Third edition

A HISTORY OF
THE VOTE IN CANADA

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PREFACE

Canada has always been an electoral democracy. As a nation, we haven't had to fight for the right to vote. There has never been any revolutionary bloodshed nor a Berlin Wall to tear down. Yet, electoral democracy as we know and understand it today is very different from what it was 150 or even 50 years ago. Things we take for granted—both in the sense that, for us, they are necessary features of democracy and in the sense that we expect them to unfold as a matter of course—were not always so.

As related in *A History of the Vote in Canada*, the story of our electoral democracy is one of struggle and reform that takes place over more than 250 years, starting from the early days of European colonization. Universal adult suffrage came about step by step, with many bumps in the road along the way.

In the early years of Confederation, many people were denied the vote because they did not meet certain qualifications for owning property or because of their gender, race or religion. In 1918, restrictions based on gender were eliminated. Property qualifications were abolished in 1920. Between the end of the Second World War in 1945 and the early 1960s, racial and religious barriers were lifted, as were restrictions on voting for Inuit and First Nations peoples. In 1970, the voting age was lowered from 21 years to 18.

The adoption in 1982 of the *Canadian Charter of Rights and Freedoms* guaranteed universal suffrage and led to the lifting of all remaining restrictions, except the one imposed on the Chief Electoral Officer.

For the right to vote to be meaningful, however, voters must be able to exercise that right no matter where they live and no matter what their physical or intellectual abilities; their race, religion or gender; or their economic circumstances. Voters must also be able to trust that elections are conducted in a way that is fair and transparent.

That means the history of the vote in Canada is about not only the extension of the franchise, but also the evolution of electoral administration in line with changing social values. Over the years, various measures have been taken to ensure that voting is accessible, convenient and secure; that the identity of those involved in an election is known; and that there is a level playing field when it comes to political financing.

In 1920, Parliament created an independent and non-partisan office to administer federal elections by appointing Canada's first Chief Electoral Officer. In doing so, Canada was a global pioneer—the agency was one of the first of its kind in the world. This office would eventually become Elections Canada.

When it was created, the office consisted of just four people: the Chief Electoral Officer (CEO), an assistant and two stenographers. Canada had roughly 4.5 million electors at the time. There were no federal voting lists. Returning officers were appointed by the government of the day. Polling stations could be situated anywhere, even in someone's living room.

Today, Elections Canada is a modern organization that employs over 700 people. It maintains the permanent National Register of Electors. Canada has some 27 million electors who are served through over 20,000 polling locations and by some 230,000 election officers across the country during an election. Returning officers are appointed by the Chief Electoral Officer and must meet certain qualifications. In addition to administering elections and political financing rules, Elections Canada provides voter information, carries out research, conducts education programs for students and offers outreach to electors. Most importantly, 100 years after its founding, everything it does continues to be guided by the principles of independence and non-partisanship.

Yet, despite the progress that has been made over the years, real barriers to voting remain. The Canadian population is incredibly diverse, with people of many different languages, cultures, religions, abilities and economic circumstances. Elections Canada endeavours to keep this diversity in mind when communicating with Canadians about taking part in the electoral process.

In recent years, the administration of elections has faced threats from outside actors through disinformation and cyberattacks. To respond to these threats, Elections Canada collaborates with federal security agencies as well as with its Canadian and international counterparts.

Elections Canada must also be prepared to deal with unexpected events and difficult circumstances. At the time of writing, the world is dealing with COVID-19. Although the full implications of this pandemic remain unclear, it would obviously have an impact on the conduct of a federal election. The agency has developed plans on how an election could be delivered in the context of the pandemic.

Other challenges have threatened the integrity of the administration of federal elections. These relate to evolving communications technology, the impacts of social media and the protection of electors' personal information.

To better understand the challenges involved in the administration of elections, Elections Canada consults with Canadians. One way we do this is by fostering discussion among experts and key stakeholders, including political parties and organizations representing various categories of electors. The process also helps us assess the administration of each election and report to Parliament with recommendations that could lead to better administration of the *Canada Elections Act*.

Our electoral history is one of progressive change. It is built on the successes of the past and continual adaption to the changing circumstances, values and expectations of Canadians. Our democracy owes much of its stability and broad social acceptance to a deep sense of continuity.

In celebrating Election Canada's 100th anniversary, we commemorate the work of those who came before us and our proud heritage. I have the honour of being Canada's Chief Electoral Officer at this time in our institution's history, and I am thankful to those who have served in this role before me. With the support of former CEOs Jean-Marc Hamel, Jean-Pierre Kingsley and my immediate

predecessor, Marc Mayrand, we are marking this milestone by revising and updating *A History of the Vote in Canada*. First published in 1997 by Jean-Pierre Kingsley for the agency's 75th anniversary, with a second edition in 2007, this publication chronicles the origins of our electoral process and the reforms that saw the gradual expansion of the franchise. It also looks at the evolution of the ways in which Elections Canada regulates political financing and administers elections.

I would like to acknowledge all those who worked on the first two editions of this book. My special thanks go to those who were involved in putting together this revised and updated third edition. In addition to the many staff members at Elections Canada who worked on this project, I would like to recognize the contribution of P. E. Bryden, Historian, University of Victoria; Louis Massicotte, Political Scientist, Université Laval; Alain Pelletier, Expert in electoral policy; James Robertson, Expert in parliamentary procedure and law; and Michael Dewing, Freelance Writer. I extend my sincere thanks to them and to all those who collaborated in revising *A History of the Vote in Canada*.

Stéphane Perrault
Chief Electoral Officer of Canada

December 2020

INTRODUCTION

The simple act of voting, once a privilege conferred on men who were affluent enough to own land or pay taxes, has become a right of citizenship for all Canadian adults, with the notable exception of the Chief Electoral Officer of Canada.

The electorate (the body of people eligible to vote at an election) is defined by the Constitution and by law. In the case of federal elections, the law is the *Canada Elections Act*. The provisions that determine eligibility are referred to collectively as the franchise. These are the conditions that govern the right to vote.

Canada's Parliament consists of the Crown (represented by the Governor General) and two chambers:

- the Senate, whose 105 members are appointed by the Governor General on the advice of the Prime Minister and represent provinces or territories; and
- the House of Commons, whose members are elected at regular intervals by popular vote.

Today, exercising the federal franchise means voting to elect a representative to sit in the House of Commons. For election purposes, the country is divided into electoral districts, also known as constituencies or ridings; each of these is now entitled to one seat in the House of Commons. (Until 1966, a number of electoral districts were represented by two members.) The number of seats is readjusted every 10 years, following the decennial census, to reflect changes and movements in Canada's population. Through this process, the number of seats has increased incrementally, from 181 at the time of Confederation to 338 following the readjustment in 2013.

Canada's electoral system is a single-member plurality system (often referred to as a first-past-the-post system); in each constituency, the candidate with the most votes—even if it is not a majority of the votes cast—is declared elected. Generally, after all the constituency results are in, the Governor General invites the leader of the party holding more than half of the seats in the House of Commons to form a government; the leader becomes or remains the Prime Minister. If no party wins the majority of seats, the leader of the party that is likely to enjoy the confidence (the support) of the House becomes or remains the Prime Minister. However, the last word belongs to the House of Commons, which may support or defeat a minority government when voting on a question of confidence.

Before looking at the history of the franchise in Canada, we must acknowledge other exercises in democracy that took place long before European colonization. Since time immemorial, Indigenous peoples had formed culturally distinct groups and developed elaborate systems of government. This book, however, addresses representative democracy since colonization.

The first elections in New France saw popularly elected representatives, known as *syndics*, chosen by residents of Québec, Montréal and Trois-Rivières to sit as members of the colonial council. Syndics were not representatives in the way legislators are today. At first, they were intermediaries who simply presented electors' views to council and conveyed council's decisions to the citizenry. After 1648, the council chose two syndics at a public assembly to become regular council members. In 1657, it was decreed that four members of the council were to be elected by the general populace "by a plurality of votes in a free vote"—essentially the single-member plurality system in use today. But throughout this period, the council remained responsible to the king or the governor of New France, not to the people. The office of syndic lapsed in 1674.

Parliamentary assemblies did not exist in France or its colonies because the French monarch was absolute. Great Britain had a Parliament, and it was accepted that British subjects in the colonies also had the right to establish local representative institutions. As early as the 17th century, Britain's American and West Indian colonies had separate legislatures; it was only natural that colonies in what is now Canada should be entitled to the same privilege.

In 1758, the election of the first assembly with legislative responsibilities took place in Nova Scotia; the other colonies followed suit in the ensuing decades. But these assemblies had limited influence because executive councils—the real decision-making bodies—reported to governors, not elected councils, and because appointed upper houses could block bills passed by assemblies.

COUNTY OF QUEBEC.

PUBLIC NOTICE is hereby given to the Electors in the COUNTY of QUEBEC, qualified to Elect and constitute Members to serve in the Assembly of this Province, that in pursuance of His Majesty's Writ to me directed, bearing date the Twelfth day of March, instant, I do require the attendance of the Electors of the said County, near the Church in the Parish of CHARLESBOURG, on TUESDAY the TWENTY-SEVENTH day of MARCH instant, at NINE o'Clock in the Forenoon, for the purpose of Electing Two Persons to represent them in the ensuing Assembly of this Province. And I do give further notice, that I shall continue the said Election, in such manner as is by Law directed, at which all persons will take notice, and govern themselves accordingly.

F. TETU,
Returning Officer.

Quebec, the 16th March, 1810.

COMTE DE QUEBEC.

AVIS PUBLIC est par le présent donné aux Electeurs du COMTE de QUEBEC, qualifiés pour élire et constituer des Membres pour servir dans l'Assemblée de cette Province, qu'en conformité aux Writ de Sa Majesté, à moi adressé en date du Douzième jour du présent mois de Mars, je requiers la présence des Electeurs du dit Comté de Québec, près de l'Eglise de la Paroisse de CHARLESBOURG, MARDI le VINGT-SEPTIEME jour du présent mois de MARS, à NEUF Heures du matin, aux fins d'élire Deux Personnes pour les représenter dans la prochaine Assemblée de cette Province. Et je donne de plus avis que je continuerai la dite Election en telle manière qu'il est dirigé par la Loi, dont toutes personnes prendront connoissance et se gouverneront en conséquence.

F. TETU,
Officier Rapporteur.

Quebec, le 16e. Mars, 1810.

Library and Archives Canada, MG55/24-No9, Volume 2, R11484-0-2-E

Election Proclamation, 1810

Anyone who met the property and income qualifications (including women) would have been eligible to vote at this election in Lower Canada. Although the colonies that would form Canada had different rules about who was eligible to vote, the franchise was mostly a privilege of wealthy men.

Moreover, the franchise at that time was far more limited than it is today. Thus, the capacity of most residents to influence the affairs of a colony was limited. This would not change until responsible government was established in the various colonies between 1848 and 1855. Even then, it was many years before the franchise was expanded to include a much greater portion of the population.

In advancing the concept of universal male (and later female) suffrage, Canadians owed a great deal to ideas made current by British and French thinkers and writers of the 18th and 19th centuries, as well as to the experience of the democracies of Great Britain, France and the United States of America. While acknowledging this debt, we have chosen to maintain the focus on the path Canada took to give these ideas legislative and institutional expression.

This history of the vote in Canada unfolds in four chapters:

- Chapter 1 examines the vote from the beginnings of responsible government in the British colonies that would become Canada, up until Confederation.
- In Chapter 2 we look at the period from 1867 to 1919, one of considerable turbulence in electoral matters, including several shifts in control of the federal franchise between federal and provincial governments.
- Chapter 3 discusses changes in the franchise from 1920, the beginning of the modern era in electoral law, through to 1981.
- The fourth and final chapter examines more recent reforms to Canada's electoral system in the period following the adoption of the *Canadian Charter of Rights and Freedoms* in 1982.

Throughout these chapters, we also look at other important legislative reforms related to the right to vote and fair elections, particularly the regulation of political financing and of political parties, candidates and third parties (individuals or groups other than candidates or registered political parties). These legislative reforms aimed to level the playing field and increase transparency.

Focusing on the details of electoral law makes the history of the vote appear extremely complex—an endlessly changing catalogue of rules, regulations and procedures. Many variations in the franchise and its exercise can be attributed to provincial peculiarities or were made necessary by the vast geography and striking diversity of the country. Our goal in this book is not to provide an exhaustive inventory of changes and variations, but to sketch the broad outlines of how the franchise and the electoral system have evolved over the past 200 years and to look at the key factors that might have brought about these changes.

Library and Archives Canada, *Canadian Illustrated News*, September 7, 1872, C-058780

Before the Secret Ballot, 1872

John Young, a candidate in the 1872 general election, addresses a group of supporters after the close of a poll. At the time, voters gathered in one place and declared their choice before the assembled crowd. It would be six years before the secret ballot was used for the first time in a general election.

In Canada, as in other democracies, the struggle for universal suffrage was not won overnight. Instead, the vote evolved in piecemeal fashion, expanding and sometimes contracting again as governments came and went and legislatures changed the rules to raise, lower or remove barriers to voting. Among the barriers imposed were restrictions related to wealth (or, more precisely, the lack of it), gender, religion, race and ethnicity. As discussed in Chapters 1 and 2, these

barriers varied from colony to colony (voting practices even varied from one settlement to another within a colony), and later from province to province.

The struggle for universal suffrage was more than a struggle for partisan advantage or political power. Resistance to expanding the franchise reflected a general 19th-century discomfort with liberal-democratic ideals, an uneasiness with the concept of majority rule, and an attitude that equated universal suffrage with social upheaval and disorder created by teeming new urban populations.

The franchise expanded incrementally until the First World War (1914–1918) as various groups, including advocates for women's suffrage, overcame resistance. Then, in 1918, with the enfranchisement of women, the federal electorate doubled overnight. However, though people could no longer be denied the right to vote in federal elections because of their gender, other restrictions persisted.

By the early 1960s, voting eligibility had expanded to include many other groups and individuals who were previously excluded for various reasons. In 1982, the right to vote was constitutionally entrenched in the *Canadian Charter of Rights and Freedoms*, so that today the only significant remaining restrictions are age and citizenship. Section 3 of the Charter, which states that "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly," cast doubt on the constitutionality of various disqualifications then in effect. This gave rise to efforts by those excluded (judges, prisoners, expatriates, persons with mental disabilities) to petition the courts to have the exclusions set aside, which allowed the courts a significant role in determining who has the right to vote.

Pierre Gaudard, National Gallery of Canada, NFB Collection

The Universal Franchise, 1963

By the 1963 general election, the last traces of racial and religious discrimination had been expunged from the law governing the federal franchise.

Barriers to voting are not only legal or constitutional—they can also be procedural or administrative. If citizens have the right to vote but are unable to exercise it because of obstacles inherent in the electoral rules or the way the rules are implemented, these barriers constitute a restriction of the right to vote as it is intended by legislators. Over the years, steps taken to overcome such barriers include proxy voting, advance voting, special mail-in ballots, polling-day registration, use of multiple languages in election information, a ballot template for people with visual impairments and level access at polling stations, among many others. In short, the Charter not only guaranteed the right to vote but also highlighted the need to ensure that the right can be exercised.

Yet even extending the right to vote to virtually every adult citizen in a society does not guarantee the sanctity of the democratic process. There are additional requirements.

First, the administration of the process must remain independent and non-partisan. To this end, the position of Chief Electoral Officer was created in 1920, and electoral boundaries commissions were established in 1964.

Elections Canada

A Democratic Right

The rights to vote and to be a candidate for office have been enshrined in the Canadian Charter of Rights and Freedoms *since 1982.*

More recently, the *Canada Elections Act* was amended to provide that returning officers are appointed by the Chief Electoral Officer rather than by the government of the day.

Second, participants in any electoral race must be able to compete on a fair and equal footing. To ensure that they compete equitably, information about their campaign activities must be available to the voting public. Since the early 1970s, legislative reforms have advanced these ideals through the registration of political parties and other political entities, regulation of political financing and third-party advertising, and other rules central to maintaining due restraint and visibility within the electoral process.

More recently, concerns over the integrity of the vote led to new requirements for electors to prove their identity and address when registering on the list of electors and voting in a federal election. Also, after a number of irregularities occurred in voting procedures during the 2011 general election, changes were made to ensure compliance with voting procedures at polling stations. As well, Elections Canada has put in place a number of legal, procedural and information technology measures in response to threats to the security of the vote from disinformation and cyberattacks.

From its origins as a privilege of men of the propertied class, the vote has become a universal right of Canadian citizenship. As documented in the following chapters, the road to universal suffrage was not without bumps and detours. Canada's democratic system, like its counterparts in other countries, continues to pursue the goal of ensuring that all citizens can exercise their right to vote freely and in secrecy.

Elections Canada

Every Vote Counts

One of the over 18.3 million voters who participated in the 2019 general election casts her vote as election officials look on. This was the first federal election in which Canadian citizens living abroad for more than five years had the right to vote.

CHAPTER 1

1758–1866

BRITISH NORTH AMERICA

Library and Archives Canada, *Canadian Illustrated News*, September 7, 1872, C-05781

In the colonies that would later form Canada, the vote was a privilege reserved for a limited segment of the population—mainly affluent men. Eligibility was based on property ownership: to be eligible to vote, an individual had to own property or assets of a specified value or pay a certain amount in taxes or rent.

The law prohibited some religious, Indigenous, ethnic and other groups from voting. Women were also excluded by and large—initially by convention, later by statute. In short, only a fraction of the population could vote. Since then, the situation has improved markedly. In the following pages, we provide a brief history of the evolution of the franchise and voting practices in Canada.

Evolution of the right to vote was neither consistent nor ordered. The right to vote was not extended gradually and steadily to encompass new categories of citizens; rather, it evolved haphazardly, with the franchise expanding and contracting numerous times and each colony proceeding at a different pace. For example, the degree of wealth needed for eligibility changed several times, with the result that people who had been entitled to vote suddenly found themselves deprived of that right, only to have it returned sometime later. Similarly, laws were adopted from time to time that withdrew the right to vote from groups that had previously enjoyed it.

Charles Walter Simpson, Library and Archives Canada, C-013951

First Elected Council Meets, 1658

Charles Walter Simpson used gouache, watercolour and oil to depict the Conseil de Québec, established in 1657. Four of its six members—one each from Trois-Rivières and Montréal and two from Québec—were elected by the small number of New France residents who qualified as habitants*—perhaps 100 of the 2,000 residents. The council had limited powers and did not survive the establishment of royal government in 1663.*

Moreover, there was often quite a discrepancy between legal provisions and reality. Early in Canada's history, voting conditions set out in the law opened the door to a host of fraudulent schemes that, in practical terms, restricted the voting rights of a significant portion of the electorate at various times. Here are some examples:

- Each electoral district usually had a single polling station.
- Votes were cast orally.
- Election dates differed from one riding to another.
- In each polling station, if a full hour passed in which no elector voted, the station was automatically closed.

How many voters, living far from their riding's only polling station, relinquished their right to vote rather than travel long distances in often harsh conditions? We will never know. Oral voting made it easier for votes to be bought; it also opened the door to intimidation and blackmail. Since each elector's vote was recorded in a document, bribers could easily tell whether the voters whose votes they had bought voted as instructed. Worse yet, the practice of closing polling stations when an hour had passed without any voters appearing led to numerous acts of violence. To win an election, an unscrupulous candidate could simply hire a gang of bullies to allow his supporters to vote, then bar the way to the polling station for an hour.

Such tactics, coupled with the fact that most candidates supplied unlimited free alcohol to voters during an election, resulted in riots that claimed at least 20 victims before 1867: three in Montréal in 1832; nine in Montréal, Vaudreuil, Beauharnois, Toronto, and the counties of Durham and Halton West in 1841; one in Northumberland County, New Brunswick, in 1843; one in Montréal in 1844; three in Belfast, Prince Edward Island, in 1847; two in Québec in 1858; and one in Saint John, New Brunswick, in 1866.

William Notman, Library and Archives Canada, PA-165422

Election Security, 1860

With electors casting their votes orally, intimidation and bullying were not uncommon. Dealing with election violence (which claimed at least 20 lives before Confederation) often required the services of the army or police, as in this scene near the Montréal courthouse in February 1860, captured by photographer William Notman.

Finally, in addition to voters killed while trying to exercise the right to vote, how many were injured? History does not say, but the following description of a brawl that broke out at a Montréal polling station in 1820 leaves no doubt that voting could often be a risky business:

> *Passions ran so high that a terrible fight broke out. Punches and every other offensive and defensive tactic were employed. In the blink of an eye table legs were turned into swords and the rest into shields. The combatants unceremoniously went for each other's nose, hair and other handy parts, pulling at them mercilessly … The faces of many and the bodies of nearly all attested to the doggedness of the fighting.*
>
> *– Hamelin and Hamelin, 47–48, translation*

Rather than expose themselves to such dangers, some voters, at least occasionally, no doubt relinquished the right to vote. As Canadian electoral law was amended to limit fraudulent practices and outbursts of violence, it ensured that a growing proportion of the population could exercise the right to vote.

LEGISLATIVE ASSEMBLIES AND RESPONSIBLE GOVERNMENT

Canadian parliamentary institutions began to take shape in the latter half of the 18th century. Though this book discusses elections following European colonization, we recognize that Canada's Indigenous peoples had developed their own systems of government long before the creation of parliamentary institutions in Canada. For example, many scholars date the beginning of the Haudenosaunee (Six Nations) Confederacy to the mid-15th century, although several argue that it began much earlier, even a millennium before the arrival of Christopher Columbus. The stories of Indigenous governance and representation are beyond the scope of this publication.

The first legislative assembly—an assembly of representatives elected by the people to enact legislation—was elected in Nova Scotia in 1758; Prince Edward Island followed suit in 1773, New Brunswick in 1785, then Lower Canada (Quebec) and Upper Canada (Ontario) in 1792. Executive authority still eluded these assemblies, however, remaining in the hands of executive council members appointed by colonial governors, who were in no way accountable to elected members or to the electorate. The consent of an assembly was required for a bill to become law, but bills originating in the assembly could be vetoed by Crown-appointed legislative councillors or governors, over whom the assemblies had no control.

Indigenous Governance

First Nations peoples developed ways of governing themselves that predate the introduction of parliamentary institutions and exist to this day. For example, the Haudenosaunee Confederacy—sometimes symbolized by the longhouse—has been called one of the oldest living participatory democracies on earth. This illustration of a 15th-century Haudenosaunee community is based on archaeological research carried out near Pickering, Ontario.

Canadian Museum of History

In the first half of the 19th century, then, recognition of the principle of responsible government—not extension of the franchise—sparked reform efforts in the colonies of British North America. Politicians known as Reformers endeavoured, first and foremost, to achieve responsible government: ministers were chosen by the majority in the house of assembly (and forced to resign if they lost the confidence of that majority) and were accountable to it.

Library and Archives Canada

Struggle for Elected Assembly, 1757

When Nova Scotia Governor Charles Lawrence ignored his appointed assembly's advice, four of its members published a pamphlet that they sent to colonial authorities along with a letter of protest. London ordered Lawrence to hold an election, and the first elected assembly in what is now Canada met in Halifax on October 2, 1758.

In 1836, Joseph Howe, known as the voice of Nova Scotia, expressed succinctly the objective of the Reformers of his time: "[A]ll we ask for is what exists at home—a system of responsibility to the people." (*DCB* X, 364) Colonial governors' opposition to such a change was backed up in London by successive secretaries of state for the colonies, whose attitude was summed up in a remark by Lord Bathurst, who apparently told a new governor on the eve of his departure for North America, "Joy be with you, and let us hear as little of you as possible." (*DCB* VIII, xxiv) This directive seems to have been followed scrupulously, for until 1828, the colonial office had only a vague idea of the discontent brewing for years in some colonies, particularly Upper and Lower Canada, where rebellions broke out less than 10 years later.

London's response—the 1838 appointment of Lord Durham as governor general, with a mandate to investigate the causes of unrest—did not produce immediate change. Durham recognized that the main source of problems for colonial governments lay in the fact that their executive councils were not responsible to the legislatures. He therefore recommended responsible government for each colony except Lower Canada. There, responsible government would have endowed the French with political control of the province. Durham therefore recommended that Lower Canada be merged with Upper Canada and that the new province be granted responsible government, with the expectation that the English element would predominate.

Fearing the loss of its authority, the British government rejected Durham's recommendations, apparently on the grounds that colonial governors would essentially become independent sovereigns if they began to act on the advice of a council of ministers.

London's inaction soon led to legislative impasse, as Reformers gradually gained control of colonial assemblies and refused to ratify legislation proposed by governors and their councils. The impasse was eventually resolved after Sir George Grey was appointed secretary of state for the colonies in 1846 and promised to grant responsible government to the largest North American colonies at the first opportunity.

The following year, Reformers won the Nova Scotia election; in February 1848 they took office, inaugurating the first responsible government in a British colony. Joseph Howe remarked that this victory had been won without "a blow being struck or a pane of glass broken," (*DCB* X, 365) forgetting to mention the role of rebellions in Upper and Lower Canada a decade earlier. A month later, in March 1848, it was the turn of Reformers in the Province of Canada to bring in their responsible government. Prince Edward Island and New Brunswick did likewise in April 1851 and October 1854, respectively.

Among the chief architects of this fundamental change in the shape of Canadian parliamentary institutions were the following Reformers: Joseph Howe and James Boyle Uniacke of Nova Scotia; Louis-Hippolyte La Fontaine, Augustin-Norbert Morin and Louis-Joseph Papineau of Canada East (Lower Canada); William Warren Baldwin and his son Robert Baldwin, Francis Hincks and William Lyon Mackenzie of Canada West (Upper Canada); George Coles of Prince Edward Island; and Charles Fisher and Lemuel Allan Wilmot of New Brunswick. Thanks to them and other Reformers, Canadians acquired the right not only to elect assembly members but to choose their governments.

THE GREAT BRITAIN OF GEORGE III

While allowing its North American colonies to have legislative assemblies, London was deciding, through governors and their councillors, who would have the right to vote. The legislative assemblies of the Maritime colonies gained partial control in this area between 1784 and 1801, while Upper and Lower Canada did not do so until after their union in 1840. It was not until 1847, however, that London gave colonial assemblies the right to set their own rules on the naturalization of immigrants, thereby giving them full authority to determine who had the right to vote. Thereafter, each colony had the authority to confer the status of British subject, but this status was valid only on its own territory; if granted by London, such status was valid throughout the empire.

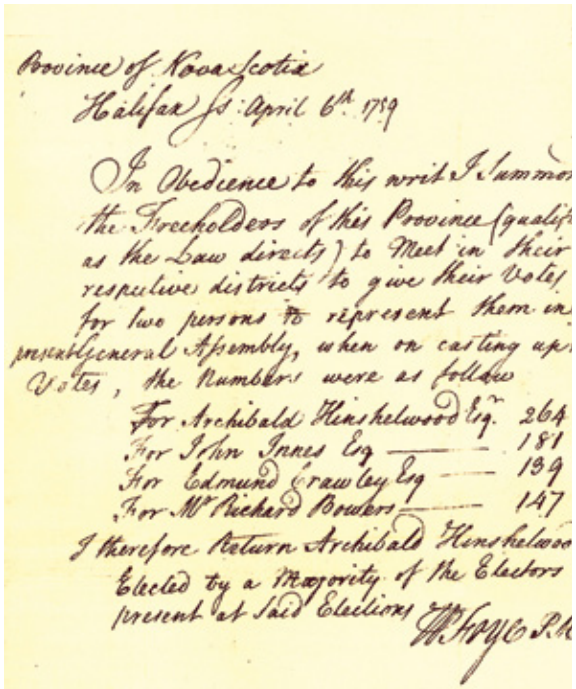
Initially, the rules governing the right to vote in the colonies of British North America tended to be modelled on those of the mother country. In the Great Britain of George III—the second half of the 18th century—several categories of individuals were denied the right to vote. First, the right to vote was based on property ownership: to be eligible to vote, an individual had to own a freehold (land free of all duties and rents), and this freehold had to generate a minimum annual revenue of 40 shillings, or £2 sterling; this immediately excluded the vast majority of the population.

Of the other groups denied the vote, women undoubtedly represented the greatest number. There was no decree or law prohibiting them from voting; rather, they had not voted for centuries by virtue of a tacit convention of English common law.

Nor could Catholics and Jacobites vote. Mostly Scottish and Irish Catholics, the Jacobites were supporters of James II, who had tried in vain to restore Catholicism in England in the late 17th century. By 1701, in an attempt to strengthen Protestantism, the English Parliament had passed acts establishing three oaths of state designed to exclude Catholics and Jacobites from public office. The first oath was one of allegiance to the king of England; the second, known as the oath of supremacy, denounced Catholicism and papal authority; and the last, the oath of abjuration, repudiated all rights of James II and his descendants to the English throne. Not only was swearing these oaths necessary to hold public office, but electors could be required to swear them before voting.

What is more, the law forbade Catholics to practise their religion, to acquire property through purchase or inheritance, to sit in Parliament and to vote. The prohibition on owning property was removed in 1778; a 1791 law allowed the open practice of their religion again, but they would not be given the right to vote until 1829. Jews also

experienced exclusion, though indirectly. They were not explicitly denied the vote, but they refused to take the oaths of state, because they were to be taken "in the name of the Christian faith."


Province of Nova Scotia
Halifax 5th April 6th 1759

In Obedience to this writ I Summon
the Freeholders of this Province (qualif
as the Law directs) to Meet in their
respective districts to give their Votes
for two persons to represent them in
present General Assembly, when on casting up
Votes, the Numbers were as follow
For Archibald Hinshelwood Esq. 264
For John Innes Esq —— 181
For Edmund Crawley Esq —— 139
For Mr Richard Bowers —— 147
I therefore Return Archibald Hinshelwo
Elected by a Majority of the Electors
present at said Elections

Nova Scotia Archives, RG 5, Series E, Vol. 1. No. 6

First By-election, 1759

Governor Lawrence of Nova Scotia issued a writ, dated January 10, 1759, commanding a by-election. The seats of two members, John Anderson and Benjamin Gerrish, had been declared vacant. The colony, which included present-day New Brunswick and Prince Edward Island, consisted of a single constituency. Men over 21 who owned freehold land were eligible to vote. Here, the chief election official at Halifax reports the results to the Governor, writing them on the back of the original writ.

Immigrants and other new arrivals who were not British subjects and had not been in the colonies long enough to become naturalized citizens were the other sizeable group unable to vote. Once again, no law or decree prohibited them from voting; rather, common law prevented them from doing so and from owning property directly or through a lease or farm tenancy. In 1844, a law was passed allowing them to hold property through a lease or farm tenancy, and in 1870, a second law allowed them to purchase landed property directly; both laws also stipulated that they did not have the right to vote, even if they met the legal qualifications.

Since 1740, however, immigrants had been able to become British subjects and thereby gain the right to vote if they met three conditions: they had lived in Great Britain for seven years, they had taken the three oaths of state and they had received communion according to the rite of a reformed church (which was, in practice, the Church of England). These conditions prevented Catholic immigrants, as well as immigrants belonging to certain Protestant sects, such as Baptists and Methodists, from becoming British subjects.

On the whole, these restrictions were applied only partially and erratically in the North American colonies because of the different socio-economic conditions prevailing there. For example, such restrictions were not imposed in Lower Canada, for they would have contravened the spirit of the *Quebec Act* of 1774. The criteria also varied from colony to colony, with the result that those that formed Canada during the 19th century—Nova Scotia, Prince Edward Island, New Brunswick, Lower Canada, Upper Canada and British Columbia—joined Confederation with appreciably different electoral laws. The nature and evolution of these laws are the main focus of this chapter.

PROCLAMATION !

DIVISION ELECTORALE DE MONTARVILLE.

ELECTORAL DIVISION OF

SAVOIR

TO WIT

le troisieme jour du mois de JUIN

Monday, the Third Day of the Month of June

Library and Archives Canada, RG 4, B72, Vol. 40, p. 8131, R14705-0-1-E

Candidate Wins Seat, Then Loses It

Forced to flee his Polish homeland after opposing Russian rule in the 1831 rebellion, Alexandre-Édouard Kierzkowski (1816–1870) reached Canada in 1842, becoming a naturalized British subject in 1847. Kierzkowski was elected to the Province of Canada's legislative council on September 15, 1858, but opponents claimed that his property value was insufficient to qualify him for office. After a three-year investigation, a legislative committee declared the election void (this was not unusual in tumultuous 19th-century politics). His challenger at the ensuing by-election was Louis Lacoste (1798–1878), a political activist in Lower Canada. Lacoste defeated Kierzkowski 2,042 votes to 2,013.

Dans la Contestation de l'Election

POUR LA

DIVISION MONTARVILLE

A tous Constables et Huissiers nommés ou à être nommés pour servir dans cette affaire :

Vous êtes par les Présentes

En Foi de Quoi

Library and Archives Canada, RG 14, C1, Vol. 129, R14529-09-E

Library and Archives Canada, PA-165451

NOVA SCOTIA: CRADLE OF CANADIAN PARLIAMENTARY GOVERNMENT

In 1713, under the Treaty of Utrecht, France ceded Nova Scotia to Great Britain but kept Île Royale (Cape Breton Island) and Île Saint-Jean (Prince Edward Island). The following year, a small British garrison was established at Port-Royal, Nova Scotia, now renamed Annapolis Royal. The 2,000 Catholic French-speaking Acadians living in the colony at the time agreed to swear an oath of allegiance containing a clause exempting them from bearing arms in the event of conflict with France. In the decades to come, despite every effort to attract colonists from New England, very few settled in Nova Scotia, while the number of Acadians multiplied at a rapid rate. In the circumstances, the British authorities considered it imprudent to let the colony have a legislative assembly.

Following the War of the Austrian Succession (1744–1748), London finally decided to try to change the population makeup in Nova Scotia by encouraging emigration by non-English-speaking Protestants from Europe, mainly victims of religious wars there. Recruited mostly from Germany, but also from the Netherlands and Switzerland, about 2,600 such immigrants accompanied Colonel Edward Cornwallis, governor of Nova Scotia and founder of Halifax, when he sailed to Nova Scotia in 1749. That same year, Governor Cornwallis was given full authority to establish an elected assembly when he deemed it appropriate, but he delayed doing so indefinitely, as the colony was home to three to four times as many Acadians as Protestants.

Nova Scotia

1758 First elected assembly, made up of 22 men. Eligible to vote: Protestants age 21 or older who own a freehold of any value.

1783 Assembly gains statutory control of representation and the franchise.

1789 Assembly removes religious restrictions on eligibility to vote.

1848 First responsible government in British North America inaugurated.

1851 Right to vote separated from land ownership, extending the franchise to men over 21 who have paid taxes in the year preceding an election; number of electors increases by 30 percent.

1854 Universal male suffrage adopted (though it does not include First Nations people or people receiving financial assistance from government); number of electors increases by 50 percent. Nova Scotia is the first colony in North America to adopt male suffrage and the only one to do so before Confederation.

1863 Restrictive rules reintroduced—property ownership is again a criterion for eligibility.

1867 Rules in place at Confederation: to vote in a federal election held in Nova Scotia, electors have to be male, age 21 or older and own property of a specified value.

Library and Archives Canada, MG 23, G III 22, R5431-0-9-E

First Jewish Candidate, 1796

Moses Hart issued this announcement, asking for voters' support, but later withdrew his candidacy. Hart's younger brother, Ezekiel, elected in 1807, was prevented from taking his seat by the oath of office, which included the phrase "upon the true faith of a Christian." Jews were also excluded from voting by the oath designed to bar Catholics. Ezekiel's son Aaron was instrumental in having the oath changed in the 1830s.

In 1754, war broke out again between Great Britain and France. This time, the British demanded that the Acadians, who had previously remained neutral, take up arms. They refused. The British reaction was to deport them. In 1755, as their homes were burned down, about 7,000 Acadians were herded onto ships and dispersed among Britain's 13 American colonies and the West Indies; 2,000 to 3,000 more met the same fate in the years that followed.

Beginning in 1759, colonists from New England settled on the land confiscated from the Acadians, while other immigrants arrived from the British Isles. Thus, on the eve of the American Revolution (1775–1783), Nova Scotia had about 20,000 inhabitants, nearly half of whom had come from New England; the rest were either Acadians who had returned from exile or escaped deportation, or Irish, Scottish and English settlers.

The American Revolution changed the composition of Nova Scotia's population considerably. Following the Treaty of Versailles (1783), which recognized the United States, Loyalists—people living in the United States who had remained loyal to the British Crown—fled north by the tens of thousands. An estimated 35,000, including approximately 3,500 African Americans, settled in Nova Scotia, more than doubling its population. This massive influx led to socio-political tensions that would last for years, but it also prompted the establishment of new Maritime colonies in 1784: New Brunswick and Cape Breton.

When the governor of Nova Scotia called the 1758 election—which would lead to the formation of the first legislative assembly in Canadian history, made up of 22 members—the population was still quite small and made up of fairly recent arrivals. The conditions for eligibility to vote, therefore, had to be more liberal than in Great Britain to yield a sufficient number of voters. With the support of his councillors, the governor declared that any Protestant age 21 or older who owned a freehold of any value could vote. In addition, however, prospective voters could be asked to swear the three oaths of state; this prevented Catholics and Jews from voting. As for women, their status was the same as that of British women—they did not have the right to vote. In 1759, however, the governor and his council decided to restrict the vote to freeholders owning property generating an annual revenue of 40 shillings, as in Great Britain.

The arrival of the Loyalists prompted a change in conditions of eligibility. In 1789, the legislative assembly rewrote the rules of the game. Freeholders still had to meet the criteria established in 1759, but the right to vote was extended to anyone who owned a dwelling with his land, regardless of its value; to anyone who owned at least 100 acres of land, whether farmed or not; and to anyone who occupied Crown land by virtue of an occupancy permit. Finally, the legislative assembly abolished religious discrimination in the eligibility criteria, enabling Catholics and Jews to vote. These new measures favoured urban landowners, fishermen and Loyalists, a good many of whom had only an occupancy permit.

Compared to the rules prevailing in the Great Britain of George III, those established by the Nova Scotia assembly were quite liberal—perhaps even a little too liberal. In 1797, the assembly reconsidered and tightened the rules once again. In future, those occupying Crown land by virtue of an occupancy permit would no longer have the vote, nor would freeholders who had not formally registered their property at least six months before an election; owners of 100 acres or more of land would no longer have the vote unless they were farming at least 5 acres of it.

It was not until 1839 that the assembly changed the rules again. It upheld the right to vote of freeholders owning property generating an annual revenue of 40 shillings but withdrew it from owners of 100 acres of land and those who owned a dwelling with their land. However, property owners who met the same conditions as freeholders could now vote. In addition, mortgagors and co-owners were now eligible to vote, as were tenants, if they owned an interest in real property that earned them at least 40 shillings annually.

Wellington A. Chase, Library and Archives Canada e011154382

Universal Male Suffrage: Nova Scotia, 1854

If they were over 21 and had lived in the colony at least five years, these Yarmouth merchants (photographed by Wellington Chase in spring 1855) were eligible to vote under the 1854 electoral law. Property ownership entitled recent immigrants to vote as well. "Universal" male suffrage did not include "Indians," however, and it lasted only until 1863, when property ownership again became a requirement.

Twelve years later, in 1851, Nova Scotia took the significant step of detaching the right to vote from land ownership. The assembly declared that anyone age 21 or older who had paid taxes (in any amount) in the year preceding an election could vote. In ridings where taxes were not yet collected, only freeholders with property yielding 40 shillings a year could vote. The same law stipulated, however, that no woman could vote even if she met the legal requirements regarding taxes or property. The assembly added this clause because, during an election held in 1840, a candidate in Annapolis County had tried to get some 30 women who had the necessary qualifications to vote, common law notwithstanding.

In 1854, Nova Scotia became the first colony in British North America to adopt universal male suffrage—and it would be the only one to do so before Confederation. That year, the assembly adopted a law to the effect that British subjects age 21 or older who had lived in the colony for at least five years could vote. It kept the rule allowing freeholders with property generating a minimum annual revenue of 40 shillings to vote; this enabled a number of immigrants of British origin to vote even though they had not lived in the colony for five years. Like the electoral law of 1851, the 1854 act contained a restrictive clause stating that "Indians"* and people receiving financial assistance from the government could not vote.

Further change, more regressive this time, came a decade later: the elimination of universal suffrage and a return to more restrictive rules. In 1863, Nova Scotia limited the right to vote to British subjects at least 21 years old who owned property assessed at $150 or more, or personal and real property assessed at $300 or more. The number of eligible British subjects was expected to increase, however, at least in theory, as immigrants now had to live in the colony for only one year to be declared British subjects.

Such were the rules that defined the Nova Scotia electorate in August and September of 1867, when the first Canadian federal election was held.

PRINCE EDWARD ISLAND: A "LANDLESS" COLONY

In 1758, the British succeeded in taking possession of Île Saint-Jean, where it followed the same policy as had been pursued in Nova Scotia a few years earlier. Some 4,000 French and Acadian colonists were deported, but several hundred evaded capture by seeking refuge in the far corners of the island. In 1763, after the Treaty of Paris, the island was joined with Nova Scotia. Four years later, it was subdivided into 67 townships of about 20,000 acres each; these were distributed to individuals who had earned the gratitude of the British government for services rendered during the Seven Years' War. The lands were granted on certain conditions, one being that they be used for Protestant settlers, who were not to come from other British colonies. At the turn of the 19th century, some of these lands were joined, so that a few wealthy individuals, most living off the island, came to own vast expanses of

How is it that men who had to, for 20 years, obtain and determine the price they must attach to the noble right to elect or to be elected are not horrified at the thought of selling their vote or buying votes, at the thought of cowardly tampering with their participation in an election?

– L'Aurore, *September 3, 1817 (translation)*

* The Indigenous peoples known today as First Nations were referred to then as "Indians" in both federal and provincial law. We use that term here only for historical accuracy and to avoid confusion in discussing the legal provisions governing the franchise. Indigenous peoples, also known as Aboriginal peoples, include First Nations, Inuit and Métis.

land that they often refused to sell, preferring long-term leases to tenant farmers. By the middle of the century, not even a third of the farmers were freeholders, and it was not until 1895 that the government bought back the last estate from the remaining large landowner.

In 1769, the island was separated from Nova Scotia to form a distinct colony, and its first governor was instructed to establish an elected assembly when he deemed it appropriate. The population, almost exclusively Acadian, was still very small; the governor delayed. Between 1770 and 1773, about 800 Scottish settlers came to the island, increasing the population to more than 1,200; it was at this point that the governor decided to exercise his prerogative. The first house of assembly, which consisted of 18 members, was elected on July 4, 1773. The governor restricted the vote to freeholders and planters, but there were practically none of these on the island; almost all the residents were tenants or squatters living on land belonging to absentee landlords. With the consent of his councillors, the governor gave the vote to all Protestants living on the island, imposing no further restrictions related to age, nationality or gender. It was understood, however, that the island would follow the prevailing electoral practice in Great Britain, where neither children nor women could vote. For the time being, however, only Catholics were explicitly denied the vote, although Jews were effectively excluded as well, as voters could be required to swear the three oaths.

After the American Revolution, only a few hundred Loyalists joined the Acadians and colonists of British origin. However, a change that affected the electorate was made in 1787. Protestant residents of rural areas would continue to have the vote, but in Princetown, Georgetown and Charlottetown, only freeholders would be allowed to vote; this obviously excluded tenants.

The* viva voce *system was more in accordance with the institution of the empire to which we belonged and more congenial to the manly spirit of the British people; and he would not therefore consent to abandon it in favour of the underhand and sneaking system of a vote by ballot.

– *C. A. Hagerman, Solicitor General,* Kingston Chronicle*, February 12, 1831*

In 1801, the island's legislative assembly gained control of the rules governing voting rights but did not change the criteria. It even reiterated the ban on voting by Catholics. Because of the growing number of Irish and Scottish arrivals, Catholics were beginning to outnumber Protestants, even though initially the colony had been intended to receive only Protestant immigrants. It was not until five years later, with a rapid rise in the number of immigrants from the Highlands of Scotland, many of whom were destitute, that the assembly decided to restrict the right to vote. In rural areas, Protestant residents remained eligible to vote if they owned a freehold yielding at least 20 shillings a year, leased land for 40 shillings a year, or occupied and maintained land and paid annual rent of at least £3. In Princetown, Georgetown and Charlottetown, freeholders retained their right to vote, while those who maintained and occupied property, regardless of its value, acquired the same right.

To prevent squatters, labourers and transients from voting, the assembly imposed further financial restrictions in 1830. In future, freeholders in rural areas would have to own property yielding annual revenue of at least 40 shillings, not 20, and individuals occupying and maintaining property would have to be paying an annual rent of £5 (up from £3). Unchanged was the requirement that tenant farmers or leaseholders be paying an annual rent of 40 shillings. Freeholders in Princetown, Georgetown and Charlottetown retained the right to vote, but individuals responsible for maintaining a property had to occupy a building commanding an annual rent of at least £10. In addition, owners of real property producing annual revenue of at least £10 would be eligible to vote.

