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## LEGISLATIVE SUMMARY



# **Bill C-33: An Act to amend the Canada Elections Act and to make consequential amendments to other Acts**

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

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*Legislative Summary of Bill C-33*  
(Legislative Summary)

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# LEGISLATIVE SUMMARY OF BILL C-33: AN ACT TO AMEND THE CANADA ELECTIONS ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

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## 1 BACKGROUND

Bill C-33, An Act to amend the Canada Elections Act and to make consequential amendments to other Acts was introduced in the House of Commons on 24 November 2016.<sup>1</sup> The bill addresses five areas under the *Canada Elections Act*<sup>2</sup> (CEA):

- the registration of future electors;
- the education and communications mandate of the Chief Electoral Officer (CEO);
- vouching for voters who lack the required identification documents when voting and the use of the voter information card, more formally referred to as “confirmation of registration”;
- voting rights of non-resident electors; and
- returning the Commissioner of Canada Elections to within the Office of the Chief Electoral Officer.

Bill C-33 effectively reverses some of the legislative changes enacted in 2014 by the *Fair Elections Act*,<sup>3</sup> which amended the CEA in the following ways:

- It limited the CEO’s public education and outreach mandate in relation to the electoral process.
- It eliminated the ability to vouch for the identity of voters who lack the requisite documentary identification to obtain a ballot and replaced it with “attestation” of residence only. Previously, voters lacking the requisite documentary identification could have another voter (with the requisite identification) vouch for both their identity and their residence. Since the enactment of the *Fair Elections Act*, voters without the required documentary identification can only have their residence attested to, meaning that individuals lacking the required documents to prove their identity are not able to receive ballots.
- It restricted the voter information card from being designated as a valid secondary piece of identification for voters who lacked a primary piece of identification containing a photograph and an address.
- It moved the Office of the Commissioner of Canada Elections, which is the investigative arm of Elections Canada, to the Office of the Director of Public Prosecutions.<sup>4</sup>

Bill C-33 also removes a long-standing ban on voting by persons who have been continuously absent from Canada for five years or more, and enables Canadian citizens between the ages of 14 and 18 to register as “future electors” to facilitate their addition to the National Register of Electors upon attaining the voting age of 18.

## 1.1 THE REGISTER OF FUTURE ELECTORS

The proposal to create a Register of Future Electors (RFE) is derived from a recommendation of the CEO in his report to Parliament following the 42<sup>nd</sup> federal election.<sup>5</sup> In that report, the CEO observed that registering electors once they turn 18 and thus can vote federally is a “continual challenge,” that “the gap between the estimated number of electors and the number of electors who were registered is highest for 18-year-olds,” and that 18- to 34-year-olds are disproportionately underrepresented on voter lists.<sup>6</sup>

The CEO recommended that he be given the authority to retain information on citizens between the ages of 16 and 18 so that they might be registered as soon as they were old enough to vote.<sup>7</sup>

As noted by the CEO, pre-registration of future electors exists in several other jurisdictions around the world.<sup>8</sup> Within Canada, Nova Scotia,<sup>9</sup> Prince Edward Island,<sup>10</sup> Yukon,<sup>11</sup> and, as of 1 July 2017, Ontario<sup>12</sup> all allow for the collection of information on individuals aged 16 and up for this reason. In the United States, where federal elections are administered by state electoral agencies, 27 states (and the District of Columbia) allow for pre-registration at some point before an individual turns 18, ranging from age 16 up to 6 months before the 18<sup>th</sup> birthday.<sup>13</sup> Pre-registration of some kind exists in various other jurisdictions, including in:

- the United Kingdom, where individuals are registered as “attainers” if, within 12 months of 1 December after their registration is received, they will reach the age of 18;<sup>14</sup>
- New Zealand (age 17);<sup>15</sup>
- Australia (age 16);<sup>16</sup>
- Argentina (age 16);<sup>17</sup>
- South Africa (age 16);<sup>18</sup> and
- Portugal (age 17).<sup>19</sup>

Bill C-33 amends the CEA to create the RFE and allows the CEO to collect the information of young people, aged 14 and up, so that when they turn 18 they are automatically placed on the National Register of Electors.

## 1.2 THE CHIEF ELECTORAL OFFICER’S PUBLIC EDUCATION AND INFORMATION MANDATE

In 2014, the *Fair Elections Act* imposed certain limitations on the ability of the CEO to educate and inform the public about the electoral process and democratic rights more generally. As a result of the *Fair Elections Act*, such efforts could be aimed only at primary and secondary school students, and not the general public. Prior to the *Fair Elections Act*, the CEO had the power to implement public education and information programs, and engage in outreach programs for particular groups of voters, without restriction and with particular emphasis on persons or groups most likely to experience difficulties exercising their democratic rights.<sup>20</sup>



Bill C-33 restores the broad-based authority of the CEO to educate and inform the public about the electoral process and democratic rights, and to use various media to inform the public about the electoral process. These amendments follow the recommendations made by the CEO in his report following the 42<sup>nd</sup> general election, in which he noted that “[w]hile civic education for youth is obviously important, it is not less important for electors who lack the basic knowledge about democracy.”<sup>21</sup> The CEO recommended that:

The CEO should again be given the mandate to implement public education and information programs to make the electoral process better known to the general public, particularly to those persons and groups most likely to experience difficulties in exercising their democratic rights. This mandate should specifically include outreach activities to groups of electors that have a lower registration rate than the general population.<sup>22</sup>

### 1.3 VOTER IDENTIFICATION: PROVING A VOTER’S IDENTITY AND RESIDENCE

Since 2007, in order to be allowed to vote, every elector has been required to confirm his or her identity and residence with the deputy returning officer and poll clerk.

Currently, electors can establish their identity and residence by providing election officers with:

- one piece of identification, issued by any level of government, containing a photograph and the name and address of the elector; or
- two pieces of identification, each of which establishes the elector’s name, and at least one of which establishes the elector’s address.

Individuals who do not possess acceptable identification at the time of voting must undergo a procedure prescribed in legislation and administered by election officers in order to vote.

### 1.4 ELECTORS RESIDENT OUTSIDE CANADA AND THE RIGHT TO VOTE

Voting by non-resident citizens of Canada first occurred when the vote was extended to soldiers fighting abroad in the First World War.<sup>23</sup> For most of the 20<sup>th</sup> century, only certain types of non-resident citizens, such as armed forces personnel and public service staff posted abroad, were permitted to vote in federal elections. The CEA was amended in 1993 to enable all Canadian citizens who reside outside Canada to vote in federal elections, provided that they have been absent from Canada for less than five years and plan to return to Canada (certain electors, such as those serving abroad in the Canadian Forces or those working at embassies abroad, are exempt from the five-year absence rule).

