

**BILL C-31: AN ACT TO AMEND
THE CANADA ELECTIONS ACT AND
THE PUBLIC SERVICE EMPLOYMENT ACT**

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LEGISLATIVE HISTORY OF BILL C-31

HOUSE OF COMMONS

Bill Stage	Date
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N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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BILL C-31: AN ACT TO AMEND
THE CANADA ELECTIONS ACT AND
THE PUBLIC SERVICE EMPLOYMENT ACT*

BACKGROUND

Bill C-31, An Act to amend the Canada Elections Act and the Public Service Employment Act, was introduced in the House of Commons by the then Leader of the Government in the House of Commons and Minister for Democratic Reform, the Hon. Rob Nicholson, PC, MP, and received first reading on 24 October 2006.

The bill proposes various amendments to Canada's electoral law and related amendments to another piece of legislation. The changes proposed in the bill are a response by the government to a series of recommendations proposed by the House of Commons Standing Committee on Procedure and House Affairs in its 13th Report in June 2006, entitled *Improving the Integrity of the Electoral Process: Recommendations for Legislative Change*.⁽¹⁾ The Committee developed its recommendations in conjunction with its review of the recommendations for legislative reform contained in the Chief Electoral Officer's report on the 38th general election pursuant to section 535 of the *Canada Elections Act*, tabled in the House of Commons on 29 September 2005.⁽²⁾

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive royal assent, and come into force.

- (1) House of Commons, Standing Committee on Procedure and House Affairs, *Improving the Integrity of the Electoral Process: Recommendations for Legislative Change*, 13th Report, 1st Session, 39th Parliament, June 2006 (hereinafter, *Improving the Integrity of the Electoral Process*), <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=10465&Lang=1&SourceId=150092>.
- (2) Chief Electoral Officer, *Completing the Cycle of Electoral Reforms: Recommendations from the Chief Electoral Officer of Canada on the 38th General Election*, September 2005 (hereinafter, *Completing the Cycle*), <http://www.elections.ca/content.asp?section=gen&document=index&dir=rep/r38&lang=e&textonly=false>.

The Committee's review of the Chief Electoral Officer's recommendations, and its consideration of the areas it identified as requiring reform, was guided by three overarching and interrelated themes:

- the integrity and accuracy of the National Register of Electors;
- voter identification at the polls; and
- voter fraud.

Each of these themes spoke to the need to maintain and strengthen the integrity of the electoral process. The Committee expressed this goal as follows:

The integrity of the electoral process is fundamental to the effective functioning of a democracy. Without adequate safeguards to ensure that those who exercise the vote are in fact eligible to vote, to prevent fraudulent voting practices, and to ensure that eligible voters are not disenfranchised or impeded in their ability to vote, the entire electoral process is undermined.⁽³⁾

The Committee endorsed a significant number of the Chief Electoral Officer's recommendations in whole or in part. The government, in its response to the Committee's report,⁽⁴⁾ accepted many of the Committee's recommendations and proposed amendments to the Act to implement them.

The amendments proposed in Bill C-31 touch on diverse aspects of election management and conduct. They affect many disparate parts of the *Canada Elections Act*, including: data collection for the purpose of maintaining the National Register of Electors; registration of electors; voter identification at the polls; access to voting opportunities; and campaigning.

DESCRIPTION AND ANALYSIS

To present the amendments in a coherent way, this document groups them as follows: the National Register of Electors; revised lists of electors; voting procedures; and operational issues.

(3) *Improving the Integrity of the Electoral Process*, p. 2.

(4) Government of Canada, *Government Response to the Thirteenth Report of the Standing Committee on Procedure and House Affairs: "Improving the Integrity of the Electoral Process,"* 1st Session, 39th Parliament, 20 October 2006, <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=10465&SourceId=177007&SwitchLanguage=1>.

A. National Register of Electors

The National Register of Electors is established and administered by the Chief Electoral Officer under the authority of Part 4 of the *Canada Elections Act*. As noted earlier, the integrity and accuracy of the National Register was one of three key themes that guided the Committee in its review of the Act, in conjunction with the Chief Electoral Officer's recommendations for legislative reform. The Committee endorsed many of the recommendations aimed at improving the accuracy of the information in the National Register. In response to that endorsement, the government has proposed a series of amendments to the *Canada Elections Act* affecting the National Register.