Before agreeing to the new electoral law, London demanded the removal of all clauses restricting the right to vote to Protestants, thus giving Catholics the vote. Six years later, Prince Edward Island passed a law prohibiting women from voting. This decision was surprising, as there appears to be no evidence that women had sought to exercise this right.

Since the beginning of the 19th century, the assembly had been attempting to restrict the electorate by increasing the property requirements, mainly to bypass the Escheat party, which was calling for the lands of absentee owners to be confiscated and resold to those occupying and working the land. During the 1840s, Escheat supporters lost ground to the more moderate Reformers, who eventually achieved responsible government in 1851. Two years later, the assembly adopted a law authorizing the island government to purchase land from consenting landowners for resale in small parcels to their tenants.

Prince Edward Island

1773 First elected assembly, consisting of 18 members. Eligible to vote: all Protestants on the island. There are no legislated restrictions, though convention dictates that women and children do not vote.

1785 Quakers enfranchised and allowed to stand for public office.

1801 Legislative assembly gains control of rules governing the right to vote (but does not change them at this time).

1830 Restrictions on voting by non-Protestants removed.

1836 Law passed explicitly limiting the franchise to men.

1851 Responsible government achieved.

1853 The practical equivalent of universal male suffrage introduced.

1862 Elected legislative council secured.

1873 Prince Edward Island joins Confederation with the most liberal electoral law of all the former colonies (only British Columbia's franchise is broader), but significant numbers are still disenfranchised: women, men over age 60 who own no land, and non-British arrivals who have lived on the island less than seven years.

Political tensions subsided, and in 1853, the assembly decided to broaden the electorate considerably. This time, the vote was extended to British subjects age 21 or over who had lived on the island for at least 12 months before an election and who were subject to the statutory labour law.* As a result, all British subjects between the ages of 21 and 60 who had lived on the island for at least a year became eligible to vote. This was essentially the equivalent of universal male suffrage. In addition, the vote was granted to British subjects over age 21 who owned or had legal title to an urban freehold, or who owned rural or urban property producing annual revenues of at least 40 shillings. In other words, these landowners could vote more than once—in the electoral district where they lived (that is, where they were subject to the statutory labour law) and in the district where they owned property that met the eligibility requirements.

Moreover, like the other colonies of British North America, since 1847 Prince Edward Island had had the authority to enact regulations governing the naturalization of non-British settlers. Nearly all immigrants came from the British Isles and thus were already British subjects. It was not until 1863 that the assembly passed a law granting civil and political rights to non-British arrivals who had lived on the island for at least seven years.

Of the original colonies that formed Canada, Prince Edward Island had the most liberal electoral law when it joined Confederation in 1873, although a sizable fraction of its population was still prohibited from voting: women, anyone over 60 years of age who was not a landowner, and immigrants who had been living on the island less than seven years.

CAPE BRETON: A COLONY WITHOUT VOTERS

With the capitulation of the fortress of Louisbourg in July 1758, Île Royale came under the control of the British. Five years later, after the Treaty of Paris, London joined Cape Breton with the colony of Nova Scotia; now Nova Scotia's electoral laws applied to Cape Breton. To reserve the operation of the coal mines and fisheries for the Crown, the British authorities had decided to give residents of Cape Breton occupancy permits, not freeholds. Suddenly, no Cape Breton resident could vote, since only freeholders could vote in Nova Scotia.

Cape Breton

1763 Cape Breton is merged with Nova Scotia and becomes subject to its electoral law; no resident can vote, as no freeholds are permitted on Cape Breton, and only freeholders can vote in Nova Scotia.

1784 The colonies are separated again, but no legislative assembly is established.

1820 The colonies are rejoined; tenants on Crown land in Cape Breton gain the vote.

* This law required men between the ages of 16 and 60 to provide four days' labour (or the cash equivalent) each year for road building and maintenance.

In 1763, Cape Breton was still occupied by a handful of Acadians who had evaded deportation. Between then and the end of the American Revolution in 1783, however, immigrants from the British Isles, particularly Scotland, settled there. Then in 1784, several hundred Loyalists arrived in Cape Breton, founding the city of Sydney. That same year, London separated Cape Breton from Nova Scotia, making it a distinct colony with its own governor and executive council. No legislative assembly was established, apparently for two reasons. First, the population was deemed to be too poor to support such an institution. Second, the vast majority of Cape Breton's population was made up of Catholic Gaelic-speaking Scottish settlers and Acadians, also Catholic, who spoke only French. To participate in the proceedings of a house of assembly under the British system of the time, an individual had to speak English and be a non-Catholic.

Cape Breton gradually became fairly prosperous. Early in the 19th century, residents began to demand a house of assembly, but London turned a deaf ear. In 1820, with the population of Cape Breton nearing 20,000, London decided to merge it with Nova Scotia again. The annexation occurred shortly after Nova Scotia's assembly had adjourned. As the laws of Nova Scotia did not yet apply to Cape Breton, the governor and his councillors decided who would have the vote in the newly annexed territory.

Giving the vote only to freeholders, as in the rest of Nova Scotia, would be tantamount to denying the vote to virtually the entire population of Cape Breton, as only a handful of speculators had been granted land under its system of tenure since 1784. Nearly all residents were therefore tenants or tenant farmers, leasing Crown land or land belonging to a land speculator. The governor and council finally decided to give the vote to tenants on Crown land, a decision that was subsequently ratified by the Nova Scotia assembly. Elsewhere in Nova Scotia, Crown land leaseholders would not obtain the right to vote until 1851, some 30 years later.

The people of Cape Breton were thus denied the right to vote for 57 years—from 1763 to 1820—an unenviable record for a British North American colony.

NEW BRUNSWICK: A FRAGMENTED COLONY

When the British took Louisbourg in 1758, several small Acadian communities lay scattered across the vast territory of New Brunswick. Some, situated along the southern shore of the Baie des Chaleurs, would become towns like Caraquet, Shippagan and Miscou. Others were situated at the mouths of rivers that emptied into the Gulf of St. Lawrence, and still others on the north shore of the Bay of Fundy and in the Saint John Valley. As they had done elsewhere, the British conducted a deportation policy for several years, and, as elsewhere, many Acadians evaded deportation by fleeing to the bush, beyond the reach of English bayonets, particularly along the headwaters of the Saint John River.

In 1763, New Brunswick did not exist as a separate jurisdiction but was part of Nova Scotia. British authorities lost interest in the region. Over the years, several hundred Acadian families returned from exile, while only a few thousand British emigrants settled there, mainly in the Saint John Valley. By the end of the American Revolution, New Brunswick was still sparsely populated.

New Brunswick

1785 First elected assembly in New Brunswick, comprising 26 members. Eligible to vote: white males over the age of 21 who have lived in the colony for at least three months and agree to take an oath of allegiance.

1786 Votes of Catholic Acadians disallowed in a disputed election.

1791 First electoral law adopted—one of the strictest in British North America; it receives royal assent in 1795.

1810 Catholics and Jews gain the vote when the oath requirement is lifted.

1848 Vote withdrawn from women.

1855 New electoral law extends the franchise to include tradesmen, professionals and senior clerks (in addition to landowners) but still excludes most labourers and workers (who make up some 21 percent of men over the age of 16 in 1861). Voting by secret ballot introduced.

The flood of Loyalists into Nova Scotia prompted profound change. The Loyalists dreamed of "a stable, rural society governed by an able tightly knit oligarchy of Loyalist gentry," (*DCB* V, 156) a dream that translated into a profound distrust of the innovative and democratic spirit of the Americans. Nova Scotia's existing population was largely of American origin and took a dim view of the massive influx of Loyalists. In 1784, to ease the political tensions caused by their arrival, London separated the territory of New Brunswick from Nova Scotia to accommodate Loyalist settlement. Between 15,000 and 20,000 Loyalists settled in New Brunswick; they were later joined by immigrants of Scottish, Irish and English origin.

Until the mid-19th century and even beyond, colonization of New Brunswick bore little resemblance to that of its sister colonies, Nova Scotia and Prince Edward Island. The colony consisted of a series of separate communities that had very little contact with each other, with the result that settlers in each isolated region were generally unaware of conditions elsewhere but vigorously supported any measure intended to meet their own needs. As a result, businessmen and politicians from the various regions represented conflicting interests and proposed divergent solutions. In this situation, the electorate tends to play a less significant role than when there are political parties promoting a platform or advocating specific measures affecting the population as a whole.

When New Brunswick obtained its status as a colony in 1784, the first governor was given the usual orders: to govern with the advice of his executive council until circumstances favoured the establishment of a legislative assembly. In the fall of 1785, the circumstances were favourable, and elections were held for the 26-member legislative assembly. The number of freeholders was extremely small, so the governor gave the right to vote to any white male age 21 or over who had lived in the colony at least three months and who agreed to take the oath of allegiance. But these liberal criteria disappeared in a flash when, the day after the first election, the losing candidate in Westmorland County complained to the legislative assembly that he had been defeated by the Acadian vote.

New Brunswick Museum, www.nbm-mnb.ca, 1961.39

Saint John, 1865

A record dating from 1865 shows the existence of some 20 shipyards in Saint John, New Brunswick, employing 1,267 men at an average wage of $1 a day. As shipbuilding is a seasonal occupation, these workers would have had an annual income of scarcely more than $250 or $300. To be eligible to vote in New Brunswick in 1865, individuals had to earn a minimum of $400 annually.

In January 1786, the assembly resolved that those Acadian votes were not legal. The assembly then unseated the winning candidate and seated his opponent. In this way, the votes of Acadians were invalidated.

Five years later, the assembly adopted New Brunswick's first electoral law. It also reiterated its January 1786 resolution denying Catholics the vote, enabling sheriffs, who oversaw the elections, to discount the votes of anyone who refused to take the three oaths of state. Once again, Jews found themselves excluded by the same provisions that disenfranchised Catholics.

The requirements of the electoral law were among the strictest of any in the British North American colonies. To be eligible to vote in a given constituency, an individual had to be 21 or older and own property in the riding free of any duties or rents and assessed at £25 or more, or own similar property in another riding assessed at £50 or more. The requirements reflected the conservative mentality of the ruling class in New Brunswick, which had received a large proportion of the Loyalists who had previously held important civilian and military positions in Britain's 13 American colonies. This class was inclined to restrict the vote to major landowners. At the time the law was enacted, a number of settlers owned enough land to be eligible to vote, but a steadily growing number of poorer immigrants swelled the ranks of those ineligible to vote.

These restrictive requirements remained in force for more than half a century, with one exception: in 1810, the assembly did away with the mandatory three oaths, enabling Catholics and Jews to vote. In 1848, however, the assembly explicitly withdrew the vote from women who met the property requirements. The women's vote had been granted only once before, in the County of Kent in 1830. Had others attempted to have this repeated? From the legislative measure of 1848, it would seem so.

From about the 1820s, in the face of strict eligibility requirements, more and more people took to voting illegally, often going to the polling stations in such large numbers that election officials were unable to verify whether everyone was eligible. Following each general election, the ordinary business of the legislative assembly would often be paralyzed for days, even weeks, because members had to investigate contested elections, an increasingly common phenomenon.

The assembly procrastinated for several decades before adopting a new law in 1855 to extend the franchise. Still eligible to vote were all freeholders owning property assessed at £25 or more; they were joined by anyone whose annual income, combined with the value of his real and personal property, was at least £100. It was still necessary, of course, to be a British subject age 21 or older; a foreigner could obtain this status only after residing in the colony for seven years. In short, this legislation gave the right to vote to almost all property owners and to those in the upper income bracket, but it still excluded the vast majority of labourers and workers. At Confederation, New Brunswick's 1855 electoral law was still in effect.

LOWER CANADA: A BRITISH COLONY UNLIKE THE OTHERS

July 1608: Samuel de Champlain founds Quebec. September 1759: Quebec surrenders to the British. In the intervening 150 years, a colony of French-speaking Catholics had put down roots in the St. Lawrence Valley and spread west and south into the land of the Illinois and to Louisiana. This was *la Nouvelle France*—New France. Compared to its neighbours—Britain's 13 American colonies—New France grew geographically by leaps and bounds; demographically, however, it moved at a snail's pace.

At the turn of the 18th century, New France consisted of four main colonies: at the periphery, Newfoundland, Acadia and Louisiana; in the centre, Canada, firmly entrenched in the St. Lawrence Valley but controlling a network of trading and military posts extending to Hudson Bay, the Great Lakes region and the Mississippi Valley. Because of its relatively large population, Canada dominated the rest of New France, but the total population was still only about 14,000. By contrast, Britain's 13 American colonies, huddled along the Atlantic coast between Acadia and Spanish Florida, was already home to some 275,000 settlers and enslaved Africans.

Under the Treaty of Utrecht, France ceded present-day Nova Scotia, as well as Hudson Bay and Newfoundland, to Great Britain in 1713. Fifty years later, under the Treaty of Paris, France ceded the rest of New France, keeping only the islands of Saint-Pierre and Miquelon, off the southern coast of Newfoundland, which remain French to this day. By then, the population of Britain's 13 American colonies was roughly 1.6 million (including Indigenous people and enslaved Africans), while Canada's was only about 60,000. That population had already developed characteristics that distinguished it from its neighbours to the south, however, who had remained closer to their European roots.

Within two generations, the French settlers in the St. Lawrence Valley had become "Canadianized," blending their European heritage with traits borrowed from First Nations. Aware that they enjoyed far more freedom than their counterparts in France, they referred to themselves as *habitants* rather than *paysans*. Driven by a spirit of egalitarianism, they usually proved resistant to hierarchy. They were commonly called "*Canadiens* / Canadians" to distinguish them from French sojourners in the colony who had not joined settler society. The colonial authorities—civilian, military and religious alike—complained regularly of the rebellious spirit of the Canadians.

New France, 1755

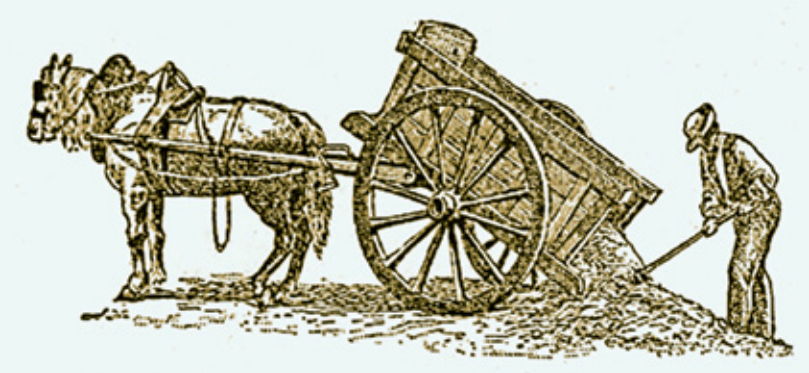
The eastern part of New France, mapped in 1755 by Jacques-Nicolas Bellin, map-maker and engineer to the King in the employ of the French navy. The map is an etching on paper, embellished with ink and watercolour.

McCord Museum, *Partie orientale de la Nouvelle-France ou du Canada*, ca. 1755, M15877

In 1752, a French military engineer visiting Canada, like many other chroniclers of the time, was struck by their profound sense of independence: "Canadians generally are unruly, stubborn and act only according to their fancy and whim ...." (Franquet, 103, translation) In short, the French of the St. Lawrence Valley became Canadianized before the English of the 13 American colonies became Americanized, and this distinction became more pronounced over time.

In 1763, Great Britain was convinced, mistakenly, that it was inheriting a French society. English authorities did not fully understand the reality: that the former subjects of the king of France already formed a distinct people, more North American than European, and wanted to remain that way. By the *Royal Proclamation of 1763*, issued by George III, Canada became the Province of Quebec, and its first governor received the usual orders to call a legislative assembly when conditions allowed. This might be surprising

at first glance, but less so when considered in light of the fact that London anticipated a strong influx of Protestant settlers from New England who would quickly outnumber the Canadians.



Source unknown

Lower Canada, 1815–1850

Between 1815 and 1850 in the city of Québec, a day labourer working 20 days a month earned no more than £12 or £13 a year; the purchase of a large loaf of bread cost him nearly 40 percent of his daily earnings. With such an income, day labourers, who accounted for about 15 to 20 percent of workers in Québec, certainly could not afford the luxury of voting.

In 1821, there were 468 tenants in Saint-Roch, a suburb of Québec inhabited mainly by artisans, day labourers and construction workers. Rents were quite low in Saint-Roch, and two thirds of housing fell below the average annual rental of £11. As a result, a corresponding two thirds of tenants could not vote, as a tenant had to be paying an annual rent of £10 to be eligible to vote.

In the meantime, a major problem arose in 1764: the legal status of Canadians. Colonial authorities sought the opinion of legal experts, who finally declared that the conquered people were not subject to the "Incapacities, Disabilities and Penalties" imposed upon Catholics in England. (*DCB* IV, xli)

Two years after the Royal Proclamation, only a few hundred British, mostly merchants and traders, had settled in the new colony, mainly in Québec and Montréal—nowhere near the influx expected. In late 1767, the governor was forced to note that, barring some "unforeseeable disaster," the numerical superiority of Canadians, far from diminishing, would increase. London therefore decided to revise its policy and, among other things, gave up the idea of permitting a legislative assembly. But the Canadians paid little attention, accustomed as they were to living by a precept common under the French regime: "*Chacun parle en son nom et personne au nom de tous*." ("Each one speaks on his own behalf and no one on behalf of everyone.")

Under the *Quebec Act* of 1774, the Province of Quebec was to be administered by a governor and an executive council. The Act also reinstated the Coutume de Paris as the civil code, replacing the common law, and retained the seigneurial system. But 10 years later, the "unforeseeable disaster" occurred: a wave of mostly Anglo-Protestant settlers, in the form of several thousand Loyalists, flooded the colony.

It was not a very big wave: some 10,000 to 15,000 immigrants, including about 2,000 Indigenous allies. All the same, it was enough to shift the demographic balance; the British minority jumped from 4 or 5 percent of the total population to between 10 and 15 percent. Some took up residence on the southeast shore of the Gaspé peninsula or in the Eastern Townships, but most settled north of Lake Ontario. The Loyalists wanted neither the seigneurial system nor the *Coutume de Paris*; they demanded English common law, the English system of land tenure and parliamentary institutions. London was forced to pay attention.

The *Constitutional Act* of 1791 established a new colony north of the Great Lakes: Upper Canada. The Province of Quebec became Lower Canada, retaining the *Coutume de Paris* and the seigneurial system. The Act also established the English land tenure system wherever land had not yet been transferred under the seigneurial system, notably in the Eastern Townships. Finally, to satisfy the British minority in Lower Canada, London agreed to houses of assembly. The legislative assembly of Lower Canada had 50 members, while that of Upper Canada had 16 members.

Having done this, however, colonial authorities could not restrict the vote to English-speaking settlers. The *Constitutional Act* therefore stipulated that anyone age 21 or older who had not been convicted of a serious criminal offence or treason and who was a British subject by birth or had become one when Canada was ceded to Great Britain, was entitled to vote if he or she had the necessary property qualifications. In rural areas, this meant owning land yielding at least 40 shillings a year, less any rent or charges owing. In urban areas, this meant owning a lot with a habitable dwelling generating annual revenue of at least £5, less any rent or charges owing; tenants paying an annual rent of at least £10 were also eligible to vote. The Act also stipulated that property conferring the right to vote could be owned or held under an occupancy permit issued by the governor and executive council.

Unlike women in the other British North American colonies, women in Lower Canada who met the property requirements could vote. Nothing in the *Constitutional Act* prevented them from doing so, and they were not subject to English common law. They therefore took to voting, apparently without arousing comment, until a tragic event altered the electoral landscape. During a by-election held in Montréal between April 25 and May 22, 1832, illegalities and acts of intimidation and violence occurred almost daily. On the 22nd day of voting, the authorities asked the army to intervene. The result: three Canadians shot dead by British soldiers.

Robert Auchmuty Sproule, *Saint-James Street, Montréal*, McCord Museum, M300

Montréal, 1825

With its population of 22,540, Montréal was the most populous city in British North America in 1825. There were 2,698 assessed properties in the area, 2,085 of which were in the suburbs and 613 in the city. While the average revenue from these properties was £33, revenues could be as high as £82 in the city or as low as £18 in the suburbs. In the suburbs, some 522 properties earned only a modest £6 annually, well below the £10 annual rent a tenant had to be paying to be eligible to vote.

Until then, the Reformers, led by Louis-Joseph Papineau, had supported women's right to vote; but they had a change of heart, believing that polling stations had become too dangerous for "the weaker sex." In 1834, the house of assembly adopted a law depriving women of the right to vote. Because of a legal technicality, however, London rejected the Act, and the women of Lower Canada retained the right to vote.

The electorate of Lower Canada, as defined by the *Constitutional Act* of 1791, was not altered between then and the creation of the Province of Canada through the union of Upper and Lower Canada in 1840. Political life in Lower Canada proceeded along essentially the same lines as in the other colonies of British North America: reform-oriented parties that demanded major political change opposed conservative parties more satisfied with the status quo. In Lower Canada, however, unlike elsewhere, the struggle among political parties was played out against a cultural backdrop: reformers promoted the interests of French-speaking Canadians, while conservatives advanced those of the English-speaking minority. As a result, Lower Canada was a British colony quite unlike the others.

In 1810, Governor James Craig complained bitterly, as officials of the French regime had done before him, about Canadians' spirit of independence and insubordination. He wrote, "It seems to be a favorite object with them to be considered as a separate Nation; *la Nation canadienne* is their constant expression." (Ryerson 1973, 45) And following the rebellion of 1837–1838, Lord Durham in turn noted:

> *I expected to find a contest between a government and a people: I found two nations warring in the bosom of a single state: I found a struggle, not of principles, but of races .... The circumstances of the early colonial administration excluded the native Canadian from power, and vested all offices of trust and emolument in the hands of strangers of English origin.*
>
> *– Cornell et al., 211–212*

Then the man known among his contemporaries as Radical Jack because of his liberal ideas concluded:

> *There can hardly be conceived a nationality more destitute of all that can invigorate and elevate a people, than that which is exhibited by the descendants of the French in Lower Canada, owing to their retaining their peculiar language and manners. They are a people with no history, and no literature.*
>
> *– Cornell et al., 214*

Lord Durham was right in pointing out the ethnolinguistic dimension of the constitutional struggles that had taken place in Lower Canada prior to his arrival. However, he overlooked the fact that many English-speaking people had sided with the Reformers because the latter defended principles they agreed with, such as responsible government and the election of legislative councillors by the people. His assumption that the bridges had been burned between the two language communities and that, therefore, the only solution was to establish the dominance of one over the other was belied by subsequent events. Lower Canada was definitely a British colony like no other.

UPPER CANADA: THE ERA OF THE FAMILY COMPACT

Established by the *Constitutional Act* of 1791, Upper Canada inherited the same rules as Lower Canada for determining its voters. Yet these rules were not applied in quite the same way because Upper Canada, a colony founded specifically for the Loyalists, inherited common law rather than French civil law. Thus, from the outset, women were excluded from the electorate. Also excluded were members of certain religious sects, such as Quakers (members of the Society of Friends, who were relatively numerous in Upper Canada), Mennonites, Moravians and Tunkers, as their faiths forbade them from taking an oath. Under common law, an election officer or even a candidate for election could require a voter to take an oath of allegiance before casting a vote. This restriction would not be lifted until 1833, by an act of the British Parliament.

Of all the eligibility criteria, however, the one concerning the definition of a British subject posed the most serious problem. It even started a kind of family quarrel among immigrants from the United States that would last several decades.

When the *Constitutional Act* came into force, some 10,000 Loyalists were living in Upper Canada. At the same time, westward migration in the United States was spilling over into territory north of the Great Lakes, where the authorities were offering Americans land free of charge or for a nominal sum. Over the years, immigrants from the United States flowed steadily into Upper Canada. These new settlers, unlike their predecessors, were not Loyalists and tended to support the Reformers in large numbers, whereas the Loyalists tended to favour the Conservatives.

Upper and Lower Canada

1791 *Constitutional Act* establishes Upper and Lower Canada and sets voting rules. Eligible to vote: British subjects over 21 who have not been convicted of a serious criminal offence or treason and meet property ownership requirements. In Lower Canada, women have the vote, but in Upper Canada, the common law prevails, and women are excluded.

1792 First elected assemblies in Upper and Lower Canada. The legislative assembly of Upper Canada had 16 members; the house of assembly of Lower Canada had 50 members.

1832 Election violence in Montréal results in three deaths.

1834 Polling stations are deemed too dangerous for women; legislative assembly of Lower Canada adopts law denying them the vote; London disallows the law.

1840 *Act of Union* creates the Province of Canada by merging Upper and Lower Canada. Franchise remains as in *Constitutional Act* of 1791.

1841 First elected assembly in the Province of Canada: Canada East and Canada West each had 42 members.

1844–1858 Successive measures exclude from voting judges, bankruptcy commissioners, customs officials, imperial tax collectors, paid election agents, court clerks and officers, registrars, sheriffs and their deputies, Crown clerks and assistant clerks, Crown land agents and election officials.

1848 Responsible government in the Province of Canada.

1849 Legislative Assembly of the Province of Canada standardizes electoral law of Upper and Lower Canada.

1853 First electoral law ordering preparation of electoral lists from property assessment rolls; measure abandoned in 1855 after lists remain unfinished; adopted again in 1859, after election fraud becomes widespread.

1861 First election held using registers (lists) of electors compiled through municipal assessment system.

In 1800, the Conservatives, who controlled the legislative assembly, started to become alarmed at the situation; they passed a measure to the effect that, to be eligible to vote, immigrants from the United States had to have lived in Upper Canada for seven years and have taken an oath of allegiance to the British Crown. In 1804, the Reformers won a majority in the assembly and tried to repeal the measure of 1800, but in vain. The legislative council, controlled by the Conservatives, opposed the move.

Repeated efforts by the Reformers became even more futile following an event that took place eight years later. On June 18, 1812, the president of the United States declared war on Great Britain. The population of Upper Canada was by then close to 94,000. Eighty percent of the population was of American origin, but less than a quarter of them were of Loyalist descent. When the American army tried to invade Upper Canada, the Loyalists and British settlers defended the territory, but most non-Loyalists remained neutral. This no doubt aroused the distrust of other Upper Canadians, and because the Conservatives still controlled the legislature, the Reformers' efforts continued to be frustrated.

From 1815 on, a steadily mounting number of immigrants from the British Isles chose Upper Canada as their destination. As British subjects, they had the right to vote, provided they met the property requirements. This time,

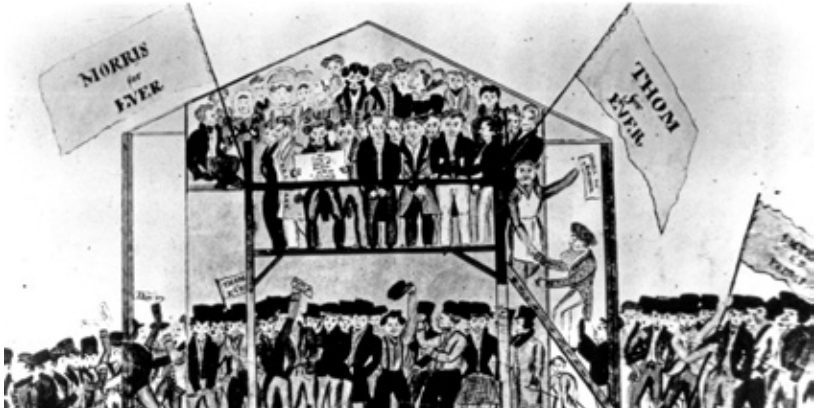
Library and Archives Canada, *Canadian Illustrated News*, January 3, 1863, C-134199

Campaigning, 1862-style

Before the advent of public street lighting, torchlight parades were popular election events. This one, captured in a wood engraving, was held to honour George Brown, Reform politician and publisher and editor of The Globe*, the Toronto weekly he founded in 1844. The parade took place in Toronto on December 26, 1862.*

fearing a loss of political control, the old colonists of American origin—Loyalists and non-Loyalists alike—joined forces. In 1821, the assembly decreed that an occupancy permit issued by the lieutenant-governor of Upper Canada was insufficient to obtain the vote.

Consulted on this point, legal experts in London concurred with the assembly's pronouncement. In their view, the *Constitutional Act* of 1791 was explicit: only an occupancy permit granted by the governor of Lower Canada could confer the right to vote. The governor had not granted such permits since the first general election, leaving this task to the lieutenant-governor. In addition, because it had become increasingly difficult since 1818 for immigrants to obtain a freehold, "annual batches of poor" (Ryerson 1968, 27) from the British Isles were swelling the ranks of the disenfranchised. Throughout the 1830s, settlers of British origin outnumbered even those of American origin, with the result that a sizable portion of the population of Upper Canada had no electoral voice.



F. H. Consitt, Queen's University Archives, Kingston Picture Collection, V23 Rec-Car-18

Rival Candidates, 1828

At Perth, Upper Canada, Alex Thom, William Morris (who was re-elected) and election officials survey the crowd from the hustings. Originally, the platform on which candidates were nominated for the British Parliament, the hustings was where Canadian voters had to stand and declare their electoral choices before the advent of the secret ballot (1874). Now, the term is synonymous with the campaign trail. (Watercolour by F. H. Consitt)

In the meantime, the squabble among Upper Canadians of American origin died down. In 1828, with London's consent, the assembly adopted a law stating that foreigners who had settled in Upper Canada before 1820 would automatically become British subjects. The same act stipulated, moreover, that foreigners who had come to Upper Canada between 1820 and March 1, 1828, could obtain the status of British subject after living in the colony for seven years and taking an oath of allegiance. This act superseded the 1800 law.

In short, on the eve of the union of the Canadas, the criteria for voting in Upper Canada had become considerably more restrictive than those in force in Lower Canada, even though those criteria had originally derived from the same legislation. Why? Reformer William Lyon Mackenzie denounced the culprit in plain terms in 1833:

> *This family compact surround the Lieutenant Governor, and mould him, like wax, to their will; they fill every office with their relatives, dependants and partisans; by them justices of the peace and officers of the militia are made and unmade; … the whole of the revenues of Upper Canada are in reality at their mercy; – they are Paymasters, Receivers, Auditors, King, Lords and Commons!*
>
> *– Ryerson 1973, 93*

Following his investigation of 1838, Lord Durham also did not mince words:

> *In the preceding account of … Lower Canada, I have described the effect which the irresponsibility of the real advisers of the Governor had in lodging permanent authority in the hands of a powerful party … But in none of the North American Provinces has this exhibited itself for so long a period or to such an extent, as in Upper Canada, which has long been entirely governed by a party commonly designated throughout the Province as the "family compact" … For a long time this body of men … possessed almost all the highest public offices, by means of which, and of its influence in the Executive Council, it wielded all the powers of government; it maintained influence in the legislature by means of its predominance in the Legislative Council ….*
>
> *– Cornell et al., 212*

In short, the Family Compact effectively transformed Upper Canada into an oligarchy.

A RIGHT IN JEOPARDY

ANNUAL PAY OF COUNTRY SCHOOLTEACHERS, BRITISH NORTH AMERICA, 1848

	Male Schoolteachers	Female Schoolteachers	Comments
Upper Canada	£30	£15	Without lodging
Lower Canada	£36	£18	Without lodging
Nova Scotia	£38-8s	£19-4s	With food and lodging
New Brunswick	£40	£20	Without lodging

With such low annual incomes, it would be surprising if even one country schoolteacher was eligible to vote in British North America in 1848, since in rural areas, individuals had to own property of a certain value to be eligible to vote.

Lord Durham was given the task of identifying the causes of political unrest in the colonies of British North America and proposing solutions. His first recommendation was to give each colony responsible government—an idea London did not accept until some 10 years later. Radical Jack also proposed a second solution aimed at the one colony that was decidedly unlike the others—Lower Canada. Here, according to Durham's diagnosis, the political problem was coupled with a cultural one. His solution could not have been simpler: subjugate one of the two cultural groups to the other. The means also could not have been simpler: uniting Lower Canada with Upper Canada. Mathematically, Durham was right: every year since the end of the Napoleonic Wars, immigrants had been leaving the British Isles by the thousands to improve their lot in North America, while the inhabitants of Lower Canada could now depend only on themselves to increase their numbers. Durham calculated:

If the population of Upper Canada is rightly estimated at 400,000, the English inhabitants of Lower Canada at 150,000, and the French at 450,000, the union of the two Provinces would not only give a clear English majority, but one which would be increased every year by the influence of English emigration; and I have little doubt that the French, when once placed, by the legitimate course of events and the working of natural causes, in a minority, would abandon their vain hopes of nationality ....

– Cornell et al., 214

The following warning accompanied Durham's recommendation:

> *I am averse to every plan that has been proposed for giving an equal number of members to the two Provinces, in order to attain the temporary end of out-numbering the French, because I think the same object will be obtained without any violation of the principles of representation, and without any such appearance of injustice ….*
>
> *– Cornell et al., 214*

London finally accepted Durham's recommendation for unification and, under the *Act of Union* of 1840, created the Province of Canada from the two provinces: Canada East, still commonly known as Lower Canada, and Canada West, or Upper Canada. But London ignored Durham's warning and gave each province the same number of representatives—42 members—even though Lower Canada had 150,000 more inhabitants than its neighbour. This measure would bear out Durham's prediction: it would tend to "defeat the purposes of union, and perpetuate the ideas of disunion." (Cornell et al., 214)

All that remained was to get the population to support the union, a task London entrusted to the governor general of British North America, Lord Sydenham, a highly ambitious and self-assured man—"the greatest coxcomb I ever saw, and the vainest dog," as one of his contemporaries wrote in his personal journal. (*DCB* VII, 855) Sydenham soon realized that the success of his mission depended on the election of a group of representatives who supported the new regime. In Lower Canada, the largely French-Canadian population unanimously opposed the union, while in Upper Canada, ultra-Conservatives and extremist Reformers opposed it as well. But Sydenham knew that, under the terms of the *Act of Union*, the governor had the power to set the boundaries for certain ridings in cities and towns, appoint returning officers, select the location of polling stations and set the election date. Moreover, as governor, Sydenham was also commander-in-chief of the army and head of government. He was certainly not the type of person to trouble himself with scruples; in his view, the end justified the means.

Beginning in early 1840, he did everything possible to win the forthcoming election. "He plans and talks of nothing else," wrote his secretary. (Abella, 328) In Upper Canada, Sydenham acted like a party leader, naming most of the candidates he wanted to see elected. He made promises or threats, depending on the circumstances. For example, to persuade two candidates campaigning for votes in Bytown (now Ottawa) to withdraw, he offered them government positions. He also threatened to deprive voters of government grants if his candidate was defeated.

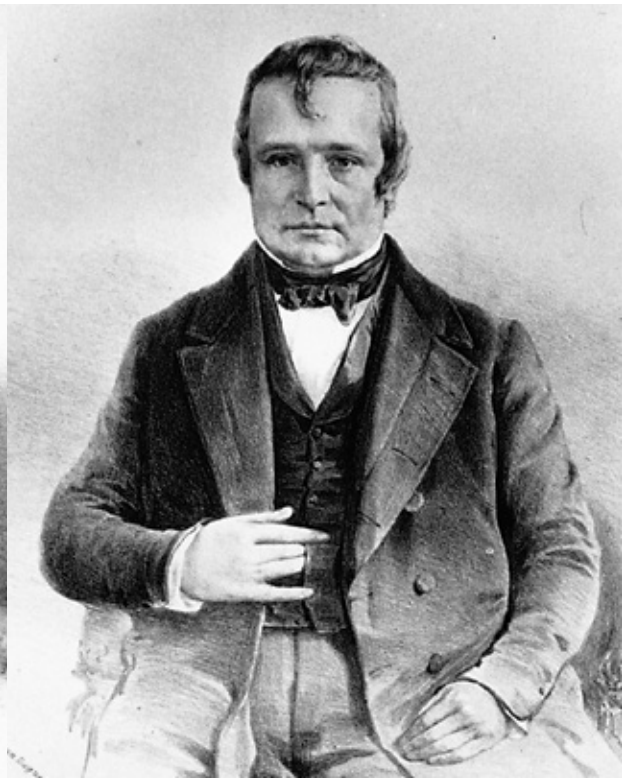
Vote for no man whose conduct in private and public life is not above suspicion, and inquire with due diligence before you give your suffrages.

– William Lyon Mackenzie, address to the reformers of Upper Canada, Toronto, September 1834

He called on officials to back his supporters and appointed returning officers dedicated to his cause. By the fall of 1840, Sydenham was assured of a victory in Upper Canada. In mid-October, the Toronto *Herald* reproduced the list of 26 candidates who were also government employees and concluded, "His Excellency should nominate the whole of the members and not beguile us with 'shadows of a free election.'" (Abella, 332)

In Lower Canada, where he could hope to see only a few candidates elected, Sydenham resorted to other ploys. He shamelessly readjusted the boundaries of urban ridings. He cut off the mainly French-Canadian suburbs from ridings in the cities of Québec, Montréal and Trois-Rivières, keeping only the downtown English-dominated cores. Nearly all voters in the suburbs were thus deprived of the vote, since in the rural ridings to which the suburbs were now attached, tenants did not yet have the vote. To increase the Anglophone vote in Sherbrooke, Sydenham added on the neighbouring town of Lennoxville. By this single boundary change, the governor guaranteed the election of six of his candidates in a community where he had previously been assured of just one seat.

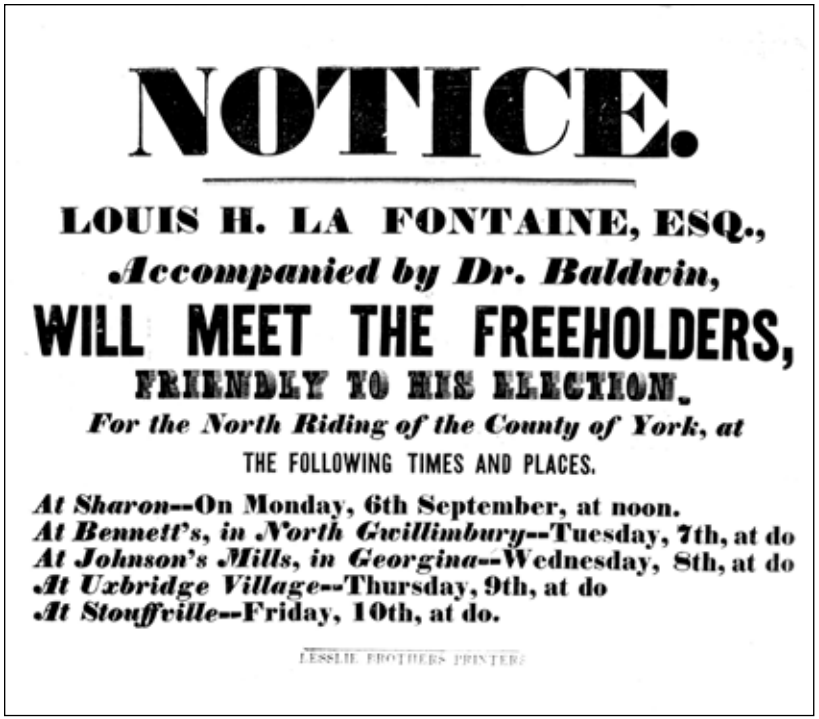
Library and Archives Canada, C-010671



M. Desnoyers, Library and Archives Canada, C-036094

Allies in Reform

Robert Baldwin and Louis-Hippolyte La Fontaine were partners in the struggle to make governments responsible to the elected assembly. La Fontaine had been imprisoned briefly in 1838 for his active nationalism, while Baldwin belonged to Upper Canada's landed gentry. But both men considered the 1840 Act of Union *unjust to French Canada, and they became friends and political allies. (Lithographs, 1848)*



NOTICE.

LOUIS H. LA FONTAINE, ESQ.,

Accompanied by Dr. Baldwin,

WILL MEET THE FREEHOLDERS,

FRIENDLY TO HIS ELECTION,

For the North Riding of the County of York, at

THE FOLLOWING TIMES AND PLACES.

At Sharon--On Monday, 6th September, at noon.
At Bennett's, in North Gwillimbury--Tuesday, 7th, at do
At Johnson's Mills, in Georgina--Wednesday, 8th, at do
At Uxbridge Village--Thursday, 9th, at do
At Stouffville--Friday, 10th, at do.

LESSLIE BROTHERS PRINTERS

Toronto Public Library, Baldwin Collection, Acc. No 1841

Election Literature, 1841

Robert Baldwin, advocate of responsible government and a bicultural nation, supported the bid of fellow Reformer Louis-Hippolyte La Fontaine for a Toronto-area seat in the legislature of the newly created Province of Canada (uniting Upper and Lower Canada). When the Province of Canada won responsible government in 1848, La Fontaine became its premier.

In each rural riding, Sydenham set up a single polling station, located not in the centre of the riding but at the perimeter and, where possible, in an English enclave. For example, in the riding of Terrebonne, the polling station was set up at New Glasgow, a small Irish and Scottish community at the northern extremity of the riding; the community was a few days' travel from the riding's centre, which had a strong French-Canadian majority. The same tactic was used in several other ridings, including Ottawa, Chambly and Berthier. Finally, by holding the election in early March, a time of year when the roads were virtually impassable, Sydenham could count on a low turnout among the French-Canadian electorate.

Not content with all these pre-election schemes, the governor intervened in the election itself. In Kingston, on the third day of voting, he dismissed an official named Robert Berrie, who the day before had voted against Sydenham's candidate. The other officials quickly got the message; most supported the governor, and the rest abstained from voting. In some ridings where the vote was close, such as London, the governor had land patents granted *in extremis* to his supporters but not to his opponents, thus ensuring victory. In the ridings of Beauharnois, Vaudreuil, Chambly, Bonaventure, Rouville, Montréal and Terrebonne, he sent gangs of ruffians armed with clubs and guns to take over the polling stations and prevent his opponents from voting. The toll: one dead in

Since 1840, there is this demoralizing and subversive war on corruption, on opinion buying, on the overarching presence of all these disgraces that place the country second and bring a nation to its fall.

– C. J. L. Lafrance, 1873,
Cited in Hamelin and Hamelin, 58 (translation)

Montréal, two in Vaudreuil and three in Beauharnois. In Terrebonne, to avoid a bloodbath, the French-Canadian Reform leader Louis-Hippolyte La Fontaine withdrew his candidacy. Riots broke out in Upper Canada, and there were deaths in Toronto and in the counties of Durham and Halton West.

As commander-in-chief of the army, Sydenham did not hesitate to use the army for his own ends. He refused to send troops to protect 15 opposition candidates who sought protection, while granting the same protection to any of his supporters who requested it.

Through these and other underhanded tactics, Sydenham managed to win the election. In June 1841, he wrote proudly to Lord Russell, "I have gained a most complete victory. I shall carry the measures I want." (Abella, 343) He did not savour his victory for long, however, as illness forced him to resign a month later. Lord Sydenham certainly did not invent election strong-arm tactics, but he used them to an extent never seen before. After his departure, election morals continued to decline in the Province of Canada. In this regard, the Canada of 1867 inherited an unenviable legacy.

THE PROVINCE OF CANADA: CHANGING RULES REFLECT INSTABILITY

In 1840, the Province of Canada entered a period of political unrest that would intensify from the mid-1850s on, resulting in an impasse some 10 years later. One of the causes of this unrest was equal representation, which initially worked to Upper Canada's advantage and then soon worked against it. As early as 1850, the population of Upper Canada exceeded that of Lower Canada because of the heavy flow of immigrants. Ironically, what had been considered fair in 1840, when English Canadians were in the minority, became seen as unfair in 1850, when they were in the majority.

The *Act of Union* was based on the assumption that the English would support the governor and his partisans, while the French would remain in opposition, with no hope of office. The assumption was shattered when English-speaking Reformers, led by Robert Baldwin, built an alliance with French reformers, led by Louis-Hippolyte La Fontaine, to achieve responsible government. They prevailed in the 1847–1848 election. In March 1848, the incumbent Tory administration was defeated in the assembly, and Governor General Lord Elgin appointed a government of Reformers. Henceforth, the government had to command a majority in the assembly, a constitutional convention which is now firmly established.

Beginning in the early 1850s, Reformers in Upper Canada, led by *Globe* editor George Brown, demanded representation by population. Over the years, this demand gained popular support and played an important role during elections. At the same time, the unification of both provinces into a single one was incomplete, since each province maintained its own private law: common law was upheld in Upper Canada, and civil law was upheld in Lower Canada. Each province also had its own distinct school system. Therefore, a number of laws adopted by the assembly applied to only one of the assembly's two sections. Yet, all members still needed to vote on these laws.

As a result, the following problem arose: it was clearly possible for a law to be adopted despite being rejected by members of the section to which it applied. An oft-cited case is that of the denominational schools in Upper Canada, which were imposed by the predominantly French Catholic members of Lower Canada. However, the latter occasionally got a taste of their own medicine. The problem only got worse during the 1850s and 1860s, when the Conservatives forced themselves onto Lower Canada, while the majority of Upper Canadians supported the Reformers. Some proposed that a government could not remain in office without the support of a majority of both sections (called the double-majority rule), which, in fact, proved impossible to attain. In the years that followed, one coalition government after another fell, until the government machinery finally jammed in 1864. The system failed; it no longer truly met the needs of the people. Three years later, there would be a new constitutional compromise: Confederation.