In his September 2005 report following the 38<sup>th</sup> general election, the CEO recommended that the limitation contained in section 11(d) of the CEA, prohibiting voting by persons who have been absent from Canada for five consecutive years or more and who intend to return to Canada, be removed.<sup>24</sup>

The following year, in 2006, the House of Commons Standing Committee on Procedure and House Affairs conducted a study assessing the CEA and possible amendments, using the CEO's September 2005 report as a starting point.<sup>25</sup> The committee agreed with the CEO's recommendation that the five-year period should be eliminated, and it went further by suggesting that all Canadian citizens absent from Canada should be able to vote, and that the requirement that there be an intention to return to Canada be dropped.

In his statutory report following the 41<sup>st</sup> general election, which took place in May 2011, the CEO explained changes following the 2006 general election to the manner of calculating the residency requirement for Canadians living abroad, indicating that a visit to Canada was no longer being considered a resumption of residence in Canada and so would not interrupt the five-year period.<sup>26</sup> Subsequently, the constitutionality of the five-year limit for Canadians living abroad was challenged in court by two Canadians living in the United States, Gillian Frank and Jamie Duong.

#### 1.4.1 *FRANK ET AL. V. ATTORNEY GENERAL OF CANADA*

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 the provisions of the CEA preventing Canadian citizens absent from Canada for more than five years from voting violated those citizens' democratic right to vote guaranteed by section 3 of the *Canadian Charter of Rights and Freedoms*.<sup>27</sup> Section 3 of the Charter 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."<sup>28</sup>

Justice Penny further held that the violation was not saved by section 1 of the Charter,<sup>29</sup> in that the limits prescribed by the CEA on Canadian citizens absent from Canada for more than five years were not "demonstrably justified in a free and democratic society."<sup>30</sup>

As a result, Justice Penny declared that sections 11(d), 222(1)(b), 222(1)(c), 223(1)(f), 226(f) and the word "temporarily" found in sections 220, 222(1) and 223(1)(e) of the CEA had no force or effect.<sup>31</sup> The decision took effect immediately.

In response to the ruling, the CEO indicated that Elections Canada would no longer apply the invalidated provisions, and that following the court decision:

Canadian citizens aged 18 or older who reside abroad may apply to be added to the International Register of Electors and to vote by mail-in special ballot in federal general elections, by-elections and referendums, provided they have at some point resided in Canada.<sup>32</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>33</sup> It held that while the five-year limit for Canadians living abroad violated their rights under section 3 of the Charter, the limitation was justified under section 1. Writing for the majority, Ontario Chief Justice George 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.<sup>34</sup>

The notion of a “social contract” had not previously been expressly invoked by the Attorney General before the application judge.

In his dissenting opinion, Justice John Laskin argued that the trial decision was right, and that the five-year residency limitation was not justified under section 1 of the Charter. Justice Laskin posited that the harmful effects of the limitation on a citizen's right to vote outweighed any potential benefits:

The benefits of the five-year non-residency limitation are thin, especially because already several groups of Canadian citizens who may live outside Canada for many years are entitled to vote. These groups of citizens have no more obligation to obey our laws than do Gillian Frank and Jamie Duong, yet unlike Frank and Duong, they can participate in the election of our lawmakers. To the extent the social contract is eroded when individuals not subject to the majority of Canada's laws participate in electing our lawmakers, surely it has already been eroded by the rules extending the vote to those individuals.

By contrast, the harmful effects of depriving the respondents of their right to vote are significant. Voting, participating in the selection of a country's representatives, is a cornerstone of a free and democratic state. Depriving a person of this most fundamental benefit of citizenship, constitutionally guaranteed in Canada, must inevitably have a serious adverse impact. This deprivation turns the respondents into second class citizens and so undermines the values of equality and inclusiveness stressed in *Sauvé* and underlying our *Charter* rights.

Moreover, laws made today affect how our country will be governed, not just in the immediate future, but for years to come. Yet Canadian citizens abroad for more than five years, such as the respondents, will have no voice in the future direction of their country even though they have family here, intend to return here, and thus will be affected by laws enacted while they are abroad.

In this final balancing, these harmful effects on the respondents far outweigh any benefits achieved by the challenged legislation.<sup>35</sup>

The original applicants, Gillian Frank and Jamie Duong, were granted leave to appeal to the Supreme Court of Canada in April 2016.

Bill C-33 would remove all of the disputed provisions limiting the right of Canadians living abroad for more than five years to vote. The case was to be heard on 16 February 2017. However, the Attorney General of Canada, the respondent in the appeal, sought and obtained an adjournment to the hearing of the appeal, arguing that Bill C-33 makes the appeal moot.<sup>36</sup> The hearing has been adjourned to the 2018 winter session of the Supreme Court.<sup>37</sup>

## 1.5 THE COMMISSIONER OF CANADA ELECTIONS

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>38</sup> Under section 511 of the CEA, if the Commissioner believes that an offence has been committed, the Commissioner can refer the matter to the Director of Public Prosecutions, who is responsible for deciding whether to initiate a prosecution, and, if so, to conduct the prosecution.

From 1974 to 2014, the CEO appointed the Commissioner of Canada Elections. The Commissioner reported to the CEO within Elections Canada. The *Fair Elections Act* changed this structure, and since this legislation has come into force, the Commissioner is to be appointed by the Director of Public Prosecutions for a non-renewable term of seven years, removable before that time by the Director of Public Prosecutions for cause. The *Fair Elections Act* also specified that the Director of Public Prosecutions cannot consult the CEO when appointing the Commissioner. As detailed in part 2.5 of this Legislative Summary, Bill C-33 returns the Commissioner of Canada Elections to within the Office of the Chief Electoral Officer.

## 2 DESCRIPTION AND ANALYSIS

### 2.1 FUTURE ELECTORS AND REGISTER OF FUTURE ELECTORS (CLAUSES 1, 6 TO 17, AND 31)

#### 2.1.1 DEFINITIONS (CLAUSE 1)

Clause 1 amends section 2(1) of the CEA, the definition section, to include two new definitions:

- future elector: a Canadian citizen who is between the ages of 14 and 18; and
- Register of Future Electors: the register established under new section 44(1)(b) (“a register of persons who are qualified as future electors”).

#### 2.1.2 HEADINGS (CLAUSES 6 AND 7)

Currently, Part 4 of the CEA is entitled “Register of Electors.” Clause 6 of Bill C-33 changes the heading to “Register of Electors and Register of Future Electors.”

Clause 7 changes the first subheading in Part 4 to “Maintenance and Communication,” instead of “Maintenance and Communication of Register.”

#### 2.1.3 MAINTAINING THE REGISTERS (CLAUSE 8)

Clause 8 adds new section 44 to the CEA. Like the existing section 44, the new section provides that the CEO is responsible for the maintenance of the Register of Electors, which contains identifying information on electors along with a unique,

randomly generated identifier to help track changes to electors' records; it also provides that inclusion in the register is optional. In addition, clause 8 establishes that the CEO maintains the RFE, which contains the same information as the Register of Electors, and that inclusion in the RFE is optional, as well.

