

**BILL C-6: AN ACT TO AMEND THE CANADA ELECTIONS
ACT (VISUAL IDENTIFICATION OF VOTERS)**

**Sebastian Spano
Law and Government Division**

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LEGISLATIVE HISTORY OF BILL C-6

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 26 October 2007
Second Reading: 15 November 2007
Committee Report:
Report Stage:
Third Reading:

SENATE

Bill Stage	Date
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First Reading:
Second Reading:
Committee Report:
Report Stage:
Third Reading:

Royal Assent:

Statutes of Canada

This bill did not become law before the 39th Parliament ended on 7 September 2008.

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

Legislative history by Michel Bédard

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BILL C-6: AN ACT TO AMEND THE CANADA ELECTIONS ACT
(VISUAL IDENTIFICATION OF VOTERS)*

BACKGROUND

Bill C-6, An Act to amend the Canada Elections Act (visual identification of voters), was introduced in the House of Commons on 26 October 2007 by the Leader of the Government, the Honourable Peter Van Loan, PC, MP. The bill requires that voters who present identification in order to vote, register to vote, or vouch for another voter must have their faces uncovered to enable election officials to identify them visually.

The bill introduces a refinement to the voter identification provisions of the *Canada Elections Act* that were introduced by Bill C-31 in the 1st Session of the 39th Parliament. These provisions introduced the concept of voter identification but did not expressly provide that a voter must have an uncovered face in order to vote or to register to vote.

Bill C-31, An Act to amend the Canada Elections Act and the Public Service Employment Act, as enacted by S.C. 2007, c. 21, introduced amendments to the Act requiring, among other things, that an individual must, in order to vote, provide one piece of identification, issued by any level of government, containing his or her photograph, name and address.⁽¹⁾ Alternatively, as stipulated by Bill C-31, 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. Voters who lack any suitable identification may take a prescribed oath provided that they are vouched for by a voter who has the required identification and whose name appears on the voters' list.

* 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) Michel Bédard and Sebastian Spano, *Bill C-31: An Act to amend the Canada Elections Act and the Public Service Employment Act*, LS-542E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 22 June 2007, <http://www.parl.gc.ca/LEGISINFO/index.asp?Language=E&query=4851&Session=14&List=ls>.

The new requirements for identification at the polls are a direct response to concerns expressed by members of the House of Commons Standing Committee on Procedure and House Affairs during their study of proposed reforms to the *Canada Elections Act*.⁽²⁾

The issue of voting with a face covering came to the fore in the summer and early autumn of 2007 when the Chief Electoral Officer, Marc Mayrand, indicated in response to questions from the media that he would not require women who wear veils or burkas to remove their face covering in order to vote. During a press conference on 10 September 2007, Mr. Mayrand explained that, on his interpretation of the voter identification requirements of the Act, voters with a covered face could not be compelled to remove their face covering.⁽³⁾ He noted that voters are provided with two alternatives to voting without photo identification (i.e., providing two pieces of non-photo identification, or taking an oath). An uncovered face could not be a requirement of the Act, since there would be no means of making a visual comparison of the voter's face with a photograph under these two alternatives for voter identification. He further noted that the Act provides for other means of voting that do not require the visual comparison of a voter with his or her photograph, such as voting by mail, an option that approximately 80,000 electors exercised in the 2006 election.

The Chief Electoral Officer was urged to reverse his position by the House of Commons Standing Committee on Procedure and House Affairs during meetings in early September 2007. Alternatively, he was urged to use his power of adaptation provided in section 17 of the Act to impose the requirement of voting with an uncovered face. In an appearance before the Committee on 13 September 2007, however, Mr. Mayrand indicated that it would be inappropriate for him to exercise this power, as the situation did not call for the use of a power he considered to be reserved for emergencies or other unforeseen events.

Mr. Mayrand maintained throughout the controversy that he could not compel a voter to remove a face covering without an explicit direction in the Act to that effect. Hence, the government's response was to introduce Bill C-6 to expressly require voters to remove any face covering when identifying themselves at a polling station.

(2) House of Commons Standing Committee on Procedure and House Affairs, *Improving the Integrity of the Electoral Process: Recommendations for Legislative Change*, 1st Session, 39th Parliament, 13th Report, June 2006, <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=10465&Lang=1&SourceId=150092>.

(3) Elections Canada, "The Chief Electoral Officer of Canada, Marc Mayrand, clarifies application of the new voter identification provisions of the Canada Elections Act," News release, 10 September 2007, <http://www.elections.ca/content.asp?section=med&document=sep1007&dir=spe&lang=e&textonly=false>.

DESCRIPTION AND ANALYSIS

Bill C-6 requires that voters who present themselves to vote, register to vote, or vouch for a voter have an uncovered face when doing so. Some voters who are resident in Canada will also be required to have an uncovered face when they receive a special ballot. An exception to the requirement to have an uncovered face when voting, registering to vote, or vouching for another voter is provided in cases where, in the opinion of an election official, removal of a face covering would be harmful to the individual's health.