The political uncertainty inherent in the Union was reflected in electoral law. During its brief life—just over a quarter of a century—the Province of Canada passed no fewer than four major election laws affecting the right to vote, as well as numerous other subsidiary acts and regulations that either restricted or expanded the electorate.

There is no inalienable right in any man to exercise the franchise.

– Sir John A. Macdonald, speech in the Legislative Assembly of the Province of Canada, April 19, 1861

Jean-Joseph Girouard, Library and Archives Canada, C-018441

From Political Prisoner to Member of Parliament

Louis Lacoste, a notary public from Boucherville, Quebec, was 40 when Jean-Joseph Girouard did this charcoal sketch of him. A political activist since 1834, Lacoste had been imprisoned in 1837–1838 for his support of the Patriots, but he later won a seat in the Parliament of the Province of Canada. He served in the Legislative Assembly and the Legislative Council until Confederation when he was appointed to the Senate.

Initially, the *Act of Union* in no way altered the eligibility criteria; it simply upheld those of the *Constitutional Act* of 1791. In time, however, these criteria underwent various changes in Upper and Lower Canada. In 1849, the Province of Canada passed a law intended to standardize the electoral law of Upper and Lower Canada. In rural ridings, British subjects age 21 or older who owned a freehold or land under the seigneurial system with an annual revenue, less charges, of 40 shillings were still entitled to vote. In urban ridings, owners of a plot of land with a dwelling yielding a net annual revenue of £5 could also vote, provided they were British subjects at least 21 years old. Tenants had the same right, provided they had lived in the city for the 12 months preceding an election and had paid an annual rent of £10.

On the face of it, this law reinstated the property requirements of the *Constitutional Act*, with one exception: in rural ridings, it no longer covered owners of property held through a permit issued by the governor. In urban ridings, the qualifications may have been held over from the early part of the century strictly for the sake of appearances: since the 1820s, there had been a general decline in the economic standing of labourers, artisans and workers, with the result that an annual rent of £10 in 1850 was proportionately higher than in 1800. Finally, the 1849 act prohibited women from voting—the result of a complaint by a defeated candidate in Halton West (Upper Canada) in an election four years earlier. The candidate protested that seven of the votes counted for his opponent had been from women, contrary to common law. The upshot was that women in Lower Canada, who had been able to vote since 1791 under French civil law, well and truly lost this right.

Also in 1849, the Province of Canada enacted legislation concerning voting by foreigners; it stipulated that all foreigners residing in the colony at the time of Union would now be considered British subjects and could exercise their political rights. Foreign immigrants who had come to the colony after Union could obtain the same status if they remained for seven years and agreed to take the oath of allegiance.

A new elections act affecting voters was adopted in 1853. In rural ridings, all British subjects age 21 or older could vote if they were on the assessment rolls as landowners, tenants or occupants of a property worth £50 or more or generating annual revenues of at least £5. In urban ridings, anyone whose name appeared on the assessment roll as a landowner, tenant or occupant of a property generating annual revenues of at least £7 and 10 shillings acquired the right to vote. This legislation was accompanied by a new measure: the preparation of electoral lists from property assessment rolls. The new qualifications became mandatory for all of Upper Canada and for the cities of Québec and Montréal; elsewhere in Lower Canada, they remained optional, as very few municipalities had assessment rolls.

While this law expanded the categories of voters, taking in tenants and occupants in rural ridings and occupants in urban ridings, it was still restrictive, as it raised the qualifications appreciably. In rural areas, it jumped by 250 percent, while in urban ridings, it rose by 150 percent. Moreover, the gap between the rural and urban qualifications was tending to narrow, an obvious indication of growing urbanization.

The next year, on the very eve of the 1853 act coming into force, the government found that there were still no electoral lists for Lower Canada and only a few for Upper Canada. It therefore passed a provisional act, extending the time allotted to prepare the lists by one year. This law made the use of the qualifications established in the previous year's act optional in both provinces. But by 1855, compilation of the electoral lists still remained largely unfinished; the government therefore decided to make the provisional law of 1854 permanent but gave up the idea of electoral lists. To avoid fraud resulting from the absence of lists, the government introduced a multitude of oaths. But in fact, the Act soon proved unenforceable.

In 1859—after an election in which so many false oaths were sworn that in some ridings, the number of votes cast was as much as triple the number of eligible voters—the government decided to remedy the situation. The assembly adopted the fourth elections act in less than 10 years. The new law returned to the provisions of the 1853 act and abolished once and for all the optional revenue requirement of 40 shillings in rural areas. Again, it became mandatory in both provinces to compile electoral lists from the assessment rolls. In rural areas, the vote was given only to British subjects age 21 or older who owned, leased or occupied landed property assessed at $200 or more or generating annual revenues of at least $20; in urban areas, the same categories of individuals had the vote, provided their property was assessed at $300 or generated annual revenues of at least $30.* In the same year, 1859, the residency period required of foreigners to become British subjects was reduced to three years.

But in Upper Canada, some considered these qualifications too permissive, believing that they extended the franchise too far down the social ladder. In 1866, the government decided to change the way property assessment was done in Upper Canada, while increasing the property requirements for voting. Only landowners and occupants of property assessed at $600 in cities, $400 in towns, $300 in incorporated villages and $200 in townships could vote. In ridings where workers were numerous, this measure eliminated eligibility for many voters—more than 300 in the county of London, for example, and about 900 in Hamilton.

Along with the several elections acts, the government adopted a series of statutory measures designed to exclude from the vote persons who, by their position, exerted some influence in society. Thus, between 1844 and 1858, members of a number of groups—no doubt because they were thought to exercise a degree of influence in society—successively lost the right to vote; they included judges, bankruptcy commissioners, customs officials, imperial tax collectors, paid election agents, court clerks and officers, registrars, sheriffs and their deputies, Crown clerks and assistant Crown clerks, Crown land agents and all election officials.

These were the statutes in force at Confederation. The same categories of voters existed in both parts of the Province of Canada, but the property requirements were higher in Upper Canada than in Lower Canada.

* In effect, this was the same qualification as in 1853 but expressed in dollars instead of pounds sterling following a change in the currency system.

BRITISH COLUMBIA: THE IMPORTANCE OF BEING BRITISH

When it was founded in 1849, the colony of Vancouver Island (which was home to tens of thousands of First Nations people) had virtually no independent settlers; it was still just a fur trading post inhabited by employees of the Hudson's Bay Company. Under the circumstances, the governor felt obliged not only to postpone election of an assembly indefinitely, but to administer the colony without the aid of a council. In subsequent years, only a few dozen colonists came to settle there, but in London's eyes, this did not matter: democracy carried obligations. In 1856, the secretary of state for the colonies ordered the governor to call an elected assembly. He was instructed to allow all freeholders with at least 20 acres to vote, including absentee landowners, who could vote through their agents living on the land. In August of the same year, after the colony's 40-odd electors had voted, the seven members of the smallest legislative assembly in the history of British North America held their first session.

In 1859, it was decided that new eligibility criteria were needed to increase the number of voters. However, the presence nearby of a band of adventurers panning for gold in the Fraser River prompted conservatism on the part of the legislature. It gave the vote to male British subjects age 21 or older who had lived in the colony for four months and who met at least one of the following conditions: ownership of 20 acres of land; ownership, for three months or more, of property assessed at £50; six-months' occupancy of property generating annual rent of £12 or more; 12 months farming 20 acres of farmland as a sharecropper for at least one quarter of the crop; or the practice of surgery, medicine or law, or possession of a diploma from a British college or university. These selection criteria would still be in use when Vancouver Island joined British Columbia in 1866.

British Columbia

1856 British North America's smallest legislative assembly (seven members) is established on Vancouver Island and meets after an election in which about 40 people voted. Eligible to vote: freeholders with at least 20 acres.

1863 First election for one third of the members of a legislative council (other two thirds appointed by the Crown); each electoral district sets its own criteria for voting eligibility.

1866 Vancouver Island joins British Columbia. At the next election, no voting restrictions on the mainland except in New Westminster, where Chinese and First Nations people are excluded. Island districts allow voting only by landowners who are British subjects and meet the three-month residency test.

1868 Governor extends New Westminster rules to island districts.

1870 London imposes restrictions on the entire colony: eligibility restricted to male British subjects age 21 or older who can read and write English. Excludes First Nations people and immigrants of American origin.

1871 Voters approve joining Confederation. Just before British Columbia does so, new restrictions are added: six-month-residency rule, minimum property requirements and no taxes owing.

In 1857, the discovery of gold on land controlled by the Hudson's Bay Company prompted London to establish a new colony to protect its jurisdiction there. In August 1858, the territory of New Caledonia became a Crown colony known as British Columbia. More than 10,000 prospectors were already sifting feverishly through the gold-bearing sands along the Fraser River. They came mainly from the United States, but also from virtually every country in Europe. As they were a transient population, London postponed establishing parliamentary institutions in British Columbia.

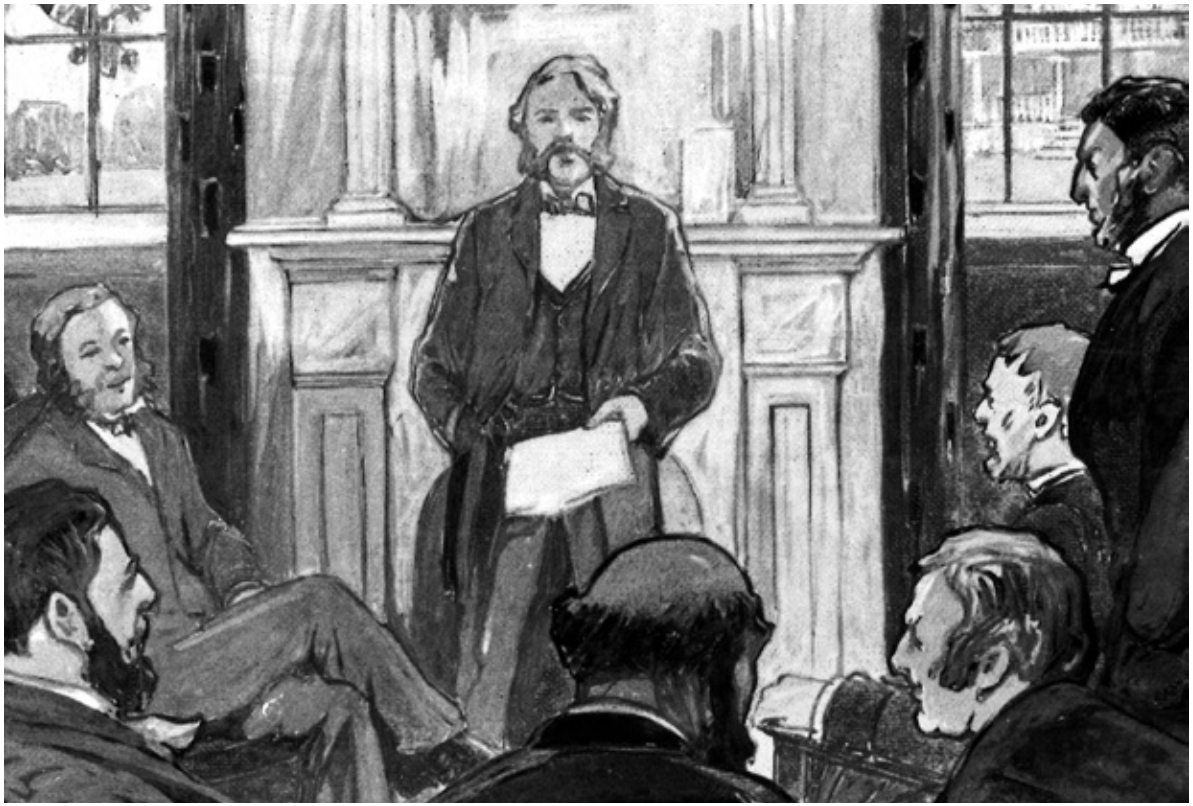
In the meantime, in the hope of attracting British immigrants, land was sold cheap, but only to British subjects. In 1863, the authorities deemed that there were enough British colonists to warrant representative institutions for the colony. However, to ensure that the settled population outweighed the transient population, which had grown during the 1858 and 1862 gold rushes, the governor proposed to set up a legislative council with two thirds of its membership appointed by the Crown and the other third elected by the people. London agreed.

For the first election, the governor subdivided the territory into a number of electoral districts and allowed the residents of each district to define their own criteria for eligibility to vote. The citizens of the district of New Westminster decided that voters would have to be British subjects and have lived in the district for at least three months; voters also had to own a freehold assessed at £20 or more, lease property for an annual rent of at least £12 or own land—freehold or by pre-emptive right—assessed at £20 or more. Two other districts, Douglas and Lillooet, adopted the same rules. In the other more remote districts, there were no restrictions: anyone who wanted to could vote.

The situation remained unchanged until Vancouver Island joined British Columbia in November 1866, a union prompted by the end of the gold rush.

The colonial government then decided to abolish the legislative assembly of Vancouver Island and retain the legislative council, extending it to include the new part of the colony. For the first election, the voter selection criteria varied from one electoral district to another. The three districts on Vancouver Island kept the rules established in the 1859 act, when the island was a separate colony. In the mainland districts, there were no voting restrictions. Only the district of New Westminster again took the initiative of setting conditions for exercise of the vote, though these were less restrictive than in 1863: voters had to have lived in the district for three months and be neither Chinese nor "Indian." In the other districts, anyone who wished to could vote.

In 1868, on the eve of another election, the governor decided that the rules in force in the district of New Westminster would also apply to the Vancouver Island districts. Two years later, it was London that imposed restrictions on the right to vote, applicable to the entire colony: the vote was restricted to male British subjects age 21 years or older who could read and write English. These conditions, particularly the last one, ruled out First Nations people (who constituted at least half the population), while the need to be a British subject excluded a large segment of the population of American origin. London imposed these restrictions on the eve of a referendum-style vote on whether British Columbia should join Confederation, clearly with a view to assuring British Columbia's approval.



Charles Walter Simpson, Library and Archives Canada, C-013947

The Smallest Legislature

As a colony separate from British Columbia, Vancouver Island elected its own legislative assembly. At the first election in 1856, some 40 voters elected 7 members to North America's smallest legislature.

The plan succeeded. In 1871, just before joining Confederation, British Columbia introduced further restrictions on the vote: to exercise the right, voters had to have been born British subjects, be at least 21 years of age, be able to read English and have lived in the colony for at least six months. They also had to own a freehold with a net value of $250 or a leasehold producing net annual revenues of $40, or occupy a dwelling generating net annual revenues of $40. Those who held a duly registered pre-emptive title on 100 acres of land or a duly registered mining licence could also vote. The same privilege was accorded to those who paid $40 or more annually for housing or $200 annually for room and board. In addition to meeting the conditions just outlined, the names of prospective voters had to have been published on an electoral list, and any taxes owing to the province had to be paid before a vote could be cast. Finally, the law prohibited from voting anyone convicted of treason or other serious crimes, unless they had been pardoned for the offence or had completed their sentence. Judges, police personnel and returning officers were treated the same way as criminals—they were deprived of the vote while in office.

VOTERS AND CONFEDERATION

Ottawa, June 1864. All was not well. In less than four months, two successive governments had come to grief in the Province of Canada. No coalition government could rally or keep a large enough majority to establish its authority. To resolve the impasse, the leaders of the several political factions agreed to form a government whose first task would be to amend the constitution. One solution had been on the drawing board for several years: federating the various British colonies of North America. This solution would kill two birds with one stone: it would resolve the chronic political crisis in the Province of Canada and settle another problem, one of a financial nature.

Since 1850, British North America had been caught up in a frenzy of railway construction, particularly in the Province of Canada. Since 1857, however, Canada had had trouble paying the interest on money borrowed to pay for its railway system. Worse yet, the 2,000 miles of railway lines laid by 1860—there had been just 66 miles a decade earlier—were not generating enough revenue to cover operating costs or interest on the borrowed capital. With federation of the British colonies, the railway system could be extended *a mari usque ad mare*, thus making it profitable. Another important advantage of a federation was that it would stifle public objections in Great Britain to excess government spending on the military defence of the North American colonies.

There were two other objectives for Confederation: First, the separation of Canada West and Canada East and their re-establishment as two separate provinces—Ontario and Quebec. Each province would then regain control of its internal affairs. Second, the creation of a federal union with the other British North American colonies would provide a stopgap measure in the face of the United States' rejection in 1864 of the Reciprocity Treaty, which until then had established trade mainly on a North–South axis.

A federal union of the British colonies would stimulate trade among them by way of an inter-colony railway that could transport trade goods to the port of Halifax, which, unlike the St. Lawrence River, never froze over.

The issue of representation by population would also be solved by a House of Commons in which seats would be allocated based on population and by a Senate that would continue to represent Ontario and Quebec on an equal basis.

Unlike previous constitutions, Confederation was mainly the work of colonial politicians and businessmen, backed by a number of important London financiers and administrators. The plan was essentially drawn up in secret and without input from the electorate. John A. Macdonald, the plan's chief architect, did not hide his aversion to popular consultation. As he put it, "As it would be obviously absurd to submit the complicated details of such a measure to the people, it is not proposed to seek their sanction before asking the Imperial Government to introduce a Bill in the British Parliament." (Ryerson 1973, 354)

Delegates from the several colonies met in September 1864 in Charlottetown and again the next month in Québec, both times *in camera*. In the end, 72 resolutions were passed at

Québec, and it was agreed that they should be approved by the local legislatures without consulting voters. But in March 1865, the government of New Brunswick was forced to hold a general election. The incumbent ministers, who favoured Confederation, suffered a crushing defeat.

The federal union plan marked time, as it was impossible to federate Nova Scotia and the Province of Canada without including New Brunswick. But there was still hope, as the cabinet formed in New Brunswick after the March 1865 election consisted of men whose only affinity with each other was their opposition to the Québec resolutions; they disagreed on most other political issues. Such a government would find it difficult to survive for long. In April 1866, after several cabinet members withdrew their support, the premier was forced to tender his government's resignation. Backed by the British and financed in part by politicians in the Province of Canada—and helped along by an attempted invasion by the Fenians, an Irish-American paramilitary group devoted to the liberation of Ireland—the Confederationist candidates won the subsequent election handily.

At the same time, the legislatures of the other Atlantic colonies took a stand on the federal plan: Newfoundland and Prince Edward Island were opposed; Nova Scotia was in favour. But in Nova Scotia, Joseph Howe mobilized public opinion in favour of putting the question to the people. The Fathers of Confederation, fearing defeat, turned a deaf ear. That fall, delegates from the colonies, with the exception of Newfoundland and Prince Edward Island, met in London to put the final touches on the plan. In October, John A. Macdonald, still haunted by the prospect of failure, warned one Canadian delegate already in England:

> *It appears to us to be important that the Bill should not be finally settled until just before the meeting of the British Parliament. The measure must be carried per saltum [in one leap], and no echo of it must reverberate through the British provinces till it becomes law … The Act once passed and beyond remedy the people would soon learn to be reconciled to it.*
>
> *– Ryerson 1973, 355*

The *British North America Act* (now known as the *Constitution Act, 1867)*, uniting New Brunswick, Nova Scotia and the Province of Canada in a single political entity and providing for the division of the latter into the provinces of Ontario and Quebec, was given royal assent on March 31, 1867, and came into force the following July 1.

John A. Macdonald and the other Fathers of Confederation had won their wager: they had established a new constitution without going to the voters. Nova Scotia struck back, however; in the September 1867 general election, the province sent a single federalist member (out of 19) to the House of Commons in Ottawa, while at the provincial level, all but two of the new members were anti-federalists. A few months later, delegates from the would-be secessionist province travelled to London to try to have the *Constitution Act, 1867* repealed. Their efforts were in vain, but London did agree to have the federal government revise its policy on taxation, trade and fishing for Nova Scotia.

Having learned a valuable lesson, Prime Minister John A. Macdonald modified his strategy and decided not to impose Confederation on another colony without consulting the people through the polls. In the years that followed, his government negotiated agreements with Newfoundland, British Columbia and Prince Edward Island for their entry into Confederation. Once agreements had been reached with the leadership in each colony, Macdonald insisted that an election be held. In 1869, the Newfoundland electorate voted overwhelmingly against joining Confederation. Two years later, British Columbia voters had their turn, but given the presence of a strong movement for amalgamation with the United States, the province's electorate had been selected carefully by establishing eligibility requirements to ensure sufficient numbers of pro-federation voters. The ploy succeeded, and British Columbia joined the union. Finally, in 1873, the people of Prince Edward Island agreed to join Confederation.

In short, even though the *Constitution Act, 1867* was the first Canadian constitution to be drawn up in Canada by elected Canadian politicians, only a small fraction of the voters in the founding colonies had been given an opportunity to decide their political future; the others were presented deliberately with a *fait accompli*. Since then, as subsequent events have shown, the relative influence of voters in Canadian parliamentary institutions has grown appreciably—to the point where today, politicians would not likely venture to act as the Fathers of Confederation did without consulting the electorate.

Livernois, Library and Archives Canada, C-051818

The Clerk of the Crown in Chancery

The Clerk of the Crown in Chancery was the government official responsible for assembling and reporting election results to the House of Commons. Édouard J. Langevin (1833–1916) was appointed Clerk in January 1865 and held the office through Confederation until October 1873. The position was replaced by the independent Chief Electoral Officer of Canada in 1920.

CHAPTER 2

1867–1919

UNEVEN PROGRESS

Library and Archives Canada, PA-094788

At Confederation, the *Constitution Act, 1867* stated that control of election law and the federal franchise would remain a provincial matter until Parliament decided otherwise. The provinces were still developing more or less independently, each with its own character rooted in its traditions, demography and geography. Inevitably, these differences were reflected in the provincial electoral laws that were to determine who could vote in federal elections for the first two decades of Confederation.*

A FEDERAL OR A PROVINCIAL MATTER?

At Confederation, therefore, no federal election law existed for electing the first Dominion Parliament. Sir John A. Macdonald envisaged the use of provincial election laws as an interim measure for the 1867 election and expected Parliament to adopt its own election law.

It was 1885 before Parliament took action on the franchise. The Conservatives, under Macdonald, had been unable to reach consensus on a single set of voting eligibility criteria, while the Liberals, who supported a decentralized federation, wanted eligibility to remain under provincial control.

In 1885, Macdonald's government finally succeeded in having a law passed that gave Parliament control of the right to vote. The provinces regained control 13 years later, however, under a Liberal government led by Sir Wilfrid Laurier. As a result, in 10 of the 13 federal general elections held between 1867 and 1920, the electorate varied from province to province, with eligibility determined by provincial law.

A. Leroux, Library and Archives Canada, *Canadian Illustrated News*, September 28, 1878, C-068249

After the Elections

Appearing first in the Canadian Illustrated News *after the Quebec election of May 1, 1878, this cartoon by André Leroux of Montréal was adapted for the cover of the* News *after Sir John A. Macdonald's Liberal-Conservatives defeated Alexander Mackenzie's government later that year.*

* The Parliament of Canada created by the *Constitution Act, 1867* is made up of the Crown, the appointed Senate and the elected House of Commons. Senate seats are allocated on a regional basis, while the number of seats in the House of Commons is determined by a formula found in the Constitution and is adjusted every 10 years.

The *Constitution Act, 1867* also provided for Parliament to create a "General Court of Appeal for Canada." It did so in 1875 when it created the Supreme Court of Canada. At first, its decisions could be appealed to the Judicial Committee of the Privy Council in London. This lasted until 1933 for criminal appeals and until 1949 for other appeals. Today, the Supreme Court is the final court of appeal.

The original colonies continued to adopt or adjust their electoral laws to meet their needs and circumstances. In addition, not long after Confederation, Canada experienced a huge territorial expansion that produced new provinces and territories, each of which adopted its own electoral legislation, adding further to interjurisdictional diversity in the electorate. Citizens of British Columbia and Manitoba took part in their first federal general election in 1872, Prince Edward Island in 1874, the Northwest Territories in 1887, Yukon in 1904, and Alberta and Saskatchewan in 1908.

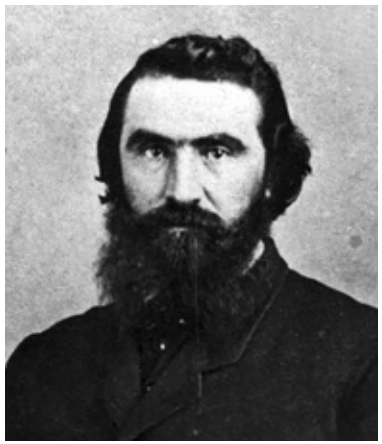
Other factors, both regional and national, affected evolution of the right to vote during this period. These included demographic change, largely the result of massive immigration; urbanization and industrialization, and the accompanying enfranchisement of workers; and the emergence of a number of groups promoting women's suffrage. First Nations people were still effectively denied access to the franchise, either directly or indirectly, at the regional and national levels.

Canada's geographic expansion in the second half of the 19th century was matched by population growth that continued into the early decades of the 20th century. Between 1871 and 1921, the population more than doubled, from four million to more than eight and a half million. Growth was largely the result of immigration, although not all regions were equally affected. The Prairie provinces and, to a lesser degree, Ontario and Quebec attracted the largest numbers of immigrants. Over this period, the population of the Prairies shot up from 75,000 to almost two million.

Library and Archives Canada, e000009388

Manitoba, 1870

An elected provisional government led by Louis Riel took root in the Red River Settlement in the early months of 1870. The Legislative Assembly of Assiniboia played a key role in negotiating the terms of Manitoba's entry into Confederation later that year, as a largely Métis province with four seats in the federal Parliament.



Archives of Manitoba, McKay, Angus (A) 1 Personalities, M.L.A. Lake Manitoba, 1870's, N12819

Angus McKay

Angus McKay was one of the first two Métis politicians elected to Parliament in 1871, along with Pierre Delorme (seen in the photo with Louis Riel, top row, second from left).

Library and Archives Canada, PA-110153

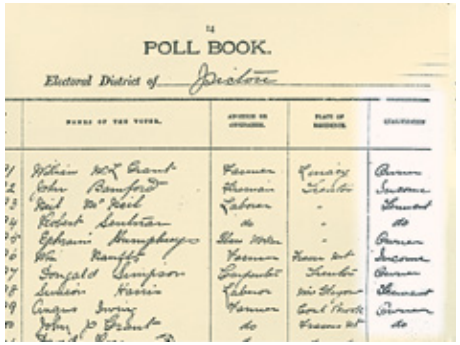
Yukon's First Wholly Elected Council, 1908

Voters elected two members for each of the territory's five constituencies. George Black (top row, second from right) also represented Yukon in Parliament from 1921 to 1935 and 1940 to 1949. Martha Louise Black, his wife, held the seat while he was ill (1935–1940) and was Canada's second female member of Parliament.

Although many immigrants were of British origin, a large proportion were from Eastern Europe and Asia. In provinces where immigrants of neither British nor French origin formed a sizable minority, concerns about the electoral effects of the "ethnic factor" tended to be reflected in electoral legislation. Conversely, in provinces where the existing population did not feel threatened by the arrival of immigrants of different ethnic origins, ethnicity was not an important factor in voting eligibility.

Over the same period, urbanization and industrialization led to the emergence of workers' groups seeking to broaden the electorate. This is not surprising, given that in almost all provinces, the right to vote in federal elections depended on property ownership or, in some cases, income level. These restrictions remained in force until the beginning of the 20th century and persisted even longer in some provinces.

Property- or income-based qualifications effectively prevented large segments of the working population from voting. During the last quarter of the 19th century, most workers earned modest if not miserable incomes, and the vast majority were unlikely to own their own homes. In such conditions, any property-based qualification, no matter how minimal, was prohibitive. When the labour movement began to organize in the early 1870s, its representatives demanded that the franchise be extended to lower-income groups. Some 20 years later, they demanded universal suffrage. It is difficult to know to what extent these demands contributed to improving electoral legislation. One thing is certain: starting at the turn of the century, the provinces progressively eliminated property- and income-based restrictions on voting eligibility.


POLL BOOK.

Electoral District of Pictou

Library and Archives Canada, MG30-E471, volumes 1 and 4, R2145-0-9-#

Library and Archives Canada, MG26-A, Vol 335b, R14424-0-3-E

The Changing Electorate

An expanded franchise brought new participants to politics. The Mechanics and Labourers of Ottawa presented a scroll to Sir John A. Macdonald in 1878 "in sympathy with Liberal Conservative Rule." But a 1900 poll book for Pictou, Nova Scotia shows that income was still a voting qualification.

QUESTIONABLE ELECTION PRACTICES

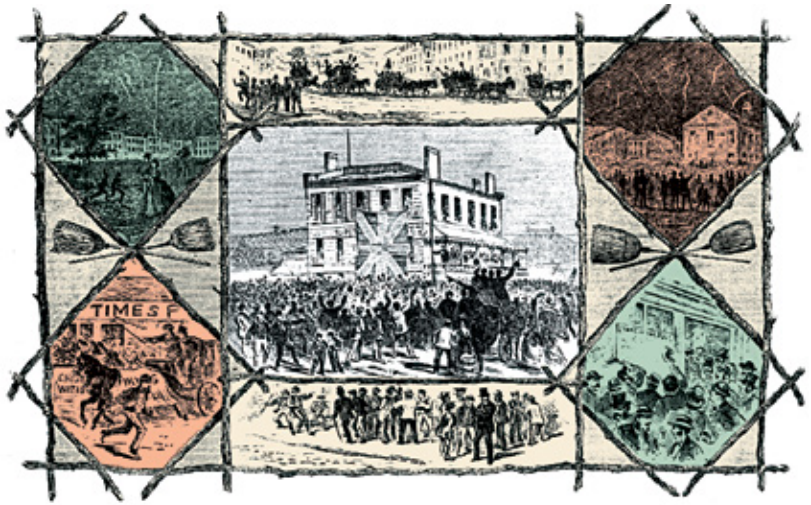
In the early days of Confederation, any individual who met the voting eligibility criteria could, in theory, exercise the right to vote. In fact, because of electoral practices common in those tumultuous times—when each vote carried more weight due to the limited number of electors—many people were deprived of that right or obliged to cast their votes for a candidate selected by someone else.

Some of the rules in effect at that time did nothing to promote fair and equitable polling practices. In all provinces but New Brunswick, which had adopted the secret ballot in 1855, electors voted orally, a polling method manifestly open to blackmail and intimidation.

Furthermore, in all provinces except Nova Scotia and Prince Edward Island, elections were held on different dates in different ridings. The system allowed the party in power to hold elections in a safe riding first, hoping in this way to influence the vote in constituencies less favourable to them. The system even enabled a candidate who lost in one riding to run again in another. In the 1867 general election, the Conservatives stretched the process over six weeks; in the next election (1872), they dragged it out for nearly three months.

After their 1874 victory, the Liberals passed two laws on election procedure. One measure withdrew the right to vote from a number of officials, including federally appointed judges and individuals who worked for candidates during an election (for example, as official agents, clerks

or messengers), but this had little effect on the overall composition of the electorate. However, the measures also included several important mechanisms to help clean up questionable election practices: they introduced the secret ballot and stipulated that votes must be cast on the same day in all constituencies, and they transferred hearings on contested election petitions from parliamentary committees to the courts.



Library and Archives Canada, *Canadian Illustrated News*, August 31, 1872, C-058774

Last of the Open Ballots, 1872

Sketches from the Canadian Illustrated News *depict one of the last open-ballot elections; this one in Hamilton, Ontario. On the left, a torchlight parade is held to drum up voters. In the centre, successful candidates greet their supporters outside the newspaper office. On the right, the crowd reacts as each man declares his vote from the hustings.*

Other changes were the result of concerns about the fairness of political competition and worries about donors exercising undue influence over politicians. In 1873, telegraph transcripts had showed Sir John A. Macdonald demanding large campaign contributions from promoters of the Canadian Pacific Railway; the evidence helped topple his Conservative government and prompted the succeeding Liberals to make legislative changes. The 1874 *Dominion Elections Act* required candidates and their "agents" (political parties were not recognized in law until nearly a century later) to disclose how and where campaign funds were spent. This was the first time that such a requirement was put in place. However, the Act's provisions did not limit these expenses, require disclosure of contributions or assign responsibility for administering and enforcing the legislation.

The reforms cleaned up the electoral process to some extent (for example, by reducing the use of violence to intimidate voters), but they did not eliminate all abuses. The figures on members who lost their seats because of fraud or corrupt electoral practices indicate the extent of the problem. Between 1867 and 1873, when petitions protesting the outcome of an election were presented to a committee of the House of Commons, just 1 of 45 contested elections was invalidated. When the courts began to look impartially at claims following adoption of the Liberal reforms, the number of voided elections soared. Between 1874 and 1878, 49 of the 65 contested elections submitted to the courts were voided, forcing nearly one third of the members of the House of Commons to resign. The rigorous approach of the courts appeared to lower the incidence of fraud, at least temporarily. Between 1878 and 1887, some 25 members were unseated following contested elections. Corruption flared up again, however, between 1887 and 1896, with some 60 members losing their seats after court challenges.

By the end of the century, the number of members convicted of election fraud or corrupt practices began to decline again—not because of any improvement in election practices, but because of the political parties' increasing use of "saw-offs"—friendly agreements to withdraw equal numbers of contested election petitions before appealing to the courts.

One must vote in secret
Away from glances:
If a vote can be bought
Well, then,
It's done in secret.
You know what I mean.

Is one dumb enough
To offer gold without knowing
For whom the patriot will
Well, hum,
Cast his vote?
You know what I mean.

– Extract of a satirical song by Rémi Tremblay, songwriter, 1883 (translation)

Fraudulent practices took many and varied forms. One of the most common was to purchase votes through "treating" (the purchase of food and drink) or compensation. In addition to cash payment for votes, candidates or their agents might hand out alcohol, pork, flour and other foodstuffs. Personation—the illegal practice of voting in the place of another elector—also occurred on a large scale, especially in urban ridings, where population mobility was much more prevalent.

Another practice was "importing" voters from the United States for election day—ferrying in Canadians who had moved to the United States. On March 6, 1891, a Quebec newspaper reported the arrival of two Grand Trunk Railway trains carrying some 2,000 textile workers from the United States who were returning home to vote. (Hamelin et al., 108) A decade later in Ontario, the Lake Superior Corporation used a tugboat to bring in workers from Sault Ste. Marie, Michigan, to vote in the place of absent or deceased miners.

Soon after the adoption of Macdonald's *Electoral Franchise Act* in 1885, falsification of electoral lists became a common practice. Before that date, the lists, drawn up by municipal employees, had given rise to few complaints. Beginning in 1885, however, the lists were drawn up by persons appointed by the party in power. The name or profession of an elector was often changed, with the result that the person in question was not allowed to vote when he arrived at the polling station. At the same time, many individuals became "legally qualified" to vote when false names were added to the lists and the names of persons who had died or moved away were not deleted. To make matters worse, the lists were not updated regularly.

Elections cannot be carried without money. Under an open system of voting, you can readily ascertain whether the voter has deceived you. Under vote by ballot, an elector may take your money and vote as he likes without detection.

– John H. Cameron, MP, House of Commons Debates*, April 21, 1874*

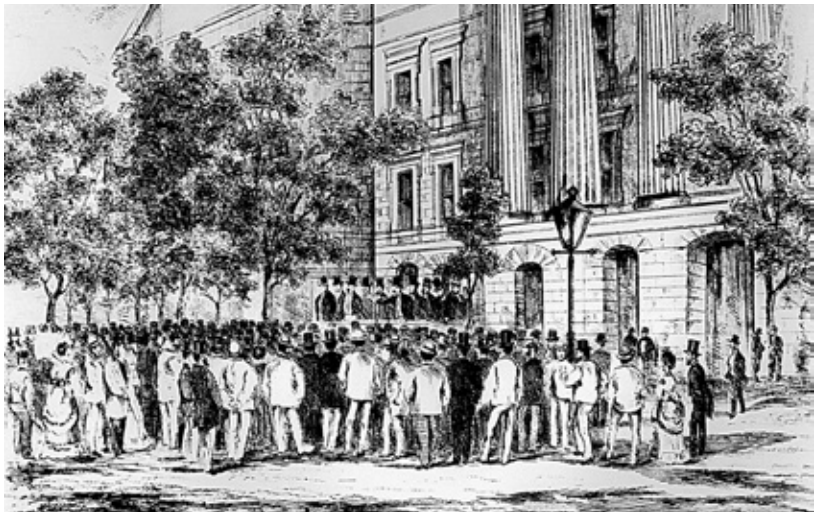
Library and Archives Canada, C-120987

Campaign Literature, 1872

Malcolm Cameron (1808–1896) used the latest technology to produce this colour lithograph supporting his electoral bid, but voters chose another candidate. Cameron founded the Bathurst Courier at Perth, Upper Canada, in 1833 and was Queen's Printer for Canada from 1863 to 1869.

The 1891 election provides an excellent example of the combined effects of falsification of lists and lack of regular updating. In Ontario alone, comparison of the electoral lists updated in 1889 and census data for the year of the election reveals the existence of more than 34,000 "floaters"—persons who had died or moved out of the province. Moreover, because the 1891 election was held on the basis of lists revised two years earlier, tens of thousands of new electors were disenfranchised. In the country as a whole, according to contemporary accounts, at least 50,000 and possibly more than 100,000 electors were deprived of the right to vote in that election because the electoral lists had not been updated or, in some cases, had been falsified.

Intimidation was another method used to influence election results. The Catholic clergy, for example, openly supported the Conservative party in pastoral letters and statements from the pulpit. Some parish priests even threatened their parishioners with the fires of hell if they voted Liberal. Although the effects of such intimidation were felt mainly in Quebec, where some elections were even voided because of the "undue influence" of the clergy, it was also a factor in the Maritimes, Ontario and Manitoba—until the Roman Catholic Church and the courts reined in these tendencies around the turn of the century.



Library and Archives Canada, *Canadian Illustrated News*, July 1, 1871, C-056351

Nominations, 1871-style

Sketch of the nominations in Montreal Centre for the Quebec provincial election held in 1871.

Intimidation by employers, though less widespread than the influence of the clergy, was nonetheless a factor. Employers threatened to reduce the wages of, or even fire, those who did not vote for the "right" candidate. The March 10, 1896, edition of *La Patrie* published the text of a notice posted on the wall of a Montréal manufacturing concern:

> *We feel it is only fair to notify employees that, in case of a change in government [Conservative], we will be unable to guarantee the wages you are now being paid; neither will we be able to guarantee work of any kind to all the employees employed by us at this time.*
>
> *– Hamelin et al., 109 (translation)*

... there is so little likelihood of detection, [and] the price paid for passing false votes is so tempting, that unless severe measures are employed, there will always be persons willing to undertake the business.

– Herbert Brown Ames quoted in John English, The Decline of Politics*, 1977*

To the range of questionable election practices already described must be added the inappropriate use of public funds for election purposes, illegal election expenses, falsification of ballots, and dishonesty, or even incompetence, among election personnel. In 1891, a returning officer in the Algoma riding said that he could distinguish between male and female "Indians" only on the basis of their clothing. Organizers for the Conservative candidate seized the opportunity: the men voted first, then loaned their clothing to the women so they could vote.

As a result of these and other scandals, new provisions were added to the *Dominion Elections Act*. In 1891, it became an offence to assist a candidate in exchange for money or other valuable consideration. In 1908, corporations were barred from making campaign contributions, while others could make donations only through a candidate's official agent. The lack of an overseeing body, however, made the legislation an ineffective deterrent, and businesses continued to donate campaign funds freely to whomever they wished.

THE ELECTORAL MOSAIC, 1867–1885

From 1867 to 1885, five federal general elections were held, with the electorate varying from province to province under the provincial electoral laws then in force. In all provinces, there were three basic conditions for becoming an elector: being male, having reached the age of 21 and being a British subject by birth or naturalization. The other conditions varied according to the electoral law of each province. Tables 2.1 and 2.2 give an overview of the diversity of conditions in effect.

Except in British Columbia, the main restrictions on entitlement to vote were property- or income-based qualifications, which established four classes of citizens: those who owned real property of a minimum value, those who leased or occupied a property of a minimum value or paid an annual rent of a minimum value, those who owned personal property or a combination of personal and real property of a minimum combined value, and those who earned a minimum annual income. As Table 2.1 shows, electors were far from being equal across the country on the basis of these criteria.

For property owners, the required value of real property varied by as much as $300 from one province to another. Conditions for tenants and for those who qualified on the basis of owning a combination of real and/or personal property also varied widely. Finally, two provinces linked the right to vote to a minimum annual income: in Ontario, the minimum was $250; in New Brunswick, it was $400.

Three provinces—Ontario, Manitoba and British Columbia—imposed racial restrictions. Before Confederation, just one of the colonies had decreed that "Indians" could not vote. Nova Scotia explicitly excluded them from the electorate in 1854 when it abolished property-based qualifications; when the province re-established these qualifications in 1863, it repealed the exclusion clause. In practice, in Nova Scotia as elsewhere, First Nations persons were not entitled to vote because, under federal law, virtually none of them held property as individuals.

Soon after Confederation, Ontario decreed that, in places where no electoral lists existed, only "enfranchised Indians"—persons who had renounced their "Indian" status—could vote. If they wanted to exercise their right to vote, they could not be "residing among the Indians" or benefiting from amounts paid to a tribe or band in the form of annuities, interest or other funds. In ridings where electoral lists were drawn up, "enfranchised Indians" who did not reside among the "Indians" were eligible to vote, even if they received a portion of an amount paid to a tribe or band. In practice, however, this measure affected few people. Between 1867 and 1920, in all of Canada, a mere 250 First Nations persons were enfranchised. There is no record of others who might have been covered by the terms of the legislation and could therefore have voted; their numbers were certainly not legion.

In Manitoba, First Nations persons who received a benefit from the Crown were not entitled to vote. In British Columbia, neither First Nations persons nor residents of Chinese descent could vote. Although there were very few immigrants of Asian origin in British Columbia at that time, First Nations peoples accounted for more than an estimated two thirds of the province's population in 1871.

TABLE 2.1
PROPERTY AND INCOME QUALIFICATIONS: MINIMUM CONDITIONS REQUIRED TO VOTE IN FEDERAL ELECTIONS, 1867–1885

Province	Value of real property, whether occupied by owners or tenants				Amount of annual rent		Annual income
	Owner or co-owner[1]		Tenant, co-tenant or occupant[1]		Tenant, co-tenant or occupant[1]		
	Urban area	Rural area	Urban area	Rural area	Urban area	Rural area	
Nova Scotia[2]	$150		$150		–		–
Quebec	$300	$200	–		$30	$20	–
Ontario[3]	$200	$100	$200	$100	–		$250 (urban residents)
Manitoba[4]	$100		$200		$20		–
New Brunswick[5]	$100[6]		–		–		$400
Prince Edward Island	Those under 60 years of age had to make an annual contribution of four days' work to maintain and build highways or the equivalent in cash; those over age 60 had to own real estate that generated a minimum annual income of $8.						
British Columbia[7]	No property or income qualifications.						

Notes:

1. The amounts indicated apply to each individual elector, including co-owners and co-tenants (e.g. for two co-tenants, the minimum value of the dwelling would be twice the amount stated in the table).
2. In Nova Scotia, the right to vote was given to the sons of anyone qualified to vote, on condition that the total value of the father's (or mother's, if the father was deceased) property was sufficient to qualify him to vote and that the son had not been absent from the family home for more than four months during the year preceding an election. Individuals whose total real and/or personal property was valued at at least $300 were also qualified to vote.
3. In Ontario, the right to vote was generally given to all residents whose names were included on a property assessment roll. An elector whose name did not appear on a list had to be, for at least six months before an election, the owner or tenant of real property granted by the Crown whose value met the requirements of the property qualifications then in effect.
4. In Manitoba, the right to vote was also given to any occupant of a dwelling located on land from which it was possible to derive income of at least $20 per year. In all cases, the period of residency was at least three months before an election.
5. Personal and/or real property of a total value of $400 also entitled individuals to vote in New Brunswick.
6. Property owners only.
7. In British Columbia, all electors had to have lived in the province for at least 12 months and in the riding for at least 2 months before an election.