Clause 8 also makes two additions to section 44:

- section 44(4), which allows for information on future electors to remain in the RFE after the future electors have become electors and until they are included in the Register of Electors (so long as they consent); and
- section 44(6), which states that parental consent is not necessary for a future elector to be included in the RFE.

## 2.1.4 POPULATING AND UPDATING THE REGISTER OF FUTURE ELECTORS (CLAUSES 10 TO 12)

### 2.1.4.1 SOURCES OF INFORMATION (CLAUSE 10)

Section 46 of the CEA currently outlines the sources of information the CEO can use to update the Register of Electors, and it specifies that some information that is not kept in the register itself can be retained for the purposes of correlating new information with previously collected information in the register.

Clause 10 clarifies that those same sources may be used to populate and update the Register of Future Electors and that the same information may be retained for correlation purposes.

Clause 10 also adds section 46(1.01) to the CEA, which mandates that when future electors included in the RFE become electors, their RFE information is added to the Register of Electors.

### 2.1.4.2 INFORMATION FROM THE MINISTER OF CITIZENSHIP AND IMMIGRATION AND THE MINISTER OF NATIONAL REVENUE (CLAUSE 11)

Clause 11 adds section 46.01 to the CEA, allowing the Minister of Citizenship and Immigration to provide the CEO with specified information about permanent residents and foreign nationals contained in the databases of the Minister's department, in response to a written request by the CEO. The purpose, as stated in this section, is to assist the CEO in updating the Register of Electors, including by deleting the names of people who are not electors.<sup>39</sup>

In his report following the 42<sup>nd</sup> General Election, the CEO recommended the adoption of such a provision, noting that:

Another important recommendation to improve the accuracy of the information in the NROE [National Register of Electors] is to grant authority to Immigration, Refugees and Citizenship Canada (IRCC) to share citizenship data with Elections Canada.

Although there is no single repository of citizenship information in Canada, IRCC has information on non-citizens residing in the country that would help Elections Canada ensure that only citizens are included in the NROE. Internal studies have indicated that approximately 0.2 percent of individuals in the NROE are potentially not Canadian citizens. Having access to non-citizen data would allow Elections Canada to identify and remove these individuals from the NROE on an ongoing basis. Elections Canada could also compare it with data from other sources to confirm the accuracy of the entries in the NROE. [Recommendation A7]<sup>40</sup>

The bill retains the provisions in sections 46.1 and 46.2 for the CEO to gather some information about electors from the Minister of National Revenue (MNR). Section 46.1 permits the MNR, for the purposes of assisting the CEO in updating the Register of Electors, to request that any individuals making a return of income under the *Income Tax Act*<sup>41</sup> indicate whether they are Canadian citizens. Section 46.2 requires that the MNR provide the CEO with the name, date of birth and address of any individual who is deceased, whose legal representatives filed a return of income, and whose legal representatives have authorized the sharing of that information.

Clause 11 updates sections 46.1 and 46.2 so that they apply to the RFE, as well as to the Register of Electors.

#### 2.1.4.3 NEW ELECTORS, CORRECTION OF INFORMATION, AND VERIFICATION OF INFORMATION (CLAUSE 12)

Clause 12 amends the following sections so that they apply to future electors and the RFE:

- section 47.1, which mandates that, between elections, a returning officer shall maintain the Register of Electors at the request of the CEO;
- section 48, which outlines the steps by which the CEO may include a new elector in the Register of Electors;
- section 49, which outlines the steps by which individuals may request that the CEO include them in the Register of Electors;
- section 50, which permits electors to correct information relating to them in the Register of Electors and requires the CEO to make the necessary corrections; and
- section 51, which permits the CEO to contact electors to verify information relating to them or to request that it be confirmed, corrected or completed within 60 days.

Clause 12 also amends section 48 so that any updates to the Register of Electors based on information drawn from the Register of Future Electors (new section 46(1.01)) are not subject to the notice and consent requirements that normally apply.

### 2.1.5 DELETION OF NAMES (CLAUSE 13)

Under current section 52(1) of the CEA, the CEO is required to delete from the Register of Electors any information pertaining to an individual who is dead, who is not an elector, who makes a request for deletion, or whose authorized representative under a court-ordered regime (i.e., a guardianship, tutorship, or curatorship) makes a request for deletion. The CEO also retains the discretion to delete the information of an individual who fails to provide verification within 60 days of a request under section 51 of the CEA (see section 2.1.4 of this Legislative Summary).

Clause 13 extends these requirements to apply to future electors and the RFE as well. It clarifies, however, that any deletion from the RFE of information pertaining to an individual who is no longer a future elector is subject to section 44(4), which, as noted in section 2.1.4 of this Legislative Summary, allows this information to be retained if it can be transferred to the Register of Electors.

This clause also clarifies that section 52(1)(d), which permits an authorized representative acting under a court-ordered protective regime to request that an elector's information be deleted from the Register of Electors or the RFE, shall only apply if the person is mentally incapacitated, and it adds section 52(1)(e), which permits the parents of a future elector with a mental incapacity to request deletion from the RFE.

### 2.1.6 RESTRICTIONS (CLAUSE 14)

Under current section 53 of the CEA, an elector may write to the CEO to request that his or her information in the Register of Electors be used only for federal electoral or referendum purposes. Clause 14 adds section 53(2), under which a future elector may write to the CEO to request that his or her information in the RFE be used only to update the Register of Electors and to transmit information under section 18 (which, as described in sections 2.2.1 to 2.2.3 of this Legislative Summary), allows the CEO to inform the public about the electoral process).

### 2.1.7 ACCESS TO INFORMATION (CLAUSE 15)

Section 54 of the CEA allows electors to access, upon written request, all the information relating to them in the CEO's possession. Clause 15 extends this access to future electors as well.

### 2.1.8 AGREEMENTS ON GIVING INFORMATION (CLAUSE 16)

Section 55(1) of the CEA permits the CEO to enter into information-sharing agreements with provincial bodies that establish lists of electors. Clause 16 allows the CEO to make similar agreements with provinces involving information about future electors and registers of future electors.<sup>42</sup>

2.1.9 OFFENCES  
(CLAUSES 17 AND 31)

Current section 56 of the CEA prohibits, among other things:

- knowingly making false or misleading statements about one's ability to be an elector;
- knowingly providing the CEO with false information;
- knowingly making false or misleading statements about the qualifications or information of another for the purposes of having that person deleted from the Register of Electors; and
- wilfully applying to have an animal or thing included in the Register of Electors.

Clause 17 amends these prohibitions to make them apply to future electors and the RFE as well.

Clause 17 also adds section 56(e.1), which prohibits the use of personal information from the RFE for anything but the following:

- updating the Register of Electors;
- transmitting information under section 18 (public education); and
- information-sharing under an agreement with a provincial body that maintains a list of electors or future electors.