1. Unique Personal Identifiers (Clause 4)

One recommendation made by the Chief Electoral Officer was the assignment of a unique, personal and stable identifier to each person listed on the Register.⁽⁵⁾ Although in her appearance before the Committee the Privacy Commissioner, Ms. Jennifer Stoddart, expressed some reservations about assigning numbers to individuals, she indicated that any privacy concerns could be addressed by ensuring that random numbers were used and that the numbers would be placed at a distance from government reach. The Committee also recommended that Social Insurance Numbers not be used as the identifier, given the considerable amount of highly personal information associated with these numbers.

The government agreed with this recommendation and proposed the addition of subsection 2.1 to section 44 of the Act (see clause 4 of the bill), thus requiring the Chief Electoral Officer to assign personal identifier numbers to the names of individuals listed on the Register.⁽⁶⁾ The amendment is silent on the issue of whether Social Insurance Numbers may be used.

(5) *Completing the Cycle*, Recommendation 2.11, pp. 61-62.

(6) Prior to Bill C-31, under section 44 of the Act, the Register contained the name of the elector, his or her date of birth, a civic and mailing address, and other information authorized under the Act.

2. Provision of Updated Lists to Members of Parliament (Clause 5)

A related amendment to section 45(2) provides for the personal identifier to be included in the electronic list of electors sent to Members of Parliament in a given electoral district, as well as to each registered party that endorsed a candidate in that electoral district in the last election (clause 5). The list will contain each elector's full name, civic and mailing address, and unique identifier (section 44(2.1)). These electronic lists are to be made available by 15 November of each year, a change from the previous date of 15 October (section 45(1)). If 15 November falls during an election period or if the vote is held within a six-month period before that date, provision of the list is not required (section 45(3)).⁽⁷⁾ The amendment to section 45(3) extending the relevant period to six months was requested by the Chief Electoral Officer and endorsed by the Committee.

3. Updating the Register Using Provincial Sources of Personal Information (Clause 6)

Currently, the Chief Electoral Officer may use information collected from a variety of sources to update the Register of Electors. These sources include: information provided by the elector; information held by government departments if the elector consents to its release; and information held under the authority of provincial legislation listed in Schedule 2 of the Act. The last-mentioned source includes information such as driver's licence numbers and motor vehicle registration, vital statistics, and provincial elections information. The Chief Electoral Officer sought an amendment to the Act to permit him not only to use all of these sources of information to *update* the Register, but also to *retain* and *incorporate* that information. New subsection 46(1.1) facilitates the use of such information (clause 6). It permits the Chief Electoral Officer to retain information collected under the authority of provincial legislation listed in Schedule 2 of the Act for the purpose of "correlating information subsequently collected" with the information already contained in the Register.

(7) It should be noted that Bill C-16, An Act to amend the Canada Elections Act (1st Session, 39th Parliament), will establish a fixed date for general elections. The date proposed in the bill is the third Monday of October in the fourth calendar year following polling day in the last general election. This means that, in an election year, it will not be necessary for the Chief Electoral Officer to submit updated electronic lists as prescribed in section 45(1), if the election is held on the third Monday of October or within six months of November 15. For more details on Bill C-16, see James R. Robertson, *Bill C-16: An Act to amend the Canada Elections Act*, LS-530E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, revised 17 November 2006.

4. Agreements With Provincial Authorities on Sharing Electoral Data (Clauses 9 and 10)

The Act permits the sharing of information between provincial governments and Elections Canada. This is facilitated by means of various agreements between the Chief Electoral Officer and his or her provincial counterparts. Section 55 enables the Chief Electoral Officer to enter into agreements with provincial election authorities to share information contained in the National Register with those provincial authorities. He or she cannot share source or preliminary data and other data not incorporated in the Register. These types of data are useful for updating not only provincial registers but the National Register as well, since the provinces, in turn, share their data with the Chief Electoral Officer.