TABLE 2.2
Categories of Citizens Ineligible to Vote, 1867–1885*

Nova Scotia	1. Any person who, during the 15 days preceding the election, was remunerated by the government as an employee of one of the following: • post office • customs • lighthouses • Crown land office • public works • mines • railroads • department of revenue 2. Any person in need who received social assistance or assistance in any amount from a charitable organization during the year preceding the election.
Quebec	1. Any person remunerated by the government as an employee of one of the following: • post office (cities and towns) • customs • Crown land office or holder of one of the following positions: • judge of the superior court, court of Queen's bench, vice-admiralty court, sessions court or municipal court • district magistrate • secretary, undersecretary or clerk of the Crown • sheriff or assistant sheriff • officer or member of a provincial or municipal police force 2. Any person who collected federal or provincial duties, including excise duties, in the name of Her Majesty.
Ontario	1. Any person of "Indian" origin or partly "Indian blood," not enfranchised, who resided on a reserve located in a riding where no electoral list existed and who benefited from amounts paid, in the form of annuities, interest or other funds, to the tribe or band of which the person was a member. 2. Any person who was remunerated by the government as an employee of one of the following: • post office (cities and towns) • customs • Crown land office or holder of one of the following positions: • judge • prosecutor in a county court • registrar general • Crown clerk or assistant clerk • chancellor or vice-chancellor of the province • sheriff or assistant sheriff 3. Any person collecting excise duties on behalf of Her Majesty. 4. Any person acting as returning officer or election clerk (deputy returning officers and poll clerks retained the right to vote). 5. Any person working in any capacity for a candidate before or during an election. 6. Any stipendiary magistrate (i.e. paid by an individual).

Manitoba	1. Any person of "Indian" origin who received an annuity from the Crown. 2. Any person holding one of the following positions: • judge of the court of Queen's bench, a county court or a municipal court • Crown clerk • registrar general • clerk of a county court • sheriff or assistant sheriff
British Columbia	1. Any person of "Indian" origin. 2. Any immigrant of Chinese origin. 3. Any person holding one of the following positions: • employee of the customs department • employee of the federal government responsible for collecting excise duties • judge of the Supreme Court or a county court • stipendiary magistrate • police constable or police officer 4. Any employee of the federal government paid an annual salary (except postal employees). 5. Any employee of the provincial government paid an annual salary. 6. Any teacher paid by the government of the province. 7. Any person previously found guilty of treason, serious crimes or other offences, unless he had been pardoned or served his sentence.

At the same time, all provinces except New Brunswick and Prince Edward Island denied the vote to certain government employees. Here, too, there was considerable inconsistency among the provinces. In Nova Scotia, for example, postal employees did not have the vote; in British Columbia and Manitoba, they did; in Quebec and Ontario, only rural postmasters were eligible to vote. Postmasters were patronage appointments made by the federal government. At a time when the Conservatives dominated the federal government, postmasters could be seen as Conservative supporters. This was one of the reasons that Macdonald wanted the federal government to control the franchise.

Amendments to provincial election laws between 1867 and 1885 did little to increase the number of electors, except in Ontario, where property requirements were reduced significantly, and in Nova Scotia, where the voting privileges of property owners were extended to tenants. At the same time, Nova Scotia, Quebec, Ontario and Manitoba extended the right to vote to co-owners and co-tenants of property assessed at a value that, if divided among the co-owners or co-tenants, fulfilled the property qualifications in effect for each individual. Considering the economic conditions of the period, this measure probably affected only a small number of individuals.

* Based on provincial legislation in effect for all or part of the period.

MACDONALD CENTRALIZES THE FRANCHISE

On July 27, 1885, Conservative Prime Minister Sir John A. Macdonald wrote to his friend Charles Tupper, "On the twentieth we closed the most harassing and disagreeable session I have ever witnessed in forty years." But he went on to add, "I consider the passage of the Franchise Bill the greatest triumph of my life." (Stewart, 3)

J. W. Bengough, Library and Archives Canada, C-078604

Macdonald's Admission, 1873

The caption below this cartoon, published on September 26, 1873, quoted The Mail *of the same date: "We in Canada seem to have lost all idea of justice, honor and integrity." Macdonald's support in the House of Commons declined after revelations that he had accepted campaign donations from Sir Hugh Allan, with whom he was negotiating government railway contracts. His government resigned on November 6.*

Why was Macdonald—who had won many other significant victories in his 40-year political career—so pleased with the bill? An ardent centralist, Macdonald had little use for provincial governments; if it had been up to him, they might have been abolished at Confederation. In the years preceding his franchise bill, the struggle between the federal government and the provinces had intensified. Ontario, led by Oliver Mowat's Liberals, had won battles with the federal government on provincial boundaries and alcohol licensing. There seemed to be the risk of a snowball effect: in Nova Scotia, also led by a Liberal government, withdrawal from Confederation was touted as a real possibility. In this context, Macdonald could no longer allow the provinces to control the entitlement to vote in federal elections.

He tabled a bill giving full control of the franchise to the federal government. The bill led to unprecedented debate in the House of Commons. Between April 16 and July 6, 1885, members engaged in heated discussion of every facet of the legislation, often late into the night. The government finally had to concede a number of amendments. The result was an extremely complex elections act that, instead of producing a uniform Canadian electorate, diversified the electorate even more.

At a time when Ontario was preparing to expand access to the vote, Macdonald contrived to keep the property-based qualification. Along with most members of his party, he had a profound aversion to universal suffrage, which he considered one of the greatest evils that could befall a country. Perhaps convinced that most women were conservative, Macdonald suggested giving the vote to widows and "spinsters" who owned property. He backed down, however, in the face of objections from some of his

own members. The suspicion remains that Macdonald had inserted the clause as a sacrificial lamb, never intending it to survive final reading of the bill.

Macdonald's 1885 *Electoral Franchise Act* retained the three basic conditions common to all the provinces: being male, having reached the age of 21 and being a British subject by birth or naturalization. The property-based qualification differed according to whether an individual lived in an urban or a rural riding. Furthermore, in urban areas, it varied according to whether an elector lived in a city or a town (a distinction based on population size). Table 2.3 summarizes the resulting franchise across the country.

For example, to be qualified to vote in a city, a man was required to own real property valued at $300 or more. The occupant in good faith of a property of the same value was also qualified to vote. Tenants who paid a monthly rent of at least $2 or an annual rent of at least $20 could also vote, as could persons whose annual income was at least $300. Sons of owners, or of widows of owners, whose total property value, divided among them, was sufficient to confer the right to vote on each of them were qualified to vote, on the condition that a son had lived with his mother or father for one year with no break longer than four months. Furthermore, all electors except property owners were subject to a one-year residency requirement.

TABLE 2.3
MINIMUM CONDITIONS REQUIRED TO VOTE IN FEDERAL ELECTIONS, 1885[1]

Category	Value of real property, whether occupied by owners or tenants		Amount of annual rent	Annual income
	Owner or co-owner[2]	Tenant, co-tenant or occupant[2]	Tenant or co-tenant[2]	
Urban area	$300 (cities)[3] $200 (towns)		$2/month or $20/year	$300
Rural area	$150[4]		$2/month or $20/year	$300

Notes:

1. Under the terms of the *Electoral Franchise Act* of 1885, voting qualifications were the same in all provinces except Prince Edward Island and British Columbia. In those two provinces, where no provincially established qualifications existed, anyone who had the right to vote at the time the 1885 act came into effect kept that right; those who reached the age of 21 after that date had to meet the same qualifications as those in the other provinces.
2. The right to vote was given to sons of owners and tenants, on condition that the minimum value of the father's (or mother's, if the father was deceased) dwelling was sufficient to qualify him for the vote and the son had resided in the family home for 12 months without being absent for more than 4 or 6 months (depending on whether they lived in an urban or a rural area). In rural areas, owners' sons could be absent for more than 6 months without losing the right to vote if the reason for absence was working as a sailor or fisherman or attending an educational institution in Canada.
3. A city was a town with a population exceeding a number established by law.
4. Fishermen who owned real property and fishing gear (boats, nets, fishing gear and tackle) of a total value of at least $150 were also qualified to vote.

Prince Edward Island and British Columbia, where there had been no property-based qualification, received special treatment. In both provinces, anyone who already had the right to vote when the 1885 act was passed continued to enjoy that right; however, those who reached the age of 21 after that date were subject to the same property or income qualifications as those in effect in the other provinces.

The property-based qualifications set by the *Electoral Franchise Act* clearly favoured rural residents over urban dwellers. Furthermore, the qualifications were set higher than they had been before in most provinces. The Act did give the vote to new classes of persons, on certain conditions, including fishermen, property owners' sons and farmers' sons (although they already had the vote in British Columbia and Prince Edward Island). At the same time, however, the Act made it more difficult for small property owners and some tenants to obtain the right to vote.

Comparing Tables 2.1 and 2.3 shows that property owners saw the most significant increase in voting qualifications. In New Brunswick and Manitoba, the required value of property tripled for cities and doubled for towns; in rural areas, it rose by 33 percent. In Nova Scotia, it doubled for cities and climbed by 33 percent for towns, but remained the same in rural areas. In Ontario, the property qualification rose by 33 percent for both rural and urban areas. In Quebec, it remained unchanged for urban areas and fell by 25 percent for rural areas.

The situation with regard to tenants is more difficult to pin down. In the provincial laws that had previously applied, eligibility to vote was related to the value of leased property rather than the annual rent paid, making comparisons difficult. Under the 1885 act, at least some tenants became new members of the electorate. In New Brunswick, where no tenant had had the vote, the new law enfranchised those who paid the minimum required rent. In Manitoba and rural Quebec, the annual rent requirement was unchanged; in Quebec cities, it dropped by one third. Elsewhere, it can be assumed that the new law affected tenants adversely to the extent that the required value of leased property rose significantly.

Because the number of citizens in each category is unknown, it is impossible to arrive at an accurate figure for the electorate as a whole. It can be assumed, however, that the new electoral law reduced the overall size of the electorate. Residents of two provinces—British Columbia and Prince Edward Island, where universal male suffrage had almost been achieved—were clear losers. In these provinces, those who already had the right to vote kept it. But others reaching voting age were subject to the property-based requirements, which inevitably reduced the relative size of the electorate. The citizens of two other provinces were also clear losers as a result of the changes: Ontario, because it was the most urbanized province and the legislation favoured rural residents, and Nova Scotia. These two provinces, both with Liberal governments in power, were precisely the provinces that had caused the biggest headaches for the Conservative government in Ottawa in the matter of the division of powers. In just one province—Quebec, a Conservative stronghold since 1867—did the size of the electorate appear to have increased.

The 1885 act was more lenient than most of the previous provincial acts in terms of the right to vote of judges and some classes of government employees. Only the chief justice and justices of the Supreme Court of Canada and the chief justices and magistrates of provincial superior

courts were prohibited from voting. Furthermore, some election officials (returning officers, poll clerks and the revising officers who updated the lists of electors) were allowed to vote, but only in a riding other than the one where they worked. This rule also applied to all individuals who worked for a candidate in any capacity before or during an election.

The new election law retained existing racial restrictions and even disenfranchised some First Nations people in Quebec and the Maritimes. Persons of "Mongolian and Chinese race" were expressly deprived of the right to vote. According to Sir John A. Macdonald, persons of Chinese origin ought not to have a vote because they had "no British instincts or British feelings or aspirations." (Roy, 152) Furthermore, the First Nations people of Manitoba, British Columbia, the District of Keewatin and the Northwest Territories had no vote, and those living on reserves elsewhere in Canada were required to own and occupy a piece of land that had been improved to a minimum value of $150.

Macdonald was pleased, not only with recovering control of the franchise but also with ensuring that, from then on, the electoral lists would be drawn up by revising officers appointed by the government in power. These lists were the keystone of the electoral system. If an elector's name was missing from the list, he could not exercise his right to vote. Macdonald himself, on the advice of his supporters, appointed the revising officers. Over the years, he established a complex countrywide network of his own appointees, which he controlled completely and effectively.

Library and Archives Canada, e010934529

The Last Hurrah, 1891

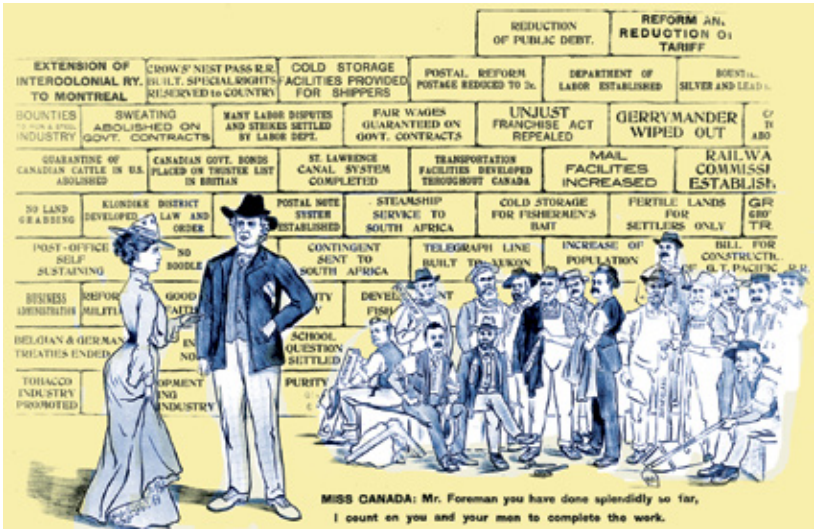
At age 75, Sir John A. Macdonald fought his last election campaign, defending his protectionist National Policy against the idea of "commercial union" with the United States.

LAURIER DECENTRALIZES THE FRANCHISE

For the Liberals, the 1885 election legislation was a bitter pill to swallow. They had only to wait for the right moment to change track. Macdonald died in June of 1891. Without him at the helm, the Conservatives soon foundered, and the Liberals under Wilfrid Laurier took power in 1896. When Charles Fitzpatrick, the solicitor general, tabled a proposed new electoral law in the House of Commons, he said that since 1885, preparation of the electoral lists had cost the public coffers more than $1,141,000, an enormous sum at that time.

The new act, which took effect on June 13, 1898, was designed to correct the situation by giving the provinces responsibility for drawing up electoral lists and, once again, control of the right to vote in federal elections. The situation had regressed to the pre-1885 system, including significant inequality among electors in different provinces.

To mitigate these disparities, the new federal law specified that the provinces were not empowered to disqualify voters. More specifically, the provinces were prohibited from excluding a citizen, otherwise qualified to vote, from exercising the right to vote on the grounds that he practised a particular profession or carried on a particular occupation, worked for the federal government or a provincial government, or belonged to any class of persons. As a result, citizens of Chinese or Japanese descent living in British Columbia obtained the right to vote in federal elections (even though they were excluded from provincial elections), as did federal and provincial government employees in Nova Scotia, Prince Edward Island, Quebec, Ontario and Manitoba.



Library and Archives Canada, C-122035

Running on Their Record, 1904

The Liberals appealed to voters with a wall of achievement—built of bricks that included "Unjust Franchise Act Repealed" and "Gerrymander Wiped Out." Says Miss Canada to Wilfrid Laurier, "Mr. Foreman you have done splendidly so far, I count on you and your men to complete the work."

The situation with regard to First Nations people was less clear-cut. At first glance, the wording of the Act seems to suggest that they were also excluded from disqualification by provinces. There were indications, however, that in the minds of the legislators, "Indians" did not belong to "any class of persons." Until that time, the Liberals had always appeared reluctant to give First Nations people the right to vote. At its 1893 convention, the party made a formal statement condemning any measure of this kind. Later, the federal government refused them the right to vote in the Northwest Territories and Yukon, both of which were under direct federal control. It is therefore highly probable that the provisions disqualifying them from voting in provincial elections applied to federal elections as well.

In 1898, most provinces already applied significant restrictions on First Nations people's right to vote. No First Nations person was allowed to vote in British Columbia or New Brunswick. In Manitoba, the right to vote was reserved for "Indian" persons who received no benefit from the Crown and had received no such benefit during the three years preceding an election. In Ontario, the right was given only to "enfranchised Indians" or to First Nations persons living outside a reserve, on condition that the latter owned real property assessed at $200 or more in a city or town or $100 or more in a village or township. This last condition was even more discriminatory because Ontario had abolished all property-based qualifications for non-Indigenous electors 10 years earlier.

The situation did not improve in the years that followed. In 1915, Quebec withdrew the voting rights of First Nations persons living on reserves, and by July 1919, First Nations persons living on reserves anywhere in the country were no longer entitled to vote in federal by-elections.

The Liberals' 1898 election law excluded other groups as well, among them previously excluded federally appointed judges. Furthermore, three classes of individuals already disqualified from voting in Manitoba, Ontario and New Brunswick—prison inmates as well as residents of lunatic asylums and charitable institutions receiving assistance from a municipality or the government—were now disenfranchised throughout the country. In addition, persons who, before or during an election, were hired by another person and remunerated in any way for working as an agent, clerk, solicitor or legal counsel were also disenfranchised. Electors found guilty of election fraud lost the right to vote for seven years. Finally, returning officers and poll clerks were prohibited from voting in the riding in which they performed their duties. All these exclusions remained in force until at least 1920.

The 1898 act specified that the conditions that qualified a person to vote in a federal election were the same as those that qualified the individual to vote in provincial elections in his province of residence. This principle was more restrictive than it appeared at first glance. Because statutory disqualification was no longer permitted, the provinces were left with five factors that they could use to control the right to vote: age, gender, citizenship, length of residence and property-based requirements. The first three qualifications were already common to all provinces. From Atlantic to Pacific, only males age 21 or over who were born or naturalized British subjects were qualified to vote. Residency requirements, which varied from province to province, might apply to the province as a whole, to the electoral district or to both.

Library and Archives Canada, *Canadian Illustrated News*, May 4, 1878, C-067823

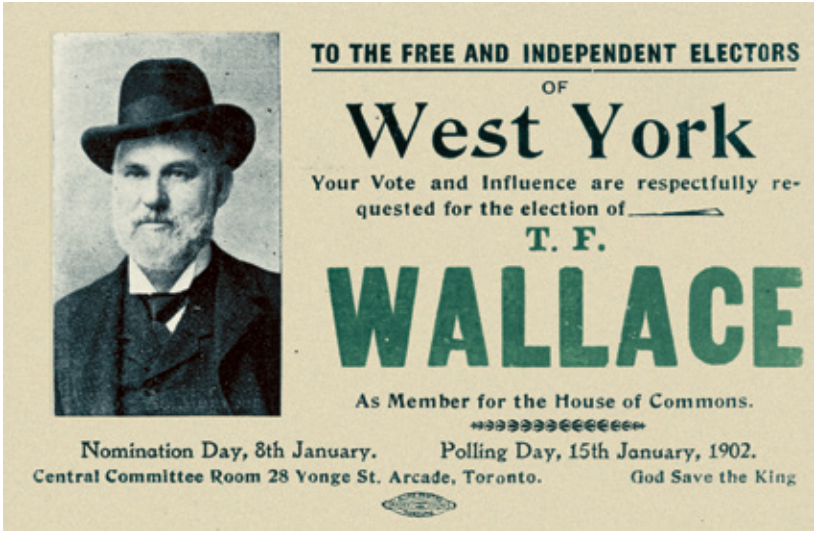
After the Elections, Part 2

The 1878 Quebec provincial election resulted in numerous cartoon depictions of the vanquished and the victor, such as this one from the Canadian Illustrated News.

The required length of residence in the province was 6 months in British Columbia and 12 months everywhere else; for particular ridings, the provisions ranged from 1 month to 12 months. Ontario, the most urbanized of the provinces, added a specific provision with regard to cities and towns, where changes of domicile were extremely common. The residency requirement was 12 months in the province, 3 months in the town in question and 1 month in the riding. These provisions tightened restrictions on urban electors, who often moved in pursuit of work, without penalizing them too harshly.

Before 1920, only two provinces changed their residency requirements. In 1907, New Brunswick halved it, from 12 months to 6. The same year, Ontario relaxed its 12-month residency requirement to include residence anywhere in the country, though the additional residency requirements for urban areas remained in place. A few provinces accepted the fact that some individuals (loggers, sailors, students) were occasionally or temporarily absent from their usual residence to carry on their occupation or attend an educational establishment. In 1900, the federal government decreed that military personnel and war correspondents did not lose the right to vote because of absence for reasons of active duty. The measure, which affected all provinces, was adopted to accommodate Canadians serving in the Boer War in South Africa. When the war ended two years later, the privilege granted to Canadian servicemen remained in place.

Before adoption of the 1898 act, property-based qualifications were the main curb on expansion of the electorate. At that time, this restriction still existed in only four provinces: Prince Edward Island, New Brunswick, Nova Scotia and Quebec.



Library and Archives Canada, C-976540

Family Connections, 1902

This card urged electors to nominate and vote for T. F. Wallace but did not achieve its goal: Wallace lost the 1902 by-election. He was likely a relative of Nathaniel Clarke Wallace, member of Parliament for West York from 1878 until his death in 1901, and of Thomas George Wallace, who held the seat from 1908 to 1921.

In Prince Edward Island, property-based qualifications affected only persons 60 years of age or over, who were required to own real property assessed at at least $100 or generating a minimum annual income of $6. In 1902, the province achieved universal male suffrage when it abolished the requirement. To qualify to vote in New Brunswick, it was necessary to own real property assessed at $100 or more, or real property and personal property with a combined value of $400. Persons earning an annual income of $400 were also qualified to vote. This threshold was very high; at the turn of the century, a textile worker, for example, earned an average of $240 per year. New Brunswick abolished property- and income-based qualifications in 1916.

The lists used in [the 1908 federal] election were provincial lists which had been compiled two or more years earlier, and contained the names of many dead and absent persons. However, by a custom regarded as common and ordinary, the votes of the dead and absent were not lost but were made good use of by both contesting parties.

– *Charles G. ("Chubby") Power,* A Party Politician*, 1966*

In Nova Scotia, the situation had remained unchanged since 1885. To be qualified to vote in the province in 1898, it was still necessary to own, rent or occupy property assessed at $150 or more. Furthermore, an individual who owned personal property and leased or occupied property whose value, added to that of the personal property, totalled $300 was qualified to vote. Co-owners, co-tenants, sons of men qualified to vote or of widows who owned, occupied or leased property with a value sufficient to confer the right to vote could vote under the same conditions as those that existed before 1885. The province later qualified as electors persons earning an annual income of at least $250 and fishermen who owned real property, boats, nets and fishing tackle with a combined value of $150 or more. Property- and income-based qualifications were eventually eliminated in the province in 1920.

In Quebec, where urbanization was in full swing, the property-based qualifications in force in 1898 still favoured residents of rural areas. In urban areas, owners or occupants in good faith of premises assessed at $300 could vote; in rural areas, the minimum required value was just $200. A similar disparity existed between tenants in urban areas, where the minimum annual rent was $30, and tenants in rural areas, where it was $20. Persons receiving a minimum annual income of $300 were also qualified to vote.

Fishermen could vote if they owned boats, nets, seines and fishing tackle worth a total of $150 or more. Furthermore, retired farmers and property owners (referred to as life annuitants) could also vote if their annuity—in cash or in kind—was $100 or more. Teachers were exempt from any property-based requirement. In 1912, Quebec substantially reduced financial qualifications, a measure that gave the right to vote to the great majority of men in the province.

The 1898 federal legislation certainly expanded the Canadian electorate. To what extent? Because censuses from that era are relatively unreliable, it is impossible to say. One thing is certain: when the legislation was adopted, most provinces, including Ontario (the province with the largest population), had already introduced universal male suffrage. In these provinces, therefore, universal male suffrage also applied to federal elections. This was a significant step forward from Macdonald's 1885 legislation, which not only maintained the principle of property- or income-based qualifications but even raised the eligibility threshold in most areas of the country. Laurier's 1898 law broadened the electorate by prohibiting provincial disqualification based on race or socio-professional characteristics. Nonetheless, two provinces—British Columbia and Manitoba—tried to find ways to get around the federal legislation.

John Boyd, Library and Archives Canada, PA-060819

Broadcasting the News, 1911

In the days before mass media, broadcasting an election proclamation required a brush and a bucket of paste (Lambton County, Ontario).

The 1898 Plebiscite on Prohibition

The year 1898 marked the first time the federal government held a referendum—the prohibition plebiscite. Some 44.6 percent of the electorate voted: of those, 51 percent voted in favour of a prohibition on alcohol, and 49 percent voted against. With such a close result, Prime Minister Laurier decided there was not enough support for legislating prohibition.

In 1901, British Columbia decreed that no one could vote if he was unable to read the provincial election legislation, which was written in English. Naturally, this measure was hostile to the enfranchisement of citizens of Chinese or Japanese origin. The following year, Manitoba adopted a similar strategy: no one was qualified to vote who could not read the Manitoba elections act in English, French, German, Icelandic or a Scandinavian language; this effectively prohibited many immigrants of Polish, Ukrainian and Russian origin from voting in federal elections. The record does not show whether the federal government intervened to counteract these efforts at disenfranchisement.

BOUNDARY REDISTRIBUTION

For the democratic process to be truly representative, a system for maintaining the fair and balanced distribution of constituency boundaries is essential. The Fathers of Confederation addressed this requirement in the *Constitution Act, 1867* by adopting the basic working principle of "representation by population" for the House of Commons. Given that the Act guaranteed Quebec a minimum of

65 seats in the House of Commons, the seat allotment for the rest of the country was determined by dividing the average population in Quebec's 65 ridings into the total population for each of the other provinces—thus making the number of seats per province proportional to their respective populations. The *Constitution Act, 1867* furthermore provided a mechanism for maintaining this balance by specifying that a process to review and adjust provincial seat allotments, as well as boundaries of individual ridings, should occur after each 10-year census.

Significantly, in those early years after Confederation, the responsibility for determining the new boundary placements rested solely with the government. The *Representation Act* of 1903 sought to rectify the consequent political advantage by conferring the job of boundary readjustment on a bipartisan committee of the House of Commons. Since the governing party still held a majority on the committee, though, the pursuit of balanced democratic representation remained a secondary consideration, and blatant political manoeuvring within the process continued to fuel rancorous debate for another 60 years.

BORDEN'S STRATEGIC MEASURES

After Canada declared war on Germany in August 1914, the country fell victim to a wave of collective hysteria. The commander of the naval yard at Esquimalt, British Columbia, was so fearful of a German invasion that he succumbed to nervous collapse. Fear of spies gave rise to general mistrust of new Canadians, especially those from Germany or Austria-Hungary. At that time, immigrants from these countries accounted for about 5 percent of the population of Canada. In October 1914, the federal government interned foreign nationals identified by government officials as a potential danger to the country. More than 8,500 individuals were sent to closely guarded internment camps.

Three years later, the war dragged on, and volunteers for military service had begun to fall short of requirements. In April 1917, the number of volunteers was only 5,530; in May, it was up slightly at 6,407. But Canadian losses at the front were high: in April alone, 3,600 Canadians were killed and 7,000 wounded at the battle of Vimy Ridge. The Conservative prime minister, Sir Robert Borden, travelled to England and returned shaken by the experience. To him, there was only one solution: in June, he tabled a military service bill authorizing the government to conscript any male person between the ages of 18 and 60.

Borden's government was already in serious trouble, however, and an election was imminent. Could the conscription issue defeat them at the polls? This was what was predicted in the West, where the largely immigrant population already sympathized strongly with Laurier's Liberals, and the conscription issue seemed to be strengthening the trend. Across the country, union leaders got ready to do battle with conscriptionists. In Ontario, the rural population opposed conscription, and Francophone Quebec rejected conscription spontaneously and massively.

Borden and his government, who saw their situation as increasingly desperate, attempted to modify the composition of the electorate by changing the electoral law. Borden confided to his diary, "Our first duty is to win at any cost the coming election so that we may continue to do our part in winning the war and that Canada be not disgraced." On September 20, 1917, Parliament adopted not one, but two election acts, though Borden had to use closure to push them through.

Department of National Defence, Library and Archives Canada, PA-002318 (left) / William Ivor Castle, Canada Department of National Defence, Library and Archives Canada, PA-000554 (above)

Making the Vote Accessible, 1916–1917

Special arrangements for electors unable to vote because of occupation or assignment abroad were introduced gradually to improve access to the vote. For example, in 1915, the postal ballot was introduced. These photos show soldiers voting overseas in the federal election of December 1917 and the British Columbia election of September 1916.

The first, the *Military Voters Act*, was designed to increase the number of electors potentially favourable to the government in power. As its title suggests, the law defined a military voter as any British subject, male or female, who was an active or retired member of the Canadian Armed Forces—including First Nations persons and persons under 21 years of age, independent of any residency requirement—as well as any British subject ordinarily resident in Canada who was on active duty in Europe in the Canadian, British or any other allied army. (Thus, some 2,000 military nurses—the "Bluebirds"—became the first Canadian women to get the vote; see next section.) Furthermore, military voters could assign their vote to any riding in which they had previously resided, or their vote could be assigned by the party of the military voter's choice to the riding where it would be most useful. Finally, the Act contained a short section that appeared innocuous but was extremely significant: several hundred thousand votes from overseas would be counted only 31 days after an election in Canada.

The second law, the *Wartime Elections Act*, had a dual purpose: to increase the number of electors favourable to the government in power and decrease the number of electors unfavourable to it. The law conferred the right to vote on the widows of Canadian Forces members as well as on the spouses, mothers, sisters and daughters of any persons, male or female, living or dead, who were serving or had served in the Canadian Forces, provided they met the age, nationality and residency requirements for electors in their respective provinces or Yukon. It also conferred the right to vote on those who did not own property in accordance with prevailing provincial law but had a son or grandson in the army. (This provision affected only Quebec and Nova Scotia, as the other provinces had already abolished property- and income-based qualifications.)

The Act also disenfranchised conscientious objectors. This affected Mennonites and Doukhobors, two pacifist groups, even though the federal government had exempted them officially from military service: the former in 1873 and the latter in 1898. Individuals born in an enemy country who became naturalized British subjects after March 31, 1902, were also disenfranchised, with the exception of those born in France, Italy or Denmark who arrived in Canada

before the date on which their country of origin was annexed by Germany or Austria. Also included were British subjects naturalized after March 31, 1902, whose mother tongue was that of an enemy country, whether or not the individual's country of origin was an ally of Great Britain. The same rule applied to persons found guilty of an offence under the *Military Service Act, 1917*. Overall, new Canadians living on the Prairies were the most seriously affected by the *Wartime Elections Act*, with tens of thousands being disenfranchised.

Finally, the legislation of September 20, 1917, stripped the provinces of the responsibility for drawing up electoral lists and gave the task to enumerators appointed by the federal government—in other words, by the Conservatives as the party in power. The president of the Canadian Suffrage Association remarked that the Act would have been more honest if it had simply disenfranchised everyone who failed to promise to vote for the Conservatives! All Borden had to do now was call an election.

But the race was not yet won. One week after the two laws were passed, an informant with sources in government circles reported to Laurier that the Conservatives, fearing defeat, were preparing to mobilize English-Canadian opinion against French Canada. Who among Borden's inner circle had devised the strategy? One thing was certain: Borden did not reject it. In the next few months, the English-language press painted a picture of Quebec as a province that was as big a threat to Canada as Germany was to the world.

Cases of election fraud soared during the subsequent election campaign. A soldier suspected of intending to vote Liberal was threatened with being sent immediately to the front. Telegrams and letters from the federal cabinet even specified the number of floaters to be entered on the electoral lists to assure election of a given candidate in a given riding. An officer who feared investigation of the irregularities was told that anyone who failed to hold their tongue would be buried in France within six months. Efforts to exercise "undue influence" on the election resurfaced on a scale previously unheard of. The Sunday preceding the election, in three out of four Protestant churches across the country, pastors and ministers exhorted the people to look on voting for the government in power as a sacred duty, failing which Canada would be disgraced.

The election was held on December 17, 1917. As specified in the *Military Voters Act*, the votes of civilian electors were counted before those of military voters. The military vote was more than 90 percent for Conservative candidates. The Conservatives won at least 14 additional seats by redistributing the military vote to ridings where opposition candidates had a slight lead. Borden won the election. But was Canada less "disgraced"? The proposition is doubtful at best. A few days before Canadians went to the polls, Laurier remarked to Sir Allen Aylesworth, one of his oldest friends, "The racial chasm which is now opening at our feet may perhaps not be overcome for many generations."

WOMEN AND THE VOTE

The Bluebirds who voted in the 1917 federal election may have been the first Canadian women to do so with the official sanction of the electoral law behind them, but they were not the first women in the colonies of British North America to vote.

Library and Archives Canada, RG 4-B72, Volume 21, pages 3153-4

A Woman Votes in Lower Canada, 1827

A handwritten record of names, qualifications, challenges and votes for the election of July 25, 1827, shows that Agnes Wilson's vote (left-hand column, fourth name from the bottom) was not challenged. Women in Lower Canada were not bound by the common law convention barring women from the polls.

At Confederation, all the original colonies had statutory provisions excluding women from voting;* these were entrenched in section 41 of the *Constitution Act, 1867*:

> *Until the Parliament of Canada otherwise provides, all laws in force in the several Provinces of the Union … shall … apply to elections of Members to serve in the House of Commons … [and] every male British Subject, aged Twenty-one Years or upwards, being a householder, shall have a vote.*
>
> – Constitution Act, 1867*, section 41*

The colonies (except for Lower Canada) inherited England's common law tradition, under which women had not exercised the franchise for centuries; this was the result of convention, not statute law. (Garner, 156) In the colonies, the convention seems to have been less influential.

Only New Brunswick explicitly prohibited voting by women before 1800. There, the council banned women from voting in the colony's inaugural election, held in 1785, but the assembly later failed to include the ban in the colony's first electoral law, passed in 1791.

* Only Upper Canada never used statute law to close the franchise to women. But after the union of Lower and Upper Canada, the Province of Canada disenfranchised women in 1849.

Women and the Right to Vote, 1867–1900

1867 *Constitution Act, 1867* entrenches women's exclusion from the vote.

1873 Female property owners in British Columbia are first "Canadian" women to gain the right to vote in municipal elections.

1876 First women's suffrage group set up in Toronto under the guise of a literary society.

1885 Sir John A. Macdonald introduces, then withdraws, an elections act amendment that would have given women the right to vote.

1894 Women's Enfranchisement Association of New Brunswick formed.

Manitoba Equal Suffrage Club founded.

House of Commons votes down a petition for women's suffrage presented by the Women's Christian Temperance Union.

1900 By this date, most women property owners have the right to vote in municipal elections.

In Upper and Lower Canada, the *Constitutional Act* of 1791 was silent on the issue of women voting, extending the franchise to "persons" who owned property of a certain value. Not being subject to the common law, women in Lower Canada turned out to vote at several locations. Madame Rosalie Papineau, mother of Louis-Joseph Papineau, voted for her son at the 1809 election, declaring her choice "a good and faithful subject." The women accompanying her also voted. By the 1820 election the practice had spread, and voting by women was recorded in Bedford County and Trois-Rivières, where a local citizen wrote later that two members had been elected by the "men and women of Trois-Rivières, for here women vote just as men do, without discrimination." In Trois-Rivières, one man was even disenfranchised because he had placed his property in his wife's name. On election day, "the unhappy man appeared at the polling place, only to find himself doubly humiliated by being refused the franchise and then sent to get his wife to the polls because she was the qualified voter in that family." (Cleverdon, 215)

In Upper Canada, the common law tradition seems to have prevailed, since there are no written accounts of women voting or records of election-related complaints involving voting by women.

Two recorded incidents in Nova Scotia make it clear that women voted there. The first involved a disputed election in Amherst Township and the second an 1840 election in Annapolis County, where the Tories made great efforts to use women's votes to save the riding from a Reform landslide and the Reformers countered by transporting their own female supporters to the polls. The Tory effort was in vain. The Reform women did not even have to vote—they turned out at the polls in such large numbers that the Tory women returned home without voting. (Garner, 156)

The 1840 *Act of Union*, uniting Upper and Lower Canada in the Province of Canada, contained no prohibition on voting by women, and neither colony had a law against it. At least seven women voted in the 1844 election in Canada West—the first recorded occurrence of a violation of the common law practice. This came to light as a result of

a protest by the defeated Reform candidate that seven women had voted for his Tory opponent. When they returned to power in 1849, the Reformers used the occasion of a general consolidation of electoral laws to insert a clause excluding women from the vote.

Cyril Jessop, Library and Archives Canada, e010933901

The Suffragist Movement

The Manitoba Political Equality League was founded in 1912 and was instrumental in the movement to enfranchise Canadian women. In 1916, Manitoba women were the first to gain the right to vote in provincial elections. Women across the country gained the same federal voting rights as men in 1918 when gender barriers were removed at the federal level.

The female franchise had already begun to contract in 1834, when Lower Canada's legislative assembly attached a clause restricting voting by women to an act dealing with controverted elections.* The pretext was that polling stations had become too dangerous for women. (Violence during the 1832 election had resulted in three deaths.) The 1830s also saw the rise of ultramontanism, a conservative clergy-led movement that was to affect many aspects of Quebec society. The *Imperial Reform Act* of 1832, which restricted the franchise in the United Kingdom to men, may also have been influential.

The entry of women into politics, even if only by suffrage, would be a misfortune for our province. There is no basis for it, be it natural law or social benefit. Rome will approve our viewpoint, which is that of all our episcopate.

– Mgr Bégin, motion tabled at the National Assembly on January 10, 1922 (translation)

* The law was later overturned by colonial authorities in London for reasons unrelated to women's right to vote.

Women and the Right to Vote, 1912–1921

1912 Manitoba Political Equality League founded in Winnipeg.

Montreal Suffrage Association formed.

1914 Flora MacDonald Denison, suffragist journalist and president of the Canadian Suffrage Association, publishes *War and Women*.

1915 Edmonton, February. Nellie McClung, heading one of the largest delegations to the Alberta legislature ever assembled, presents a petition demanding the vote for women.

Winnipeg, December. Suffragists present a 45,000-name petition to Premier Tobias C. Norris.

1916 January. Manitoba women are the first in Canada to win the right to vote in provincial elections.

March. Saskatchewan women get the right to vote.

April. The suffrage movement triumphs in Alberta.

1917 February. Ontario women get the vote but still cannot sit in the legislature.

April. British Columbia women get the right to vote.

Serving members of the armed forces (including women) get the federal franchise through the *Military Voters Act*.

Female relatives of soldiers at the front get the right to vote through the *Wartime Elections Act*.

1918 May 24. Royal assent given to a bill giving women the right to vote in federal elections. Eligibility: age 21 or older, not alien-born and meet property requirements in provinces where these exist.

1919 Electoral law amended—women can now stand for federal office.

1920 Federal electoral law amended; changes include universal female (and male) suffrage regardless of provincial law.

1921 First federal election at which women vote under universal franchise.

Another force was at work as well: cultural politics. The events in Bedford County in 1820 demonstrated that restriction of the franchise may have been less the result of hostility to women voting than of language and cultural tensions. In Bedford, the defeated candidate complained to the assembly that his opponent had been elected in part by the votes of 22 married women—in other words, husbands and wives had exercised the right to vote on the basis of the same pieces of property.

The assembly responded by resolving that the women's votes had been illegal, but the resolution seems to have been prompted by the fact that the women's votes had elected an English-speaking candidate at the expense of the French-speaking incumbent. This impression is reinforced by an incident eight years later, when in 1828 petitioners contested the election of Andrew Stuart after an English-speaking returning officer in Québec refused to accept one woman's vote for Stuart's French-speaking opponent. (Garner, 157)

Whatever the source of the restriction, and regardless of the fact that the 1834 law was later struck down, increasing social conservatism seems to have done its work, and women in Lower Canada appear to have ceased voting in significant numbers. (Hamel, 227)

TABLE 2.4
WOMEN'S DEMOCRATIC RIGHTS

	Right to Vote	Right to Be a Candidate
British Columbia	1917	1917
Alberta	1916	1916
Saskatchewan	1916	1916
Manitoba	1916	1916
Ontario	1917	1919
Quebec	1940	1940
New Brunswick	1919	1934
Prince Edward Island	1922	1922
Nova Scotia	1918	1918
Newfoundland	1925	1925
Northwest Territories	1951	1951
Yukon	1919	1919
Nunavut	1999	1999
Canada	**1918**	**1919**

Note: Nunavut was created on April 1, 1999.

[Women's suffrage] is a matter of evolution and evolution is only a working out of God's laws. For this reason, we must not attempt to hurry it on.

– *James P. Whitney,* The Mail and Empire*, March 21, 1911*

Between that time and Confederation, the female franchise was eroded further. Women were disenfranchised by law in Prince Edward Island in 1836, in New Brunswick in 1843 and in Nova Scotia in 1851. Two years earlier, in 1849, the Reform government of the Province of Canada had gained legislative approval for a law prohibiting women from voting: "May it be proclaimed and decreed that no woman shall have the right to vote at any election, be it for a county or riding, or for any of the aforesaid towns and cities." This ended years of confusion about the validity of the female franchise in the Canadas.

This was the situation at Confederation: women of property in the various colonies had enjoyed the franchise (or at least had not faced legal restrictions), then lost it over a period of years and for a variety of reasons. Within a decade, however, a women's suffrage movement had begun in almost all the former colonies. The exception was Quebec, where extreme conservatism and the influence of the Roman Catholic Church still held sway in social, political and religious matters. Elsewhere in Canada, the push for women's suffrage had taken hold by the 1870s.

The first suffrage societies were established by women seeking social, economic and political equality with men. Many were professionals, often pioneers in fields such as medicine, who had encountered discrimination first-hand. (Bacchi, 433) This decade saw the founding of the Toronto Women's Literary Club by Dr. Emily Stowe, Canada's first female doctor, in 1876. The club was in fact a screen for suffrage activity and thus was the country's first suffragist organization, changing its name in 1883 to the Toronto Women's Suffrage Association.

But soon the suffrage movement took on a different cast, attracting men and women of Protestant Anglo-Saxon origins, most of whom belonged to the educated urban middle class—professionals, clergymen, a few reform-minded businessmen and their wives. (Bacchi, 433) These suffragists had a broad social reform agenda, one that embraced workplace safety, public health, child labour, prohibition of the production and sale of alcohol, prostitution, the "Canadianization" of immigrants as well as votes for women. The Women's Christian Temperance Union (WCTU), for example, became a force in the suffrage movement, convinced that if women had the vote, temperance would be assured.*

Similarly, social reformers intent on combatting the evils of industrialization and the urbanization that accompanied it—abuse of alcohol, prostitution, venereal disease, neglect of children—joined the suffrage movement with the goal of bolstering the social order with what might now be called "family values." Giving women the right to vote would double the family's representation and extend maternal influence into the political sphere.

Royal BC Museum and Archives, Image B-06786

Sisters in the Struggle, 1916

British suffragette Emmeline Pankhurst was photographed in 1916 at the Edmonton home of Nellie McClung. Mrs. McClung is in the centre, wearing a striped dress; Mrs. Pankhurst is to her left. Also in the group was Emily Murphy (author, suffragist and later a judge), one of the five complainants in the 1929 "Persons Case," in which the British Privy Council determined once and for all that Canadian women were indeed "persons" and therefore eligible for appointment to the Senate.

In Quebec, the picture was different. As the suffrage movement elsewhere in Canada was taking its first steps, Quebec moved to prohibit women voting in municipal elections and to amend the Civil Code to make women legally "incapable"—of owning property, of inheriting an estate and certainly of voting. Advocates of women's rights in that province therefore focused more on gaining legal reforms and equality of opportunity in education

* The first Canadian section of the WCTU was founded by Letitia Youmans at Picton, Ontario, in 1874.

than on the vote. It was not until the 1930s that the focus shifted to women's suffrage. Also apparent was the influence of conservative clergy and nationalists who objected to the Anglo-Saxon origins of the suffrage movement.

In the 1880s, debate about women's suffrage became linked with provincial autonomy issues. Until 1885, under the terms of the *Constitution Act, 1867*, which provided that existing provincial election laws would continue until Parliament decided otherwise, the provinces determined who was eligible to vote in federal elections. Prime Minister John A. Macdonald changed that with the *Electoral Franchise Act* of 1885, which consolidated control of the franchise at the federal level. As mentioned earlier, Macdonald even included a clause giving propertied widows and single women the right to vote, though he later withdrew it: apparently it had been a sacrificial lamb never intended to remain in the final version of the law. Sir Wilfrid Laurier's Liberal government returned the federal franchise to provincial control with a new electoral law in 1898. The focus of suffragist activity therefore shifted to provincial governments and legislatures, where it remained for the next two decades.

By the end of the 19th century, then, the women's suffrage movement was well under way, with organizations active in the western provinces, Ontario and the Maritimes. The municipal franchise was extended gradually; by 1900, most women property owners across the country could vote in municipal elections.

In addition, bills to give women the right to vote had been introduced in New Brunswick, Nova Scotia, Ontario and British Columbia, though none was successful. Between 1885 and 1893, and again between 1905 and 1916, a bill introduced annually in the Ontario legislature to give women the right to vote provoked laughter and derision. Bills were also introduced in the New Brunswick legislature in 1886, 1894, 1895, 1897, 1899 and 1909; all were defeated (some by only a narrow margin) or allowed to die on the Order Paper. Women presenting petitions at the time the 1909 bill was introduced were greeted by insults, whistles and jeers from members of the legislative assembly in the corridors, who asked the sergeant-at-arms to ring the division bells until the women left the building.

To counter these attitudes, Canada's suffragists relied on petitions to provincial governments—sometimes containing as many as 100,000 names; on lecture tours and speaking engagements; on meetings with politicians; and on public meetings and events, such as mock parliaments. The confrontational tactics adopted by British and American campaigners for women's suffrage had no counterpart in Canada.