Current section 485 of the CEA categorizes the offences set out in section 56 of the CEA concerning the Register of Electors as either summary offences or dual procedure offences (able to be prosecuted as either a summary conviction offence or an indictable offence). The prohibitions in sections 56(a) to 56(d) are categorized as dual procedure offences, while that in section 56(e) is a summary conviction offence. This latter offence concerns the unauthorized use of personal information recorded in the Register of Electors.

Clause 31 of Bill C-33 specifies that the new offence in section 56(e.1), like the offence found in section 56(e), is to be prosecuted as a summary conviction offence. The other prohibitions concerning the new RFE are dual procedure offences.

2.2 CHIEF ELECTORAL OFFICER'S PUBLIC EDUCATION  
AND INFORMATION MANDATE  
(CLAUSES 4 AND 5)

2.2.1 INFORMATION AND EDUCATION PROGRAMS TO BE  
DIRECTED TO BROADER PUBLIC  
(CLAUSES 4 AND 5)

Clause 4 repeals section 17.1 of the CEA, which currently limits the CEO's power to implement public education and information programs about the electoral process to students at the primary and secondary levels.



Clause 5 restores the CEO's public education mandate as it existed prior to the *Fair Elections Act*, reinstating pre-*Fair Elections Act* wording in new section 18(1) regarding the use of advertising to inform electors, both inside and outside Canada, about the exercise of their democratic rights. The *Fair Elections Act* restricted the use of such advertising to the transmission of messages about how to vote, how to become a candidate, how to be included on a voters' list, the identification requirements for voting, and measures for assisting voters with disabilities.<sup>43</sup>

## 2.2.2 USE OF MEDIA TO TARGET VOTERS OUTSIDE CANADA (CLAUSE 5)

Clause 5 replaces section 18(1) with new sections 18(1), 18(1.1) and 18(1.2). Under new section 18(1), the specific restrictions on the topics the CEO is permitted to address is removed, and the CEO is permitted to "implement public education and information programs to make the electoral process better known to the public."

New section 18(1.1) permits the CEO to use any media that he or she deems appropriate to provide the public, both inside and outside Canada, with information relating to Canada's electoral process and the right to vote and to be a candidate. New section 18(1.2) further allows the CEO to establish programs to disseminate information targeted at voters outside Canada.

## 2.2.3 ELECTORS WITH DISABILITIES (CLAUSE 5)

Clause 5 also replaces current section 18(2) with a new section that specifies that the CEO must ensure that information about the following must be fully accessible to electors with disabilities:

- how to vote in Canada;
- how to vote abroad;
- how to become a candidate;
- how to get on the list of electors;
- how to prove one's identity or residence; and
- the measures that are available to assist electors with disabilities to access polling stations or advance polling stations.

New section 18(2.1) adds a further safeguard for electors with disabilities: it requires the CEO to ensure that any information or advertisement on how future electors may have their names added to the Register of Future Electors and may have corrections made to information respecting them in that register must be fully accessible to future electors with disabilities.

2.3 VOTER IDENTIFICATION  
(CLAUSES 19 TO 24 AND 30 TO 33)

2.3.1 VOUCHING REPLACES ATTESTATION TO ESTABLISH IDENTITY AND  
RESIDENCE AT AN ELECTION (FOR VOTERS ON THE LIST OF ELECTORS)  
(CLAUSE 19)

Under current section 143(3) of the CEA, if an elector is able to establish his or her identity – but not residence – using two authorized pieces of identification, the elector can establish his or her residence by a two-stage attestation process:

- the elector can take a prescribed oath in writing; and
- another elector whose name appears on the list of electors for the same polling division and who has proven his or her identity can attest to the elector's residence by written oath (an attestation).

Section 143(3) is amended by clause 19(3) of Bill C-33 to permit an elector without acceptable identification to prove *both* identity and residence by a similar two-stage process:

- the elector can take a prescribed oath in writing; and
- another elector whose name appears on the list of electors for the same polling division and who has proven his or her identity can vouch for the elector's identity and residence, also by written oath.

2.3.1.1 REMOVAL OF THE PROHIBITION ON AUTHORIZING  
VOTER INFORMATION CARDS  
(CLAUSE 19(2))

Under section 143(2.1) of the CEA, it is the CEO who authorizes the types of identification that electors can use to prove their identity and residence. Currently, the CEA specifically prohibits the CEO from authorizing as identification a notice of confirmation of registration, also known as the voter information card. Clause 19(2) amends section 143(2.1) to remove the prohibition against authorizing the voter information card as a type of identification.

2.3.1.2 FORM OF OATHS FOR VOUCHING AT AN ELECTION  
(CLAUSE 20)

Currently, under section 143.1(1) of the CEA, the person who administers the written oath regarding an attestation must orally advise the oath-taker of the qualifications for electors and the penalty that may be imposed for being found guilty of voting fraudulently or attempting to vote fraudulently. Clause 20 replaces the requirement that oral advice be given with the requirement that the written oath signed by the elector include a statement of the qualifications for electors and the penalty for fraudulent voting.

Clause 20 also amends section 143.1(2) of the CEA, which currently requires that oral advice be given to the attester regarding the penalty for attesting for more than one elector and for taking a false oath. It replaces this provision with a requirement that the voucher's written oath contain, among other things, a statement that indicates he or she knows the penalty that may be imposed for vouching for more than one elector and for taking a false oath.

**2.3.1.3 NO MULTIPLE OR SERIAL VOUCHING AT AN ELECTION  
(CLAUSE 19(4))**

Clause 19(4) amends sections 143(5) and 143(6) of the CEA to replace references to attesting to an elector's residence with references to vouching. Amended section 143(5) maintains that no elector can vouch for more than one elector at an election, and amended section 143(6) states that an elector who has been vouched for cannot vouch for another elector.

**2.3.2 VOUCHING REPLACES ATTESTATION FOR ELECTION DAY REGISTRATION  
(CLAUSE 21(2))**

Currently, under section 161(1)(b) of the CEA, an elector whose name is not on the revised list of electors (which is prepared for each division before polling day) may register in person on election day, provided that he or she:

- has established his or her identity by using two authorized pieces of identification;
- proves his or her residence by taking a written oath; and
- is accompanied by another elector whose name appears on the list of electors for the same polling division who proves his or her own identity in the prescribed manner and attests to the elector's residence through a written oath.

Clause 21(2) amends section 161(1)(b) to provide that the elector may register in person on election day, provided that he or she:

- proves both his or her identity and residence by taking a written oath; and
- is accompanied by another elector whose name appears on the list of electors for the same polling division. This person must provide the prescribed pieces of identification and vouch for the elector through a written oath. In this way, the qualified elector vouches rather than attests on written oath, and may vouch not only for the elector's residence but also for his or her identity.