The Chief Electoral Officer and the Committee recommended that the Act be amended to give the Chief Electoral Officer authority to share all data. Clause 9, accordingly, expands the scope of the information that the Chief Electoral Officer may share with his or her provincial counterparts. It enables the sharing of data listed in section 44(2), which includes such data as the elector's date of birth and sex, as well as the personal identifiers to be established in accordance with clause 4 (subsection 44(2.1)), if the Chief Electoral Officer "intends to include" that information in the Register.⁽⁸⁾

A related amendment is aimed at clarifying that provincial authorities are not prohibited from using their electoral lists if the lists contain information obtained from the Register. Clause 10(2) amends section 56(e) by expressly stating that it is not an offence to knowingly use personal information obtained from the Register in accordance with any conditions in an agreement entered into with the Chief Electoral Officer pursuant to section 55. The scope of the information has also been enlarged to include information that is "obtained" from the Register. The existing provision spoke only of information "recorded in the Register." The change in wording captures information that is not yet recorded, or incorporated, in the Register.

5. Citizenship Information (Clause 7)

Federal income tax returns are an important source of information used by Elections Canada to update the Register. The Chief Electoral Officer considers tax returns an indispensable tool because they provide information that is more current than data obtained from most other sources. The Canada Revenue Agency collects this information and shares it

(8) *Completing the Cycle*, Recommendation 2.20, pp. 70-71.

with Elections Canada if the taxpayer has indicated his or her consent by marking a consent box on the front page of the general tax return form.

One of the deficiencies in this process, however, is that taxpayers who are not Canadian citizens may be consenting to share their personal information for inclusion on the Register. As a result, these individuals may be listed on the Register of Electors without being eligible to vote. Under section 3 of the Act, only Canadian citizens 18 years of age or older are qualified as electors. In a response to a recommendation of the Chief Electoral Officer, supported by the Committee, Bill C-31 adds section 46.1 to the *Canada Elections Act*, authorizing the Minister of National Revenue to amend the tax return form so that individuals may indicate whether they are Canadian citizens (clause 7).

6. Deceased Electors (Clause 7)

In response to concerns expressed by the Chief Electoral Officer, and shared by the Committee, about deceased electors remaining on the Register, the bill adds section 46.2 to the Act. This amendment expressly authorizes the Canada Revenue Agency to provide information about a deceased taxpayer to Elections Canada if the taxpayer had previously consented to the release of information to Elections Canada through the consent box in the tax return form (clause 7).

7. Use of Returning Officers Between Elections (Clause 8)

The Act permits returning officers to update the Register from information they receive in the course of their duties *during* elections. The Chief Electoral Officer recommended that they be authorized to continue to do this work *between* elections.⁽⁹⁾ The bill therefore, adds section 47.1 to facilitate this (clause 8).

B. Revised Lists of Electors

Part 7 of the Act sets out the framework for revising the lists of electors made available to returning officers and candidates during an election. Lists of electors are established for each polling division within an electoral district from information contained in the Register. Bill C-31 makes a series of amendments to Part 7 in order to make the lists more widely available, to improve their accuracy and to distribute them more frequently during an election period.

(9) *Completing the Cycle*, Recommendation 2.17, p. 66.

1. Preliminary Lists of Electors to Political Parties (Clause 13)

Section 93 of the Act requires that the preliminary lists of electors be sent to returning officers in each polling division within an electoral district. Clause 13 of the bill requires that an electronic copy of those lists for each electoral district be sent to any registered or eligible party that requests them. The preliminary lists of electors will also include, under an amendment to section 93(2), the elector's personal identifier, to be established in accordance with clause 4 of the bill, in addition to the elector's name and civic address.

2. Updating the Preliminary Lists With Data From the National Register (Clauses 15 and 16)

Returning officers update the preliminary lists of electors from information they obtain from voters in the course of the election. However, the Act was unclear as to whether the preliminary lists may be updated from information provided by Elections Canada from the National Register. The Chief Electoral Officer noted that considerable updating of the Register takes place immediately before and after the preliminary lists are sent to returning officers. As a result, these updates are not reflected in the preliminary lists.⁽¹⁰⁾ To address these concerns, clause 15 creates section 99.1 to expressly authorize returning officers to use information from the Register to update preliminary lists of electors. Clause 16 creates section 101(1.1), which makes updated data from the Register available to returning officers after the initial data from the Register have been sent to them.