The suffragists were well organized, willing to buck social convention and skillful at enlisting the help of influential organizations, particularly in the West, where they gained the support of the United Farmers' Association of Alberta and the Grain Growers Association. As has been the case with other social issues in Canada, the Western provinces led the way in enfranchising women. Manitoba was the first, extending the provincial franchise to women in January 1916. Saskatchewan and Alberta followed suit in March and April respectively. The next year, 1917, Ontario women got the vote in February and British Columbia women in April. Also that year, Louise McKinney of Alberta, a temperance and women's rights advocate, became the first woman elected to a Canadian legislature.

This broadening of the provincial franchise, coupled with extension of the franchise to propertied women in municipal elections, created pressure for change at the federal level. But the immediate impetus was political, and women's first access to the federal franchise was almost accidental. On the eve of the 1917 general election, the government of Sir Robert Borden faced a complicated situation: women in all provinces from British Columbia to Ontario had the vote by virtue of provincial electoral law; women living east of the Ontario/Quebec border did not. Without some standardization of the franchise, ridings in Ontario and the West would have twice as many electors as those in Quebec and the Maritimes.

Foote and James, Archives of Manitoba, Events 173, PR1967-43

Votes for Men!

Women's suffrage groups often staged public events to advocate their cause. In January 1914, a play written by Nellie McClung was staged in Winnipeg, featuring women in the role of legislators listening to a group of men petitioning for the vote. Playing the role of provincial premier, McClung rejected the idea, declaring that "Man is made for something higher and better than voting. Men were made to support families. What is a home without a bank account!" McClung mimicked Premier Sir Rodmond Roblin so well that the audience often roared with laughter.
Chronicle of Canada, 557

The temporary solution that presented itself had less to do with women's rights than with the pressing political issue facing Borden's government: conscription. As described earlier in this chapter, Parliament extended the franchise through two new laws in a transparent effort to expand the pro-conscription ranks. The *Military Voters Act*, intended to enfranchise soldiers under the age of 21, inadvertently benefited women as well, so that the Bluebirds—military nurses serving in the war effort—became the first Canadian women to exercise the right to vote in a federal election.

The second law, the *Wartime Elections Act*, gave the vote to close female relatives of people serving in the armed forces (swelling the electoral lists by some 500,000 names), but it also effectively withdrew the vote from women who would otherwise have had it by virtue of provincial law but did not have a relative in the armed forces. This situation would not be tolerated for long.

The following year, Borden's re-elected government moved to correct the situation, introducing a bill to provide for universal female suffrage on March 21, 1918. Again, the bill was not universally welcomed. MP Jean-Joseph Denis declared, "I say that the Holy Scripture, theology, ancient philosophy, Christian philosophy, history, anatomy, physiology, political economy, and feminine psychology all seem to indicate that the place of women in this world is not amid the strife of the political arena, but in her home." (*Debates*, April 11, 1918; 643) Facing strong opposition, Borden compromised by stipulating in the bill that women electors would have to meet the same requirements as men—for example, property requirements where they existed. The compromise worked, and the *Act to confer the Electoral Franchise upon Women* received royal assent on May 24, 1918. A 1919 law gave women the right to be candidates in federal elections.

William Rider-Rider, Canada Department of National Defence, Library and Archives Canada, PA-002279

Bluebirds at the Ballot Box, 1917

These Canadian military nurses (the "Bluebirds"), photographed at a polling station set up at a Canadian field hospital in France in December 1917, were among the first Canadian women to vote in a federal election.

Women's suffrage was "in the tide," as Nellie McClung told Alberta legislators in 1915. The "fresh wind" of change felt by McClung would sweep across the land. Women gained the provincial franchise in Nova Scotia in 1918, New Brunswick in 1919, Prince Edward Island in 1922 and Quebec in 1940.

At the federal level, the *Dominion Elections Act* of 1920 provided access to the vote without reference to property ownership or gender—age and citizenship remained the only criteria. Provincial control of the federal franchise was now a thing of the past. The general election of 1921 was the first in which nearly all Canadian men and women over the age of 21 could vote. Agnes Macphail won a seat at that election and became the first female member of Parliament.

The Grey Roots Archival Collection

Agnes Macphail

Canadian women won the right to stand as a candidate for the House of Commons in 1919. In 1921, Agnes Macphail was the first woman elected to the Canadian Parliament.

CHAPTER 3

1920–1981

MODERNIZATION

Elections Canada

We have seen how the right to vote expanded gradually until the First World War and then how the electorate doubled when women gained the franchise. By 1920, with the removal of disqualifications based on gender or the ownership of property, nearly all adults had the right to vote. Nevertheless, many individuals were still disenfranchised for administrative reasons, and some groups were disqualified on racial, religious or economic grounds. That year, the establishment of the office of Chief Electoral Officer began the tradition of an independent, non-partisan agency administering the electoral process—one of the first such agencies in the world.

At the beginning of the period covered in this chapter, few special measures were in place to protect the right to vote by facilitating voting or encouraging those who had the franchise to exercise it. The conventional procedure for casting a ballot—an elector appearing in person at the polling station on the day set for the election—was the only available option. Citizens were presumed to

- be present in the riding on the appointed day
- have the time needed to get to a polling station and vote
- hold employment that did not interfere with voting
- have no characteristics—such as a disability or a language problem—that might pose an obstacle to voting

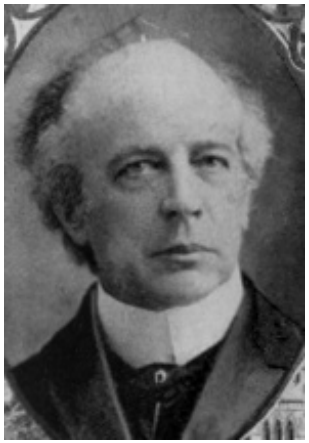
By 1981, these assumptions were recognized as faulty and no longer held sway in electoral law and administration.

Pierre Gaudard, National Gallery of Canada, NFB Collection

Decision Day, 1963

A Toronto voter looks on as the deputy returning officer places the voter's ballot in the ballot box. It was not until 30 years later, when the electoral law was amended by Bill C-114, that voters were entitled to place their own ballots in the ballot box.

This chapter traces how the law and election administration have been shaped and reshaped to accommodate the broad diversity that characterizes the Canadian electorate. Legislative and administrative innovations made voting more accessible and convenient, modernized the election machinery, reformed the regulation of political parties and campaign finances and the process for setting new constituency boundaries, and removed racial and religious disqualifications.



Library and Archives Canada

Prophetic Pronouncement, 1917

Sir Wilfrid Laurier feared the effects of the 1917 election on French–English relations and opposed some of the changes in electoral law that preceded it, but he remained opposition leader after the votes were counted. This image is from a postcard used in Laurier's 1911 campaign.

William Topley, Library and Archives Canada, PA-027012

A New Era Dawns, 1920

Despite criticism of his 1917 election tactics, Sir Robert Borden, Prime Minister from 1911 to 1920, is credited with ushering in the modern era of electoral law with passage of the Dominion Elections Act*, predecessor of today's* Canada Elections Act.

As we learned in Chapter 2, Sir Wilfrid Laurier feared the *Wartime Elections Act* would open an abyss that might not close for generations. He was referring to a clash between Canadians of French and British origin, but in the years immediately after the First World War, it seemed that the hysteria of 1917 might extend to other groups as well. Anti German sentiment, for example, did not fade entirely with the end of the war. During social disturbances such as the Winnipeg General Strike of 1919, anti alien feelings were widely expressed. In the 1920s, hostility to racial and religious minorities swept across North America, and these feelings were exacerbated by the Great Depression of the 1930s and the Second World War, and only dissipated in the post-war period. One way this hostility was expressed was in exclusionary electoral laws.

But not all developments in the franchise were negative. The *Wartime Elections Act* governed just one election, that of 1917, and was replaced under Borden's Conservative government by the *Dominion Elections Act* of 1920.* The Act established the office of Chief Electoral Officer and named Oliver Mowat Biggar, a retired army colonel, as the first incumbent. After he resigned in 1927, the current mechanism of appointing the Chief Electoral Officer through a resolution of the House of Commons was adopted, thus isolating the incumbent from political pressures.

The new act gave the Chief Electoral Officer the status of a deputy minister and the tenure of a judge of the Supreme Court of Canada, which at that time was for life. In 1927, a mandatory retirement age of 75 years was set for judges of the Supreme Court and, by extension, for the Chief Electoral Officer. In 1948, the *Dominion Elections Act* was amended to provide for the compulsory retirement of the Chief Electoral Officer at age 65.

* The title was changed to the *Canada Elections Act* in 1951.

CHIEF ELECTORAL OFFICERS AND THEIR TIMES

Just seven people have held the position of Chief Electoral Officer since it was established in 1920.

Oliver Mowat Biggar
(1920–1927)

the first Chief Electoral Officer, oversaw the development of federal election administration under the new law. It was his task to implement a system that centralized financial and organizational aspects of federal elections for the first time. Under him, reforms were begun to improve the accuracy and completeness of federal voters lists and to make advance polling more widely accessible.

Jules Castonguay
(1927–1949)

launched the first attempt to establish a permanent list of electors. The last vestige of property qualification was eliminated during his tenure. He was responsible for introducing, in 1935, the short-lived innovation of sending a postcard telling each registered elector where to vote. Dropped in 1938, the postcard was reintroduced in 1982, when technological advances made the practice more cost-effective. During his term of office, a system was introduced that allowed Canadian military personnel serving overseas to vote.

Nelson Jules Castonguay
(1949–1966)

oversaw the end of religious discrimination in the law, the extension of the franchise to all "registered Indians" and the introduction of the *Electoral Boundaries Readjustment Act*. During his tenure, special arrangements were made for electors in sanatoriums, chronic care hospitals and homes for seniors. Voting by postal ballot became available to spouses of military personnel posted abroad, and the right to vote in advance polls was made available to everyone who would be away from home on election day.

Jean-Marc Hamel
(1966–1990)

implemented many changes in election law and administration, including the registration of political parties, the establishment of an election financing regime controlled by the 1974 *Election Expenses Act* and the creation of the position of Commissioner of Election Expenses, which in 1977 became the Commissioner of Canada Elections. After 1982, Jean-Marc Hamel oversaw the implementation of amendments arising from legal challenges to the *Canadian Charter of Rights and Freedoms*. During his term in office, the voting age was lowered from 21 to 18 years, and measures to increase the accessibility of the vote for electors with disabilities were put into place.

Jean-Pierre Kingsley
(1990–2007)

continued the reforms needed to comply with the Charter and ushered Elections Canada into the age of computerized election administration. He implemented Elections Canada's new mandate to inform and educate voters, particularly those most likely to experience difficulties in exercising their democratic rights. His tenure also saw the introduction of the 36-day election calendar and digitized electoral geography systems and products, and the establishment of the National Register of Electors. As well, the election financing regime was expanded to regulate third-party advertising and election financing of all political entities. During Jean-Pierre Kingsley's tenure, Elections Canada participated in many significant international development missions aimed at promoting democratic electoral processes. Following his recommendations to Parliament, the *Canada Elections Act* was amended in 2006 to authorize the Chief Electoral Officer to appoint returning officers.

Marc Mayrand
(2007–2016)

established an open and consultative approach with parliamentarians and political parties on electoral matters, particularly issues related to electors who face barriers to voting, such as electors with disabilities and youth. He launched the Advisory Group for Disability Issues to provide expertise on accessibility initiatives and identify ways to make information about the electoral process more accessible. He also created the Elections Canada Advisory Board to seek advice on the conduct of elections, electoral participation by voters and political participants, regulatory compliance and electoral reform. During Marc Mayrand's term, Parliament adopted legislation that set fixed dates for general elections, focused Elections Canada's public education and information programs on primary and secondary school students, and implemented voter identification measures at the polls. Under his leadership, the Online Voter Registration Service was introduced, as was the use of social media channels to communicate with electors.

Stéphane Perrault
(2018 to present)

served in several positions at Elections Canada before becoming Associate and then Acting Chief Electoral Officer in 2016. He was formally appointed as Chief Electoral Officer in 2018. He has set up a consultative process with political parties to bring greater transparency and engagement to resolve regulatory issues and has overseen initiatives to increase young people's interest in electoral democracy, including the creation of the Advisory Circle of Educators and the renewal of the agency's civic education program. In the lead-up to the 2019 general election, he guided the implementation of the provisions of the *Elections Modernization Act*. Under his leadership, Elections Canada has also worked with government security agencies to address growing threats to electoral security, such as cyberattacks and disinformation.

During debate on the Act, there was opposition to lifetime tenure. J. A. Currie, the MP for Simcoe North, said, "You are only setting up a form of Prussianism when you are appointing officers for life." Other MPs also questioned the value of the office. But many would have agreed with Norman Ward's assessment: "a most salutary reform." (Ward, 181)

As first Chief Electoral Officer, Colonel Biggar presided over what could have been the most chaotic election in years. No fewer than 75,000 newly minted election officials were appointed to supervise a completely redesigned process serving an electorate that, including women, was more than double the number of those eligible to vote before 1917. Despite these innovations, Biggar recounted in his statutory report that the problems involved in the election process itself were comparatively small, given the large number of people involved.

An important job of the Chief Electoral Officer was, and still is, to prepare a report after each election. The report, required under the *Canada Elections Act*, gives the Chief Electoral Officer a regular opportunity to assess how the electoral law is working and to suggest reforms to Parliament. Many of these have concerned access to the vote—how to ensure that electors can exercise their franchise. The post-election reports have had positive effects on the electoral process, as Parliament has adopted many of the Chief Electoral Officers' recommendations.

In his report after the 1921 election, for example, Colonel Biggar recounted the difficulties of electors—particularly women—who had been left off voters lists. He suggested the appointment of more revision officers and advised making more advance polls available. Parliament responded by reducing the number of voters needed for setting up an advance poll from 50 to 15.

Similarly, after the 1925 election, Colonel Biggar pointed out that with the election being held on a Thursday, the advance voting provisions had been of little use to commercial travellers: they were already out on the road when the advance polls opened for the three days preceding the election. In 1929, the law was changed to establish Monday as election day.

THE *DOMINION ELECTIONS ACT* OF 1920

Parliament's overhaul of the electoral law in 1920 not only established the office of Chief Electoral Officer but also centralized the financial and logistical operations of federal election administration for the first time. It was a comprehensive revision of the election law, yet flaws remained in the system.


PROCLAMATION

MONDAY LUNDI

Library and Archives Canada, Office of the Chief Electoral Officer fonds

Never on Sunday

Since 1929, the law has specified that elections are to be held on a Monday unless that day is a federal or provincial holiday, in which case voters cast their ballots on Tuesday. Election proclamations have followed a similar format for the past 200 years. This 1988 proclamation is for Nunatsiaq, which was then Canada's largest riding in terms of area (a distinction held by Nunavut since 1993) and its smallest in population.

The most serious deficiencies were the continuing obstacles to voting for some female electors; exclusion from the franchise of specific groups for racial, religious or economic reasons; disqualifications for judges, prisoners, expatriates and people with mental disabilities; and administrative disenfranchisement of individual voters. One hundred years after the passage of the revised electoral law, efforts continue to be made to increase accessibility, fairness and transparency to safeguard democratic values.

VOTERS LISTS

As was the case before 1920, the new law provided for elections to be conducted on the basis of lists of electors; in urban areas, the lists to be used were provincial lists compiled previously, but in rural areas, an enumeration would be conducted. These lists proved contentious, not only in their compilation, but also in what they contained and how they were published. The most serious problem—placing the names of eligible women on the electoral rolls—was solved by 1929, but methods of preparation, revision and publication continued to be debated and modified over the years.

The reason for the distinction between "rural" and "urban" polling divisions and the two different methods of compiling and revising voters lists was concern about the completeness and accuracy of existing voters lists in rural areas. This fear was borne out in the 1921 election, when lists from rural Ontario proved virtually useless.

The law, therefore, stipulated that in rural polling divisions (places with a population of less than 1,000), lists were to be "open." People would be enumerated by specially appointed "registrars" in a door to door canvass. Voters missed by the enumeration could be sworn in on election day, as long as another voter named on the list vouched for them.

But in urban polling divisions, voters left off a provincial list had to apply to a registrar—a person appointed by the returning officer to register people on the voting list. One was available in each constituency for 10 hours a day for 6 days. After this time, urban lists were "closed" until the next election. The argument used to justify this difference in treatment was that rural areas were harder to canvass, so election day swearing-in was needed to protect the franchise of rural voters. There was also an assumption that in rural areas, people were more likely to know each other than in urban areas. It was not until 1993, when Bill C-114 eliminated the distinction between urban and rural polling divisions, that urban voters had access to this provision.

The urban/rural distinction appears to have been a significant impediment to the exercise of the franchise for many electors. Some constituencies included both rural and urban polling divisions, and voters did not always know which type of polling division they lived in—which meant that they might not take the steps necessary to have their names added to the list. To add to electors' confusion, a few months before the 1921 election, the definition of "rural" polling divisions was changed. Now towns with a population of less than 2,500 were considered "rural." (This population figure was later revised several times.)

But the most serious impact that became apparent in the 1921 election was that large numbers of women seemed to have been prevented from voting, despite the removal of legal restrictions in 1917–1918.

In Quebec, for example, women did not have the vote in provincial elections until 1940. (Indeed, Alexandre Taschereau asserted that they would never get it so long as he was premier—which he was until 1936.) Until 1929, provincial lists were used in rural areas; because women's names did not appear on those lists, they tended to be disfranchised. The only way women in rural areas could register was to swear an oath on election day.

The results are apparent in the figures for elector registration. In Ontario, 99.7 percent of the population aged 21 or older was registered; the comparable figure in Quebec was 90.6 percent. The 9 percentage-point difference was the equivalent of 107,259 people. As there were 581,865 women aged 21 or over in Quebec in 1921, it seems likely that the vast majority of unregistered people were women who were thus unable to exercise the federal franchise.

In 1929, the Act was amended to abolish the use of provincial voters lists, making it much easier for Quebec women to be registered on federal voters lists, even though they did not gain the provincial franchise until 1940.

These changes did not come without protest. The Conservative leader, Arthur Meighen, felt that allowing swearing in on election day in towns of 2,500 could lead to fraud. Charles G. ("Chubby") Power, a Liberal member of Parliament, agreed, saying that some people might show their patriotism "through their willingness to vote more often than the law considers judicious." (*Debates*, June 19, 1925; 4548) Despite these warnings, there appears to have been little such "patriotism" in the ensuing decades.

Beginning with the election of 1930 and until the 1990s, most federal elections were conducted using lists assembled by enumerators during the election period. For most of this period, urban enumerators worked in pairs; in rural areas, there was only one enumerator per polling division. In urban areas, enumerators were appointed from lists of names submitted to each returning officer by the parties of the candidates placing first and second in the electoral district in the previous election.

Once lists were compiled through enumeration, voters—particularly in urban polling divisions—had to make sure that their names appeared if they wanted to be able to cast a ballot. A few copies of the pertinent list were posted in every polling division so voters could check on the accuracy of the enumeration. In his 1926 report, Colonel Biggar stated that the lists had been drawn up in haste, that publicly posted lists were subject to damage by weather and vandals, and that many people felt they had been left off "on party grounds." Since revising officers were normally partisan appointees, simple mistakes were often attributed to bad faith. Biggar suggested that there should be wider access to the lists so people could check their accuracy more easily.

Privacy Matters

The location of polling stations was clearly posted for all to see during the 1963 general election. The same practice applied to voters lists until 1982, when concerns about privacy prompted its abandonment, to be replaced by a voter notification system based on postcards sent to everyone who had been enumerated. Since 1997, however, preliminary voters lists have been compiled from the National Register of Electors, following the 1996 amendment to the Canada Elections Act.

Pierre Gaudard, National Gallery of Canada, NFB Collection, no 63-3289

The Election "Telegram"

Despite steady improvement in electoral law, the "telegram," a form of electoral fraud well known in the 19th century, did not disappear until the middle of the 20th century. Campaign organizers "sent a telegram" by giving a voter an illegally obtained ballot already marked in favour of the organizer's candidate. Inside the booth, the voter concealed the blank ballot received from the deputy returning officer, then emerged with the pre-marked ballot, which was placed in the ballot box. Presenting the blank ballot would garner a "reward" from the organizer, who would then mark the ballot and repeat the process with another voter. Since the reward was received only after the ballot was cast, a voter could swear with impunity before entering the booth that he had received neither money nor other inducements. This fraudulent practice was finally laid to rest with the introduction of administrative controls.

Jules Castonguay, the second Chief Electoral Officer, took up the issue again after the 1930 election, reporting that there was no easy way for voters to protect their right to vote by ensuring they were on the voters list. He suggested that every household receive a copy of the list for the relevant polling division. This recommendation was adopted—eventually—after a different method was tried in 1934.

Milne Studios, Library and Archives Canada, C-029452

Too Young to Vote, 1942

The rules governing eligibility to vote in federal elections also apply to federal referendums. Here, the Rooney Club of Toronto uses a dog cart to promote a "Yes" vote in the plebiscite on conscription for overseas military service, held on April 27, 1942. The other national referendums were on prohibition (1898) and the Charlottetown Accord (1992). In 1992, Parliament adopted the Referendum Act *to govern the conduct of consultative referendums on the Constitution.*

The 1934 innovation was to send each registered elector a postcard showing where to vote. The Chief Electoral Officer's report described this as "quite onerous," because each card had to be addressed individually. The postcards were dropped after this election, and from the 1940 election until 1982 (when postcards were reintroduced), voters were sent a copy of the list showing the name, address and occupation of all voters in the relevant polling division.

Len Norris, Library and Archives Canada, C-1333444

The Enumerator's Challenge, 1965

"But Rodney, are you sure the Geneva Convention requiring you to give only your name, address and social security number applies?" As this cartoon by The Vancouver Sun*'s Len Norris suggests, the enumerator does not always get co-operation. With the advent of the National Register of Electors in the spring of 1997, enumeration is now a thing of the past.*

The Conservative government of R. B. Bennett also introduced a standing list of electors (a form of permanent voters list) in 1934. It established the office of Dominion Franchise Commissioner; the registration of electors became regulated under the *Dominion Franchise Act*. There was to be a final enumeration, and constituency registrars would revise the lists annually after that. All voters lists, both rural and urban, would be "closed"—anyone left off inadvertently would have to apply to be put on and could not vote until that was done.

One annual revision was undertaken, and the list was used for the election of 1935, but financial constraints prevented revision of the electoral register after that. The technology of the day was insufficient to overcome the logistical obstacles, so the effort was abandoned in 1938. Enumeration was restored as the method of compiling lists.

MPs who had experienced Bennett's electoral register system saw it as far too expensive and cumbersome, and even the Chief Electoral Officer, whose reports were normally circumspect, said that it was no improvement on the pre election enumeration system. Jules Castonguay observed that the updated elections act had not worked effectively. Sending individually addressed postcards to notify electors was costly and time-consuming, he said. The government adopted his suggestion of sending a poll list to each voter, and the idea of a permanent list did not resurface until the 1980s.

ACCESS TO THE VOTE

A significant innovation of the 1920 elections act was the provision for voting in advance of election day by specified groups of voters: commercial travellers, railwaymen and sailors could vote during the three days (excluding Sundays) preceding an election.

Although most people would consider advance voting a positive step, the provision was controversial from the first. A former minister of finance, W. S. Fielding, saw it as a waste of money; it was, he said, "like creating a steam engine to run a canoe" for a mere handful of voters. Fielding maintained that railwaymen and others should cast their votes by proxy. This would interfere with the secrecy of the ballot, he conceded, but most men, at least

in his home province of Nova Scotia, made no secret of how they voted, so the loss of secrecy did not matter much. (*Debates*, April 13, 1920; 1163)

This grudging attitude toward advance voting endured for decades. In 1934, it was extended to workers in "airships" (as aircraft were described in the law until 1960), to members of the armed forces and the Royal Canadian Mounted Police and to fishermen—although MPs pointed out that fishermen were unlikely to be in port for the brief advance polling period if it occurred during fishing season.

The advance polls were available only to voters who expected to be absent from the riding on business on election day; they had to swear to this and obtain a certificate. It was thus no easy matter to vote at an advance poll, even if a voter was among the lucky few who qualified.

Another step that improved access to the vote was legislation increasing worker entitlement to time off for voting. The measure was first introduced in 1915, when employers were required to allow workers to absent themselves from work for an hour to vote (in addition to their lunch hour). In 1920, this was increased to two hours. The number of consecutive hours was increased to three in 1948 and to four in 1970.

During the interwar years, the only new group to obtain the vote consisted of people receiving public charitable support or care in municipal poorhouses (who had not been enumerated in the past because they lacked a "home" address). They received the franchise in 1929. On the whole, the two decades after the First World War were marked by modest but steady improvements in the conditions under which electors exercised the right to vote.

THE SECOND WORLD WAR AND ITS AFTERMATH

The next stage in the evolution of the franchise saw the lifting of racial and religious restrictions on voting, some of which had been in effect for many years. It was also a period of innovation in the accessibility of the vote, with legislative and administrative changes to facilitate voting and make it more convenient for electors.

The interval between the world wars saw the spread of antagonism toward minority groups in Canada. A degree of mistrust or suspicion of "aliens" had persisted since the First World War. As is common in periods of economic distress, this grew into hostility toward minorities during the Great Depression of the 1930s, exacerbating the social conflicts arising from competition for scarce jobs and societal resources. Finally, the crisis of the Second World War provoked further racial animosity, particularly toward Canadians of Japanese origin.

One result of these powerful social currents was the continued disqualification of particular groups on racial or religious grounds. Many ordinary Canadians seemed to accept these developments as a fact of life. To their credit, some MPs from all parties opposed racism and social injustice in impassioned speeches in the House of Commons. But in the pervasive climate of intolerance, especially in the 1930s, their voices did not prevail.

When the Second World War was over, Canadians seemed to realize that they had mistreated minority groups, and disenfranchisements of earlier years began to be reversed. By 1960, when all "Status Indians"—people registered as an

"Indian" under the *Indian Act*—were finally granted the unconditional right to vote, disqualifications on racial and religious grounds had been eliminated altogether. At the same time, legislative and administrative change was making it possible for more and more Canadians to exercise their right to vote in various ways.

Library and Archives Canada, PA-103542

Japanese Canadians

In addition to being registered and interned during the Second World War, citizens of Japanese origin living in British Columbia had been excluded from voting by the Dominion Elections Act *of 1920. This internment identification card, belonging to Sutekichi Miyagawa, was presented to the National Archives of Canada in 1975 along with a collection of related items.*

RACIAL EXCLUSIONS

One of the significant exceptions to universal adult suffrage in the *Dominion Elections Act* of 1920 was a clause stating that people disenfranchised by a province "for reasons of race" would also be excluded from the federal franchise. In 1920, only one province—British Columbia—discriminated against large numbers of potential voters on the basis of race. British Columbia excluded people of Japanese and Chinese origin, as well as "Hindus"—a description applied to anyone from the Indian subcontinent who was not of Anglo-Saxon origin, regardless of whether their religious affiliation was Hindu, Muslim, Sikh or any other. Saskatchewan also disenfranchised people of Chinese origin, although the number of persons affected by the exclusion was much smaller than that in British Columbia.

British Columbia had a long history of such discrimination: when it entered Confederation in 1871, it is estimated that at least two thirds of the province's population was of First Nations or Chinese origin. Under successive provincial governments, measures excluding First Nations people and people of Asian ancestry from the franchise were extended as immigration increased toward the end of the 19th century.

The exclusion was challenged in the *Homma* case of 1900, but in 1903, the Judicial Committee of the Privy Council in the United Kingdom (at that time the ultimate court of appeal for Canada) upheld the prerogative of the British Columbia legislature to decide who could vote in provincial elections.

Denial of the franchise had far-reaching implications, because provincial law also required that pharmacists, lawyers, and provincial and municipal civil servants be

registered on the voters lists. As a result, Canadians of Japanese and Chinese origin were barred from these professions and from contracting with local governments, which had the same requirement.

Even military service was not enough to qualify people of Asian ancestry for the vote. After the First World War, the British Columbia legislature decided, following much debate, not to give the vote to returning veterans of Japanese origin, much less to other Japanese Canadians. Some had voted in the 1917 federal election: under the terms of the *Military Voters Act*, provincial disqualification had not deprived them of the federal vote. In the debate on the 1920 elections act, however, Hugh Guthrie, the solicitor general of the day, made clear his objection to enfranchisement:

> *So far as I know, citizenship in no country carries with it the right to vote. The right to vote is a conferred right in every case … This Parliament says upon what terms men shall vote … No Oriental, whether he be Hindu, Japanese or Chinese, acquires the right to vote simply by the fact of citizenship …*
>
> – Debates, *April 29, 1920; 1821*

Guthrie maintained that his government was not discriminating but merely recognizing "the provincial disqualification imposed by the law of any province by reason of race."

In 1936, a delegation of Japanese Canadians asked the House of Commons to extend the franchise to them. Prime Minister William Lyon Mackenzie King said that he had been unaware that they wanted the franchise. A. W. Neill, the Independent MP for Comox–Alberni, British Columbia, an area with a significant Japanese Canadian population, said the request for the franchise was "sob stuff" and "claptrap." Another member for British Columbia, Thomas Reid, suggested that the whole affair was a plot to enable the Japanese government to plant spies in British Columbia. Needless to say, given such views, the franchise was not extended.

The war years and the bombing of Pearl Harbor brought expulsions and internment for Canadians of Japanese origin. In 1944, Parliament amended the *Dominion Elections Act* to deny the vote to the Japanese Canadians forced to leave British Columbia and relocate in provinces where they had not previously been disqualified from voting. Extending British Columbia's racially based disenfranchisement laws to the rest of Canada provoked considerable reaction from MPs representing other provinces.

The Co-operative Commonwealth Federation member for Cape Breton South, Clarence Gillis, said:

> *While we know that the war with Japan is a serious matter and that many atrocities have been committed by the people of that country, there is no reason why we should try to duplicate the performances of that country.*
>
> – Debates, *July 17, 1944; 4912*

Arthur Roebuck, the Liberal MP for Toronto–Trinity, said that he

> *could not face the minority groups in my own city—the Ukrainians, the Poles, yes the Italians, and many others—if I allowed this occasion to pass without making myself absolutely clear before this House and the country that, when it comes to racial discrimination against anybody, count me out.*
>
> – Debates, *July 17, 1944; 4926*

Not all members were of like mind, however. Independent MP A. W. Neill supported the disenfranchisement, stating that, "This is a white man's country, and we want it left a white man's country." (*Debates*, July 17, 1944; 4935)

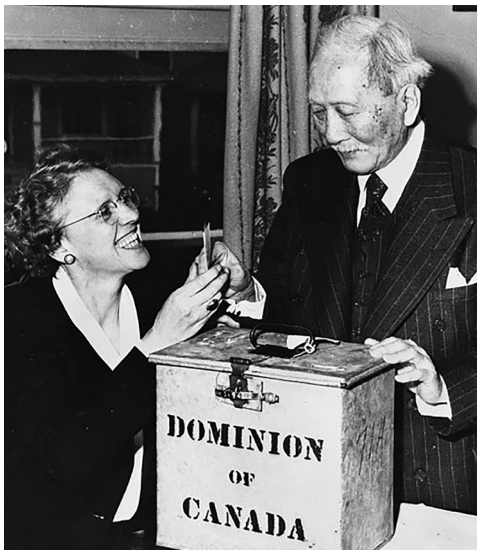
Prime Minister King denied that the policy was racist: a Japanese Canadian who had lived in Alberta before 1938 would not lose his vote, he argued, only a Japanese Canadian who moved there from British Columbia after 1938. The evacuees were "still citizens of British Columbia," he said, and subject to its laws even though they no longer lived in the province. (*Debates*, July 17, 1944; 4912–4937)

Isami (Sam) Okamoto Collection, Nikkei National Museum, 2000.14.1.1.1

Seeking the right to vote

In 1936, this delegation representing the Japanese Canadian Citizens League travelled to the House of Commons in Ottawa to request the right to vote.

After the Second World War, the most virulently anti-Japanese MPs lost their seats to more moderate members, and public opinion began to shift as well. Voting restrictions on Japanese Canadians continued until 1948, when Parliament deleted the reference to discrimination in the franchise on the basis of race. The discussion was brief, occupying just one column in the House of Commons debates for June 15, 1948. This particular form of racism in Canadian electoral law now belonged to history, although First Nations people would not be enfranchised for more than a decade.



Voting for the First Time
Won Alexander Cumyow, the first Chinese Canadian born in Canada, votes for the first time in the 1949 federal election at the age of 88. Most racial barriers were removed the previous year, and Chinese Canadians were no longer barred from voting.

University of British Columbia Libraries Special Collections, Won Alexander Cumyow fonds. BC 1848, 9

RELIGIOUS EXCLUSIONS

Several religious groups were disenfranchised by the *Wartime Elections Act* of 1917, mainly because they opposed military service. Most prominent among them were the Mennonites and the Doukhobors. This disenfranchisement ended with the end of the First World War, but the treatment later accorded the two pacifist groups in the development of the franchise varied enormously.

Mennonites migrating to Canada in the 1870s had been given an exemption from military service by an Order in Council dated March 3, 1873, but they lost the franchise during the First World War because they spoke an "enemy language" (German). They regained the vote when the *Dominion Elections Act* of 1920 superseded the *Wartime Elections Act*.

The Mennonites attracted relatively little anti-alien hostility, as their way of life allowed them to blend into the farming communities where they lived. By contrast, the Hutterites and the Doukhobors aroused more animosity, not so much because of their pacifist beliefs, but because they practised communal farming. The Hutterites had migrated to Canada from the United States in 1918 to avoid conscription. Although they sparked some opposition locally where they settled, generally they attracted little notice, and they rarely voted.

The Doukhobors were another matter. In 1917, and again from 1934 to 1955 (when the ban on voting by conscientious objectors was lifted), Doukhobors lost the federal franchise, ostensibly because their faith forbade them to bear arms.

The debates in the House of Commons showed clearly, however, that the MPs who opposed giving Doukhobors the vote were less concerned about military service than about the Doukhobors' social views and behaviour.

Mennonite Historical Society of Saskatchewan

Conscientious Objectors

Mennonites and other religious groups whose faith forbade them from bearing arms lost the right to vote under the Wartime Elections Act *of 1917. While Mennonites regained the right to vote in 1920, other religious groups, such as the Doukhobors, were excluded until the ban on voting by conscientious objectors was lifted in 1955.*

Debate on the 1934 *Dominion Elections Act* in particular revealed the intolerant views of some British Columbia MPs, in contrast with more widespread support for freedom of religion from MPs of other provinces.

W. J. Esling, the Conservative member for Kootenay West, stated that if MPs from other provinces had been in his constituency, they "would all have been quite willing to disenfranchise this religious sect."

Another Conservative MP, Grote Stirling, soon to be minister of national defence, said the Doukhobors behaved "with disgusting indecency." In particular, he resented the fact that they "voted Liberal *en bloc*," on the orders of their leader. Independent MP A. W. Neill said that only "sickly sentimental" MPs wanted Doukhobors to have the franchise.

One of the MPs who did support the Doukhobors was J. S. Woodsworth, leader of the Co-operative Commonwealth Federation. He praised the Doukhobors for their industriousness and protested against "religious tenets being made the basis for disfranchisement." Woodsworth and a number of Liberal MPs participating in the debate pointed out that the Doukhobors could hardly become good citizens if they and their descendants were disenfranchised.

Debating further revisions to the elections act in 1938, Esling, Stirling and Neill again opposed giving Doukhobors the vote. T. C. Love, provincial member for the region of British Columbia where the largest number of Doukhobors lived, claimed that giving them the vote would be the "end of true democracy in the West Kootenays." (*Vancouver Province*, April 7, 1938) The Doukhobors remained disenfranchised.

After the Second World War, as part of the general easing of racial and religious discrimination, racial disqualifications from the franchise were gradually dropped. In 1955, the last vestige of discrimination against a religious group in Canadian electoral law was repealed.

INDIGENOUS PEOPLES AND THE FRANCHISE

Indigenous peoples in Canada consist of First Nations, Inuit and Métis communities. Each has its own history and experience of the franchise.

First Nations people in most parts of Canada had the right to vote from Confederation on, but only if they gave up their status through a process defined in the *Indian Act* and known as "enfranchisement." Understandably, very few were willing to do this. It is worth noting that this requirement to give up status was not imposed on them if they joined the military. In fact, the franchise was extended to members of the First Nations who served in the world wars—although until 1924, any First World War veterans who returned to their reserves lost the right to vote. A great many First Nations people also served with distinction in the Canadian Forces during the Second World War; this was among the reasons eventually leading Canadians to conclude that all Indigenous people should have the full rights of citizenship.

Proposals to extend the franchise to First Nations date to at least 1885, when "Status Indians" in Eastern Canada who met the existing requirements gained the right to vote. This was revoked in 1898, and in general such proposals met with a great deal of hostility.

One reason for this opposition, apart from prevailing paternalistic or racist social attitudes, was the notion that First Nations people would become the dupes of non–First Nations politicians. Both Canada and the United States have a long tradition of newly enfranchised voters voting as a bloc, often as directed by their community leaders.

As these voters gained more education and became more integrated into North American society, they tended to drift away from the influence of political "bosses."

Elections Canada

Elections in the North

In 1950, Inuit regained the right to vote. During the 1953 federal election, election officials travelled to many northern communities to deliver election supplies and to provide voting services. The advent of modern communications technologies, along with changes in the law such as the special ballot for mail-in registration and voting, has made voting from northern and remote communities easier.

There was opposition to the franchise on the other side, as well. First Nations peoples had formed social groupings and elaborate systems of government well before their first contacts with Europeans. Many, therefore, looked unfavourably on 19th-century proposals for enfranchisement for at least two reasons.

First, they perceived it as an end to their recognition as distinct nations or peoples and possibly the beginning of assimilation into non–First Nations society.

Second, voting in Canadian elections would mean participating in a system of government that was alien to the traditions, conventions and practices of governance of many First Nations peoples. Furthermore, electoral participation would have been essentially redundant: they already had their own systems for choosing leaders and governing themselves.

For almost a century after the 1885 debate, there was little pressure to extend the franchise to First Nations citizens, though it was granted in 1924 to First Nations veterans of the First World War, including veterans living on reserves. With the exception of those veterans, the *Dominion Franchise Act* of 1934 explicitly disqualified First Nations persons living on reserves and Inuit from voting in federal elections.

Inuit in Canada had the vote restored to them without qualification in 1950. Among other strategies by the Canadian government to protect its sovereignty in the Arctic following the Second World War and the onset of the Cold War, it relocated individuals, families and communities into the high Arctic in the 1950s. At the same time, the government also extended the right to vote and all rights of citizenship to the Inuit. The 1952 federal election was the first in which they had the right to vote, and efforts were made to bring election supplies to isolated Inuit communities. However, it was not until the 1962 federal election that ballot boxes were finally placed in all Inuit communities in the eastern Arctic, thus permitting full exercise of the franchise. (Milen, 5)

The Métis, on the other hand, were treated as having the same rights as all other Canadians with respect to voting; thus, they never experienced any legislative impediments to the exercise of the franchise. Moreover, few Métis were covered by treaties or a federal statute like the *Indian Act*, so there was no basis on which to attempt to justify disqualifying them. In fact, in 1873 the Métis in Manitoba voted to elect Louis Riel, a Métis leader, to Parliament.

A special joint committee of the Senate and the House of Commons recommended in 1948 that First Nations people be given the vote. But it was not until John Diefenbaker became prime minister that the franchise was extended with no strings attached. Diefenbaker had long advocated extending the vote to First Nations people. In his memoirs, he described how, as a child growing up in Saskatchewan, he had met many First Nations people and had committed himself to getting them the right to vote. (Diefenbaker, 29–30) In 1958, Diefenbaker appointed James Gladstone (Akay-na-muka, or “Many Guns”) to the Senate, where he was the first member of First Nations origin.

The right to vote is one of the great privileges of democratic society, for after all it is you the people, not the Gallup poll, who determine into whose hands the guidance of public affairs may best be entrusted.

– John G. Diefenbaker, June 15, 1962

University of Saskatchewan, University Archives & Special Collections, John G. Diefenbaker fonds MG 411, JGD 3635

A Question of Rights

In 1960, First Nations people gained the right to vote at the federal level without any conditions. Before that, they were mostly excluded from voting unless they gave up their "Indian" status under the law. Prime Minister John Diefenbaker played a key role in removing voting restrictions for First Nations people.

On March 10, 1960, after a debate marked by virtually unanimous support, the House of Commons finally voted to give First Nations people the right to vote without forcing them to give up their status in exchange. In 1968, the first "Status Indian" elected to the House of Commons was Len Marchand, representing the British Columbia constituency of Kamloops–Cariboo. More First Nations people have been elected since then, though by no means in proportion to their presence in the Canadian population.

First Nations Voters

Following the extension of the vote to all First Nations people, members of the Hiawatha and Curve Lake First Nations in Central Ontario voted for the first time in a federal by-election on October 31, 1960. From left: Lawrence Salleby; Chief Ralph Loucks, deputy returning officer; Lucy Muskratt, poll clerk; Eldon Muskratt, poll constable.

Library and Archives Canada, PA-123915

First Nations women experienced a different and more complex history. Under the *Indian Act*, until 1985 a male "Status Indian" conferred status on his non-Status wife upon marriage, while a female "Status Indian" who married a "non-Indian" or a non-Status man lost her status, as did any children of the marriage. They could no longer live on reserve and lost the right to own reserve land or inherit family property, they could not receive treaty benefits or participate in band councils and political or social affairs in the community, and they lost the right to be buried in cemeteries with their ancestors.* On June 28, 1985, Parliament passed Bill C-31, *An Act to amend the Indian Act*, which, among other things, removed this form of discrimination against First Nations women.

* Persistent challenges to this unfair law began with Mary Two-Axe Earley in 1967. Others followed in her footsteps. In February 1973, the cases of Jeannette Corbiere Lavell and Yvonne Bédard, both women who lost their "Indian" status by marrying "non-Indian" men, were heard together by the Supreme Court of Canada. On August 27, 1973, the Court delivered a 5-4 majority decision that the Bill of Rights did not apply to that section of the *Indian Act*, and the legislation was upheld. A similar case was brought before the United Nations Human Rights Committee in 1977 by Sandra Lovelace, who was appointed to the Canadian Senate in 2005. In 1981, the Committee found Canada in breach of the International Covenant on Civil and Political Rights.

In each of the instances just recounted—extension of the vote to Canadians of Japanese and Chinese origin, to the Doukhobors and to Indigenous people—change was accomplished by amending the existing electoral law. Such advances in the franchise might have been trumpeted as great achievements in human and democratic rights. For instance, J. W. Pickersgill, minister of citizenship and immigration in the previous Liberal government, suggested the adoption of a special explanatory preamble to the 1960 act that gave First Nations people the right to vote without having to give up their status. But Ellen Fairclough, Canada's first female Cabinet member, who was charged with seeing the amendments through the House, said that this would be "merely gilding the lily," or in other words, unnecessary. (*Debates*, March 10, 1960; 1957) In the years since the unconditional right to vote was granted to all Indigenous peoples in Canada, many voters from First Nations, Métis and Inuit communities have recognized the importance of federal electoral participation and have exercised their right to vote.

ACCESSIBILITY AND THE ELECTORAL PROCESS

Mechanisms to ensure that electors could exercise their franchise multiplied in this period. In 1948, for example, time off from work to vote was increased to three hours. This rose to four hours in 1970, before settling back at three hours in 1996, when polling hours were extended, making the extra time off unnecessary.

A greater change in voting procedures was the postal ballot for members of the armed forces. The King government instituted the system for military personnel serving overseas during the Second World War. Following the dissolution of Parliament in 1940, the Cabinet adopted, under the *War Measures Act*, a measure that allowed soldiers to vote by mail at the election that had just been called. In 1944, this was made part of the *Dominion Elections Act*, allowing some 342,000 members of the armed forces to vote in the 1945 general election.

For the same election, proxy voting was introduced for Canadians being held as prisoners of war. Proxy votes, some 1,300 in 1945, were cast by the nearest relatives of those being held prisoner. The provision was restored in 1951 and used again during the Korean conflict, when 18 Canadians were prisoners of war. It disappeared from the statute book when the statutes of Canada were revised in 1985.

Jack Marshall, National Gallery of Canada, NFB Collection

Restricted Right

By the 1963 general election, most legal restrictions on the franchise had been removed, but a voter with a disability might still face physical barriers to the polling station.

Voting by people who were away from home on election day was accommodated by several innovative procedures in this period. In 1951, special arrangements were introduced in sanatoriums and chronic care hospitals. Voting at polling stations set up in these locations, and in homes for the elderly after 1960, would be suspended temporarily so that election officers (with permission from those in charge of the facility) could take the voting equipment from room to room, enabling anyone who was bedridden to vote if he or she wished to do so.