**2.3.2.1 FORM OF OATHS FOR VOUCHING AT ELECTION DAY REGISTRATION  
(CLAUSE 22)**

Clause 22 amends section 161.1(2) of the CEA to make identical amendments to the oaths taken under the process for an elector registering on election day as clause 20 makes to oaths taken under the process through which a registered elector can prove his or her identity and residence at an election (described in section 2.3.1.2 of this Legislative Summary).

2.3.2.2 NO MULTIPLE OR SERIAL VOUCHING FOR ELECTION DAY REGISTRATION  
(CLAUSE 21(3))

Clause 21(3) amends sections 161(6) and 161(7) of the CEA to replace references to attesting to an elector's residence with references to vouching. Amended section 161(6) maintains that no elector can vouch for more than one elector at an election, and amended section 161(7) states that an elector who has been vouched for cannot vouch for another elector.

2.3.3 VOUCHING REPLACES ATTESTATION FOR REGISTRATION  
AT ADVANCE POLLS  
(CLAUSE 23(2))

Currently, under section 169(2)(b) of the CEA, an elector whose name is not on the revised list of electors may register in person before the deputy returning officer at an advanced poll, provided that he or she:

- has established his or her identity by using two authorized pieces of identification;
- proves his or her residence by taking a written oath; and
- is accompanied by another elector whose name appears on the list of electors for the same polling division who proves his or her own identity in the prescribed manner and attests to the elector's residence through a written oath.

Clause 23(2) amends section 169(2)(b) to provide that the elector may register in person before the deputy returning officer at an advanced poll, provided that he or she:

- proves both his or her identity and residence by taking a written oath; and
- is accompanied by another elector whose name appears on the list of electors for the same polling division. This person must provide the prescribed pieces of identification and vouch for the elector through a written oath. In this way, the qualified elector vouches rather than attests on written oath, and may vouch not only for the elector's residence but also for his or her identity.

2.3.3.1 FORM OF OATHS FOR VOUCHING AT ADVANCE POLLS  
(CLAUSE 24)

Clause 24 amends section 169.1(1) of the CEA to make identical amendments to the oaths taken under the process for an elector registering in person at an advance polling station as clause 20 makes to oaths taken under the process through which an elector can prove his or her identity and residence (described in section 2.3.1.2 of this Legislative Summary).

**2.3.3.2 NO MULTIPLE OR SERIAL VOUCHING AT ADVANCE POLLS  
(CLAUSE 23(3))**

Clause 23(3) amends sections 169(5) and 169(6) of the CEA to replace references to attesting to an elector's residence with references to vouching. Amended section 169(5) maintains that no elector can vouch for more than one elector at an election, and amended section 169(6) states that an elector who has been vouched for cannot vouch for another elector.

**2.3.4 NO MULTIPLE OR SERIAL VOUCHING IN SPECIAL VOTING  
(CLAUSE 30)**

Division 4 of Part 11 of the CEA enables voters resident in Canada to vote by special ballot. The special ballot is available to electors who cannot or do not wish to cast a ballot at an ordinary or advance poll. Current sections 237.1(3.1) and 237.1(3.2) provide that multiple attestation and serial attestation are not permitted when an elector seeks to obtain a special ballot by visiting the office of a returning officer. Clause 30 amends these provisions by removing the references to attestation to residence and replacing them with references to vouching.

**2.3.5 OFFENCES REGARDING IMPROPER VOUCHING  
(CLAUSES 32 AND 33)**

Current section 489(2) of the CEA categorizes as summary conviction offences both the offence of attesting to residence for more than one elector (found in sections 143(5), 161(6) and 169(5)) and the offence of attesting to residence when one's own residence has been attested to (sections 143(6), 161(7) and 169(6)). Section 491 of the CEA categorizes these offences as summary conviction offences for the purposes of Part 11 of the Act, which deals with provisions for special voting.

Clause 32 of Bill C-33 replaces these offences with ones that prohibit improper vouching rather than attesting, while retaining prosecution by summary conviction for the new offences.

Section 491 also addresses the offences of attesting to residence for more than one elector and of attesting to residence when one's own residence has been attested to, but as described in sections 237.1(3.1) and 237.1(3.2) of the CEA, which refer to Part 11, "Special Voting Rules." Clause 33 amends section 491 to replace references to attestation to residence with references to vouching, and it retains prosecution by summary conviction for the new offences.

**2.4 THE RIGHT TO VOTE OF ELECTORS RESIDENT OUTSIDE CANADA  
(CLAUSES 2, 18, 25 TO 29, AND 41)**

Current Part 11 of the CEA, "Special Voting Rules," sets out voting rules that apply to the following groups of voters:

- Canadian Forces electors (Part 11, Division 2);
- Canadian electors temporarily residing outside the country (Part 11, Division 3);

- electors residing in Canada who wish to vote in accordance with the special voting rules (Part 11, Division 4); and
- incarcerated electors (Part 11, Division 5).

Electors who vote under the special voting rules do so by a special ballot with a separate process of voting provided for each group of voters.

Bill C-33 amends Part 11 of the CEA mainly as it affects non-resident electors.

#### 2.4.1 REPEAL OF SECTION 11 OF THE *CANADA ELECTIONS ACT* (VOTERS WHO MAY VOTE UNDER SPECIAL VOTING RULES) (CLAUSES 2 AND 18)

Clause 2 of Bill C-33 repeals section 11 of the CEA, which set out the classes of voters eligible to vote by mail pursuant to the procedures set out in Part 11 of the Act.<sup>44</sup>

Clause 18 contains a consequential amendment to section 95(1)(a) of the CEA, which specifies an exception to the stipulation that notices of confirmation of registration be sent to electors after a writ of election is issued. Currently, section 95(1)(a) specifies electors who “are referred to in paragraph 11(e)” (incarcerated electors). To take the repeal of section 11 into account, “are referred to in paragraph 11(e)” is replaced by “are *incarcerated electors* as defined in section 177.”

#### 2.4.2 ELECTORS RESIDENT OUTSIDE CANADA (CLAUSES 25 TO 29)

Clauses 25 through 29 amend Division 3 of Part 11 of the CEA, regarding electors who live outside Canada. Together, these clauses remove all of the disputed provisions limiting the right to vote of Canadians living abroad for more than five years that are at issue in the *Frank* case (see section 1.4.1 of this Legislative Summary).

Clause 25 replaces the current heading for Division 3 of Part 11 of the CEA – “Electors Temporarily Resident Outside Canada” – with “Electors Resident Outside Canada.”

#### 2.4.3 REGISTER OF ELECTORS WHO HAVE FILED AN APPLICATION FOR REGISTRATION AND SPECIAL BALLOT (CLAUSES 26 AND 27)

Currently, under section 222 of the CEA, Elections Canada maintains a “register of electors who are temporarily resident outside Canada.” Section 222(1) specifies that to be included in the register an elector must:

- have once resided in Canada;
- must be residing outside Canada for less than five years; and
- must intend to resume residence in Canada in the future.