3. More Frequent Distribution of Lists of Electors (Clause 17)

Under the provisions of the Act, returning officers prepared "preliminary lists" of electors "as soon as possible" after the issuance of an election writ (section 93), "revised lists" on the 11th day before polling day for use at advance polls (section 105), and "official lists" on the 3rd day before polling day (section 106). To ensure that electoral lists contain the most up-to-date information from the National Register and from revisions made by returning officers over the course of the election period, the bill requires an additional revised list to be prepared by returning officers and distributed in electronic form to candidates on the 19th day before polling day, after the close of nominations (clause 17, section 104.1).

(10) *Completing the Cycle*, Recommendation 2.18, pp. 66-67.

4. Date of Birth Information on Lists of Electors (Clause 18)

Sections 107(2) and (3) of the Act are amended to require that revised and official lists of electors provided by returning officers to deputy returning officers for conducting the vote in each polling division include the elector's date of birth (clause 18). By the terms of an amendment to the bill passed at the committee stage in the House of Commons, the lists provided to candidates **would have contained** the elector's date of birth. In the version of the bill as passed at second reading, the date of birth information would have been made available only to election officials. These proposed amendments **responded** to recommendations of the Chief Electoral Officer and the Committee. The Chief Electoral Officer recommended only the addition of the year of birth. The Committee, however, wished to go further and recommended inclusion of the complete date of birth on the grounds that this would provide a further safeguard against electoral fraud, especially in cases where a prospective voter presents himself or herself at a poll without adequate identification.⁽¹¹⁾ **However, as a result of an amendment to the bill made at committee stage in the Senate, the lists provided to candidates will not include the elector's date of birth or the elector's sex.**

C. Voting Procedures

Part 9 of the *Canada Elections Act* details the procedures and rules that govern the conduct of the vote. The preceding parts of the Act deal with preparation for the vote. The series of amendments in Bill C-31 dealing with voting procedures seek to give effect to two of the key themes developed by the Committee in the course of its review of the Chief Electoral Officer's recommendations: voter identification and voter fraud.

1. Identification at the Polls

In the course of its deliberations the Committee was struck by the absence of any requirement for an elector to confirm his or her identity when presenting himself or herself at a polling station to vote. As long as the person's name is on the list of electors, he or she is entitled to vote. Identification may be required only when an election official, or the candidate, or his or her representative at a polling station, have reason to doubt the identity or right to vote of an individual wishing to vote (section 144). If challenged, a voter must present "satisfactory

(11) *Improving the Integrity of the Electoral Process*, Recommendation 2.7, p. 15.

proof of identity and residence.” The Act, however, does not prescribe what is satisfactory “proof.”⁽¹²⁾

Further, should the prospective voter not have satisfactory proof of identity and address when challenged, he or she may still be permitted to vote upon taking a prescribed oath (section 144(2)). The Committee considered this lack of proper identification to be a significant deficiency in the voting process and one that could encourage fraudulent voting practices.

a. Proof of Identity and Address (Clauses 14 and 21)

In response to the Committee’s concerns, the government proposed a series of amendments in clause 21 of the bill that closely followed the detailed recommendations of the Committee.⁽¹³⁾ Clause 21 amends section 143 by requiring that prospective voters provide one piece of identification, issued by any level of government, containing a photograph and the name and address of the elector (section 143(2)(a)). Alternatively, the voter may present two pieces of identification, each of which establishes his or her name, and one of which establishes his or her address, if those pieces of identification have been authorized by the Chief Electoral Officer (section 143(2)(b)). These alternative pieces of identification may be authorized regardless of who issued them (section 143(2.1)). The amendments require the Chief Electoral Officer to publish, each year and within three days of the issue of an election writ, a list of the types of identification that are adequate alternatives to government-issued photo identification (section 143(7)).

In response to concerns raised during the House of Commons Committee hearings by a number of witnesses, the bill was amended to provide that a document issued by the Government of Canada certifying a person to be an Indian within the meaning of the *Indian Act* constitutes an authorized piece of identification under section 143(2)(b) (section 143(2.2)).

The new requirements for proof of identity will be communicated to voters in advance through the voter information card, referred to in the Act as the “notice of confirmation of registration.” Clause 14(2) amends section 95(2) to require that voter information cards contain a notice that proof of an elector’s identity and residence is required before the elector will be permitted to vote.