In addition, the military postal ballot was extended to the spouses of armed forces personnel in 1955 so that they could vote while accompanying their husbands or wives on a posting away from the home constituency.

Elections Canada

Exercising a Right

In the 1970s and 1980s, as public awareness of voters' diverse abilities and needs grew, better access for people with disabilities was achieved at many polling stations through administrative measures. But it was not until 1992 (Bill C-78) that the law was changed to require level access at polling stations.

The 1942 Conscription Plebiscite

On April 27, 1942, the second federal referendum was held. The Liberal government of Prime Minister William Lyon Mackenzie King asked Canadians if they were in favour of releasing the government from its promise not to use conscripts for overseas military service in the Second World War. Voter turnout was 71.3 percent. More than 60 percent of the voters replied "Yes," the others, "No." In Quebec, however, about 72 percent voted "No."

CONSOLIDATION AND REVIEW, 1961–1981

By 1960, then, amendments to Canada's electoral law had resulted in significant advances over the situation in 1920: racial and religious discrimination was no longer a factor in voter qualification, and no major group was deprived of the franchise deliberately or directly. The most significant changes in the law were concerned mainly with refining the electoral process—changes that affected how the process worked, rather than the extent or nature of the franchise.

Among these modifications were the regulation of political parties and campaign finance and the appointment of impartial commissions to set new constituency boundaries to reflect demographic change. Both changes had significant effects on the electoral process; from an elector's perspective, the most discernible result was probably the appearance of candidates' party affiliations on the ballot and the opportunity to make a tax-deductible political contribution.

This period also saw numerous changes undertaken to meet the varying needs of electors, including extension of advance voting provisions to all voters, adjustments to voters lists and reduction of the voting age from 21 years to 18. In addition, this was a time when the rights and concerns of people with disabilities began to gain greater public recognition, resulting in changes in their access to the polls and privacy in casting their ballots. Finally, the passage in 1969 of the *Official Languages Act* meant that voters everywhere gained the right to have access to election materials in either English or French.

REGULATION OF POLITICAL PARTIES, CANDIDATES AND CAMPAIGN FINANCE

From Confederation to the present, there has been a steady expansion of the franchise as citizens' right to vote became the cornerstone of electoral law. For this right to be meaningful, however, citizens must be able, first, to choose among competing parties and candidates and, second, to support the validity of their choice by having access to information about the activities of the contestants.

Yet the full disclosure of electoral activity required by today's standards is a strikingly recent innovation. This is due to the fact that political actors used to believe that party financing was an internal matter and that the state should not interfere with it. This mentality disappeared at the beginning of the 1960s. Scandals that surfaced in the country or abroad, such as the Watergate scandal in the United States, ushered in this shift in perspective.

As we saw in Chapter 2, during the late 1800s and early 1900s, the *Dominion Elections Act* was amended to require candidates to disclose election expenses, to make it an offence to assist a candidate in exchange for money, to ban corporations from making campaign contributions and to require donations from others to be made only through a candidate's official agent.

Starting in 1920, candidates were required to reveal the names of contributors and the amounts of their donations. In 1930, the restrictions on contributions from corporations were lifted. Until the 1970s, these changes remained the last significant amendments to the election financing provisions of the Act, despite the lingering deficiencies that would be exposed from time to time.

However, if the mid-20th century was marked by a prolonged inattention to the advancement of electoral financing provisions, after 1970 there was a flurry of legislation. It was during this period that political parties were first recognized in law—and the financial activities of political parties, candidates, third parties, and local electoral district associations alike first became regulated. Also dating from this period is the position of Commissioner of Election Expenses, later designated the Commissioner of Canada Elections.

RECOGNITION OF POLITICAL PARTIES IN LAW

Before 1970, the *Canada Elections Act* did not recognize the existence of political parties. However, this situation was examined in 1966 by the Advisory Committee to Study Curtailment of Election Expenses (known as the Barbeau Committee after its chair, Alphonse Barbeau), which contended that such legal recognition could be used to enable

- equalization in the money available to electoral candidates
- access to information by requiring disclosure of electoral financing
- wider participation in politics by the electorate through a tax credit system

The Committee considered these objectives fundamental to the development of the democratic system.

Following the Barbeau Committee's recommendations, the *Canada Elections Act* was amended in 1970 to include a process by which political parties could register and thereby receive legal recognition. This was an attractive innovation for party leaders because, by registering, a party was for the first time allowed to place its name on the ballot under that of its candidate in any electoral district. Given that candidate support is strongly influenced by party affiliation, this was an important piece of information to have on the ballot.

REGULATION OF ELECTION SPENDING

Registration became all the more significant a few years later, when, following recommendations from both the Barbeau Committee and the 1972 report from the House of Commons Special Committee on Elections Expenses (known as the Chappell Committee after its chair, Hyliard Chappell), Parliament adopted the *Election Expenses Act* in 1974. This was a significant new piece of legislation because it required political parties to limit their election spending and report the sources of their contributions, but at the same time, it made them eligible to receive reimbursements for a portion of their election expenses.

Before 1974, only the finances of candidates were regulated under electoral legislation, leaving all others free to promote the party or candidate of their choice to whatever extent they saw fit. In the opinion of the Barbeau Committee,

> *no group or bodies other than registered parties and nominated candidates [should] be permitted to purchase radio and television time, or to use paid advertising in newspapers, periodicals, or direct mailing, posters or billboards in support of, or opposition to, any party or candidate, from the date of the issuance of the election writ until the day after polling day.*
>
> *– Barbeau Committee Report 1966, 50*

Conceding that such limits might encroach somewhat on the freedom of third parties, the Barbeau Committee nonetheless concluded that without any restrictions, it would simply be impossible to limit and control election spending. The Committee's recommendation, however, extended only to expenditures aimed at directly opposing or endorsing parties or candidates during an election period. It did not support a ban of indirect expenditures (issue advocacy), believing that this would "stifle the actions of such groups in their day-to-day activities." In 1972, the Chappell Committee—while supporting the Barbeau Committee's position on direct expenditures—extended the recommendation to indirect expenditures as well.

In 1974, a Liberal minority government had a slim margin of seats over the opposition Progressive Conservatives, with the New Democratic Party holding the balance of power. It was a time when many closely related events caused concern about mushrooming election expenditures. To this were added all the ramifications of the Watergate scandal following the 1972 election in the United States. These events built up public concern about the impact of high election expenses on democracy, and they are said to have greatly influenced the adoption of the *Election Expenses Act* by Parliament in 1974. (Stanbury) This legislation established the first comprehensive set of financial rules for federal political parties.

A key innovation of the 1974 legislation was to impose limits on how much parties and candidates could spend during election campaigns. This measure was intended to prevent an upward spiral in spending and to make election contests fairer by ensuring that parties and candidates could not vastly outspend one another. This position has been upheld consistently since. For instance, the 1992 report of the Royal Commission on Electoral Reform and Party Financing (also known as the Lortie Commission after its chair, Pierre Lortie) concluded that spending limits

> *constitute a significant instrument for promoting fairness in the electoral process. They reduce the potential advantage of those with access to significant financial resources and thus help foster a reasonable balance in debate during elections. They also encourage access to the election process.*
>
> *– Royal Commission on Electoral Reform and Party Financing, 336*

The 1974 legislation also made significant advances in spending transparency, which is a key consideration for any regulatory regime governing political finance. To make informed judgments about candidates and political parties, voters must have access to information about who is contributing to these parties and in what amounts. Embracing this principle, the Election Expenses Act required candidates and political parties to disclose the names and contribution amounts of all contributors donating more than $100. (This threshold was later raised to $200 under the 2000 amendments to the *Canada Elections Act*.)

Also among the 1974 reforms were amendments to the *Broadcasting Act* (1968) that entitled registered political parties to an allotment of free and paid broadcasting time during elections. Radio and television stations were required to make available up to 6.5 hours of prime time for paid advertising or political broadcasts by registered parties during the last 4 weeks of the election campaign. (Starting in 1983, this time was allocated among parties

by the Broadcasting Arbitrator, who used a formula based on the party's popular vote and the number of seats it won in the previous election.) As well, radio and television networks were required to make free-time programming available to registered parties during network-reserved time periods—although not necessarily in prime time. Broadcasters were not required to allot air time for individual candidates, but if they did, they would trigger an obligation to offer equal time for that riding's other candidates.

Another major innovation of the 1974 *Election Expenses Act* was to reimburse candidates and political parties for a portion of the money they spent campaigning in elections. Public funding in the form of reimbursements is intended to make political office more accessible to political parties and candidates that might not have wealthy financial backers. Under the system of reimbursements instituted in 1974, candidates were the major beneficiaries of public funding. Candidates who won at least 15 percent of the vote in their electoral districts became eligible for partial reimbursement of their election expenses. In 1974, the amount of the reimbursement was based on a formula taking into account the number of electors in the district.

The 1974 act also instituted the reimbursement of certain election expenses for registered parties, compensating them for 50 percent of their total expenditures for television and radio advertising.

The final important element of the 1974 reforms was to introduce the Political Contribution Tax Credit, which allows Canadians who make a contribution to a candidate or a registered political party to claim a generous credit on their income taxes. The tax credit is a way for government to finance political parties while rewarding those parties that successfully solicit donations from Canadians.

In an effort to prevent circumvention of the spending limits for parties and candidates imposed by the 1974 *Election Expenses Act*, the legislation also established that only parties and candidates themselves would be permitted to spend money during an election period for the purpose of promoting or opposing candidates. In other words, expenditures by so-called third parties—that is, any individual or group other than a candidate or a registered political party—were expressly prohibited, except where intended to gain support for a policy stance or promote the objectives of a non-partisan group. However, the Act did offer a defence against prosecution under the new provisions if a defendant could show that such election expenses had been incurred "in good faith"—in other words, without any intent to act maliciously or take unfair advantage.

In addition, the 1974 *Election Expenses Act* established the position of Commissioner of Election Expenses to oversee compliance with and enforcement of the election expenses provisions in the *Canada Elections Act*. The position title was changed to Commissioner of Canada Elections in 1977, when these powers were extended to cover *all* provisions of the Act.

Under the 1974 *Election Expenses Act*

- Political parties and candidates were each given a limit on how much they could spend during election campaigns.
- Groups and individuals other than parties or candidates were prohibited from spending during elections to promote or oppose candidates, unless the expenditures were intended to gain support for a policy stance or to advocate the aims of a non-partisan organization.
- Both political parties and candidates were required to disclose the amount and the source of all contributions over $100.
- Registered political parties qualified for a partial reimbursement of their election expenses.
- Candidates who won at least 15 percent of the vote in their electoral districts were reimbursed a portion of their election expenses.
- Radio and television stations were required to make up to 6.5 hours of prime time available for paid advertising or political broadcasts by registered parties during the election campaign.
- Radio and television networks were required to make free-time programming periods available to registered parties.
- A maximum tax credit of $500 was available to individuals who contributed to political parties and candidates.

The Commissioner of Canada Elections

The 1974 *Election Expenses Act* established the position of Commissioner of Election Expenses. The title was changed to Commissioner of Canada Elections in 1977, when the position was made responsible for ensuring compliance with and enforcement of all provisions of the *Canada Elections Act*.

The Commissioner

- is appointed-by the Chief Electoral Officer after consultation with the Director of Public Prosecutions and can only be removed for cause
- functions independently of the government and the Chief Electoral Officer
- reviews all complaints and may begin investigations, including those of their own initiative
- may employ various compliance or enforcement measures, such as
  - issuing caution and information letters
  - entering into compliance agreements
  - accepting undertakings (formal pledges)
  - issuing notices of violation and imposing administrative monetary penalties, and laying charges for offences committed under the Act (prosecuted by the Public Prosecution Service of Canada).

During an election period, the Commissioner may seek a court order to require a person or entity to comply with the Act.

The Commissioner may also seek the judicial deregistration of a political party that does not have, as one of its fundamental purposes, endorsing a candidate at an election.

BOUNDARY REDISTRIBUTION

As we saw in Chapter 2, the *Constitution Act, 1867* made the number of seats in the House of Commons per province proportional to their respective populations. It also established a mechanism for adjusting the provincial seat allotments, as well as boundaries of individual ridings, after each 10-year census. Initially, the government determined the boundary placements, but the *Representation Act* of 1903 conferred this job on a committee of the House of Commons.

In 1915, the formula for allotting seats (the representation formula) was modified by the adoption of the "senatorial clause." Under this clause, a province cannot have fewer seats in the House of Commons than it does in the Senate. The formula was changed again in 1946, in 1951 and in 1974.

At times, however, Parliament suspended the readjustment process to permit amendments to the representation formula in the *Constitution Act, 1867* and to make some changes to the readjustment process itself. This happened after both the 1971 and 1981 censuses.

In 1964, the *Electoral Boundaries Readjustment Act* (EBRA) established a genuinely impartial process for redrawing constituency borders in Canada—one that has remained essentially unchanged. The premise underlying the impartiality sought by EBRA is that the responsibility for boundary adjustment must be assigned to formally non-partisan bodies. To this end, the legislation provides for the appointment, in each province,* of an independent electoral boundaries commission to supervise the redistribution process.

Readjusting Electoral Boundaries

The process of boundary readjustment, largely unchanged since the *Electoral Boundaries Readjustment Act* of 1964, works as follows:

1. **After each decennial census**, the Chief Statistician of Canada sends provincial population data to the Chief Electoral Officer, who applies the formula set out in the law to calculate how many seats are allotted to each province. (Since its first incarnation in the *Constitution Act*, this formula has changed many times in attempts to maintain fair representation in the face of shifting demographic realities.)

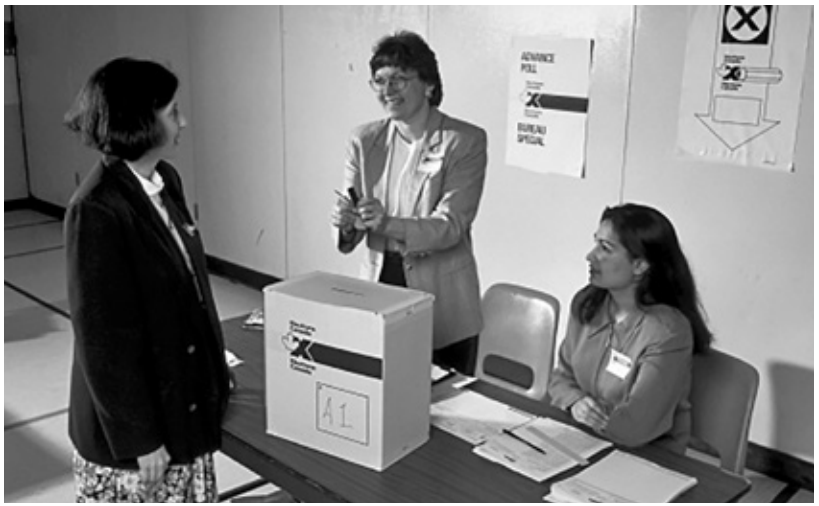
2. **Electoral boundaries commissions are established**, consisting of a chair—typically a provincial court judge—appointed by the chief justice of each province, and two residents of the province, appointed by the Speaker of the House of Commons. The commissions must be established before the earlier of 60 days after the publication of the census results or 6 months after the census.

* Territories are excepted since each comprises a single riding—their boundaries, therefore, need no adjustment. This has been the case since 1999, when Nunavut was established and the two ridings making up the Northwest Territories were separated. (Yukon has held its single riding since becoming a distinct territory in 1898.)

3. **Each commission develops a redistribution plan** that is published in newspaper ads, along with times and locations for public hearings, at least 30 days before the first scheduled hearing. Upon written notice to the commission, any interested individual or group—including sitting MPs and senators—can speak at the hearings.
4. **Commissions must complete their reports**, typically, within 10 months of receiving the population data.
5. **A designated House of Commons electoral committee** receives the commissions' reports, by way of the Chief Electoral Officer and the Speaker of the House.
6. **MPs have 30 days to file written objections** to the reports, which must be signed by at least 10 MPs. The committee then has another 30 days to discuss these objections before returning the reports, with their comments, to the commissions.
7. **The commissions modify the reports**—or not, as they choose—then forward their final boundary decisions to the Chief Electoral Officer.
8. **The Chief Electoral Officer issues a draft representation order**, based on the commission reports, documenting names, populations and descriptions of the new electoral districts, and forwards this document to the responsible minister.
9. **Cabinet proclaims the representation order** within five days of its receipt, making the new boundaries public. Within five more days, Cabinet must publish the representation order and the proclamation declaring it to be in force in the *Canada Gazette*.
10. **At least seven months must pass** between the date Cabinet proclaims the representation order and the date Parliament is dissolved for a general election before the new boundaries can be applied to that election.

ADVANCE VOTING

When first introduced in 1920, voting at advance polls had been limited to only a few classes of voters. Advance voting was extended to members of the Royal Canadian Mounted Police and the armed forces in 1934, and to members of the military reserves in 1951. In each case, a voter at an advance poll had to swear an oath that he or she would be away on business on election day.



Elections Canada

Advanced Practices

Any voter who finds it more convenient can vote at an advance poll, held on the 10th, 9th, 8th and 7th days before election day. Before 1960, voters could take advantage of advance polls only if they had one of the occupations specified in the law. An amendment to the Canada Elections Act *in 1960 allowed voters to use an advance poll, provided they swore an oath that they would be away from home on election day. The oath was dropped in 1977.*

The election of 1953 was held in August, when many potential voters were on vacation. Turnout was only 68 percent, compared with 75 percent in both the June 1949 and June 1957 elections. The Progressive Conservatives felt that they had been especially hard hit by this.* After they gained power in the 1957 election, the advance vote was extended to all electors who had reason to believe they would be absent from their polling division on election day and therefore unable to vote. Electors still had to swear an affidavit, however, under this 1960 amendment to the Act. At the next general election—in 1962—voter response was remarkable. The number of advance votes rose from an average of 10,000 in previous elections to nearly 100,000.

In 1970, the list of those who could vote at advanced polls was expanded to include persons who found it more convenient to vote at an advance poll for reasons of age, infirmity or advanced pregnancy or who were unable to vote on the ordinary polling day because of their religious beliefs or membership in a religious congregation. In 1977, the requirement to swear an affidavit was dropped. At the same time, a provision was introduced allowing people to vote at the returning office during the electoral period if they could not vote at an advance poll or on election day.

In 1993, voting in advance became more widely available when a provision was introduced permitting any elector to vote at the advance polls. Advance voting was no longer restricted to those who would be absent on election day.

VOTER NOTIFICATION

As we have seen, the 1934 provision requiring that a postcard be sent to each registered elector proved too expensive. Instead, voters were sent a copy of the list of electors for their poll. This system continued for several decades, but by the 1970s, many voters were objecting to what they considered an unacceptable invasion of privacy—in particular, women living alone and people who thought their occupation or the identity of the members of their households was no one's business but their own. There were also concerns that the lists—which together contained the names, addresses and occupations of the adults in every household in the country—could be used for other than electoral purposes.

Elections Canada; ACU00701

Everything Old Is New Again

First introduced in the 1930s but abandoned as too expensive and time-consuming, the postcard system of voter notification was made feasible in the 1980s by technological advances. In 1982, postcards replaced the public posting of electoral lists, a practice that raised privacy concerns, among others.

* *Debates*, January 27, 1954; 1515. J. W. Pickersgill, replying for the Liberals, said that "if there are a great number of Canadians who value their holidays more than their franchise, that does not mean they were disfranchised."

In 1982, this provision was therefore dropped from the Act. Instead, in a move reminiscent of 1934, each registered elector would receive a postcard confirming registration and showing where to vote; technological change had made this approach much more feasible and affordable than it had been in 1934. Electors who did not receive a card would know that they had to take steps to register if they wanted to vote.

OPENING UP THE PROCESS

In the largest expansion of the vote since women were enfranchised in 1918, people between the ages of 18 and 20 got the vote in 1970 and used it for the first time in the 1972 election. Although reducing the voting age to 18 expanded the electorate considerably—by some two million young people in all—this change was not quite like removing religious or racial discrimination from the electoral law. Unlike extension of the franchise to racial and religious minorities, lowering the voting age aroused relatively little controversy. It was the 1970s, the youth culture was at its height, and a general opening up of social and political life had begun as the politics of participation took hold.

This same social climate gave rise to greater recognition of the rights of voters with disabilities and others who might be excluded from voting for reasons related to physical abilities or illness. This recognition produced some legislative change, but for the most part, voters' special needs were addressed through administrative measures that were later incorporated into the law. Thus, for example, a 1977 amendment to the law introduced transfer certificates, allowing electors to vote at an advance poll at another polling station with level access if their own was inaccessible. At the same time, throughout the 1970s, polling stations were located increasingly in public places, so that level access became more widely available. Special templates were also devised so that voters who were blind or visually impaired could preserve the secrecy of the vote, casting their ballots without assistance. These administrative arrangements became part of the law in 1992.

Elections Canada

From Far and Wide ...

Since 1993, voting by special ballot has enabled electors away from home on election day—including anyone travelling or living abroad temporarily—to vote by mail. An ingenious system of envelopes within envelopes enables election officials to assure the integrity of the vote (so that no one votes more than once, for example), while also preserving the secrecy of each voter's choice.

Elections Canada

Voting from Anywhere

By applying for a kit like this one, an elector who cannot go to the polling station can register to vote and cast a ballot by mail. The special ballot is especially helpful for Canadians living abroad or travelling during an election campaign.

Frank Royal, NFB, Library and Archives Canada, PA-169812

Distributing Election Supplies

In the 1950s, some 50,000 packages of election supplies were shipped to returning officers across Canada at each general election.

During this period, the law included provisions for proxy voting, which had been used during the Second World War and the Korean conflict. It was introduced for fishermen, sailors and prospectors in 1970, along with people who were ill or had physical disabilities, and extended to airplane crews, forestry and mapping teams, and trappers in 1977. In 1993, proxy voting was repealed when the use of special ballots under the Special Voting Rules was expanded.

A third set of changes opened the vote to certain classes of electors living abroad. In 1970, public servants, mainly diplomats, and their dependants posted outside Canada became eligible to use the Special Voting Rules—previously available only to military personnel and their dependants. Civilian employees of the military (usually teachers and administrative support staff at schools on Canadian Forces bases) gained this eligibility in 1977. But, until 1993, ordinary Canadians who happened to be away from home and unable to vote, either on polling day or at advance polls, still could not cast a ballot.

After the adoption of the *Official Languages Act* in 1969, Elections Canada implemented a policy to ensure that electors were served in their official language in constituencies where at least 5 percent of the population spoke the minority official language. From the early 1990s onward, this service was ensured across Canada.

One slight narrowing of the franchise occurred in this period. In 1970, the law was amended to provide that British subjects who had not adopted Canadian citizenship would be disqualified from voting unless they took out citizenship by 1975. Before then, British subjects were qualified electors, but they had to be “ordinarily resident in Canada.” This privilege, which of course was not enjoyed by immigrants who were not British subjects, could be defended when Canada was part of the British Empire, but was no longer in harmony with Canada’s status as an independent country.

CHAPTER 4

1982–2020

ADVANCING FAIRNESS, TRANSPARENCY AND INTEGRITY

Elections Canada

The history of the franchise took a new turn in 1982, when the *Canadian Charter of Rights and Freedoms* was adopted as part of the Constitution. The Charter protects basic rights and freedoms, including the rights to vote and to become a candidate. Its adoption led to court challenges of certain provisions of the *Canada Elections Act* and the extension of voting rights to previously excluded groups—judges, prisoners, expatriates and certain people with mental disabilities. Other court challenges under the Charter involved certain restrictions on political parties and other groups.

Although legal restrictions were lifted for many people, additional barriers to voting remained for some. Further legislative and administrative reforms have sought to make the process of casting a ballot more accessible to people with disabilities. Likewise, the extension of periods for advance voting and the introduction of special ballots provided additional opportunities for all Canadians to vote.

Legislative and administrative measures were also introduced to help ensure that everyone has an equal opportunity to participate and to strengthen the integrity of the voting process. For instance, the *Canada Elections Act* was amended to require voters to prove their identity and address before casting their ballot. Elections Canada also took measures to address fairness in the administration of elections. As well, instead of being appointed by the government, returning officers would now be appointed by the Chief Electoral Officer based on merit.

Meanwhile, the regulation of political financing was extended with the aim of making it fairer and more transparent. Contributions from corporations and trade unions were first limited and then banned. Rules were also imposed on spending by other so-called third parties—persons or groups other than candidates and political parties. These and other measures have resulted in Elections Canada taking on a more complex role.

Although the regulation of third-party spending was challenged under the Charter, the courts ruled that broad regulation of electoral spending, while limiting the freedom of expression, is justified in the name of electoral fairness. The courts also affirmed the need to ensure the representation of communities of interest when establishing electoral boundaries.

This chapter reviews the changes that resulted from the adoption of the Charter and looks at the other legislative and administrative reforms that were put in place between 1982 and 2020.

THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

One of the most significant influences on electoral law in the postwar years was the adoption of the *Canadian Charter of Rights and Freedoms*, most of which came into effect on April 17, 1982. The Charter ensures fundamental freedoms—such as freedom of religion, opinion, expression and association—subject only to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

No previous constitutional document had entrenched the right to vote, but section 3 of the Charter specifically deals with democratic rights. It states that "every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly [of a province or territory] and to be qualified for membership therein." Unlike some sections of the Charter, section 3 cannot be overridden by the federal Parliament or provincial or territorial legislatures using the so-called notwithstanding clause.*

Also, sections 4 and 5 guarantee that there shall be a session of the Parliament of Canada and of each provincial or territorial legislature at least once every 12 months. These sections add that no House of Commons and no legislative assembly shall continue for more than five years. Exceptions are times of real or apprehended war, invasion or insurrection. In such cases, the term of the House of Commons or of a provincial or territorial legislative assembly can continue as long as the continuation is not opposed by the votes of more than one third of the members.

Well before 1982, many Canadians probably assumed that their right to vote was assured. As we have seen, however, many people had been denied the franchise—some on racial or religious grounds and others because they could not get to a poll on voting day. Even when improvements were proposed that would make it easier to access polls and to vote—such as extending advance polling to groups other than railway workers and commercial travellers—these measures sometimes provoked resistance in Parliament. For example, it took 50 years to extend advance voting to everyone who wanted it; each time a new group was given the "privilege" of advance voting, there was opposition, generally based on cost or administrative convenience. Arguments based on democratic rights and principles were heard less often.

Library and Archives Canada e002852801

A Democratic Right

The rights to vote and to be a candidate for office have been enshrined since 1982 in the Canadian Charter of Rights and Freedoms*, which is part of the* Constitution Act, 1982*. The Charter provided a basis for several groups to challenge their exclusion from the franchise and to contest other election law provisions in the courts. Her Majesty Queen Elizabeth II signed the Proclamation of the* Constitution Act, 1982*, at a rainy ceremony on Parliament Hill on April 17, 1982.*

* Under subsection 33(1) of the Charter, "Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter." Thus, while the fundamental freedoms specified under section 2, and the legal and equality rights outlined in sections 7 to 15 can in some instances be overridden, the democratic right to vote guaranteed under section 3 is indelibly protected.

The Charter signalled a new approach. Canadians can use the Charter to challenge losses or infringements of rights. Someone who is denied the right to vote by a federal or provincial statute, for example, can bring a claim before the courts. If the case is successful, the courts might strike down part of the law or require changes in the administrative rules that resulted in disenfranchisement—which has happened frequently since 1982.

Significant advances in election law and administration occurred before the Charter. For instance, denial of the right to vote on the basis of gender, religion, race, ethnicity and income had been removed from the law, and administrative steps had been taken to improve access to the vote for people with disabilities, people away from home on election day, and members of the public service and the military serving abroad. The Charter ensures that these rights are constitutionally protected.

Also, there was mounting interest in addressing public perceptions of undue influence, as the financial activities of political parties and third parties were essentially unregulated. Yet the efforts to do so—by adding restrictions on electoral financing to the *Canada Elections Act*—also fuelled numerous Charter challenges. Alleged infringements of freedom of expression—guaranteed under section 2(b) of the Charter—were the most commonly cited cause for legal recourse. Restrictions on broadcasting, third-party advertising and the publication of election surveys during election campaigns faced similar tests under the section 2(b) guarantee.

Many of these problems have been addressed. Measures that Parliament and election officials have taken ensure that Canada's electoral process is both legally and administratively consistent with Charter principles. This makes the vote accessible to everyone who is entitled to cast a ballot while protecting the integrity of the process: the influence of money on electoral contests is balanced with freedom of expression.

Indeed, the courts have embraced a vision of electoral democracy that allows for a regulated process and a fair amount of deference to Parliament. This is in contrast with the less restrictive approach taken by courts in the United States of America. For example, the Supreme Court of Canada has ruled that while regulations on spending by third parties limit their freedom of expression, these limits are justified in the name of electoral fairness. Canadian courts have also developed the concept of a right to effective representation. Under this concept, significant population variations between electoral districts are tolerated to allow for better representation of communities of interest.

Compliance with Charter principles was assisted by the Royal Commission on Electoral Reform and Party Financing (also known as the Lortie Commission after its chair, Pierre Lortie). It was appointed in 1989 by the Progressive Conservative government of Brian Mulroney to review, among other matters, the many anomalies in the electoral process that Charter challengers identified. In 1992, the House of Commons Special Committee on Electoral Reform (known as the Hawkes Committee after its chair, Jim Hawkes) reviewed the Commission's recommendations and produced additional ones. These recommendations led

to the passage of Bill C-78, *An Act to amend certain Acts with respect to persons with disabilities*, in 1992 (discussed in the section of this chapter on accessibility of the vote) and Bill C-114, *An Act to amend the Canada Elections Act*, in 1993. Together, these bills initiated significant changes in the way electoral law dealt with access to the vote. Further changes were made to political financing in the early 2000s based on the Commission's recommendations.

Bill C-114, *An Act to amend the Canada Elections Act*

Among its many wide-ranging amendments to the *Canada Elections Act* in 1993, Bill C-114:

- gave electors from both rural and urban areas the right to register to vote on election day
- extended the use of the special ballot, so any elector could register and vote without having to appear in person on election day or at an advance poll
- permitted any elector to vote at an advance poll
- removed voting disqualifications for judges, certain people with mental disabilities and inmates serving less than two years in correctional institutions
- imposed a limit on expenses incurred by third parties to support or oppose a registered party or candidate during an election
- banned political donations from foreign sources

The period also saw a major revision to the *Canada Elections Act*. The years between 1970 and 2000 saw an intimidating maze of updates, amendments, revisions and clarifications, to the point that the Act had become hard to decipher. Also, the 1992 reports of the Lortie Commission and the Special Committee on Electoral Reform, as well as related input from the Chief Electoral Officer, made it increasingly clear that the Act needed much more than a bit of housecleaning.

With the experience of the June 1997 general election still fresh, the House of Commons Standing Committee on Procedure and House Affairs tabled its own report the following June. Its synthesis of the previous work and recommendations made over the years provided the basis for the new legislation. With the passage of Bill C-2, *Canada Elections Act*, in September 2000, the previous Act was repealed. It was replaced with a new statute that streamlined the language of the provisions and the way they were organized.

The new Act also made significant changes: these included improving access to the ballot, regulating the publication of election surveys and regulating election advertising by third parties. Court decisions had struck down the 72-hour blackout period that had been introduced in 1993; the 2000 *Canada Elections Act* limited the blackout period to the transmission of election advertising on polling day, until the close of all polling stations in the electoral district. The Supreme Court of Canada upheld the new blackout provision, as well as the regulation of third-party advertising, in 2004 (*Harper v. Canada (Attorney General)*, 2004 SCC 33).

The Act also contained important new provisions for enforcement.

Bill C-2: The 2000 *Canada Elections Act*

Here are some highlights from the new Act:

- Provisions were reorganized and clarified to make them easier to interpret and apply.
- Third-party registration and reporting requirements and spending limits of $150,000 nationally—$3,000 in a particular electoral district—per general election were created. (Spending limits are adjusted annually for inflation.) Spending limits also apply during by-elections, in which case they apply to spending within the electoral district.
- The publication or broadcasting of election advertising and new election survey results was prohibited on election day until all polling stations in the electoral district had closed.
- Disclosure of financial information by registered parties was subject to more rigorous reporting requirements.
- The Commissioner of Canada Elections was empowered to enter into compliance agreements and to seek injunctions during a campaign to require compliance with the Act.

THE RIGHT TO VOTE

The main beneficiaries of Charter challenges to electoral law, as far as the right to vote is concerned, have been judges, prisoners, people with disabilities, and Canadians living abroad.

Jean-Marc Hamel, the Chief Electoral Officer when the Charter was adopted, began the process of responding to the Charter's impact on the *Canada Elections Act* by identifying the provisions of the Act that were vulnerable to court challenges and should be changed. By the time Jean-Pierre Kingsley was appointed Chief Electoral Officer in 1990, a dozen or so cases had already come before the courts to challenge the Act on Charter grounds. He also made a series of recommendations for amending the Act.

Federally appointed judges had been legally disqualified from voting since 1874. The law remained in place until 1993, but a Charter ruling at the time of the 1988 general election rendered the provision inoperative. About 500 federally appointed judges became eligible to cast ballots in federal elections after a court struck down the relevant section of the *Canada Elections Act*, declaring it contrary to the Charter's guarantee of the right to vote.

Prisoners had not been allowed to vote since 1898—although according to at least one MP, Lucien Cannon, speaking during the 1920 debate on the *Dominion Elections Act*, some inmates appear to have found a way around the rules:

> *I know a case where the prisoners were allowed, under a sheriff's guard, to go and register their votes and they came back afterwards.*
>
> – Debates, *April 29, 1920; 1820*

Denying the right to vote does not comply with the requirements [...] that punishment must not be arbitrary and must serve a valid criminal law purpose. Absence of arbitrariness requires that punishment be tailored to the acts and circumstances of the individual offender.

– Supreme Court of Canada decision in Sauvé v. Canada*, October 31, 2002*

The solicitor general of the day appeared not to credit this story, replying that prisoners might be on voters lists, but since they could not get to a ballot box, they would be disenfranchised in any event.

Prior to 1982, there was little parliamentary support for ensuring that prisoners could exercise the right to vote. After 1982, however, inmates relied on the Charter to establish through the courts that they should indeed be able to vote. They began by challenging provincial election laws, where they had some success. Then, during the 1988 federal election, the Manitoba Court of Appeal ruled that it was up to legislators to determine which prisoners should or should not be enfranchised. In 1993, Parliament removed the disqualification for prisoners serving sentences of less than two years, but prisoners serving longer terms were still disqualified from voting.

The new provision was challenged by an inmate serving a longer sentence. In its decision in *Sauvé v. Canada (Chief Electoral Officer)* in 2002, the Supreme Court of Canada ruled that prisoners serving terms of two years or more could not be disqualified from voting, as doing so was an unreasonable limit on their right to vote. The Court's ruling secured access to the vote for all prisoners. Although the *Canada Elections Act* was not amended right away, the Chief Electoral Officer applied the decision during subsequent general elections. In 2018, the inoperative provision was repealed by Bill C-76, the *Elections Modernization Act*.

Elections Canada

The Courts and the Charter

The Supreme Court of Canada and several provincial courts, in interpreting the rights guaranteed in the Canadian Charter of Rights and Freedoms*, have made a number of rulings on provisions of the* Canada Elections Act*. Court rulings have affected the definition of who has the right to vote, the number of candidates required for a political party to qualify for registration, limits on the publishing of election surveys during a campaign period and spending by third parties.*

Prisoners and the Vote: *Sauvé v. Canada*

1992 *Sauvé v. Canada* challenged a long-standing provision in the *Canada Elections Act* that prohibited inmates from voting. In its decision, the Ontario Court of Appeal considered three objectives that might be deemed important enough to infringe on prisoners' right to vote:

- affirming and maintaining the sanctity of the franchise in our democracy
- preserving the integrity of the voting process
- sanctioning offenders

The Ontario Court of Appeal ruled that, even if taken collectively, these objectives could not justify outright denial of voting rights. The federal prohibition on inmate voting was repealed. The timing of the decision enabled inmates to vote during the 1992 federal referendum on the Charlottetown Accord.

1993 The Supreme Court of Canada upheld the Ontario Court of Appeal's decision, stating that the Act's prohibition against inmate voting was too broad: it failed to meet the requirement that penal sanctions must result in minimal impairment of Charter rights and that the negative effects of impairing the right must be proportionate to the benefits.

That same year, Bill C-114 removed the voting exclusion for prisoners serving less than two years.

1995 In *Sauvé* (1995), the Federal Court Trial Division accepted the government's argument that enhancing civic responsibility, respect for the law and the general purposes of penal sanctions were important enough objectives to warrant infringement of a Charter right. The Court found, however, that the disqualification for inmates serving two years or more still failed the requirements of both proportionality and minimum impairment. Successful administration of the inmate vote in the 1992 referendum also appears to have influenced the Court's decision to strike down the prisoner voting restrictions in Bill C-114.

1999 The Federal Court of Appeal reversed the Federal Court's ruling and upheld the voting disqualification for inmates serving two years.

2002 On appeal, the Supreme Court of Canada overturned the Federal Court of Appeal's decision, concluding that

- denying individuals the right to vote will not educate them in the values of community and democracy
- a blanket disenfranchisement is an inappropriate punishment because it is not related to the nature of the individual crime
- disenfranchisement does not increase respect for democracy because it denies individuals' inherent dignity.

2004 Parliament did not amend the *Canada Elections Act* right away to remove the voting disqualification for inmates serving two years or more. Nevertheless, the Chief Electoral Officer applied the Sauvé (2002) decision during subsequent general elections, giving all inmates the opportunity to vote.

2018 Bill C-76 repealed the provision in the *Canada Elections Act* that had disqualified federal inmates from voting and that the Supreme Court had struck down.

In the 1980s and early 1990s, several changes in election administration and the law made it much easier for electors with disabilities to vote. One group of people with disabilities remained explicitly disenfranchised under the *Canada Elections Act*, however—those who were "restrained of [their] liberty of movement or deprived of the management of [their] property by reason of mental disease." In 1985, a House of Commons committee recommended that they be enumerated and have the same right to vote as other Canadians. The 1992 report of the Lortie Commission said that the disqualifying of these electors "clearly belongs to history."

In the meantime, the courts struck down the provision. In 1988, the Canadian Disability Rights Council, a coalition of disability rights groups, argued in a Charter challenge that the *Canada Elections Act* should not disqualify people who were under some form of restraint because of a mental disability. The Court agreed, although it did not specify what level of mental competence would qualify a voter. In 1993, Parliament removed disqualification on the basis of mental disability as part of Bill C-114.

Requirements for voters to provide proof of identity and address were introduced by Bill C-18, *An Act to amend the Canada Elections Act (verification of residence)*, in 2007. These requirements were challenged in 2010 by three residents of British Columbia on the grounds that they infringe the right to vote of those who do not have the necessary identification. Both the Supreme Court of British Columbia, in 2010, and the Court of Appeal for British Columbia, in 2014, found that while these voter identification requirements did limit the right to vote guaranteed by section 3 of the Charter, this limit was justified under section 1 (*Henry v. Canada (Attorney General)*, 2014 BCCA 30).

The 1992 Referendum on the Charlottetown Accord

On October 26, 1992, the third federal referendum was held. The Charlottetown Accord, which had been negotiated by Prime Minister Brian Mulroney and the provincial premiers, would have amended the Constitution to cede several federal powers to the provinces, address the issue of Indigenous representation in Parliament, reform the Senate and recognize Quebec as a distinct society. Canadians were asked to vote "yes" or "no" to the question "Do you agree that the Constitution of Canada should be renewed on the basis of the agreement reached on August 28, 1992?" Quebec conducted its own referendum on the same question.

The vote was held under the provisions of the *Referendum Act*, which was passed in June 1992. It provides for, among other things, the regulation of registered referendum committees and of contributions and expenses incurred to support or oppose the referendum question.

Voter turnout in all provinces and territories except Quebec was 71.8 percent. Voters rejected the Accord, with 54.3 percent voting "no."

A case involving the right to vote arose from the 1992 referendum. A voter named Graham Haig had moved from Ontario to Quebec less than six months before the referendum took place and was therefore not qualified to vote in that referendum. He took the matter to court. In September 1993, the Supreme Court of Canada ruled that his exclusion from the federal referendum had not violated his rights under the *Canadian Charter of Rights and Freedoms*. While section 3 of the Charter applies to the right to vote in federal and provincial elections, it does not apply to voting in a referendum (*Haig v. Canada (Chief Electoral Officer)*, [1993] 2 SCR 995).

The restriction on voting by citizens who had been living abroad for more than five years was challenged by two such Canadians who had not been allowed to vote in the 2011 election. Gillian Frank and Jamie Duong argued that the rule breached the right to vote, contrary to section 3 of the Charter. In January 2019, the Supreme Court of Canada struck down the restriction, saying that it breached the Charter and was not justified under section 1 of the Charter. Meanwhile, on December 13, 2018, Parliament had adopted Bill C-76, which removed the restriction that made electors who had been away from Canada for more than five years ineligible to vote. People applying to the International Register of Electors must prove their identity and Canadian citizenship and must indicate the address of their last place of ordinary residence in Canada.

During the 2019 general election, there were roughly 55,500 international electors registered; about 34,000 ballots were returned, representing 0.2 percent of the total number of ballots cast. This was a marked increase over the 2015 general election, when there were roughly 15,600 international electors registered and about 10,700 ballots returned, representing 0.1 percent of the total number of ballots cast.

THE RIGHTS OF CANDIDATES AND POLITICAL PARTIES

In addition to guaranteeing the right to vote, section 3 of the Charter guarantees the right to be a candidate, subject only to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Indeed, under the *Canada Elections Act*, certain people are disqualified from being a candidate. These include inmates of correctional institutions, federally appointed judges (other than citizenship judges), the Chief Electoral Officer and election officers.

The Charter guarantee of the right to be a candidate led to the challenging and striking down of the requirements for political parties to run a minimum number of candidates in an election and for candidates to make a $1,000 deposit.

When political parties were recognized in law in 1970, the legislation stipulated that for a political party to qualify for registration, it had to run candidates in at least 50 electoral districts. This requirement stood for many years before being challenged under the Charter by Miguel Figueroa, leader of the Communist Party of Canada. The party was deregistered in 1993 because it failed to run 50 candidates in that year's general election. The Supreme Court of Canada's 2003 decision in *Figueroa v. Canada* ([2003] 1 SCR 912) struck down the 50-candidate requirement as an unjustifiable restriction on the rights guaranteed under the Charter. The Court determined that there was no reason to believe that a political party running fewer than 50 candidates could not act as an effective outlet for the meaningful participation of individual candidates. The ruling also declared that restricting the ability of political parties to register was an unwarranted infringement on the right of citizens to play a meaningful role in the electoral process.

The Canadian Press, Kevin Frayer

Fifty Candidates Not Needed

In 2003, Communist Party of Canada leader Miguel Figueroa successfully challenged a provision of the Canada Elections Act *that required a political party to field 50 candidates in a general election to maintain its registration. Since then, registered parties that field at least one candidate have the right to list their party name on the ballot next to the candidate's name.*

In 2004, Parliament adopted Bill C-3, *An Act to amend the Canada Elections Act and the Income Tax Act*, implementing new criteria for the registration of political parties. The intent of the bill, introduced by the Liberal government of Paul Martin and supported by the opposition parties, was to strike an appropriate balance between fairness to political parties and the integrity of the electoral system. Among the legislation's innovations was the country's first legal definition of a political party, which it described as "an organization one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election."

The bill also included new provisions for regulating political activity. Under these provisions, parties are required to maintain at all times a leader, three other officers and at least 250 members. Furthermore, parties must submit an updated list of 250 members and their signed declarations every third year and file a statement once a year outlining the party's fundamental purpose. If a party fails to meet any of these conditions, it risks being deregistered.

In November 2015, Kieran Szuchewycz, who had tried to run as an independent candidate in the 2015 federal election, challenged the requirements to pay a $1,000 refundable deposit and to collect 100 elector signatures, saying these were unconstitutional. In *Szuchewycz v. Canada (Attorney General)* ([2017] A.J. No. 1112), the Alberta Court of Queen's Bench upheld the signature requirement but ruled that the deposit requirement for prospective candidates infringed section 3 of the Charter. The decision was not appealed, and Elections Canada stopped applying the deposit requirement. In 2018, Bill C-76 amended the *Canada Elections Act* to remove the deposit requirement.

FREEDOM OF EXPRESSION

Election surveys are a familiar feature of modern elections. Concerned that election surveys published late in an election campaign could affect the outcome of an election, in 1993 Parliament adopted legislation banning publication of election surveys during the 72 hours before election day. This provision was challenged in court. In *Thomson Newspapers Co. v. Canada (Attorney General)* ([1998] 1 SCR 877), the Supreme Court of Canada struck it down as a violation of freedom of expression, ruling that the limits were not justified under section 1 of the Charter.