The bill will also permit returning officers to appoint "any person" to act as an election official. This would give a returning officer the flexibility to appoint additional election officials to attend at polling stations where needed to accommodate persons with religious requirements who are requested to remove a face covering.

A. The Requirement to Have an Uncovered Face When Presenting Identification

1. When Voting (Clause 5)

Historically, voters were not required to present identification at a polling station in order to vote in federal elections. Provided that the individual's name appeared on the voters' list for that polling station, the individual could vote. Identification would be required only when an election official or the candidate, or his or her representative at a polling station, had reason to doubt the identity or right of an individual to vote. If challenged, a voter could present "satisfactory proof of identity and residence." However, the *Canada Elections Act* did not prescribe what constituted satisfactory "proof." Further, if the prospective voter lacked satisfactory proof when challenged, he or she would still be permitted to vote upon taking a prescribed oath.

Bill C-31 amended section 143 of the Act to require an individual wishing to vote to 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)). The Chief Electoral Officer is required, each year and within three days of the issue of an election writ, to publish a list of the types of identification that are adequate alternatives to government-issued photo identification. Suitable alternatives include a health card, social insurance number card, birth certificate, driver's licence and Canadian passport.⁽⁴⁾

(4) For a complete list of Elections Canada's approved alternatives to photo identification, see <http://www.elections.ca/content.asp?section=ele&dir=2007/ids&document=index&lang=e&textonly=false#two>.

If the voter lacks the required identification, he or she may take a prescribed oath, provided he or she is vouched for by a person who is listed on the list of electors in the same polling division as the voter, has the identification required in sections 143(2)(a) or (b), and vouches for the voter by taking an oath. A voter may vouch for only one voter, and a voter who has been vouched for may not, in turn, vouch for another voter.

Clause 5 of the bill adds the additional requirement to section 143(2) that the voter must have an uncovered face when presenting identification in order to vote. The bill also requires that the elector who is vouching for the voter without identification also have an uncovered face when presenting identification to an election official (new subsection 143(3.1)).

An exception to the rule requiring an uncovered face when voting or vouching for a voter is provided by Bill C-6. A voter will be permitted to vote or vouch for another voter with a face covering if an election official is of the opinion that removing the face covering would be harmful to the voter's health. The voter would also have to take a prescribed oath attesting to that fact (new subsection 143(3.2)).

2. When Registering to Vote (Clause 6)

Prior to the amendments brought about by Bill C-31, the *Canada Elections Act* permitted an individual whose name did not appear on the electoral list to register to vote on polling day provided that he or she had "satisfactory proof of identity and residence." Alternatively, the individual could take an oath if an eligible voter whose name was on the list of electors for the same polling division vouched for the individual by taking an oath in accordance with section 161.

Bill C-31 amended section 161 to require that a voter who registers to vote on polling day at a polling station provide the same kinds of identification as would be required of a voter under section 143(2). Alternatively, the voter may take an oath and be vouched for by another voter who has the required identification prescribed in section 143(2).

Bill C-6 further amends section 161 to make the visual identification requirements for registering to vote the same as the requirements for voting as found in proposed section 143(2.1). Clause 6 adds proposed section 161(1.1) to the Act to require that electors wishing to register at a polling station, and voters who vouch for those electors, present identification with an uncovered face.

An exception to the rule requiring an uncovered face is also provided for voters wishing to register to vote at a polling station and voters vouching for those voters, where an election official is of the opinion that removing the face covering would be harmful to the voter's health and the voter takes a prescribed oath to that effect (new subsection 161(1.2)).

3. When Registering to Vote at an Advance Polling Station (Clause 8)

The requirement to have an uncovered face is also applied to voters wishing to register to vote at an advance polling station and for voters who vouch for them. A health exception is also provided for these procedures (new sections 169(2.1) and (2.2)).

4. When Receiving a Special Ballot While Residing in Canada (Clause 9)

Currently, there are no requirements in the Act to provide identification when obtaining a special ballot. The special ballot is subject to the Special Voting Rules in Part 11 of the Act. Special ballots are available to Canadian electors who (1) are temporarily away from their electoral districts during an election or referendum, whether in Canada or abroad; (2) are in their electoral districts but cannot, or do not wish to, vote at an ordinary or advance poll; (3) are temporarily residing outside of Canada; (4) are members of the Canadian Forces; or (5) are incarcerated.⁽⁵⁾

Bill C-6 requires that voters *residing in Canada* who are entitled to vote with a special ballot present identification in accordance with section 143(2)(a) or (b) if they go to the office of a returning officer to receive the special ballot (new section 237.1(1)(a)). No vouching is permitted if the voter does not reside in the electoral district or if he or she lacks the required identification. The rationale for this is that the vouching voter's name would not appear on the electoral list, as required by subsection 143(3).