(12) The Committee heard anecdotal evidence from the 39th general election that, in some polling stations, magazine subscription labels were accepted as satisfactory proof of identity and address. See *Improving the Integrity of the Electoral Process*, p. 27.

(13) *Improving the Integrity of the Electoral Process*, pp. 25-27.

b. Taking an Oath (Clause 21)

If an elector has no suitable identification, he or she may take a prescribed oath provided that he or she is vouched for by another person whose name is on the list of electors in the same polling division as the elector and who has the required identification prescribed in the preceding subsection of the Act (section 143(3)). The individual who vouches for the elector must do so by taking an oath.

The amendments require that persons who administer an oath to those who lack the required identification must inform the oath-taker of the qualifications for voting and the penalty that may be imposed on persons who vote or attempt to vote knowing that they are not eligible to do so (section 143.1).

The original provision for requiring the taking of an oath where an election official doubts the eligibility of an individual to vote (former section 144(2)) has been preserved, with some modification. The amended provision (section 144) enables election officials, candidates and their representatives to demand that an elector take an oath if they have “reasonable doubts” concerning that person’s eligibility to vote, notwithstanding that the elector may have adequate proof of identification.

c. No Serial Vouching (Clauses 21 and 38)

To prevent a practice sometimes referred to as “serial vouching,” the Act is amended to limit vouching so that an elector may vouch for only one person (section 143(5)). It also bans vouching by electors who have been vouched for (section 143(6)). This amendment addresses the Committee’s strong criticism of the practice, which was made in light of testimony concerning abuses associated with vouching.⁽¹⁴⁾

The prohibition against vouching is supported by amendments to the enforcement provisions of the Act. Clauses 38(1) to 38(3) amend section 489(2) of the Act by creating the offences of vouching for more than one elector and vouching after being vouched for (“vouchee” acting as voucher).

(14) The Act already contained a prohibition against vouching for more than one elector in situations where a person wishes to register to vote *on polling day* but lacks appropriate identification and must take an oath (see section 161(6)). However, the Committee was told about an incident in one electoral district where one eligible voter succeeded in vouching for a busload of individuals who were not on the list of electors and whose eligibility to vote was in question. The Committee also heard of instances of electors, who had been vouched for, in turn vouching for others.

2. Special Procedures for Polling Day Registration (Clause 26)

The Act permits an individual whose name does not appear on the electoral list to register to vote on polling day provided that he or she has “satisfactory proof of identity and residence.” Alternatively, the individual may take an oath if an eligible voter whose name is on the list of electors for the same polling division vouches for the individual by taking an oath (section 161).

Clause 26(1) amends section 161 of the Act to make the proof-of-identity requirements for polling-day elector registration consistent with the new proof-of-identity requirements for voting in clause 21 (section 143(2)). That is, an individual wishing to register on polling day must produce a government-issued piece of identification that contains his or her photograph, name and address (section 143(2)(a)). Alternatively, the individual may provide two pieces of identification that have been authorized by the Chief Electoral Officer (section 143(2)(b)). If the individual lacks the required identification, he or she may take an oath, provided he or she is vouched for by a person who: is listed on the list of electors in the same polling division; has the identification required in sections 143(2)(a) or (b); and who vouches by taking an oath. Serial vouching is prohibited under this procedure as well (clause 26(2), sections 161(6) and (7)).

3. Transfer Certificates and Access to Polling Stations

In *Completing the Cycle*, the Chief Electoral Officer recommended a number of measures aimed at improving access to polling stations. The Committee agreed with most of these recommendations and made some additional ones.

a. Transfer Certificates (Clause 24)

Occasionally, an elector is reassigned to another polling station after having received a voter information card informing him or her of which polling station to use to vote. The Chief Electoral Officer recommended that such an elector be entitled to receive a transfer certificate to enable him or her to vote at the original polling station indicated on the voter information card.⁽¹⁵⁾ Clause 24 adds subsection (4) to section 158 to permit this measure.

(15) *Completing the Cycle*, Recommendation 1.12, p. 31.

b. Transfer Certificates for Physically Disabled Electors (Clause 25)

Section 159 allows a physically disabled elector to receive a transfer certificate to vote at a polling station with level access if the polling station to which he or she has been assigned lacks level access. The provision requires, however, that the request for the transfer certificate be made before 10 p.m. on the Friday before polling day. The Chief Electoral Officer recommended that this time limit be removed because it can unfairly deny some disabled persons the right to vote if they are not aware of the deadline. Accordingly, clause 25 amends section 159(2) to remove the time limit.