Section 222(2) contains exceptions to the five-year residence rule (for example for electors outside Canada who are employed in the federal or provincial public service, the Canadian Forces, or an international organization of which Canada is a member and to which Canada contributes).

Clause 27 replaces section 222 of the CEA. Under new section 222, the register is no longer designated for electors temporarily resident outside Canada, but is for electors who have filed an application for registration and special ballot and who resided in Canada “at any time.”

Clause 26 amends the definitions for the terms “elector” and “register” as they are used in Division 3 of Part 11, which relates to Canadian electors living outside Canada. The reference to living “temporarily” outside of Canada is removed from the definition for “elector.” The definition of “register,” which currently refers to the replaced section 222(1) of the CEA, is amended to refer instead to new section 222.

#### 2.4.4 REQUIREMENTS FOR APPLICATION FOR REGISTRATION AND SPECIAL BALLOT (CLAUSE 28)

Section 223 of the CEA specifies what must be included in an application for registration and special ballot for citizens residing abroad.

Clause 28 repeals section 223(1)(b), which requires proof that an elector who has resided outside Canada for more than five consecutive years is eligible to vote under one of the exceptions specified in section 222(2).

Currently, sections 223(1)(d) to 223(1)(f) of the CEA require that an application for registration and special ballot include the following:

- the date when the elector left Canada;
- the last Canadian residence (or residence of a Canadian relative) of the elector before he or she left Canada; and
- the date on which the elector intends to resume residence in Canada.

Clause 28 replaces these sections with the requirement that the application for special ballot for Canadians living abroad include “the address of the elector’s last place of ordinary residence in Canada before he or she left Canada.”

Thus, following the amendments to section 223 made by Bill C-33, an application for registration and special ballot by Canadians living abroad must include the following:

- satisfactory proof of the elector’s identity;
- the elector’s date of birth;
- the address of the elector’s last place of ordinary residence in Canada before he or she left Canada;
- the elector’s mailing address outside Canada; and

- any other information that the CEO considers necessary to determine the elector's entitlement to vote or the electoral district in which he or she may vote.

#### 2.4.5 REPEAL OF THE FIVE-YEAR ABSENCE RULE (CLAUSE 29)

Clause 29 repeals section 226(f) of the CEA, which specifies that the CEO shall delete from the register of electors who are temporarily resident outside Canada the name of any elector who has lived outside Canada for more than five consecutive years (unless he or she qualifies under an exception to remain on the register).

#### 2.4.6 TRANSITIONAL PROVISION (CLAUSE 41)

Clause 41 is a transitional provision that specifies that if an application for registration and special ballot is made under section 223 of the CEA before the day that clause 28 comes into force, then Division 3 of Part 11 of the CEA as it read before that day applies for the purposes of the application.

### 2.5 COMMISSIONER OF CANADA ELECTIONS (CLAUSES 34 TO 40 AND 42 TO 49)

#### 2.5.1 APPOINTMENT OF COMMISSIONER AND TERM OF OFFICE (CLAUSE 34(1))

Clause 34(1) of Bill C-33 replaces sections 509(1) and 509(2) of the CEA, once again giving the responsibility for the appointment of a Commissioner to the CEO, who is to consult with the Director of Public Prosecutions. The term of the appointment is lengthened to a non-renewable term of 10 years, and the Commissioner may be removed by the CEO, not the Director of Public Prosecutions, for cause.

#### 2.5.2 PERSONS INELIGIBLE TO BE COMMISSIONER OF CANADA ELECTIONS (CLAUSE 34(2))

Current section 509(3) of the CEA lists the categories of persons not eligible to be appointed as Commissioner, including those who are or have been:

- a candidate;
- an employee of a registered party or a person whose services have been engaged by a registered party to support its electoral or political financing activities;
- anyone who is or has been a CEO, a member of his or her staff or a temporary technical expert; or
- an election officer, including field liaison officers, returning officers and assistant returning officers.



Clause 34(2) of Bill C-33 repeals the last two categories so that someone who is or has been the CEO or one of his or her staff, or has been an election officer, is eligible to be appointed Commissioner of Canada Elections.

2.5.3 COMMISSIONER OF CANADA ELECTIONS TO BE WITHIN  
OFFICE OF CHIEF ELECTORAL OFFICER  
(CLAUSE 35)

Current section 509.1 of the CEA places the position of Commissioner of Canada Elections within the Office of the Director of Public Prosecutions. Clause 35 replaces this section, reversing provisions in the *Fair Elections Act* by putting the position back within the Office of the Chief Electoral Officer (amended section 509.1(1)).

Clause 35 also specifies that the Commissioner is considered the deputy head for the purpose of human resource management both under sections 11 to 13 of the *Financial Administration Act* and under the *Public Service Employment Act* (amended sections 509.1(2) and 509.1(3)). Under existing section 509.3, this enables the Commissioner to hire permanent and term employees.

2.5.4 ELECTIONS CANADA EMPLOYEES TO HELP COMMISSIONER  
PERFORM DUTIES  
(CLAUSE 36)

Under current section 509.5 of the CEA, the Commissioner may authorize Director of Public Prosecutions employees to help him or her perform functions under the Act. Clause 36 of Bill C-33 amends this provision so that the employees will come from the Office of the Chief Electoral Officer. Such assistance would be in addition to the Commissioner's ability to hire other temporary employees, including investigators, under existing sections 509.3 and 509.4.

2.5.5 AUTHORIZATION FOR ADDITIONAL EXPENSES OF THE COMMISSIONER  
(CLAUSE 37)

Under current section 509.6 of the CEA, if certain additional expenses are required by the Commissioner to carry out his or her duties, funds may be drawn from the Consolidated Revenue Fund, but only on the certificate of the Director of Public Prosecutions. In keeping with the other changes in the bill, clause 37 of Bill C-33 amends section 509.6 to make the CEO responsible for authorizing such payments.

2.5.6 INVESTIGATIONS  
(CLAUSE 38)

Under current section 510 of the CEA, the Commissioner, on his or her own initiative or in response to a complaint, may conduct an investigation. This investigation is to be conducted independently of the Director of Public Prosecutions. Given that the Commissioner's office has been moved to the Office of the Chief Electoral Officer, clause 38 of Bill C-33 amends section 510 such that the Commissioner shall conduct investigations independently of the CEO.

2.5.7 REPORTS BY THE COMMISSIONER  
(CLAUSES 39 AND 40)

Clause 40 of Bill C-33 adds sections 537.1 and 537.2 to the CEA. New section 537.1 requires the Commissioner to publish an annual report on the activities of his or her office during the year, without including the details of any investigation. New section 537.2 requires the Commissioner, as soon as possible after a general election, to make a report to the CEO that sets out any amendments that, in the Commissioner's opinion, are desirable for better compliance with, and the better enforcement of, the CEA.