At the same time, the Supreme Court's ruling indicated that concerns about the methodological accuracy of election surveys were warranted and that it would therefore be constitutional to invoke legislation requiring survey results to be accompanied by details about the methodology used. As a result, the 2000 *Canada Elections Act* required the first publication of any election survey to include details about the sponsor and the methodology used. The Act also prohibited the publication of the results of new or previously unpublished election surveys on election day.

Meanwhile, growing use of social media and email presented new challenges for controls on the premature release of election results. For many years, the polls opened and closed on election day at a standard hour in every time zone across the country. Ballots would be counted as the polls closed in each time zone from east to west, but voters would learn the results from elsewhere in the country only when the polls closed in their own time zone. When polls closed in Western Canada, voters would often learn that the outcome of the election had already been decided by ballots counted in the rest of the country.

The 1992 report of the Lortie Commission recommended extending voting hours and having staggered hours in different regions of the country. The issue was also recognized by the Chief Electoral Officer. In 1996, the *Canada Elections Act* was amended to introduce staggered voting hours on election day at a general election so that results would be available at approximately the same time across the country. In 2000, the Act was further amended to empower the Chief Electoral Officer to adjust voting hours in regions that do not switch to daylight saving time.

Elections Canada

Staggered Voting Hours

Canada's six time zones once created concern that ballots in eastern Canada were counted and the results broadcast before some voters in western Canada had finished casting their votes. The introduction of staggered voting hours in 2000 largely eliminated this problem—the majority of election results from across the country are now available at approximately the same time.

When a resident of British Columbia named Paul Bryan was prosecuted for posting results of the 2000 general election from eastern provinces before polls in the West had closed, he challenged the constitutionality of the prohibition in section 329 of the *Canada Elections Act*. The case made it all the way to the Supreme Court of Canada, which held that while section 329 of the *Canada Elections Act* limited freedom of expression, this limit was justified under section 1 of the Charter.

Ultimately, however, the increasing use of social media made it difficult if not impossible to enforce the prohibition on communicating election results before the polls had closed in western Canada. In his report on the May 2011 general election, the Chief Electoral Officer, Marc Mayrand, said the time had come for "Parliament to consider revoking the current rule." In January 2012, the government announced that it would end the prohibition, saying, "The ban, which was enacted in 1938, does not make sense with the widespread use of social media and other modern communications technology." In 2014, section 329 was repealed.

THE VOTE AND THE VOTING PROCESS

The guarantee of the right to vote means not only lifting the restrictions on various groups, but also ensuring that barriers to exercising this right are identified and addressed. Over time, legislative and administrative measures have been made to ensure that all voters are able to exercise their right to vote, that the integrity of the voting process is preserved and that constituency boundaries are adjusted to provide effective representation while reflecting the country's diversity.

ACCESSIBILITY OF THE VOTE

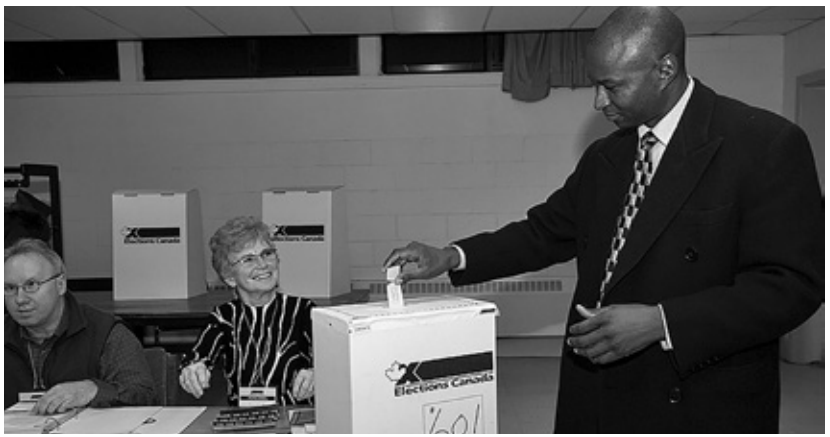
Throughout the 1980s, the disability rights movement in Canada pushed for legislative reform to enable full and equal access to all federal programs for people with physical disabilities. Certain features of the electoral legislation made voting physically impractical for many electors.

By the early 1990s, the matter had caught Parliament's attention. A report entitled *A Consensus for Action: The Economic Integration of Disabled Persons*, published by the House of Commons Standing Committee on Human Rights and the Status of Disabled Persons in June 1990, proposed identifying all legislation that presented a barrier to people with physical disabilities. In September 1991, the Canadian Disability Rights Council submitted its own legislative proposals. Based on those proposals—together with the work of the Standing Committee and recommendations from the Lortie Commission, the Special Committee on Electoral Reform and the Chief Electoral Officer—the Progressive Conservative government of Brian Mulroney introduced Bill C-78. Passed by Parliament in 1992, it made a number of amendments to electoral law and administration that made voting more accessible to people with disabilities.

Elections Canada

From Metal to Cardboard

Recyclable cardboard ballot boxes first replaced the traditional metal ones at the 1988 general election in Quebec and Ontario and then at the 1992 federal referendum in the rest of the country. Developed by the National Research Council at Elections Canada's request, the cardboard boxes are lightweight and economical to produce. They can be shipped flat for easy assembly by polling station staff as needed, eliminating the need to store boxes between elections. The cardboard voting screens were also redesigned to include an upper flap, which increases privacy and protects the secrecy of the vote.



Elections Canada

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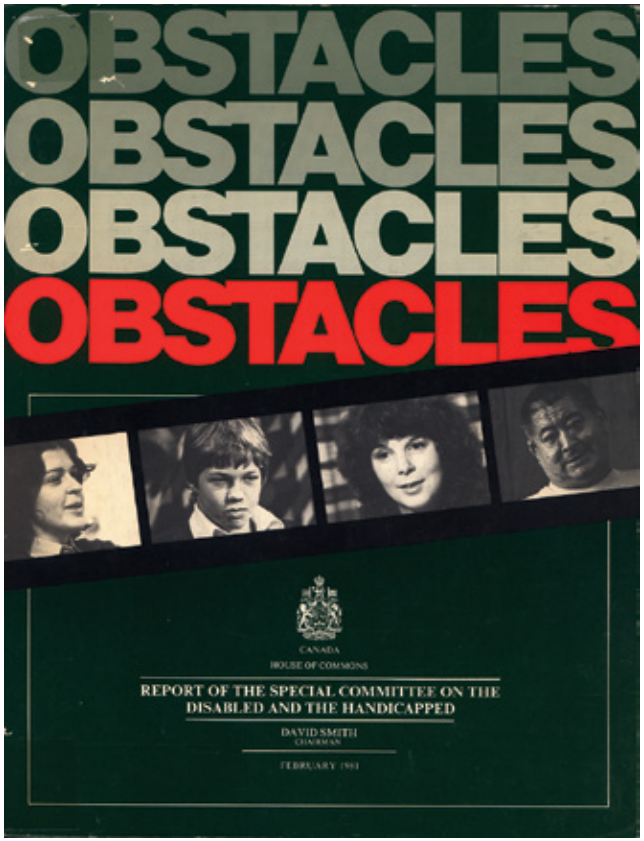

House of Commons, Special Committee on the Disabled and the Handicapped, *Obstacles*, Third Report, 1st Session, 32nd Parliament, 1981.

Removing Barriers to Voting

Obstacles*, the 1981 report of the House of Commons Special Committee on the Disabled and the Handicapped, recommended that Canada "establish a postal vote system" and that the Chief Electoral Officer accommodate "the mobility problems of disabled persons." It also recommended amending the* Canada Elections Act *to "include provision for special polls at hospitals and nursing homes." These measures were adopted by Parliament when it passed Bill C-78 in 1992 and Bill C-114 in 1993.*

Bill C-78, *An Act to Amend Certain Acts with Respect to Persons with Disabilities*

Here is a summary of the changes contained in the Act:

- It provided for polling stations at institutions where seniors and persons with disabilities live so election officers could take a ballot box to people who might have difficulty getting to the regular polling place.
- It guaranteed level access at all polling stations and the returning office; unavoidable exceptions would be permitted only with the authorization of the Chief Electoral Officer.
- It introduced transfer certificates that allow people with disabilities to vote at a different poll if their own does not have level access.
- It required templates to be available for the use of voters who are blind or have impaired vision.
- It enabled election workers to appoint language or sign language interpreters to assist them in communicating with electors.
- It allowed election workers to assist an elector with a disability in voting, including marking a ballot on the elector's behalf, in the presence of a witness.
- It mandated public education and information programs for Canadians with disabilities.

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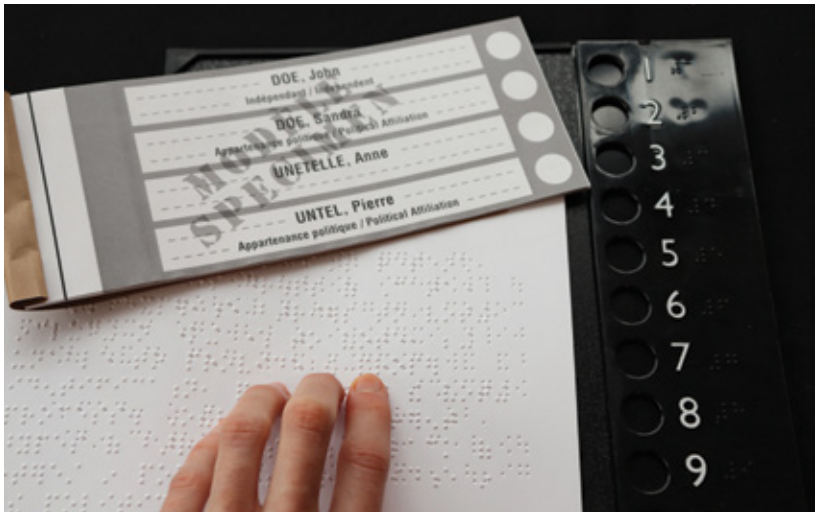

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Bringing the Ballot Box to Voters

In 1992, Bill C-78 made access to the vote easier in a number of ways. Among the improvements were mobile polling stations that serve many seniors and persons with disabilities in the institutions where they live.

In 2008, James Hughes, a resident of Toronto who used a wheelchair or a walker, made a complaint to the Canadian Human Rights Commission about the lack of barrier-free access to his polling location. In 2010, The Canadian Human Rights Tribunal found that Elections Canada had failed to provide barrier-free access and to address Mr. Hughes' complaints. The Tribunal ordered Elections Canada to make systemic remedies, including consultation with the disability community; improved policies, communication, signage and training; and a dedicated accessibility complaint process (2010 CHRT 4). In 2014, Elections Canada formalized its outreach with the disability community by launching an Advisory Group for Disability Issues to provide subject matter expertise and advice on accessibility initiatives.

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Accessibility for Voters with Visual Disabilities

Voters with visual disabilities can use a tactile and braille voting template that has a series of holes, one for each candidate. The template enables these voters to find by touch where to mark their ballot for the candidate they prefer.

Further improvements were made in 2018, when Bill C-76 amended the accommodation measures in the *Canada Elections Act* to include all persons with disabilities, not only those with physical disabilities. Instead of requiring premises to have "level access," for example, the amendments required them to be "accessible to electors with a disability." Bill C-76 also increased the availability of transfer certificates to electors with disabilities and required the Chief Electoral Officer to "develop, obtain or adapt voting technology for use by electors with a disability" and to test the technology for future use in an election. Elections Canada also developed a new paper ballot with larger font sizes to allow electronic screen readers to read the ballot.

ADVANCE VOTING AND SPECIAL BALLOTS

Meanwhile, other legislation during this period improved access to the vote for all Canadians. In 1993, Bill C-114 made advance poll voting available to all citizens. With this change, Canadian voters increasingly took advantage of the early opportunity to cast a ballot. Before the change, just over 500,000 Canadians (3.8 percent of electors) voted at advance polls during the 1988 general election; that number rose to 633,000 (4.6 percent) in 1993. As shown in the following table, since 1993 the numbers and percentages of those voting at advance polling stations and under special voting rules have tended to rise. In particular, there was a steep rise in the percentage of electors voting at advance polling stations from the mid-2000s, when it was roughly 11 percent, to over 26 percent in 2019.

Cpl. John Bradley, 3 R22eR Bn. Gp., Dept. of National Defence

Voting While Serving Far Away

Members of Canada's military are able to vote in a federal election, regardless of where in Canada they are stationed or whether they are serving in a foreign land. Canadian Armed Forces members—as well as teachers and administrative support staff at armed forces schools outside Canada—vote by special ballot. For example, Canadians serving in Afghanistan received ballots and the list of candidates for the 2004 general election. They voted a few days before most Canadians so that their ballots could be sent back to Canada in time for counting.

TABLE 4.1
VOTING AT ADVANCE POLLING STATIONS AND USING SPECIAL BALLOTS, NUMBERS AND PERCENTAGES, GENERAL ELECTIONS, 1993–2019

Year of General Election	Voting at Advance Polling Stations		Voting Using Special Ballots		Total Votes
	Number	Percentage	Number	Percentage	
1988	507,487	3.8%	159,965	1.2%	13,281,191
1993	633,464	4.6%	208,479	1.5%	13,863,135
1997	704,336	5.3%	135,458	1.0%	13,174,698
2000	775,157	6.0%	191,833	1.5%	12,857,773
2004	1,248,469	9.2%	246,011	1.8%	13,564,702
2006	1,561,039	10.5%	438,390	3.0%	14,817,159
2008	1,520,838	11.0%	253,069	1.8%	13,834,294
2011	2,100,855	14.3%	279,355	1.9%	14,723,980
2015	3,657,415	20.8%	607,152	3.5%	17,591,468
2019	4,840,300	26.6%	643,462	3.5%	18,170,880

Source: Elections Canada, Past Elections.

In addition, Bill C-114 effectively replaced proxy voting by allowing all electors to vote using the special ballot. The special ballot is a registration and voting system for Canadians who are away from their home ridings, people with disabilities, prison inmates and any other elector who cannot vote in person on election day or at an advance poll. Electors can vote using the special ballot at any local Elections Canada office or by mail. Incarcerated electors, Canadian Forces electors and electors temporarily in hospitals are also able to vote by special ballot on specific days during the election period. The amendments meant that all Canadians living or travelling outside the country—not just military personnel and diplomats—could now vote, as long as they applied for the special ballot before the deadline.

The provisions for advance polling and special ballots were modified in 2014, when Bill C-23, the *Fair Elections Act*, added a fourth day of advance polling and in 2018, when Bill C-76 extended the hours of advance polls and removed the stipulation that Canadians living abroad must not have been absent for more than five years.

Elections Canada

Elections Canada; ACU00623_C

Voting by Special Ballot

Electors who are unable to vote at advance polls or on election day can vote using a special ballot either by mail or, as shown here, in person at a local Elections Canada office. Those voting by special ballot use a unique system of three "nested" envelopes to preserve the secrecy of their choice.

FIXED-DATE ELECTIONS

Under Canada's system of responsible government, to remain in office, the Prime Minister and Cabinet must enjoy the confidence—that is, the support—of the majority of the members of the House of Commons. If the government loses the confidence of the House, by convention it would have to resign or seek the dissolution of Parliament, which would trigger a general election. Another feature of this form of responsible government has been that the Prime Minister could seek the dissolution of Parliament at any time.

The Constitution Act, 1867 does not specify when elections must be held. Section 50 provides that five years is the longest the House of Commons can continue. As we saw earlier, this is reiterated in section 4(1) of the Charter, which says, "No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members." The only exception to this would be "in time of real or apprehended war, invasion or insurrection."

Given the lack of certainty about when elections were to be held, the idea of fixed-term parliaments was debated on several occasions. For example, this idea was supported by the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada in its February 1972 final report. The Lortie Commission also looked at the idea and summarized the arguments for holding federal elections on a fixed date as follows:

It would make it easier to administer and organize elections; it would allow for better enumeration; and it would be more democratic because it would remove the ability of the party in power to call an election at the most favourable time.

– *Royal Commission on Electoral Reform and Party Financing,* Reforming Electoral Democracy: Final Report*, Vol. 4, 1991.*

Nevertheless, the Commission did not make any recommendation on fixed-date elections. Neither did the House of Commons Standing Committee on Procedure and House Affairs when it studied the matter in 1994.

The idea did not go away, however, and during the early 2000s, the legislatures of British Columbia, Ontario, and Newfoundland and Labrador enacted legislation establishing fixed election dates. In 2006, the Conservative government of Stephen Harper followed suit by introducing its own fixed-date election legislation: Bill C-16, *An Act to amend the Canada Elections Act*. It said that fixed-date elections, "would provide for greater fairness in election campaigns, greater transparency and predictability, improved governance, higher voter turnout rates and help in attracting the best qualified candidates to public life." The Chief Electoral Officer, Jean-Pierre Kingsley, also agreed with having fixed-date elections. In his appearance before the House of Commons Standing Committee on Procedure and House Affairs on September 26, 2006, he said that the bill "would improve our service to electors, candidates, political parties and other stakeholders." The bill received royal assent on May 3, 2007.

The amendments to the *Canada Elections Act* provide for a general election to be held on a fixed date: the third Monday of October in the fourth calendar year following the previous general election. At the same time, the amendments specify, "Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion." In other words, the *Canada Elections Act* does not prevent a general election from being called at an earlier date, either because the government has lost the confidence of the House or because the Prime Minister has decided to seek the dissolution of Parliament.

While Bill C-16 set the date of the next general election in October 2009, Parliament was dissolved earlier and the election took place on October 14, 2008. The following general election would have been held in October 2012, but once again, Parliament was dissolved earlier; the election was held on May 2, 2011. The first general election to be held in accordance with the fixed-date provision was on October 19, 2015.

The 2015 election was also noteworthy because the election period was 78 days, making it the longest since 1872. In his 2016 recommendations report, the Chief Electoral Officer, Marc Mayrand, pointed out that fixed election days were intended to give Elections Canada time to prepare. He noted that returning officers "faced additional staffing pressures and were deprived of the anticipated preparatory period." As a result, the Chief Electoral Officer said, "Imposing a maximum limit on the election period (for example 45 or 50 days) in conjunction with the fixed election date would create a greater measure of predictability for all electoral participants as the fixed date approaches and would better

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Signing the Writs

The Chief Electoral Officer of Canada, Stéphane Perrault, signed 338 writs, one for each electoral district, for the general election of October 21, 2019. At each election, a document like this instructs every returning officer to conduct an election to choose a member of Parliament.

accomplish the goal of a fixed election date." This issue was addressed by Bill C-76, which established a maximum election period of 50 days.

Another issue that arose was that election day and advance polling days coincided with religious holidays. At various times before the *Canada Elections Act* was amended to provide for fixed election dates, Elections Canada had consulted with religious communities about this issue and had drawn attention to opportunities to vote early, such as voting by special ballot.

In 2019, the date fixed for polling day, as well as some of the advance polling days, fell on Jewish holidays. Some members of the observant Jewish community asked the Chief Electoral Officer to consider moving the election date. Elections Canada responded with a statement about how it would accommodate Jewish voters, but did not refer to the power under the Act to recommend an alternate election day. Chani Aryeh-Bain and Ira Walfish then asked the Federal Court for judicial review of the Chief Electoral Officer's decision not to recommend moving the date. The Court ordered him to reconsider his decision and to clearly

weigh the impact of his decision on the applicants' rights under section 3 of the Charter (*Aryeh-Bain v. Canada (Attorney General)*, [2019] FC 964). On July 29, the Chief Electoral Officer, Stéphane Perrault, reaffirmed his decision not to recommend to the Governor in Council to change the election date, saying:

> *Having carefully considered the impact of holding the election on October 21 on the ability of observant Jews to participate in the electoral process, and having balanced that with my mandate to ensure accessible voting opportunities for all Canadians, I conclude that it would not be advisable to change the date of the election at this late stage.*
>
> – *Chief Electoral Officer of Canada,* Decision – Recommendation of the Chief Electoral Officer – Date of the General Election*, July 29, 2019*

THE NATIONAL REGISTER OF ELECTORS

First broached in the 1930s, the permanent register of electors became a reality during the 1990s. Prior to its creation, every time an election was called, the list of those eligible to vote was prepared by enumerators going door to door. The 1986 White Paper on Election Law Reform had examined the issue, but ultimately recommended that the existing enumeration approach be retained. It was the 1989 Auditor General's report—critical of Elections Canada for not using computer technology to streamline its operations—that motivated the push for the long-elusive permanent list.

Following some tests of the software for computerized voters lists, in 1992 Elections Canada used computerized voters lists for the referendum on the Charlottetown Accord in 220 electoral districts, excluding Quebec.* The *Referendum Act* was later amended to permit the use of the 1992 voters lists for the 1993 general election.

The idea of creating a permanent register of electors received a further boost from the recommendations made by the Lortie Commission in its 1992 report, even though it judged that conditions were not yet right for setting up a federal register. The Commission heard that Canadians did not favour moving to a system where it was up to individual voters to register. It also heard from experts that voluntary registration could create obstacles to voting. Ultimately, the Commission recommended that provincial lists of electors be used for federal purposes.

> *The current approach assumes that an enumeration must be as complete as possible if voter registration is to achieve full coverage. This ignores the fact that revision and election-day registration are integral components of a comprehensive process of registration.*
>
> – *Royal Commission on Electoral Reform and Party Financing, Final Report, 1992*

A 1996 report by an Elections Canada working group indicated that such a register would be both feasible and cost-effective, could shorten the election period by eliminating enumeration and could significantly reduce costs and duplication of effort across Canada. That autumn, the Liberal government of Jean Chrétien introduced

* In Quebec, the 1992 referendum was conducted under provincial legislation.

Bill C-63, which amended the *Canada Elections Act* to enable the necessary administrative changes. With the bill's passage in December, Elections Canada was given the mandate to create Canada's National Register of Electors.

In preparation for the 1997 general election, Elections Canada conducted its final door-to-door enumeration. Because provincial elections had recently been held in Alberta and Prince Edward Island, lists from those provinces were used for the preliminary lists of electors. The National Register of Electors became a reality after this enumeration and was used for the first time during the 1997 election.

Since that enumeration, the Register has been updated regularly with data from a variety of sources, obtained through information-sharing agreements negotiated by the Chief Electoral Officer. Data-sharing partners of the Register include provincial and territorial motor vehicle and vital statistics registrars and, federally, the Canada Revenue Agency; Immigration, Refugees and Citizenship Canada; and National Defence. Together, these sources update the addresses of the millions of Canadians who move each year—in 2018, 5.2 percent of 15 million households had moved within the past five years. They also identify the names of new electors who turn 18 years of age or acquire Canadian citizenship, and those who die and must be removed from the lists.

Elections Canada also updates the Register from the electoral lists of the provinces and territories that still use some form of enumeration, and the agency normally visits some 10 percent of households in targeted revision initiatives during federal elections. Also, when a general election or by-election is under way, voters can register at their local Elections Canada office or at their polling place when they go to vote. The *Canada Elections Act* includes strict limits on how personal information from the National Register can be used.

Elections Canada

Registering at Home

While most information for the voters lists comes from the National Register of Electors, targeted revision of high mobility and low registration areas is conducted during the election period. Revising agents visit new subdivisions, apartment buildings, student residences, nursing homes and chronic care hospitals. The effectiveness of door-to-door canvassing is declining because increasing numbers of people are away from home during the day and there is growing reluctance to open doors to strangers.

Thanks to the various methods for collecting information and keeping the Register current, it includes the large majority of Canadian electors and is for the most part accurate. Between 2009 and 2020, national coverage—the percentage of electors included in the Register—varied between 92 percent and 96.9 percent (Elections Canada, Description of the National Register of Electors). At the start of the 2019 general election, the coverage was 96.4 percent. The accuracy of the Register—the proportion of registered electors whose address is current—was 93.3 percent at the start of the 2019 general election, compared with 91 percent in 2015 and 90 percent in 2011 (Elections Canada, *Report on the 43rd General Election of October 21, 2019*).

From its conception, a primary goal of the National Register of Electors was to minimize duplication of effort between elections and across jurisdictions, thereby reducing costs for the taxpayer. According to a statement by the Chief Electoral Officer to the Standing Senate Committee on National Finance on February 8, 2005, concerning its use in the 2000 and 2004 general elections, the Register was estimated to have saved $100 million.

By eliminating the need to conduct a full enumeration with each election, the Register enabled another change long advocated by many voters: the shortening of election campaigns. In 1997, the minimum length of time required between the issue of the election writs and polling day was reduced from 47 to 36 days, and this standard has remained in effect. Election campaigns could, however, be longer—indeed, the 2015 campaign lasted a record 78 days. In 2018, Bill C-76 set a maximum 50-day election period.

Bill C-76 also established a Register of Future Electors in which Canadian citizens 14 to 17 years of age can apply to be included. Upon turning 18, eligible individuals are added to the National Register of Electors. The preregistration of 16- and 17-year-olds was one of the recommendations from the Chief Electoral Officer following the 2015 general election.

IDENTIFICATION REQUIREMENTS

One of the most significant changes to voting practices in the mid-2000s was the introduction of the need for voters to provide proof of identity and address to register for and vote in a federal election.

The *Canada Elections Act* of 2000 standardized the process by which voters could register on the day of an election. Since 1993, voters had been permitted to register on election day, but only rural voters had the option to qualify, without documented evidence of identity and address, by simply making a sworn statement and having any other elector registered in that polling division vouch for them. The revised *Canada Elections Act* extended this option to urban voters as well.

The requirement to show identification was the result of concerns about the integrity of the electoral process. In June 2006, the House of Commons Standing Committee on Procedure and House Affairs tabled a report entitled *Improving the Integrity of the Electoral Process: Recommendations for Legislative Change*. Saying that concerns had been expressed "about the potential for fraud and misrepresentation in voting," the Committee noted that other important activities required people to show identification. It went on to say:

Traditionally, Canada has tried to make voting as easy as possible, but if confidence in the system is undermined, it becomes necessary to make changes. Obviously, it is not our intention to impose any measures that would discourage voting, nor do we want to make voting more difficult than necessary. The credibility and legitimacy of the system, however, require that procedures be adopted to ensure that only those persons who are entitled to vote do so, and that they are who they say they are. This is essential to preserve the integrity in the electoral system.

– *House of Commons, Standing Committee on Procedure and House Affairs,* Improving the Integrity of the Electoral Process: Recommendations for Legislative Change*, Report 13, 1st Session, 39th Parliament, June 2006*

The Committee also said that all of the political parties then represented in the House of Commons supported "a more effective method of ensuring voter identification, including photo identification, with alternatives available for persons who are unable to furnish the required identification." In his appearance before the Committee on June 13, 2006, the Chief Electoral Officer, Jean-Pierre Kingsley, said he was in favour of the idea that voters have to present identification when voting.

In its response, the government said it would introduce a bill that would implement a uniform system of voter identification at the polls. Bill C-31, *An Act to amend the Canada Elections Act and the Public Service Employment Act*, which was adopted on June 22, 2007, introduced voter identification requirements, including proof of identity and address. To prove these, electors could choose one of three ways:

- Provide one piece of identification, issued by a Canadian government (federal, provincial/territorial or local). It must show the elector's photo, name and address.
- Provide two pieces of identification, both showing the elector's name and one also showing the elector's address.
- Swear an oath and be vouched for by an elector whose name appears on the list of electors in the same polling division and who has proven their own identity and address.

Elections Canada

Registering at the Polls

Canadians who are not already on the voters lists can register when they go to vote at the advance or election day polls. Under the rules in place in 2020, they must present proof of their identity and residence; or they may declare that information and have someone who knows them and who is assigned to their polling station vouch for them.

These requirements caused a problem for electors living in rural areas who did not have identification documents showing their civic address. To deal with this problem, the government introduced Bill C-18, *An Act to amend the Canada Elections Act (verification of residence)* to allow the use of another type of identification document. Bill C-18 was adopted on December 14, 2007.

In 2014, the identification requirements were modified by provisions of Bill C-23. Adopted by Parliament on June 19, 2014, it prohibited using the voter information card as a piece of identification at the polls. The bill also eliminated the ability of an elector to prove their identity through vouching; this was replaced with an attestation process that still required proof of identity and under which another elector could attest to the elector's address.

However, the voter identification requirements were modified once again in December 2018 when Parliament adopted Bill C-76. It lifted the prohibition on using the voter information card as proof of address and restored vouching for electors with no identification documents.

Key Provisions of Bill C-23, the *Fair Elections Act* (2014)

- prohibited the voter information card as a piece of identification authorized by the Chief Electoral Officer
- replaced previous vouching provisions with a procedure for attestation of an elector's address but not the elector's identity
- added a fourth day of advance polling on the Sunday, the eighth day before polling day
- moved the Commissioner for Canada Elections from Elections Canada to the Office of the Director of Public Prosecutions
- introduced a new requirement for an independent audit of poll worker performance following an election
- introduced a new regime regarding voter contact calling services
- changed the tenure of the Chief Electoral Officer to a 10-year, non-renewable term
- introduced new provisions allowing the Chief Electoral Officer to issue interpretation notes, guidelines and written opinions on applying the *Canada Elections Act*
- the Chief Electoral Officer's mandate to implement public education and information programs to make the electoral process better known restricted to students at the elementary and secondary levels

Key Provisions of Bill C-76, the *Elections Modernization Act* (2018)

- established a maximum election period of 50 days
- extended advance poll hours to 12 hours on each of the 4 days
- reduced the minimum age of election officers to 16
- replaced the word "sex" with the word "gender" throughout the Act
- established the Register of Future Electors
- removed the prohibition on using the voter information card as proof of address when used with another piece of identification establishing the elector's identity
- introduced the ability to vouch for an elector's identity and address (and removed the ability to attest to address)
- replaced the requirement for "level access" with the requirement for premises to be "accessible to electors with a disability"
- removed the requirements that electors living abroad must have been away from Canada for less than five consecutive years and that they must intend to return to Canada
- repealed legislative provisions that had been struck down by the Supreme Court of Canada's 2002 *Sauvé* decision regarding voting by prisoners serving a term of two years or more
- restored the Chief Electoral Officer's education and information mandate
- created a pre-election period before fixed-date general elections with new spending limits and reporting requirements for regulated political entities
- expanded the third-party regime by regulating new activities and enacting new reporting requirements and a prohibition on using foreign funds for partisan activities, partisan or election advertising, or election surveys
- required political parties to publish—and maintain—on their website their policy for the protection of personal information
- required some online platforms to maintain a publicly accessible registry of election and partisan ads
- relocated the position of Commissioner of Canada Elections within the Office of the Chief Electoral Officer and granted the Commissioner additional powers

INTEGRITY OF THE VOTING PROCESS

In addition to the new identification requirements first introduced in 2007, further changes to Elections Canada's practices related to the integrity of the voting process were brought about by two court cases. These cases arose out of incidents during the 2011 general election that involved administrative procedures at polling stations and fraudulent telephone calls to voters.

The first case involved a judicial recount in the Ontario riding of Etobicoke Centre. After it was declared that Ted Opitz had won by 26 votes, the second-place candidate, Borys Wrzesnewskyj, contested the result in the Ontario Superior Court of Justice. On May 18, 2012, the Court, which found that election officers had made a number of administrative errors, declared the results of the election "null and void." Mr. Opitz appealed the decision to the Supreme Court of Canada. In a split decision delivered on October 25, 2012, the Supreme Court ruled in his favour and confirmed the original election result.

The case centred on what administrative errors should be considered "irregularities that affected the result of the election." The majority of the judges held that "only votes cast by persons not entitled to vote are invalid," while the minority thought the election could be annulled if there were sufficient administrative irregularities—in other words, "failures to comply with the requirements of the [Canada Elections] Act."

To resolve the issue, the Supreme Court established two conditions for invalidating a vote: first, there was "a breach of a statutory provision designed to establish the elector's entitlement to vote" and, second, "someone not entitled to vote, voted." If the number of votes invalidated is equal to or greater than the successful candidate's plurality, the election result is annulled.

In this case, the Court did not find sufficient evidence to show that the administrative errors had resulted in voting by people not entitled to vote. At the same time, the Court found that election officers made many serious errors and that, in other circumstances, such errors could lead to an election being overturned (*Opitz v. Wrzesnewskyj*, 2012 SCC 55). While this court case was under way, Chief Electoral Officer Marc Mayrand said Elections Canada would place "a major priority on strengthening measures aiming to improve compliance with procedures and standards applicable on voting days." (Harry Neufeld, *Compliance Review: Final Report and Recommendations*, Elections Canada, 2013, p. 11.)

To assist it in improving its administrative practices, Elections Canada commissioned Harry Neufeld, an independent elections expert, to conduct a review of compliance by election officers with election day procedures. His March 2013 final report found that irregularities had occurred for 1.3 percent of all cases of election day voting, an average of 500 administrative errors per electoral district. He recommended the redesign of the voting process to reduce the risk of errors.

Bill C-23 introduced a new requirement for an independent audit of poll worker performance following an election. In 2015–16, Elections Canada set up an internal directorate "to oversee compliance with voting procedures and enhance its ability to detect, analyze and respond to incidents that could affect the integrity of the electoral process." (Elections Canada, *2015–16 Departmental Performance Report*.) As well, for the 2015 general election, procedural changes were made to improve compliance at polling stations, more central poll supervisors and registration officers were hired, and training material for poll workers was revised. Additional enhancements were introduced for the 2019 general election, including streamlining and simplifying certificates and forms, further improving the training program and materials, and increasing the support role of the central poll supervisor. At both the 2015 and 2019 general elections, no

incidents were detected that interfered with the integrity of the electoral process, and the independent audits confirmed that election officials properly performed their duties at the polls.

The second case related to the integrity of the voting process involved automated telephone calls (so-called robocalls) made during the 2011 general election that gave voters false information about the location of their polling stations. A former Conservative Party staffer was ultimately convicted of trying to prevent electors from voting at the election.

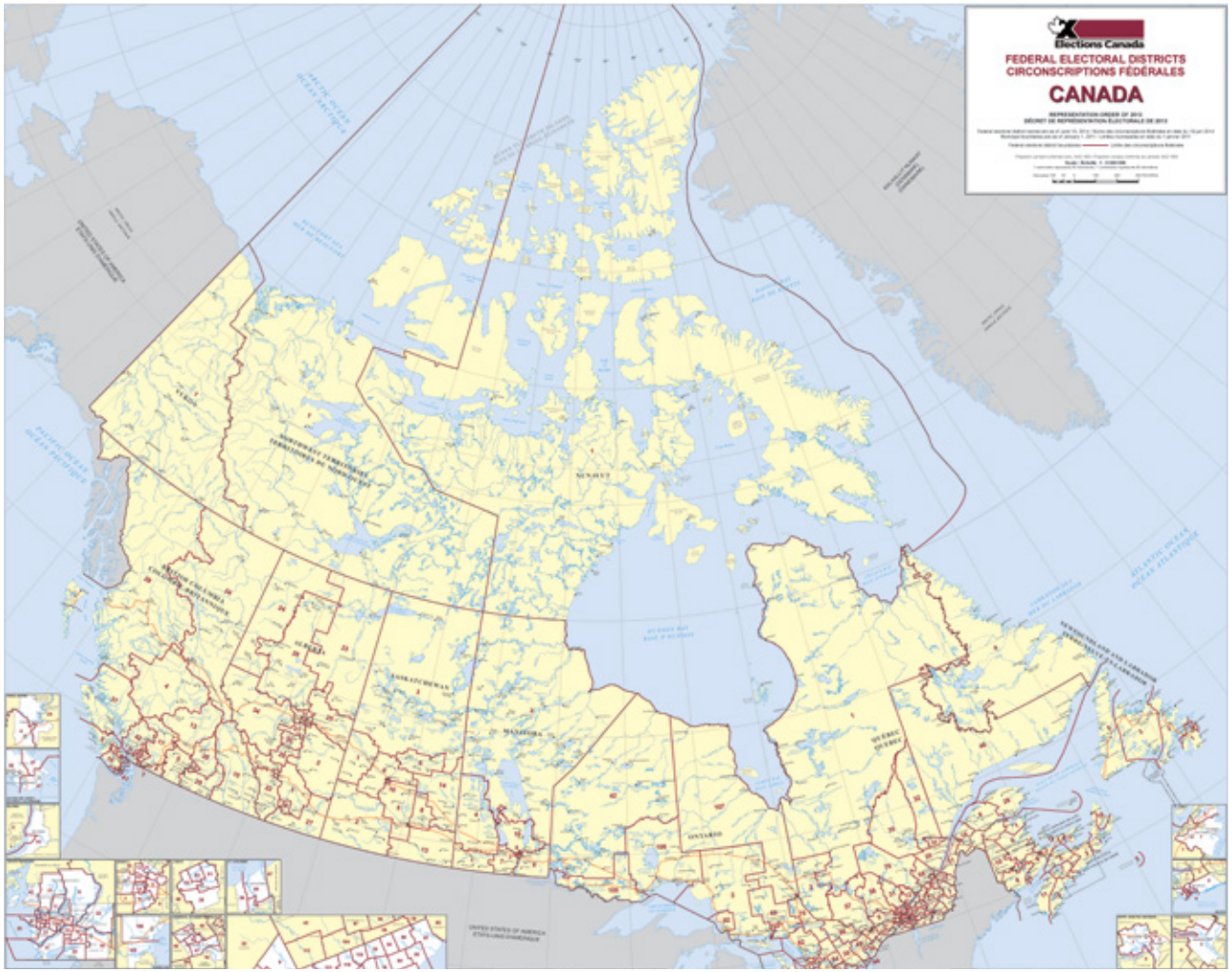
As a result of these fraudulent calls, the Federal Court was asked to annul the election results in six ridings. In his May 23, 2013, ruling, Justice Mosley found that fraud had occurred but said he was not satisfied that the fraud had affected the outcomes in the ridings. He therefore declined to exercise his discretion to annul the results. He noted, however, that had the successful electoral candidates or their agents been implicated in the fraudulent activity, he would not have hesitated to annul the result (*McEwing v. Canada (Attorney General)*, 2013 FC 525).

Also as a result of the robocalls case, Bill C-23 introduced a new regime to ensure transparency when calling service providers contact voters during an election period. Under this regime, the Canadian Radio-television and Telecommunications Commission (CRTC) is responsible for establishing, maintaining and enforcing the Voter Contact Registry. Those making calls related to the election during the election period must register with the CRTC. They must also keep records of the telephone numbers they call and copies of scripts and recordings used during the calls. Bill C-23 also made it an offence to impersonate candidates or election officers and to fail to follow the obligations to keep scripts and recordings.

In the lead-up to the 2019 general election, new concerns arose about threats to the security of the vote from influence campaigns, disinformation or cyberattacks. In a report entitled *Cyber Threats to Canada's Democratic Process*, which was published in 2017 and updated in 2019, the Communications Security Establishment (CSE) identified threats posed by foreign adversaries to elections, political parties and politicians, and traditional and social media. CSE, which provides information technology security services to the Government of Canada, said that Canadian voters would likely encounter foreign cyber interference related to the 2019 federal election. However, it noted that while elections around the world had faced cyber threats, "Canada's federal elections are largely paper-based and Elections Canada has a number of legal, procedural, and information technology (IT) measures in place that provide very robust protections against attempts to covertly change the official vote count." (Communications Security Establishment, *2019 Update: Cyber Threats to Canada's Democratic Process*, p. 5.)

In response to these concerns, Bill C-76 included provisions to combat emerging threats related to digital interference and disinformation. For example, it prohibited third parties from using funding from foreign entities to conduct partisan activities or partisan or election advertising. It also required major online platforms that sell advertising to political entities during the pre-election and election periods to maintain a registry of that advertising.

In January 2019, the government announced the creation of the Security and Intelligence Threats to Elections Task Force, made up of the Canadian Security Intelligence Service, the Royal Canadian Mounted Police, the CSE, and Global Affairs Canada. As an independent agency, Elections Canada was not part of the task force, but it collaborated with these organizations and took measures to improve the security of the vote, such as by improving its information technology infrastructure and providing security awareness training to Elections Canada staff.



Elections Canada

Electoral Districts per Province and Territory

In 2015, the number of electoral districts (and seats in the House of Commons) rose to 338. Additional districts, reflecting changes in population, were allocated to Ontario (15), British Columbia (6), Alberta (6) and Quebec (3).

BOUNDARY REDISTRIBUTION

As we saw in Chapter 3, the *Electoral Boundaries Readjustment Act* of 1964 established an impartial process for redrawing constituency boundaries. With continual population shifts occurring since the 1970s, this process led to new seats being created in southern urban areas of the country at the expense of remote northern and rural ridings, as well as of some established and historic ridings in urban cores. The formula for calculating seats is set out in the *Constitution Act, 1867*; it was revised in 1974, in 1985 and in 2011.

Under the *Electoral Boundaries Readjustment Act*, commissions draw constituency boundaries so that the population of each electoral district is as close as is reasonably possible to the average population size of a district for that province. Commissions must make every effort to ensure that no constituency deviates from the average by plus or minus 25 percent. In extraordinary circumstances, however, commissions may exceed these limits. Commissions must also consider other human and geographic factors and may vary the size of constituencies to respect communities of interest or identity, to respect historical patterns of previous electoral boundaries or to maintain a manageable geographic size for districts in sparsely populated, rural or northern regions of the province.

Will Fripp, Secretary, Federal Electoral Boundaries Commission for Ontario

Shifting the Boundaries

The work of determining federal electoral district boundaries following each decennial census is done by 10 independent federal electoral boundaries commissions (one for each province). As Nunavut, the Northwest Territories and Yukon constitute one electoral district each, they do not require commissions. Pictured here is the commission for Ontario at one of its 2002 hearings in London.

Ensuing Charter challenges highlighted the concept of "community of interest." The most significant case was the 1991 *Reference re Prov. Electoral Boundaries (Sask.)* ([1991] 2 SCR 158, also known as *Carter*). The case was put forward on behalf of a group of Saskatoon and Regina voters seeking a court ruling on the constitutional validity of the electoral boundaries that Saskatchewan adopted after *The Representation Act, 1989* became law.* In reversing a decision by that province's court of appeal, the Supreme Court of Canada held that strict population count should not be deemed the only consideration in defining equitable electoral district boundaries. The Court

*The Act had resulted in the creation of seats with tolerance limits of plus or minus 25 percent in all but the northern part of the province. For the two northern seats, the limits were set at plus or minus 50 percent. It made a further distinction among the seats in the southern part of the province by dividing them into rural and urban categories. The 25 percent limit for southern seats represented a switch from Saskatchewan's previous population limits of plus or minus 15 percent, and the urban/rural distinction was a first in the province's history. (Courtney)

ruled that "the purpose of the right to vote enshrined in section 3 of the Charter is not equality of voting power per se, but the right to 'effective representation,'" which could be achieved by "relative parity of voting power," taking into account factors such as geography, community history, community interest and minority representation to "ensure that our legislative assemblies effectively represent the diversity of our social mosaic."

Another case highlighting the concept of community of interest was *Raîche v. Canada (Attorney General)* (2004 FC 679), in which the Federal Court held that the Federal Electoral Boundaries Commission for New Brunswick had erred in its application of the rules governing the preparation of its recommendations. The Court found that the Commission had not adequately heeded the importance of the *Official Languages Act* and the communities of interest that existed in the electoral districts. In response to this case, the government introduced Bill C-36, which received royal assent in 2005 and which changed the boundaries of the Acadie–Bathurst and Miramichi electoral districts. It reversed the transfer of certain Francophone parishes from a majority French-speaking riding to a majority English-speaking one. This was the first time since the *Electoral Boundaries Readjustment Act* was introduced that a court had ordered an electoral boundary to be changed.

Following the 1991 Census, Parliament suspended the readjustment process twice. In 1992, it did so because the readjustment process could likely not be completed before the next federal election. In 1994, faced with dissatisfaction about the process, the government decided to review the *Electoral Boundaries Readjustment Act*. As a result, Parliament suspended the readjustment process again. In February 1995, the government introduced Bill C-69, *Electoral Boundaries Readjustment Act, 1995*. Provisions in this proposed legislation were aimed largely at forging a closer link between the redistribution process and the real needs of the populations it sought to serve. The bill would have provided for redistribution reviews every 5 years, instead of 10, and would have defined the term "community of interest" to include

> *such factors as the economy, existing or traditional boundaries of electoral districts, the urban or rural characteristics of a territory, the boundaries of municipalities and Indian reserves, natural boundaries and access to means of communication and transportation.*
>
> – *House of Commons, Bill C-69,* An Act to provide for the establishment of electoral boundaries commissions and the readjustment of electoral boundaries*, clause 19(5), 1st Session, 35th Parliament*

Although Bill C-69 was passed by the House of Commons, it died on the Order Paper in the Senate when the 1997 general election was called.

The Standing Committee on Procedure and House Affairs made recommendations for improving redistribution in its April 2004 report to the House. In May 2005, the Chief Electoral Officer, Jean-Pierre Kingsley, issued a report entitled *Enhancing the Values of Redistribution*. It made recommendations on, among other things, ensuring the timely conclusion of redistribution, enhancing the effective representation of Canadians and improving the amount and quality of public input. The report also supported the calls from the Standing Committee to embed a definition of the term "communities of interest" in the legislation.