4. Periodic Reports to Candidates by Poll Clerks (Clause 28)

Section 162 of the *Canada Elections Act* lists the various duties to be performed by poll clerks. These include noting on prescribed forms who has voted, whether the voter exercised the right to vote but was not on the list of electors, and whether oaths were required to be administered. The amendment stipulated by clause 28 of the bill now requires poll clerks to provide to a candidate's representative, at least every 30 minutes, a list of electors who have voted, **except for electors who registered on the same day they voted**. This clause was presumably included to enable a candidate's representative to have the most current information on whether a candidate's expected supporters have actually come out to vote. The idea for this reporting process comes from Quebec, where a so-called "bingo card" system is used whereby election officials simply check off the number that corresponds to the voter's name on the voters' list on a form resembling a bingo card.

5. Advance Polling

Part 10 of the *Canada Elections Act* outlines the requirements for the establishment of, and voting procedures in, advance polling stations. The Chief Electoral Officer noted in *Completing the Cycle* that voting in advance polls has risen in recent years from 750,000 voters in 2000 to 1,250,000 in 2004.⁽¹⁶⁾ The Chief Electoral Officer has recommended a number of measures to facilitate the establishment and operation of advance polling stations.

(16) *Completing the Cycle*, p. 30, footnote 14.

a. Greater Flexibility in Establishing Advance Polling Stations (Clause 29)

The Act provided that two or more polling divisions must be served by an advance polling station (section 168). This created difficulties for voters in geographically large, rural or remote electoral districts who wished to take advantage of advance polls. In response to a recommendation from the Chief Electoral Officer, endorsed by the Committee, clause 29 amends section 168 to enable one polling station to serve a single polling division.

b. Registration at Advance Polling Stations (Clause 30)

As with registration at polling stations on polling day, special procedures are in place for the registration of electors at an advance polling station. Clause 30 of the bill amends section 169 of the Act to ensure that the procedures for registration at advance polling stations are consistent with the procedures for registration on polling day. Section 169(2) repeats the process set out in clause 26 (sections 161(1), (6) and (7)). (See above, section C.2, “Special Procedures for Polling Day Registration.”)

D. Operational Issues

A series of other amendments are intended to facilitate the Chief Electoral Officer’s ability to conduct elections more effectively and to assist candidates in conducting election campaigns.

1. Adaptation Power of the Chief Electoral Officer (Clause 2)

The Act provides the Chief Electoral Officer with a unique power to adapt the provisions of the Act, subject to a number of listed exceptions, in cases of emergency or unforeseen circumstances. This power, however, can be exercised only during an election period. The Chief Electoral Officer indicated that he has found this power to be invaluable to his ability to respond to a variety of circumstances in the course of an election, including the need to: issue transfer certificates to electors advised to vote at the wrong polling station; enable inmates in federal institutions to vote; and extend the special ballot voting period for armed forces personnel in inaccessible locations.

The Chief Electoral Officer recommended an extension of the adaptation power for a period of 90 days following the return of the writ, since considerable and crucial election work, such as validation of the vote, takes place after the return of the writ. The amendments to the Act extend the adaptation period to only 30 days, following the recommendation of the Committee (clause 2, section 17(1)).

2. Hiring and Payment of Temporary Employees (Clause 40)

Elections Canada makes extensive use of temporary and casual employees in preparation for an election, during election periods and while reporting on an election. The term of employment for these employees, however, is subject to section 50(2) of the *Public Service Employment Act*, which limits to 90 working days the length of time that casual employees may work in a calendar year in any particular department or organization of government.⁽¹⁷⁾ The Chief Electoral Officer indicated that this limit on the duration of employment creates difficulties in the hiring and retaining of knowledgeable election workers and impedes the effective functioning of elections. He therefore recommended that the authority to hire temporary or casual election workers be taken out of the *Public Service Employment Act* and transferred to the *Canada Elections Act*, with no limit being placed on the duration of employment. It was noted that election officers, as the term is defined in section 22 of the *Canada Elections Act*, are retained separately under that Act, rather than under the *Public Service Employment Act*.⁽¹⁸⁾