Clause 39 adds that the Commissioner's proposed amendments must be included, separately, in the report that the CEO submits to the Speaker of the House of Commons as soon as possible after a general election under section 535 of the CEA. In that report, the CEO sets out any amendments that, in his or her opinion, are desirable for the better administration of the Act.

2.5.8 TRANSITIONAL PROVISIONS  
(CLAUSES 42 AND 43)

Clause 42 of Bill C-33 makes it clear that whoever holds the office of Commissioner of Canada Elections immediately before the day on which clause 34 (the new appointment procedure) comes into force continues in office and is deemed to have been appointed under section 509(1) of the CEA. The term of office of that Commissioner, however, begins on the date of his or her actual appointment.

Clause 43 deals with a number of matters that flow from the move of the Commissioner of Canada Elections position from the Office of the Director of Public Prosecutions to the Office of the Chief Electoral Officer.

Under clause 43(2), any amount that was appropriated for defraying the costs of the Commissioner within the Office of the Director of Public Prosecutions and that, on the day on which the clause comes into force, is unexpended is deemed, on that day, to be an amount appropriated for defraying the costs of the Office of the Chief Electoral Officer for the purposes of the powers, duties and functions of the Commissioner.

Under clause 43(3), any action, suit or other legal proceedings to which the Director of Public Prosecutions is a party that relate to the Commissioner's role within his or her office and that are pending in any court immediately before the day on which the clause comes into force may be continued by or against the CEO in the same manner and to the same extent as they could have been continued by or against the Director of Public Prosecutions.

Finally, under clause 43(4), nothing in Bill C-33 is to be construed as affecting the status of any employees who, immediately before the day on which the clause comes into force, worked for the Commissioner within the Office of the Director of Public Prosecutions, except that the employees shall, beginning on that day, occupy their position in the Office of the Chief Electoral Officer.

## 2.5.9 CONSEQUENTIAL AMENDMENTS (CLAUSES 44 TO 49)

The consequential amendments discussed in these clauses relate to the moving of the position of Commissioner of Canada Elections from the Office of the Director of Public Prosecutions to the Office of the Chief Electoral Officer.

### 2.5.9.1 ACCESS TO INFORMATION ACT (CLAUSE 44)

Sections 13 to 26 of the *Access to Information Act*<sup>45</sup> (ATIA) set out grounds on which access to documents requested under the ATIA may be refused. Section 16.3 states that the CEO may refuse to disclose any record requested under the ATIA that contains information that was obtained or created by or on behalf of a person who conducts an investigation, examination or review in the performance of their functions under the CEA. Current section 16.31 of the ATIA affords the Director of Public Prosecutions the same right to refuse to disclose records. Since, under Bill C-33, the Office of the Director of Public Prosecutions no longer has within it the Commissioner of Canada Elections, this right of refusal is no longer relevant and so section 16.31 of the ATIA is repealed by clause 44 of Bill C-33.

### 2.5.9.2 FINANCIAL ADMINISTRATION ACT (CLAUSES 45 AND 46)

Schedule IV of the *Financial Administration Act*<sup>46</sup> lists entities that are considered to be part of the “core public administration.” One of those entities is the “portion of the federal public administration in the Office of the Director of Public Prosecutions in which the employees referred to in section 509.3 of the CEA occupy their positions.” Clause 45 of Bill C-33 deletes that entity, and clause 46 replaces it with the “portion of the federal public administration in the Office of the Chief Electoral Officer in which the employees referred to in section 509.3 of the *Canada Elections Act* occupy their positions.” These are the employees working for the Commissioner of Canada Elections who will be switching offices.

This change ensures that the Commissioner of Canada Elections is listed properly in this schedule to the *Financial Administration Act* and so retains his or her human resources authorities as part of the core public administration under the Act when the Commissioner moves to the Office of the Chief Electoral Officer.

### 2.5.9.3 DIRECTOR OF PUBLIC PROSECUTIONS ACT (CLAUSES 47 TO 49)

Current section 3(2) of the *Director of Public Prosecutions Act*<sup>47</sup> states that, subject to sections 509.1(2) and 509.1(3) of the CEA, the Director has the rank and status of a deputy head of a department. As noted in section 2.5.3 of this Legislative Summary, Bill C-33 amends section 509.1 of the current CEA to move the position of Commissioner of Canada Elections from the Office of the Director of Public Prosecutions to the Office of the Chief Electoral Officer. Clause 47 of Bill C-33 amends section 3(2) of the *Director of Public Prosecutions Act* to take this move into

account. Clause 47 states that the Director has the rank and status of a deputy head of a department, without qualifications.

Current section 6(4) of the *Director of Public Prosecutions Act* states that a Deputy Director may act for or on behalf of the Director in the exercise of any of his or her powers or duties, except for the powers under section 509(1) of the CEA, which gives the Director of Public Prosecutions the power to appoint the Commissioner of Canada Elections. Because this power is being taken from the Director under Bill C-33, clause 48 of the bill removes the reference to it from section 6(4), so that a Deputy Director may act for the Director in all matters.

Section 16 of the *Director of Public Prosecutions Act* deals with the annual report of the Director, to be provided to the Attorney General of Canada, detailing the activities of the office of the Director in the immediately preceding fiscal year. Current section 16(1.1) requires that this report include a section, provided by the Commissioner of Canada Elections, on his or her activities under the CEA in that year. The Commissioner is not to include the details of any investigation.

Clause 49 of Bill C-33, which replaces current sections 16(1) and 16(1.1) with a new section 16(1), does not contain a reference to the Commissioner's report, reflecting the removal of the Commissioner from the Director's office. However, under this clause, the stipulation that the report not include details of any investigation under the CEA is retained: the new section states that there should be no report in relation to matters referred to in section 3(8), which specifies that the Director initiates and conducts prosecutions on behalf of the Crown with respect to any offences under the CEA, as well as any appeal or other proceeding related to such a prosecution.

## 2.6 COMING INTO FORCE (CLAUSE 50)

Clause 50 states that the amendments contained in Bill C-33 will come into force either six months after the bill receives Royal Assent or on a day before that date when the CEO publishes a notice in the *Canada Gazette* stating that the necessary preparations for the bringing into operation of the Act have been made.

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## NOTES

1. [Bill C-33, An Act to amend the Canada Elections Act and to make consequential amendments to other Acts](#), 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament.
2. [Canada Elections Act](#), S.C. 2000, c. 9.
3. [Fair Elections Act \(An Act to amend the Canada Elections Act and other Acts and to make consequential amendments to certain Acts\)](#), S.C. 2014, c. 12.

