

BILL C-40: EXPANDED VOTING OPPORTUNITIES ACT

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LEGISLATIVE HISTORY OF BILL C-40

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 12 June 2009

Second Reading:

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 2nd Session of the 40th Parliament ended on 30 December 2009.

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

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BILL C-40: EXPANDED VOTING OPPORTUNITIES ACT^{*}

BACKGROUND

Bill C-40, An Act to amend the Canada Elections Act (short title: Expanded Voting Opportunities Act), was introduced in the House of Commons by the Honourable Steven Fletcher, Minister of State (Democratic Reform) on 12 June 2009.

Bill C-40 makes various amendments to the *Canada Elections Act*⁽¹⁾ (“the Act”). There are currently three days of advance polling for federal elections: the 10th (Friday), 9th (Saturday) and 7th (Monday) days before polling day (i.e., election day). Bill C-40 adds the two Sundays (the 8th and 1st days) preceding polling day as days of advance polling, increasing from three to five the number of advance polling days. As a result, there will be four consecutive days of advance polling between the 10th (Friday) and the 7th (Monday) days preceding polling day. Moreover, Bill C-40 also increases the number of polling stations open on the last day of advance polling – all polling stations that are to be open on election day will be open for that last day of advance polling.

As its title suggests, the objective of Bill C-40 is to increase voter participation. It builds upon the increasing use of advance polling by Canadian voters.⁽²⁾ On the day Bill C-40 was introduced, its sponsor stated that “Providing more opportunities to vote will help to increase [Canadians’] participation in elections.”⁽³⁾ Since 1997, the percentage of voters who

* 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) *Canada Elections Act*, S.C. 2000, c. 9.

(2) Office of the Minister of State (Democratic Reform), “Amendments to the *Canada Elections Act* (expanded voting opportunities),” Backgrounder, Ottawa, 12 June 2009, <http://www.democraticreform.gc.ca/index.asp?lang=eng&page=news-comm&sub=news-comm&doc=20090612-eng.htm>.

(3) Office of the Minister of State (Democratic Reform), “Canada’s Government Introduces *The Expanded Voting Opportunities Bill*,” News release, Ottawa, 12 June 2009, <http://www.democraticreform.gc.ca/index.asp?lang=eng&page=news-comm&sub=news-comm&doc=20090612-eng.htm>.

cast their vote in advance polls increased from 5.4% in 1997 to 6% in 2000, 9.2% in 2004, 10.5% in 2006⁽⁴⁾ and 10.9% in 2008.⁽⁵⁾ Bill C-40 is based on the premise that additional advance polling days will increase voter turnout, which has been declining since 1988 (see Table 1). In this vein, the 58.8% voter turnout for the last general election of 14 October 2008 marks a record low.

Table 1 – Canadian Voter Turnout for Recent Federal Elections

Date of the Election	Voter Turnout (%)
21 November 1988	75.3
25 October 1993	69.7
2 June 1997	67.0
27 November 2000	64.1
28 June 2004	60.9
23 January 2006	64.7
14 October 2008	58.8

Source: Elections Canada (2007), p. 57; Elections Canada (2009), p. 30.

Bill C-40 was first introduced in the House of Commons during the 1st Session of the 39th Parliament as Bill C-55, but died on the *Order Paper* when Parliament was prorogued on 14 September 2007. It was reintroduced in the 2nd Session as Bill C-16 and once again died on the *Order Paper* when Parliament was dissolved on 7 September 2008. As introduced, bills C-55 and C-16 were substantially similar to Bill C-40. However, after completing its study of Bill C-16, the House of Commons Standing Committee on Procedure and House Affairs, to which the bill was referred, proposed numerous amendments intending to remove the last day of advance polling immediately before polling day, but keeping the Sunday, the 8th day before polling day, as a day of advance polling.⁽⁶⁾ These amendments were not incorporated in Bill C-40.

(4) Elections Canada, *The Electoral System of Canada*, 2nd ed., Ottawa, 2007, p. 31, <http://www.elections.ca/intro.asp?section=gen&document=index&lang=e>.

(5) Author's calculations, based on data included in Elections Canada, *Report of the Chief Electoral Officer of Canada on the 40th General Election of October 14, 2008*, Ottawa, 2009, http://www.elections.ca/gen/rep/re2/sta_2008/stat_report_e.pdf.

(6) House of Commons, Standing Committee on Procedure and House Affairs, Sixth Report, 2nd Session, 39th Parliament, 10 December 2007.

DESCRIPTION AND ANALYSIS

As explained above, Bill C-40 adds two advance polling days to those already provided for under the Act: the Sunday that is the 8th day before polling day, and the Sunday just before polling day. As a result, there will be four consecutive advance polling days on the 10th, 9th, 8th, and 7th days before polling day – Friday to Monday the week before the election – as well as a special advance polling day on the Sunday just before polling day. All polling stations that are to be open on polling day will also be open on the last day of advance polling.