The Committee, while being sympathetic to the Chief Electoral Officer's concerns, was prepared to recommend only an extension of the term limit for temporary employees to 125 working days in a calendar year. The government, in turn, **proposed** to amend section 50(2) to permit an extension of the maximum term by means of a regulation made by the Public Service Commission. **In the end, an amendment passed in the Senate chamber fixed at 165 days the term limit for temporary employees.**

(17) The 90-day limit was introduced as part of amendments to the *Public Service Employment Act* brought about by the *Public Service Modernization Act*, S.C. 2004, c. 22, which came into force on 31 December 2005. Previously, casual employees had been permitted to work 125 working days in any 12-month period, in any particular department or other organization of government.

(18) *Completing the Cycle*, Recommendation 1.9, pp. 27-29.

3. Access to Multiple-residence Buildings, Gated Communities and Other Premises by Election Officials (Clause 3)

The Act was silent as to whether election officials may enter multiple-residence buildings and gated communities in order to perform their duties in conducting elections. Section 43 of the Act imposes only a general obligation on a “person” not to wilfully obstruct an election official in conducting his or her duties. The Chief Electoral Officer noted in *Completing the Cycle* that the work of election officials, particularly in conducting targeted revisions essential to the maintenance of the National Register of Electors, has sometimes been impeded by landlords and others in control of multiple-residence buildings who have refused them access.⁽¹⁹⁾

This gap has been filled with the creation of section 43.1 of the Act (clause 3), which grants election officials greater access to such buildings. This new provision requires that election officials be granted access to apartment, condominium and other multiple-residence buildings as well as to gated communities between the hours of 9:00 a.m. and 9:00 p.m. in order that they may perform their official duties. Election officials may be denied access only if their activities could harm the physical or emotional well-being of the residents of the buildings subject to the new provision (clause 3, section 43.1(2)).

4. Greater Access to Private Property by Candidates and Their Representatives

a. Access to Gated Communities (Clause 11)

A companion amendment to those defined in clause 3 of the bill enables candidates and their representatives to have greater access to public and private places for the purpose of conducting an election campaign. Section 81 of the Act enables candidates and their representatives to access apartment, condominium and other multiple-residence buildings during an election between 9:00 a.m. and 9:00 p.m. Clause 11 (section 81(1)(a)) expressly extends this access to gated communities.

b. Access to Places Normally Open to the Public (Clause 12)

The Chief Electoral Officer recommended that political parties and candidates be given greater access to places normally open to the public, but which may be privately owned, such as shopping malls. The Committee endorsed this recommendation. Clause 12 of the bill

(19) *Completing the Cycle*, Recommendation 1.14, pp. 32-34.

creates section 81.1(1) to enable candidates and their representatives to campaign in and around buildings, land, streets, “or any other place” normally open, without charge, to the public. These places include: commercial, business, cultural, historical, educational, religious, governmental, entertainment or recreational places.⁽²⁰⁾ An exception to this broad access applies where campaigning in or on a particular place would be “incompatible with the function and purpose of the place or inconsistent with public safety” (subsection 81.1(2)).

E. Coming Into Force (Clause 42)

Bill C-31 will come into force in stages. Clauses 3, 6, 8, 9, 10(2), 11, 12, 14 to 16, **20 to 27, 28 (with regard to the amendments to paragraphs 162(f), (g) and (i)), 29 to 33** (new voting procedures, including identification requirements) and 35 to 39 will come into force two months after Royal Assent, or sooner if the Chief Electoral Officer publishes a notice in the *Canada Gazette* that the preparations are in place to bring the amendments into effect. **An amendment passed in the Senate at the committee stage provides that these clauses will come into force despite the general coming into force provision contained in subsection 554(1) of the *Canada Elections Act*.**

Clauses 1 (new definitions in sections 2(1) of the Act), 4 (unique personal identifiers), 5, 7, 10(1), 13, 17 to 19 (distribution of lists of electors) and 34 will come into force **ten** months after Royal Assent, unless the Chief Electoral Officer indicates, by notice in the *Canada Gazette*, that the necessary preparations have been made to put the new requirements of the bill into effect.