4. Some of the measures in the *Fair Elections Act* being addressed by Bill C-33 were the subject of litigation initiated by the Council of Canadians and the Canadian Federation of Students on 10 October 2014. The two groups challenged various parts of the *Fair Elections Act* as contrary to section 3 (voting rights) of the *Canadian Charter of Rights and Freedoms* (Charter) and thus of no force and effect. Specifically, the groups sought to have the court strike down the *Fair Elections Act* provisions on voter identification and attestation, on the Chief Electoral Officer's public education and communications mandate, and on the transfer of the Office of the Commissioner of Canada Elections to the Office of the Director of Public Prosecutions. Given the complexity and length of Charter proceedings, and the likelihood of a federal general election in October 2015, the litigants sought an interlocutory injunction in 2015, asking the court to suspend the operation of the voter identification provisions of the *Fair Elections Act* until after the election. The intention was that the full application on all the issues could be considered at a later date. In a decision rendered on 17 July 2015, the court denied the motion for an injunction ([Council of Canadians v. Canada \(Attorney General\)](#), 2015 ONSC 4601). Leave to appeal was denied on 5 August 2015 ([Council of Canadians v. HMQ](#), 2015 ONSC 4940).

Given that Bill C-33 restores the impugned provisions to their status before the enactment of the *Fair Elections Act*, there is a high likelihood that the application for Charter relief would be considered moot by a court. Thus, it is unclear whether the initial application will proceed, given that the results sought by the litigants would be achieved by Bill C-33.

5. Office of the Chief Electoral Officer of Canada, [An Electoral Framework for the 21<sup>st</sup> Century: Recommendations from the Chief Electoral Officer of Canada Following the 42<sup>nd</sup> General Election](#), September 2016.
6. *Ibid.*, p. 14.
7. *Ibid.*
8. *Ibid.*, Recommendation A6, p. 43.
9. [Elections Act](#), SNS 2011, c. 5, s. 42a.
10. [Election Act](#), RSPEI 1988, c. E-1.1, s. 24.11.
11. [Elections Act](#), RSY 2002, c. 63, s. 49.02(2).
12. [Election Act](#), R.S.O. 1990, c. E.6, s. 17.7, as amended by [Election Statute Law Amendment Act](#), 2016, S.O. 2016, c. 33, s. 2.
13. United States, National Conference of State Legislatures, [Preregistration for Young Voters](#).
14. United Kingdom, [Representation of the People Act 1983](#), c. 2, s. 4(5).
15. New Zealand, [Electoral Act 1993](#), Public Act 1993, No. 87, s. 82.
16. Australia, [Commonwealth Electoral Act 1918](#), s. 100.
17. Jennifer S. Rosenberg and Margaret Chen, [Expanding Democracy: Voter Registration Around the World](#), Brennan Center for Justice, New York University School of Law, 2009, p. 11.
18. *Ibid.*, endnote 36, p. 31.
19. Portugal, [Regime jurídico do recenseamento eleitoral](#), Law no. 13/99, s. 3(2).

20. The following is the text of the relevant provision as it stood prior to the *Fair Elections Act*:

18 (1) The Chief Electoral Officer may implement public education and information programs to make the electoral process better known to the public, particularly to those persons and groups most likely to experience difficulties in exercising their democratic rights.

The Chief Electoral Officer also had broad latitude in the use of communication media to transmit any information related to the electoral process (section 18(2), *Canada Elections Act*, before amendment by Bill C-23, the *Fair Elections Act*).

21. Office of the Chief Electoral Officer of Canada (2016), p. 13.
22. *Ibid.*, Recommendation A5, p. 43.
23. The *Military Voters Act* of 1917 provided serving members of the armed forces (including women) with the federal franchise. See Elections Canada, “[From a Privilege to a Right: 1867–1919](#),” Chapter 2 in *A History of the Vote in Canada*, Ottawa, 2007, p. 63.
24. Elections Canada, “[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*, 2005. The CEO noted:

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*.

He added:

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.

25. House of Commons, Standing Committee on Procedure and House Affairs, [Improving the Integrity of the Electoral Process: Recommendations for Legislative Change](#), June 2006, p. 2.
26. Elections Canada, [Report of the Chief Electoral Officer of Canada on the 41<sup>st</sup> General Election of May 2, 2011](#), Ottawa, 2011, p. 31.
27. [Frank et al. v. AG Canada](#), 2014 ONSC 907 [Frank].
28. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 3.
29. *Ibid.*, s. 1.
30. *Frank*, paras. 161 and 162.
31. *Frank*, para. 162.
32. Elections Canada, “[Five-year Rule Eliminated for Canadian Electors Residing Abroad](#),” News release, Gatineau, Quebec, 13 May 2014.
33. [Frank v. Canada \(Attorney General\)](#), 2015 ONCA 536.
34. *Ibid.*, paras. 5–6.
35. *Ibid.*, paras. 247–250.
36. Supreme Court of Canada, *Gillian Frank, et al. v. Attorney General of Canada*, [Docket 36645](#).

37. Ibid.
38. Commissioner of Canada Elections, [Enforcing the Canada Elections Act](#).
39. The same provision appeared in clause 2 of [Bill C-50, An Act to amend the Canada Elections Act](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament. Bill C-50 received second reading and was referred to the Standing Committee on Procedure and House Affairs on 4 May 2015, but died on the *Order Paper* with the dissolution of the 41<sup>st</sup> Parliament in August 2015.
40. Office of the Chief Electoral Officer of Canada (2016), p. 15.
41. [Income Tax Act](#), R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.).
42. As described in section 1.1 of this Legislative Summary, Nova Scotia, Prince Edward Island and Yukon currently retain information on future electors for pre-registration purposes. As of 1 July 2017, Ontario will do so as well.
43. Prior to the enactment of the *Fair Elections Act*, the comparable section to the current section 18(1), section 18(2), provided that media of communication could be used more broadly:
- 18(2) The Chief Electoral Officer may, using any media or other means that he or she considers appropriate, provide the public, both inside and outside Canada, with information relating to Canada's electoral process, the democratic right to vote and how to be a candidate.
44. Section 11 of the *Canada Elections Act* (CEA) set out the following classes of citizens eligible to vote by mail pursuant to Part 11:
- (a) a Canadian Forces elector;
  - (b) an elector who is an employee in the federal public administration or the public service of a province and who is posted outside Canada;
  - (c) a Canadian citizen who is employed by an international organization of which Canada is a member and to which Canada contributes and who is posted outside Canada;
  - (d) a person who has been absent from Canada for less than five consecutive years and who intends to return to Canada as a resident;
  - (e) an incarcerated elector within the meaning of [Part 11 of the CEA]; and
  - (f) any other elector in Canada who wishes to vote in accordance with [Part 11 of the CEA].
45. [Access to Information Act](#), R.S.C., 1985, c. A-1.
46. [Financial Administration Act](#), R.S.C., 1985, c. F-11.
47. [An Act respecting the office of the Director of Public Prosecutions](#), S.C. 2006, c. 9, s. 121 (*Director of Public Prosecutions Act*).