If the elector goes to the office of the returning officer for the electoral district in which the elector resides, the elector may prove his or her identity and residence by presenting the prescribed pieces of identification, or by taking the prescribed oath and being vouched for by an elector who resides in the same polling division as the elector and is able to provide suitable identification in accordance with section 143. The vouching elector must do so by taking the

(5) See the backgrounder prepared by Elections Canada, "Voting by Special Ballot," <http://www.elections.ca/content.asp?section=gen&document=ec90540&dir=bkg&lang=e&textonly=false> (updated April 2007).

prescribed oath (new section 237.1(1)(b)). The elector receiving the special ballot and the elector vouching for another elector who lacks the requisite identification must remove any face covering when proving identity or providing identification (new section 237.1(2)).

As with the procedures for voting at a polling station or at an advance poll, the procedures for receiving a special ballot provide for an exception to presenting oneself with an uncovered face where the returning officer is of the view that removing a face covering may be harmful to the voter's health and the voter takes an oath attesting to that fact (new section 237.1(3)).

B. Offences in Respect of Special Ballots (Clause 10)

The bill creates two new offences relating to the use of special ballots (amended section 491(2)). It will be an offence punishable on summary conviction to vouch for more than one elector receiving a special ballot in accordance with the proposed section 237.1. It will also be an offence to vouch for an elector if a person has been vouched for by an elector for the purpose of obtaining a special ballot.

C. Poll Clerk to Report Voter's Failure to Comply with Requirement of Uncovered Face (Clause 7)

Section 162 of the *Canada Elections Act* prescribes the various duties of a poll clerk. One duty is to complete a report indicating, among other things, that a voter has refused to comply with the requirement to provide appropriate identification as prescribed in section 143(2)(b) or has refused to take the prescribed oath (section 162(g)). Bill C-6 will amend section 162(g) to require that a poll clerk also complete a report when a voter refuses to comply with the requirement to have an uncovered face when voting or vouching.

D. Authority to Appoint Other Persons to Attend at a Polling Place (Clauses 1, 3, and 4)

In an apparent effort to accommodate the religious requirements of persons who would be required to remove a face covering when voting, such as Muslim women wearing a niqab or other veil, the Act grants returning officers, with the approval of the Chief Electoral Officer, authority to appoint "any other persons" as may be necessary to attend at a polling station (new section 32.1). These "other persons" would be considered election officers under section 22(1) of the Act (new sub-paragraph 22(1)(g.1)). Persons appointed under the proposed section 32.1 would be delegated any of the powers that a returning officer or poll clerk may exercise at a polling station (new section 37.1).

These amendments are intended to give Elections Canada the flexibility to appoint sufficient personnel to manage the conduct of the vote at polling stations. These additional personnel would be employees of Elections Canada.

E. Coordinating Amendments in Respect of Advance Polls (Clause 11)

Bill C-6 contains an amendment to coordinate this bill with what is now Bill C-16, An Act to amend the Canada Elections Act (expanded voting opportunities) and to make a consequential amendment to the Referendum Act, which was introduced on 1 November 2007. Bill C-16, which reinstitutes Bill C-55 from the last session of Parliament, increases the number of advance polling days from three to five and provides for an increased number of advance polling stations on the last day of advance polling. Bill C-16 also provides that all polling stations that are open on polling day will also be open on the *last day of advance* polling.⁽⁶⁾

The coordinating amendment in Bill C-6 states that if a bill is introduced that is in the same form as Bill C-55 and with the same title, both the identification provisions consistent with Bill C-31 and the visual identification provisions found in C-6 shall apply to voting on the last day of an advance poll. The coordinating amendment in Bill C-6, therefore, will form part of a new section 176.2 in Bill C-16. The coordinating amendment would create new subsections 176.2(2.1) and (2.2).

F. Coming Into Force

Bill C-6 contains no coming-into-force provision. The bill will, therefore, come into force on Royal Assent.

(6) Michel Bédard, *Bill C-55: An Act to amend the Canada Elections Act (Expanded Voting Opportunities) and to Make a Consequential Amendment to the Referendum Act*, LS-560E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 25 July 2007, http://www.parl.gc.ca/common/bills_ls.asp?lang=E&ls=c55&source=library_prb&Parl=39&Ses=1.

COMMENTARY

When the issue of veils and voting arose in September 2007, most politicians supported calls for requiring faces to be uncovered, but there was a distinct lack of support for this position among media commentators. There has been little media commentary on Bill C-6 since its introduction in the House on 26 October 2007. *The Globe and Mail*, in a harshly critical editorial, opined that “[p]andering to ethnic prejudice is a cheap way to win votes.” It described the bill as “a solution in search of a problem.” It noted that where voters vote using an alternative to photo identification that would still be permitted by the Act, showing an uncovered face would serve no purpose and would not advance the aim of the legislation to address voter fraud. Showing one’s face, according to the editorial, would only prove that the voter “has a face.”⁽⁷⁾

(7) *The Globe and Mail* [Toronto], “A bad bill on veils,” 30 October 2007.