Paragraphs 162(i.1) and (i.2) of the *Canada Elections Act* (lists of electors who have voted provided to candidate’s representative) will come into force six months after Royal Assent, unless the Chief Electoral Officer indicates, by notice in the *Canada Gazette*, that the necessary preparations to bring the amendments into effect have been made.

Clause 40 which **amends** the *Public Service Employment Act*, will come into force on Royal Assent (since the bill is silent with respect to the coming into force of **this provision**).

(20) The provision is, in fact, much broader than was recommended by the Chief Electoral Officer, who had called for equal campaigning opportunities where the owner of a property, such as a mall, permits only one party or candidate to enter the property, but excludes others: *Completing the Cycle*, p. 34.

COMMENTARY

Bill C-31 represents a significant step toward the implementation of important reforms that the Chief Electoral Officer has been seeking for a number of years.⁽²¹⁾ Some of these reforms address practical, operational issues relating to the conduct of elections. Others deal with fundamental concerns about the exercise of voting rights and the accuracy of voter information, both of which are central to the integrity of the electoral process itself.

Not all of the amendments sought by the Chief Electoral Officer are contained in Bill C-31. Some, such as limiting the right of Elections Canada employees to strike, were endorsed by the Committee but were considered by the government to require more consultation with stakeholders, including the unions and employees potentially affected. Other reforms that were supported by the Committee, such as more equitable entitlement to paid and free-time political broadcasting during elections, were not addressed by the government in Bill C-31. The government indicated in its response to the Committee's report that not all the recommendations for legislative amendment could be accommodated because of the need for further consultation with stakeholders or for further study.

Bill C-31 does not address election finance reform. This omission reflects the Committee's desire to engage in a comprehensive review of election finance after it receives a second report from the Chief Electoral Officer on the effects of Bill C-24, which came into effect as S.C. 2003, c. 19, on 1 January 2004.⁽²²⁾ The Chief Electoral Officer indicated in *Completing the Cycle* that he would table a second report dealing specifically with the operation of the political financing reforms arising from Bill C-24.

In his appearance before the Committee on 23 November 2006, Mr. Nicholson commented on three main issues that emerged in the debate at second reading in the House: voter identification, date of birth on the electors' list, and unique personal identifiers. He commented that the new voter identification requirements represent a balanced approach: by providing three options – photo identification, other approved identification, or an oath – the bill seeks to maintain voting accessibility while safeguarding the integrity of the voting process.

(21) See for example, the Chief Electoral Officer's 2001 report to Parliament on the 35th General Election, *Canada's Electoral System: Strengthening the Foundation*.

(22) James R. Robertson, *Bill C-24: An Act to amend the Canada Elections Act and the Income Tax Act (Political Financing)*, LS-448E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, revised 11 June 2003.

With respect to the unique identifiers, Mr. Nicholson supported the idea of strengthening the language of the bill to ensure that only the Chief Electoral Officer would be authorized to assign such numbers. Indeed, amendments to the bill proposed by the government and the Bloc Québécois after the House of Commons Committee's study of the bill resulted in new wording clarifying the provision that only the Chief Electoral Officer will assign the identifiers. Finally, with respect to date-of-birth information appearing on electors' lists, Mr. Nicholson emphasized that this proposal respected individual privacy while providing an additional tool for the verification of voter identity. By the terms of the bill as passed at second reading by the House of Commons, the elector's date of birth would not have been provided on the electors' lists made available to candidates and their representatives, but only to returning officers and other election officials at the polls. At the committee stage, however, the bill was amended to provide that this information must also be made available to candidates and their representatives.

This amendment was met with sharp criticism by the Privacy Commissioner of Canada, Ms. Jennifer Stoddart. In a letter to Mr. Paul Dewar, MP, dated 15 February 2007, Ms. Stoddart expressed concern about sharing date-of-birth information with politicians and their representatives. She questioned whether sharing this information would protect or improve the integrity of the electoral process. She further noted that the apparent motivation for the amendment – “target-marketing of constituents” – is not a use that an individual would reasonably expect when registering to vote, nor would it be consistent with protecting the integrity of the electoral process.

An amendment passed by the Senate at committee stage echoed these concerns by removing the elector's date of birth from the lists that are provided to candidates. This amendment was agreed to by the House of Commons.