A. Holding of Advance Polls (Clauses 2, 6 and 7)

Sections 171 and 172 of the Act, which provide rules on the conduct of advance polls and with regard to the notice of advance polling, will be replaced by new sections 167.1 and 167.2 (clauses 6 and 7).⁽⁷⁾ These two provisions substantially mirror former sections 171 and 172, but are placed at the beginning of Part 10, Advance Polling, since they provide general rules that apply to the first four days of advance polling and to the last day of advance polling.⁽⁸⁾ New sections 167.1 and 167.2 differ slightly from former sections 171 and 172 in that they refer to the two new additional advance polling days. The notice of advance poll has also been slightly modified to inform electors of polling divisions for the first four days of advance polling and of the polling divisions open for the last day of advance polling (section 167.2).

B. First Four Days of Advance Polling (Clauses 6 and 8)

Sections 168 to 176 will now be preceded by the heading “First Four Days of Advance Polling” since the rules they provide for apply only to the first four days of advance polling (clause 6).

Consequential amendments are made to sections 175(1) (examining and sealing of ballot box), 175(2) (close of advance poll), 175(4) (reopening of advance poll) and 175(6) (candidates may check seals on ballot boxes) to specify that the rules they provide for pertain exclusively to the first four days of advance polling (clause 8).⁽⁹⁾

(7) This amendment entails a consequential amendment to the definition of “spoiled” in section 2(1) of the Act (clause 2).

(8) The definition of “advance polling station” in section 2(1) is also amended and refers generally to Part 10, Advance Polling, in order to include the advance polling stations for the first four days of advance polling as well as the advance polling stations for the last day of advance polling (clause 2).

(9) The French versions of sections 175(1), (2) and (4) are also amended to be consistent with the English versions and thus reflect that the candidate or his or her representatives may be at the polling station (clause 8).

C. Last Day of Advance Polling (Clauses 5 and 9)

Clause 9 brings in an entire new subpart to Part 10, Advance Polling, entitled “Last Day of Advance Polling,” and adds sections 176.1 to 176.7 to the Act. New section 176.1 provides that all polling stations open on polling day will also be open on the last day of advance polling. These polling stations will be open from noon to 8:00 p.m. (see section 176.7). Sections 176.2 to 176.7 repeat the substance, with the necessary adaptations, of the rules that already apply to the first four days of advance polling in respect of:

- registration at an advance polling station (sections 176.2 and 176.3; see sections 169 and 169.1 of the existing *Canada Elections Act*);
- the list of electors being deemed modified when a registration certificate is issued (section 176.4; see section 170);
- who may vote at advance polls (section 176.5; see section 173);
- duties of the deputy returning officer (section 176.6; see section 174); and
- examination and sealing of ballot boxes (section 176.7; see section 175).

However, these provisions are adapted to take into account that the polling stations that were open on the last advance polling day are reopened as polling stations on polling day. Clause 5 makes consequential changes to section 140 to reflect the fact that ballot boxes used on polling day will have been used on the last day of advance polling.

D. Poll Workers (Clause 3)

Clause 3 amends sections 32(b) and (c) of the Act in respect of poll workers appointed to advance polling stations. Amended section 32 provides for the appointment, by the returning officer, of one deputy returning officer and one poll clerk for each advance polling station for the first four advance polling days, and of one deputy returning officer and one poll clerk for the last day of advance polling and polling day.

E. Official List of Electors (Clauses 4 and 9)

Prior to Bill C-40, the official list of electors for each polling division had to be prepared on the 3rd day before polling day. Amended section 106 changes this timeline by providing that the list shall be prepared as soon as possible after the 7th day before polling day

(just after the first four advance polling days) and no later than the 3rd day before polling day (clause 4). The official list of electors is used on the last advance polling day and on polling day (clause 9, section 176.2).

F. Counting of Votes on Polling Day (Clause 10)

Clause 10 amends section 289(1) of the Act by replacing the reference to section 172(a)(iii), which is repealed by clause 7, with a reference to new section 167.2(a)(iv), which is added by clause 6, with regard to the place where the votes cast on advance polling days are counted.

G. Offences (Clauses 11 and 12)

Offences for events that occur during the last day of advance polling are added to the Act. Clause 11 adds sections 489(2)(f) and (g), instituting, for the last day of advance polling, offences already provided for the first four days of advance polling for every person who vouches for more than one elector or who, being a “vouchee,” acts as a voucher (see sections 176.2(5) and (6)).⁽¹⁰⁾ Clause 12 adds sections 490(d), (e) and (f) to the Act, creating three new offences that replicate, for the last advance polling day, the offences pertaining to the first four advance polling days with regard to: a deputy returning officer’s failure to permit a person to vote (section 176.6(1)); a poll clerk’s failure to record a vote (section 176.6(2)); or a deputy returning officer’s improper handling of ballot boxes with the intention of causing the reception of a vote that should not have been cast or the non-reception of a vote that should have been cast (section 176.7).

H. Coming Into Force (Clause 13)

Bill C-40 comes into force three months after the bill receives Royal Assent, unless the Chief Electoral Officer publishes in the *Canada Gazette* a notice to the effect that the necessary preparations for the bringing into operation of the bill have been completed, in which case it comes into force on the day when that notice is published (clause 13).

(10) The “voucher” is an elector whose name is on the list of electors for the same polling division as the “vouchee.” The voucher asserts under oath the identity of the vouchee.