To address the underrepresentation of the fastest-growing provinces—Ontario, British Columbia and Alberta—in December 2011 Parliament passed Bill C-20, the *Fair Representation Act*. It created more seats for these provinces as well as for Quebec, to prevent that province from becoming underrepresented.

Key Provisions of Bill C-20, the *Fair Representation Act* (2011)

- changed the formula found in the *Constitution Act, 1867* for the allocation of House of Commons seats to provinces, resulting in an increase in the number of electoral districts from 308 to 338 in 2015 (this was done through a constitutional amendment under section 44 of the *Constitution Act, 1982*, under which Parliament may exclusively make laws amending the Constitution in relation to the Senate and the House of Commons)
- amended the time periods in several provisions of the *Electoral Boundaries Readjustment Act* and required that electronic versions of maps be provided to registered parties
- allowed a returning officer to be appointed for a new term of office, whether or not other persons are considered for the appointment, if the office of the returning officer is vacant by reason of the revision of the boundaries for federal electoral districts

Elections Canada

Finding an Electoral District

The Elections Canada website provides information about electoral districts, including lists of candidates, locations of polling places, the addresses of local Elections Canada offices and maps of electoral districts.

TABLE 4.2
NUMBER OF PROVINCIAL AND TERRITORIAL SEATS, 1867–2013

Year	Can.	N.B.	N.S.	Ont.	Que.	Man.	B.C.	P.E.I.	N.W.T.	Y.T.	N.L.	Nun.
1867	181	15	19	82	65							
1871	185	15	19	82	65	4						
1872	200	16	21	88	65	4	6					
1873	206	16	21	88	65	4	6	6				
1882	211	16	21	92	65	5	6	6				
1887	215	16	21	92	65	5	6	6	4			
1892	213	14	20	92	65	7	6	5	4			
1903	214	13	18	86	65	10	7	4	10	1		

Year	Can.	N.B.	N.S.	Ont.	Que.	Man.	B.C.	P.E.I.	Alta.	Sask.	N.W.T. / Y.T.	N.L.	Nun.
1907	221	13	18	86	65	10	7	4	7	10	1		
1914	234	11	16	82	65	15	13	3	12	16	1		
1915	235	11	16	82	65	15	13	4	12	16	1		
1924	245	11	14	82	65	17	14	4	16	21	1		
1933	245	10	12	82	65	17	16	4	17	21	1		
1947	255	10	13	83	73	16	18	4	17	20	1		
1949	262	10	13	83	73	16	18	4	17	20	1	7	

Year	Can.	N.B.	N.S.	Ont.	Que.	Man.	B.C.	P.E.I.	Alta.	Sask.	N.W.T.	Y.T.	N.L.	Nun.
1952	265	10	12	85	75	14	22	4	17	17	1	1	7	
1966	264	10	11	88	74	13	23	4	19	13	1	1	7	
1976	282	10	11	95	75	14	28	4	21	14	2	1	7	
1987	295	10	11	99	75	14	32	4	26	14	2	1	7	
1996	301	10	11	103	75	14	34	4	26	14	2	1	7	
2003	308	10	11	106	75	14	36	4	28	14	1	1	7	1
2013	338	10	11	121	78	14	42	4	34	14	1	1	7	1

Proposals for Reforming the Electoral System

Proposals to reform Canada's first-past-the-post electoral system have arisen from time to time.

- In 1985, the Royal Commission on the Economic Union and Development Prospects for Canada (also known as the Macdonald Commission after its chair, Donald S. Macdonald) recommended that "the Senate should be elected by a system of proportional representation." It also recommended that if Senate reform could not be adopted within a reasonable time, "efforts should be made to reform the electoral system of the House of Commons to enhance regional representation."
- In its 1992 final report, the Lortie Commission noted that while the Macdonald Commission had considered alternatives to the first-past-the-post voting system, none of them had been placed before the House of Commons. The Lortie Commission, therefore, did not recommend changes to the first-past-the-post system.
- Beginning in 2001, the Law Commission of Canada, which had the mandate to provide independent advice on improving, modernizing and reforming the legal system, undertook a study of electoral reform. In its 2004 report, entitled *Voting Counts: Electoral Reform for Canada*, the Commission recommended "that Canada adopt a mixed member proportional electoral system."
- In February 2013, the Conservative government of Stephen Harper asked the Supreme Court to consider, among other things, whether it was in Parliament's legislative authority to establish a process of consultative elections for the nomination of senators. In its 2014 decision, the Supreme Court ruled that establishing such a process would require amending the Constitution under the general amending formula (*Reference re Senate Reform*, 2014 SCC 32). This means that it would need to be approved by Parliament and by two thirds of the provinces, representing 50 percent of the population.
- In 2016, the Liberal government of Justin Trudeau launched a series of consultations on electoral reform. Concurrently, in June 2016 the House of Commons established the Special Committee on Electoral Reform to study the question of voting systems to replace the first-past-the-post system and the questions of mandatory voting and online voting. The Special Committee conducted extensive consultations with Canadians and sought the views of experts. In its December 2016 report, the Special Committee recommended that a referendum be held on the current electoral system and a proposed proportional electoral system. The proposed system would be designed "to minimize the level of distortion between the popular will of the electorate and the resultant seat allocations in Parliament." The Special Committee recommended that neither mandatory voting nor online voting be

implemented "at this time." Other recommendations dealt with improving accessibility of the vote, improving voter turnout and increasing the possibilities for historically disenfranchised and underrepresented groups to be elected, registering youth under 18 years of age in the National Register of Electors and giving Elections Canada the mandate to encourage voter participation.

- In its response to the Special Committee, the government said that "a clear preference for a new electoral system, let alone a consensus, has not emerged. Furthermore, without a clear preference or a clear question, a referendum would not be in Canada's interest." The government did, however, agree with the intent of recommendations to improve accessibility of the vote to improve voter turnout and encourage participation by traditionally underrepresented groups. It also agreed with recommendations to create a Register of Future Electors and to give Elections Canada a mandate to encourage greater voter participation.

Proposals for Improving Indigenous Representation in Parliament

During the 1990s, several proposals were made to improve Indigenous representation in Parliament.

- In its 1992 final report, the Lortie Commission discussed the issue of Indigenous electoral districts. It said that there was consensus among Indigenous people for the creation of such districts, that the creation of such districts would be compatible with the Canadian parliamentary system and that non-Indigenous Canadians had compelling reasons to support their creation. The Commission therefore recommended the creation of seven Indigenous electoral districts: two in Ontario and one each in Quebec, Manitoba, Saskatchewan, Alberta and British Columbia.

- The 1992 Charlottetown Accord, a package of proposed constitutional amendments, also addressed the issue of Indigenous representation. The Accord proposed that Parliament study the issue in consultation with Indigenous people. However, the Accord was rejected in a referendum on October 26, 1992, and the study did not go ahead.

- The 1996 report of the Royal Commission on Aboriginal Peoples* recommended the establishment of an "Aboriginal" parliament, whose main function would be "to provide advice to the House of Commons and the Senate on legislation and constitutional matters relating to Aboriginal peoples." The Indigenous parliamentarians would be elected by their Nations or peoples, with the elections taking place at the same time as federal elections.

* During the 1990s, the term "Aboriginal" was used instead of "Indigenous."

EXTENDING THE REGULATION OF POLITICAL FINANCING

During the period covered by this chapter, key changes were made to the regulation of campaign and electoral financing, as well as to the regulation of third-party spending. The aim of these changes was to provide greater transparency and a level playing field so that everyone has the same opportunity to participate in the electoral process and voters are better informed about the funding of political campaigns and how the money is being spent.

As a result of these and other changes, the role of Elections Canada has evolved and become more complex. In addition to its operational role in the delivery of elections, it must ensure regulatory compliance. Notably, it must ensure compliance with contribution and spending limits, with the regime for reimbursing election expenses and with financial reporting requirements.

The successive reforms between 1974 and 2018 have established a comprehensive political financing regime, a regime that has become increasingly complex. For example, there are contribution limits, many categories of expenses, and requirements during the pre-election period established in 2018 that are different from those during the election period. To help political entities comply with the rules, Elections Canada produces training materials, responds to questions from political entities and issues written opinions, guidelines and interpretation notes.

Maria Janicki/Alamy - Image ID: F4KBPK

Key Elements of Canada's Political Financing Regime

Under Canada's political financing regime, there are annual limits on contributions from individuals, and contributions from corporations and unions are banned. Public funding is provided through tax credits for contributions and partial reimbursement of election expenses. As well, there are financial reporting requirements for political entities.

CAMPAIGN AND ELECTORAL FINANCING

The reform of campaign and electoral financing came about as a result of the vigorous debate on the subject that took place in the late 1990s and early 2000s. In 1992, the Lortie Commission made several recommendations to reform political finance at the federal level. The Chief Electoral Officer's reports to Parliament following the 1993, 1997 and 2000 general elections strongly supported measures to curb the influence of corporate and union donors.

As a result, in January 2003 the Liberal government of Jean Chrétien introduced Bill C-24, *An Act to amend the Canada Elections Act and the Income Tax Act*. The bill provided the most significant set of reforms to party and campaign financing since the 1974 *Election Expenses Act*. In his speech at second reading, Prime Minister Chrétien said this was

> *a bill that will change the way politics is done in this country, a bill that will address the perception that money talks, that big companies and big unions have too much influence on politics, a bill that will reduce cynicism about politics and politicians, a bill that is tough but fair.*
>
> – Debates*, February 11, 2003*

The legislation, which Parliament adopted in June 2003 and which came into force in January 2004, was rooted in the belief that the primary source for contributions to political parties and candidates should be individuals giving relatively small amounts, as opposed to larger donations from organizations. The new regulations therefore stipulated that each elector could contribute up to a total of $5,000 a year to registered parties and their electoral district associations, nomination contestants and candidates; $5,000 to independent candidates; and $5,000 to leadership contestants. Donations from corporations and trade unions to registered associations, nomination contestants and candidates were limited to $1,000 per year. Furthermore, while individuals could contribute directly to a registered party, corporations and unions could not. To police the new rules, the Act extended disclosure requirements to electoral district associations and to leadership contestants and nomination contestants of registered parties.

To counterbalance the new contribution limits, Bill C-24 introduced direct public subsidies for political parties. These subsidies were in addition to the public funding being made through partial reimbursement of expenses and tax credits for contributions. Bill C-24 entitled any party receiving a minimum percentage of the popular vote in a general election to a quarterly public allowance proportional to its share of votes (also known as a per-vote subsidy). These quarterly allowances compensated parties for the loss of their customary funding stream from large corporate and union donations. The concept was not new—both the Barbeau Committee in 1966 and the Lortie Commission in 1992 were in favour of funding political parties through direct public subsidies.

The quarterly allowances added an average of $26.4 million a year to the coffers of all the eligible registered parties. As a result, "annual average revenue streams to all regulated federal political entities went from $76.6 million before 2004 to $111.9 million after 2004, an increase of 46%." (Elections Canada, *Analysis of Financial Trends of Regulated Federal Political Entities, 2000–2014*, November 2015.)

With the aim of providing for equal opportunity and a level playing field, Bill C-24 also sought to address concerns about unbridled spending in nomination and leadership contests. New rules required the contestants to

- register with Elections Canada
- abide by rules governing who could make contributions to their campaigns
- limit nomination campaign expenses to 20 percent of the general election spending limit for the electoral district, per candidate
- disclose all nomination contributions and spending information, as they would for election campaigns

Finally, Bill C-24 brought local electoral district associations under legislative purview for the first time. Under the new rules, any such entity wishing to accept contributions on behalf of—or provide goods and services or transfer funds to—a registered party or candidate had to register and report annually to Elections Canada.

The underlying premise of Bill C-24 was that financial controls and full disclosure "will increase public confidence in the system, and that financially healthy political parties will contribute to the vitality of the electoral process." (Robertson, 13.) As described by the Supreme Court of Canada, this approach is known as an "egalitarian model" of electoral democracy. Under this model, everyone has an equal opportunity to participate in the electoral process. This is achieved by reimbursing candidates and political parties and providing broadcast time to political parties. Electoral spending is regulated with the aim of creating a level playing field for those wishing to participate in the process, which in turn allows voters to be better informed. (*Harper v. Canada (Attorney General)*, 2004 SCC 33.)

All of us in this House have been guilty at one time or another of throwing out the accusation that corporate or union contributions influence our opponents—often without foundation. And the media even more so. This is not good for the political process. It is not good for democracy. This bill addresses this issue head on.

– Jean Chrétien, address preceding the second reading of Bill C-24, House of Commons, February 11, 2003

Key Provisions of Bill C-24, *An Act to amend the Canada Elections Act and the Income Tax Act* (2004)

- Introduced a limit on annual contributions to registered political parties, electoral district associations, candidates, nomination contestants and leadership contestants. Individual Canadian citizens and permanent residents could contribute up to $5,000 annually to a registered party and its electoral district associations, candidates and nomination contestants, plus $5,000 toward a party leadership contest and $5,000 to each independent candidate.
- Corporations and trade unions could contribute up to $1,000 annually to a registered party's electoral district associations, candidates and nomination contestants—but nothing at all to the party itself or its leadership contestants.
- Anyone who accepts a contribution to their campaign for the leadership of a party, or incurs leadership campaign expenses, must register with the Chief Electoral Officer as a leadership contestant.
- Registered political parties receive a quarterly allowance of 43.75 cents ($1.75 per year) for each vote they received in the most recent general election. To qualify, a party must have received at least 2 percent of all votes cast nationally or 5 percent of votes cast in the electoral districts in which it ran candidates.
- The election expenses reimbursement rate for registered parties increased from 22.5 to 50 percent.

- The share of votes cast that a candidate must receive to qualify for election expenses reimbursement was lowered from 15 to 10 percent, while the portion of eligible expenses increased from 50 to 60 percent.
- The upper threshold for a donation eligible to receive the maximum Political Contribution Tax Credit rate of 75 percent rose from $200 to $400.
- New anti-avoidance provisions prohibited attempts by parties or candidates to hide the identity of donors or otherwise circumvent restrictions on contributor eligibility or contribution amounts.
- The period for instituting a prosecution following the commission of an offence was extended from 18 months to 7 years, as long as the action commenced within 18 months of the complaint being brought to the attention of the Commissioner of Canada Elections.

Bill C-24 was followed in 2006 by Bill C-2, the *Federal Accountability Act*. Introduced by the Conservative government of Stephen Harper, this legislation further restricted political donations by banning contributions from corporations, trade unions, associations and groups. It also made other changes to the *Canada Elections Act* that were intended to increase the transparency of the electoral process and better control the influence of money on elections.

Key Provisions of Bill C-2, the *Federal Accountability Act* (2006)

- Only individuals may make contributions to registered political entities; those individuals must be Canadian citizens or permanent residents.
- Contributions are capped at $1,000 (indexed for inflation) per calendar year to each of the following:
  - a registered political party
  - each entity related to a registered party (electoral district associations, nomination contestants and leadership contestants)
  - each candidate, including those endorsed by a registered party and independent candidates.
- Cash contributions to registered political entities are limited to $20.
- Corporations, trade unions, associations and groups may no longer make political contributions.
- Candidates cannot accept any gift (other than contributions to their campaign) that might be seen to influence them as eventual members of Parliament, although they may accept a gift from a relative or as a normal expression of courtesy or protocol.
- Candidates must report to the Chief Electoral Officer the name and address of every person (other than a relative) or organization from whom they receive a gift or gifts worth more than $500 while a candidate, the nature of the gift and the circumstances under which it was given.

- Registered parties and registered electoral district associations may no longer transfer trust funds to candidates of the party.
- The Chief Electoral Officer is responsible for appointing a returning officer for each electoral district. Appointments are made on the basis of merit, when the Chief Electoral Officer is satisfied that the person meets the essential qualifications to perform the work. Returning officers are appointed for a term of 10 years, but may be removed for reasons set out in the Act.
- A prosecution for an offence under the *Canada Elections Act* must start within 5 years after the day when the Commissioner of Canada Elections became aware of the facts giving rise to the prosecution, and no later than 10 years after the day the offence was committed.
- The Director of Public Prosecutions is responsible for prosecuting offences under the *Canada Elections Act*. The Commissioner of Canada Elections remains responsible for compliance agreements and enforcing the Act through the use of injunctions to prevent or stop violations of the law during an election period.

In its June 2011 Budget, the government announced that it would introduce legislation to phase out the quarterly allowances to political parties that had been introduced in 2003 as a way of compensating them for the loss of corporate and trade union donations. Noting that political parties also receive taxpayer support through the tax credit for contributions from taxpayers and the reimbursement of election expenses, the government said the elimination of the allowances was a way of generating savings in a time of fiscal restraint. The savings were projected to reach $30 million by 2015–16. (Government of Canada, *A Low-Tax Plan for Jobs and Growth*, June 6, 2011.)

Accordingly, in October 2011, the government introduced Bill C-13, *Keeping Canada's Economy and Jobs Growing Act*, an omnibus bill that, among other things, amended the *Canada Elections Act* to phase out the quarterly allowances over three years. During debate in the House of Commons, some of those in favour of eliminating the per-vote subsidy argued that political parties should be supported by their members instead of by taxpayers, while some of those opposed to ending the subsidy argued that it was a way of ensuring that every vote had an impact, whether the candidate won a seat or not. After Parliament adopted Bill C-13 in December 2011, the allowances paid to the parties were gradually reduced; the last quarterly allowances were paid in April 2015.

In February 2014, the government introduced Bill C-23, which Parliament adopted in June 2014. In addition to a number of administrative changes (discussed in the section on electoral programs and services), the bill increased the limits on the amounts individuals can contribute annually from $1,200 to $1,500, increasing by $25 per year. The bill also increased the spending limit for a party's or candidate's election expenses and provided for an increase to these spending limits if the election period was longer than the 36-day minimum.

In an interpretation note published in August 2015 and again in his 2016 recommendations report to Parliament following the 42nd general election, the Chief Electoral Officer, Marc Mayrand, drew attention to deficiencies related to the regulation of leadership and nomination contests:

> *Because it allows many relevant expenses and contributions never to be reported, the current political finance regulatory regime applicable to nomination and leadership contestants fails to achieve the Act's goal of transparency.*
>
> – *Chief Electoral Officer of Canada,* An Electoral Framework for the 21st Century: Recommendations from the Chief Electoral Officer of Canada Following the 42nd General Election*, September 2016*

This issue was one of those addressed in Bill C-50, *An Act to amend the Canada Elections Act (political financing)*. Introduced by the Liberal government of Justin Trudeau and adopted by Parliament on June 21, 2018, it changed nomination and leadership expense definitions so they include all expenses incurred in relation to the contest, as opposed to those expenses incurred only during the contest period. Bill C-50 also required that political parties publicly advertise fundraising events attended by ministers, party leaders or leadership candidates where more than $200 is required to attend. Political parties were also required to report the names of those who attended the fundraiser to Elections Canada.

As mentioned in the section on fixed-date elections, the general election of October 19, 2015, was the first to be held on a fixed election day, and the 78-day election period for this election was the longest since 1872. In his 2016 recommendations report, the Chief Electoral Officer, Marc Mayrand, pointed out that fixed election dates were intended to improve transparency and fairness. He went on to say, "The absence of a maximum period for the election, however, combined with the fact that spending limits for parties and candidates are prorated to the length of the campaign, can compromise the level playing field by favouring campaigns that have access to more resources."

This issue was addressed by Bill C-76, which established a maximum election period of 50 days. The Act also removed the provision under which spending limits varied depending on the length of the election period.

Bill C-76 also created a pre-election period during which political parties and third parties must respect spending limits. This pre-election period begins on June 30 in the year of a fixed-date general election and finishes on the day before the start of the election period. During this period, there are rules for partisan advertising by political parties, electoral district associations and third parties and for partisan activities and election surveys by third parties.

Elections Canada

Extending the Political Financing Rules

Over time, Parliament has extended the regulation of political financing with the aim of making it fairer and more transparent and to prevent the undue influence of money. Among other measures, rules were imposed on spending by third parties—persons or groups other than candidates and political parties. When these rules were challenged under the Charter, the courts ruled that broad regulation of electoral spending, while limiting freedom of expression, is justified in the name of electoral fairness.

THIRD-PARTY SPENDING

As we saw in Chapter 3, the 1974 *Election Expenses Act* provided that only parties and candidates would be permitted to spend money during an election period to promote or oppose candidates. Expenditures by so-called third parties were expressly prohibited, except where intended to gain support for a policy stance or promote the objectives of a non-partisan group.

This wording proved so broad that it failed to stand up in court against most infractions, and so it undermined the intended effect of the spending restrictions. For this reason, in 1983 the Liberal government of Pierre Elliott Trudeau introduced Bill C-169, *An Act to amend the Canada Elections Act (No. 3)*, which amended the legislation to prohibit any third-party election spending directed at supporting or opposing a candidate or party, unless officially authorized.

This legislation was struck down by the Alberta Court of Queen's Bench, in the case of the *National Citizens' Coalition Inc. v. Canada (Attorney General)* (1984, 11 DLR (4th) 481), on the grounds that it was an unconstitutional infringement of freedom of expression and contrary to section 2 of the Charter. This remained the status quo until 1993, when Bill C-114 sought to prohibit third parties from incurring election advertising expenses over $1,000. These restrictions, in turn, faced their own challenge from the National Citizens Coalition in *Canada (Attorney General) v. Somerville* (1996 ABCA 217). They met a similar fate, being struck down by the Alberta Court of Appeal.

A new legal interpretation of third-party spending restrictions emerged the following year in *Libman v. Quebec (Attorney General)* ([1997] 3 SCR 569). This case involved provisions in that province's *Referendum Act* that were similar to those struck down in the *Somerville* case. The Supreme Court of Canada upheld the Quebec *Referendum Act*'s provisions limiting third-party spending as a means of promoting equality of participation, as such regulations aim

> *to permit an informed choice to be made by ensuring that some positions are not buried by others [and] to preserve the confidence of the electorate in a democratic process that it knows will not be dominated by the power of money.*
>
> – Libman v. Quebec (Attorney General) *([1997] 3 SCR 569)*

The *Somerville* ruling created an anomaly that permitted third parties to spend an unlimited amount on election advertising, while the candidates themselves were restricted in their spending on election expenses. In his *Report of the Chief Electoral Officer of Canada on the 36th General Election*, Jean-Pierre Kingsley recommended that new legislation be drafted to restrict third-party spending, based on similar provisions in the federal *Referendum Act*.

The next attempt to restrict third-party spending activities materialized when the *Canada Elections Act* was replaced in 2000. Under the 2000 Act, election advertising was defined as

> *the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated.*
>
> – Canada Elections Act*, S.C. 2000, c. 9, s. 2(1)*

The new provisions limited spending by third parties, which were now defined in the *Canada Elections Act* as "a person or a group, other than a candidate, registered party or electoral district association of a registered party." The provisions also subjected third parties, for the first time, to registration and reporting requirements.

The National Citizens Coalition challenged the legislation's constitutionality in *Harper v. Canada (Attorney General)* (2004 SCC 33). On May 18, 2004, the Supreme Court of Canada ruled that, while the limits on third parties do limit freedom of expression, the infringement was justified, given the capacity of these limits to promote equality, ensure voter confidence and protect the integrity of the overall regulation of political finance. All provisions of the third-party legislation were therefore upheld.

In 2014, Bill C-23 amended the rules for third parties in the *Canada Elections Act* to require individuals and persons responsible for a group to certify that they are Canadian citizens or permanent residents or that they reside in Canada. If the third party is a corporation, it must certify that it carries on business in Canada.

In 2018, the rules for third parties were modified by Bill C-76 so as to capture a broader array of activities over a greater period of time. The activities now covered include partisan activities to promote or oppose a party or candidate (such as social media campaigns or door-to-door canvassing), election surveys (such as those to collect information about voters' intentions) and both partisan activities and advertising during the pre-election period.

Bill C-76 created this pre-election period that extends from June 30 of the year of a fixed-date election to the issuing of the writ. Third parties and other regulated entities carrying out partisan activities, election surveys or advertising (so-called regulated activities) during the pre-election period would now have to register with Elections Canada if they incur costs of $500 or more. The bill also prohibited third parties from using funds for regulated activities if the source of the fund is a foreign entity and prohibited foreign third parties from incurring expenses for regulated activities. The bill also imposed separate expense limits for regulated activities that take place during a pre-election period and during an election period.

Canadian Public Opinion on Political Financing

Since the 1997 general election, Elections Canada has participated in the Canadian Election Study (CES), a university research project initiated in 1965 to examine various aspects of federal elections. Results from the CES show notable support for the regulation of political financing.

1997
- 83 percent of respondents support limitations on third-party expenditures

2000
- 95 percent of respondents agree that the public has the right to know how candidates and political parties obtain their contributions
- 93 percent support a cap on election expenses
- 63 percent support limits on campaign contributions

2004
- 72 percent of respondents agree that electoral district associations should be required to register with the Chief Electoral Officer
- 68 percent support the new limits on campaign expenses for nomination contestants
- 57 percent support banning corporations and unions from contributing directly to political parties

2008
- 97 percent of respondents agree that the public has the right to know how candidates and political parties obtain their contributions
- 77 percent of respondents agree that it is a good thing that corporations and unions are not allowed to make donations to federal political parties

2011
- 97 percent of respondents agree that the public has the right to know how candidates and political parties obtain their contributions
- 99 percent of respondents agree that it is a good thing that there are limits on how much political parties can spend during elections

2015

- 97 percent of respondents agree that the public has the right to know how candidates and political parties obtain their contributions
- 90 percent of respondents agree that it is a good thing that there are limits on how much political parties can spend during elections
- 76 percent of respondents agree there should be limits on advertising spending by political parties at all times

Source: Canadian Election Study, 1997 to 2015

ELECTORAL PROGRAMS AND SERVICES

One of Elections Canada's main roles is to ensure that the administration of elections is carried out fairly and impartially. Over the period covered by this chapter, legislative and administrative measures addressed the administration of elections and the enforcement of the *Canada Elections Act*. Other measures affected the way technology is used in the electoral process, the protection of electors' personal information and Elections Canada's outreach to Canadians. During the period, the role of Elections Canada evolved as it worked to ensure compliance with a regulatory regime that had become increasingly complex.

Finally, the chapter describes a number of collaborations between Elections Canada and its provincial, territorial and international counterparts that have grown out of its mandate to address issues that include governance and accountability, legislative trends, best practices and voter services.

ADMINISTRATION OF ELECTIONS

A significant change to the administration of elections was the 2006 amendment made by Bill C-2. Under this amendment, returning officers are appointed by the Chief Electoral Officer based on merit and a prescribed list of qualifications. Prior to this, returning officers were appointed by the Governor in Council (the government) and did not need any particular qualifications.

This change has led to what could be described as the professionalization of the role of the returning officer. As specified in the returning officer profile, the role calls for "broad management experience and strong skills: financial planning; material, human and financial resources management; contract negotiation; public relations; and office automation, to name a few." For example, returning officers locate spaces for polling sites, recruit and train office staff, appoint and direct the work of hundreds of election officers, and ensure that Elections Canada's guidelines and policies are respected.

In 2014, Bill C-23 replaced the mandatory retirement of the Chief Electoral Officer at age 65 with a 10-year, non-renewable term. The Chief Electoral Officer can be removed only for cause by the Governor General following a joint address of the Senate and the House of Commons.

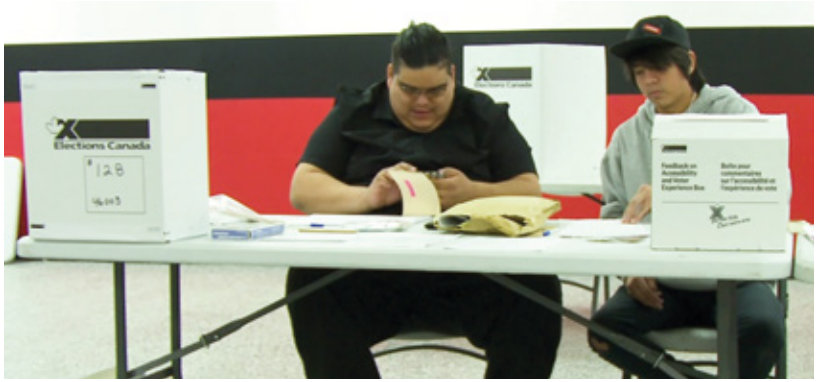
Bill C-23 also made a number of changes to the mandate of Elections Canada. These changes aimed to improve the agency's transparency and its understanding of the needs of political entities, including political parties, electoral district associations and candidates. One of these changes authorized the Chief Electoral Officer to issue interpretation notes and guidelines on applying the *Canada Elections Act*.

The Chief Electoral Officer is also required, on request, to issue a written opinion on how the Act applies to activities that political entities propose to engage in.

Bill C-23 also formalized the Advisory Committee of Political Parties to advise the Chief Electoral Officer on matters relating to elections and political financing. The Advisory Committee, which was created in 1998 by Chief Electoral Officer Jean-Pierre Kingsley, also advises the Chief Electoral Officer in the development of opinions, guidelines and interpretation notes. The Committee, which brings together two representatives from each registered political party, meets at least once a year.

In 2018, Bill C-76 amended the *Canada Elections Act* to provide flexibility in the ways electors are served. Although few changes were made for the 2019 general election, the Act now allows poll workers the flexibility to shift roles as needed to ensure more efficient operations.

In the lead-up to the 2019 general election, Elections Canada made a number of improvements to help returning officers fulfill their responsibilities. To provide more support for returning officers, Elections Canada set up a new field support model with agents trained on specific topics, along with a web-based single access point for communications with headquarters. It also set up an online case management system for headquarters employees who provide support and services to field staff.



Elections Canada

Many, many polling stations

More than 72,000 polling stations—such as this one at Sagkeeng First Nation in Manitoba—were needed for the general election of October 21, 2019. More than 18 million ballots were cast in that election, including more than 4.8 million during four days of advance voting.

ENFORCEMENT OF LEGISLATION

As we saw in Chapter 3, the 1974 *Election Expenses Act* established the office of the Commissioner of Election Expenses. In 1997, it became the Commissioner of Canada Elections, whose enforcement responsibility was extended to cover all provisions of the *Canada Elections Act*.

When the *Canada Elections Act* was rewritten in 2000, new enforcement provisions were added. For example, the Act allowed the Commissioner of Canada Elections to resolve some contraventions by entering into compliance agreements—a remedial rather than a punitive measure. Also, the Commissioner gained the authority to seek injunctions, during an election period, to stop a contravention or force a person to comply with the Act where fairness and the public interest warranted action.

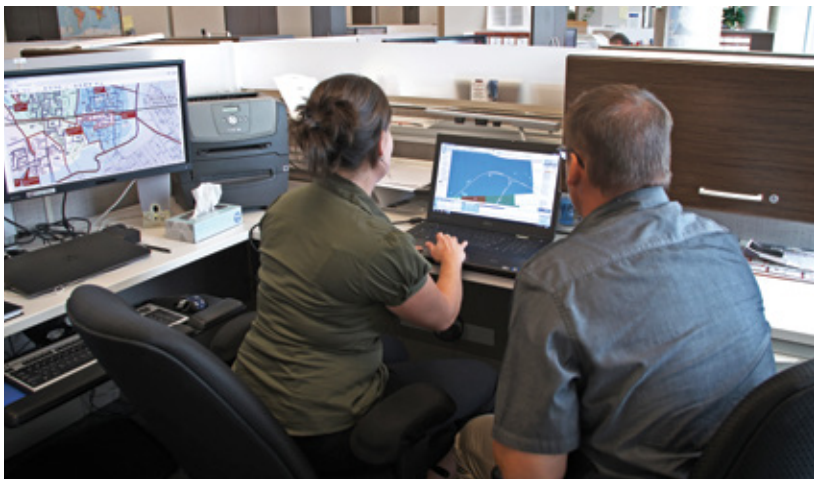
In 2006, Bill C-2 made the Director of Public Prosecutions responsible for prosecuting offences under the *Canada Elections Act*. This changed in 2018, when Bill C-76 gave the Commissioner the authority to lay charges.

Bill C-76 also expanded the Commissioner's compliance and enforcement toolkit by including the option of imposing an administrative monetary penalty (AMP). The Commissioner can impose these penalties for contraventions related to political financing, communications, third parties and certain voting offences, such as voting more than once. As pointed out by Chief Electoral Officer Marc Mayrand in his recommendation report following the 2015 general election, enforcement of the *Canada Elections Act* had been "based almost entirely on a traditional, and costly, criminal approach." In contrast, the purpose of AMPs is to create an incentive to comply with the Act. He went on to say, "The use of AMPs is a more efficient, immediate and, in many cases, effective tool to achieve compliance than the possibility of a future prosecution."

TECHNOLOGY AND THE ELECTORAL PROCESS

Canada's first significant step toward high-tech election administration began in 1992, with a computerized list of electors. This innovation made possible the development of the National Register of Electors, which was established in 1997.

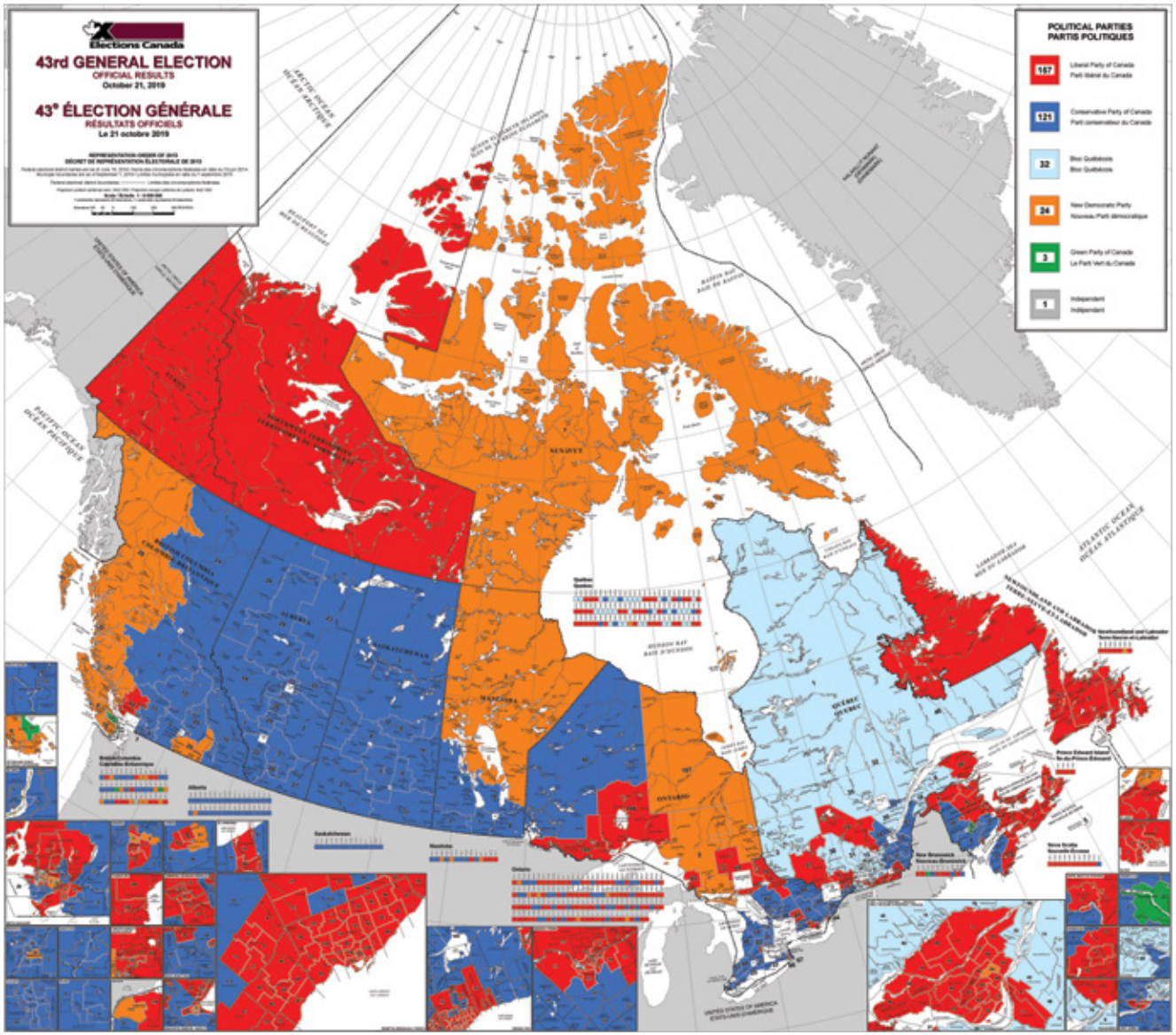
Computer technology has also greatly improved the administration of election financing, particularly the registration of political entities and disclosure of their contributions and expenses. As well, digital cartography is being applied to display election information on computerized maps to further assist returning officers, candidates and political parties during elections. The geographic databases also provide the framework for assigning electors to a polling division and readjusting electoral boundaries after a decennial census. They also allow electors to enter a postal code on Elections Canada's website to obtain information on the corresponding electoral district, member of Parliament and polling station. On election night, Canadians are served by a web module called Election Night Results, which posts election results as they unfold.



Elections Canada

Mapping the Electoral Districts

Digital cartography and geographic databases are used to assign electors to polling divisions and to support returning officers, candidates and political parties during elections. Elections Canada geographers also provide technical and mapping support to electoral commissions when electoral boundaries are adjusted after a decennial census.



Elections Canada

Election Night Results

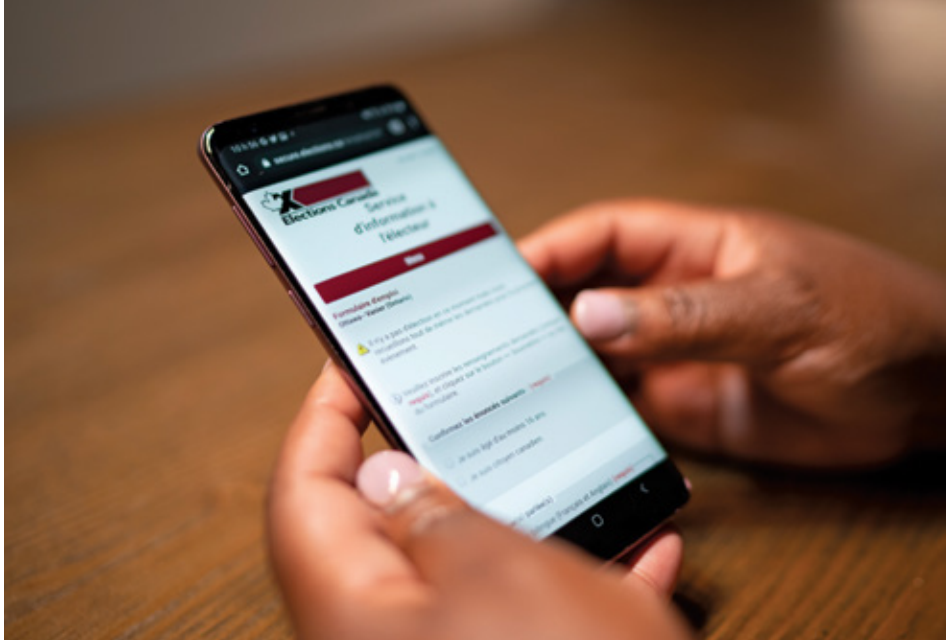
After all of the polls are closed on election night, the Elections Canada website provides preliminary voting results for each electoral district. They are also displayed nationally, by province or territory, by major centre and by party leader. Following the election, the site also shows the validated results and the results of any judicial recounts.

In the mid-1990s, Elections Canada created a website to communicate ways, when and where to vote. The website presents extensive information on the Canadian electoral process, including historical data, past election results and a searchable database on electoral financing. It also provides educational resources on federal elections and democracy for elementary and secondary school teachers, as well as information for groups that face barriers to participating in elections. Political parties and candidates can find extensive information on electoral legislation, as well as online forms to assist them in filing necessary reports.

Technologies have also been implemented to assist persons with disabilities, including a teletypewriter (TTY) service for people with hearing impairment, campaign news releases on audio news and other information services for persons with visual impairment, and a voice response system on the inquiries line that directs people to where they should vote.

During the early 2010s, Elections Canada implemented technology that allowed for streamed election night results and improved online services. For example, electors are able to register online to vote. Information technology also allows local offices to update the central voters list electronically. For the 2015 general election, the agency began using social media to provide electors with information about registration and voting.

As already noted, in preparation for the 2019 election, Elections Canada made significant investments in its information technology infrastructure and improved its security. It also introduced an online portal to allow candidates to file their nomination papers and financial reports electronically.



Elections Canada; ACU00008

A Wealth of Information Online

*In addition to providing authoritative information on the Canadian electoral process, the Elections Canada website (**elections.ca**) provides online services to electors and candidates. For example, electors can register online or find out where to vote during elections. Political entities can file required documents and reports. The website also includes historical data, past election results, education resources and searchable databases.*

PROTECTION OF ELECTORS' PERSONAL INFORMATION

Political parties collect personal information about electors. Indeed, the *Canada Elections Act* requires Elections Canada to provide parties with voters lists that contain the names and addresses of voters, both annually and during an election. Political parties often supplement this information with information from other sources. However, political parties are not covered by federal privacy laws—the *Privacy Act* and the *Personal Information Protection and Electronic Documents Act*.

Concerns about the protection of electors' personal information were noted by Chief Electoral Officer Marc Mayrand in his 2013 recommendations report following the 41st general election. The report said that experts consulted by Elections Canada "were particularly concerned about data breaches and the lack of recourse that those affected by such breaches would have." The Chief Electoral Officer shared these views and recommended that political entities become subject to the broadly accepted privacy principles governing the collection, use, disclosure and retention of records.

Following revelations that electors' personal information was used in attempts to manipulate electoral outcomes in the United Kingdom and the United States in 2016, there was increased support for the idea that federal political parties should be subject to rules that govern how personal information is treated. In 2018, Bill C-76 established an obligation for political parties "to adopt a policy for the protection of personal information." As explained by Elections Canada, this policy is "with respect to the treatment of any personal information [the political parties] collect, use or disclose. They must publish their policy online and provide it to the CEO [Chief Electoral Officer] in order to obtain and maintain their registration." (Elections Canada, *The Protection of Electors' Personal Information in the Federal Electoral Context*, May 2020.)

OUTREACH TO CANADIANS

In 1992, the Chief Electoral Officer was given a specific mandate to initiate public education and information programs to make the electoral process better known to the public—especially those most likely to experience difficulties exercising their right to vote because of a disability, a language barrier or other factors.

Over the years, this mandate evolved into three main pillars:

- First, to raise awareness of the registration and voting process, Elections Canada provides Canadians with information through various channels on when, where and ways to register and vote in a federal election.
- Second, Elections Canada conducts outreach with stakeholder groups that most often face barriers—First Nations, Inuit and Métis electors; people with disabilities; and first-time voters, such as youth and new Canadians. Elections Canada consults with these groups and hires community relations officers to share voting information with them in ways that meet their needs. For example, as part of its outreach to Indigenous communities, elders and youth are hired to work at polling places on election day to help explain the voting process.
- Third, Elections Canada provides an ongoing civic education program for students in elementary and secondary schools. It makes resources available for teachers and students with a view to raising their knowledge of and interest in Canada's electoral democracy. Also, during every general election since 2004, Elections Canada has held a parallel election for youth under 18 so they can experience voting.

COLLABORATION WITH CANADIAN AND INTERNATIONAL PARTNERS

Elections Canada collaborates with its provincial, territorial and international counterparts to address issues such as governance and accountability, legislative trends, best practices and voter services.

With the collapse of the Berlin Wall in 1989, new democracies emerged all over the world. Elections Canada was among the first electoral management bodies to assist emerging democracies with their electoral processes. Recognizing that democratic development projects can benefit greatly when electoral management bodies work together in networks of support, Elections Canada engages with other electoral management bodies and international electoral organizations to develop and share knowledge on effective electoral management.

In accordance with provisions of the *Canada Elections Act*, Elections Canada pursues a goal of strengthening the independence, impartiality, integrity, transparency and professionalism of electoral management abroad and in Canada to ensure the conduct of free, fair and inclusive election processes. Since 1980, Elections Canada's international engagement has included participating in workshops, contributing to global research on electoral administration, facilitating monitoring missions and receiving many foreign delegates visiting Canada to learn more about the Canadian electoral system.

Paul Assaker, KRT, ABACA-CP

The International Mission for Iraqi Elections

In 2004, Elections Canada took part in the International Mission for Iraqi Elections, which monitored election preparations and voting. This was one of some 400 international missions in which Elections Canada participated between 1990 and 2006. As well, for many years, Elections Canada has cooperated with other electoral management bodies and international electoral organizations to strengthen electoral management at home and abroad.

International assistance and co-operation have ranged from one-time sharing of information to long-term, multifaceted partnerships with other electoral management bodies and with international organizations, such as the Organization of American States. An example of the latter was the relationship with Mexico's Federal Electoral Institute, which began in 1993 and included the signing of two five-year bilateral co-operation agreements (in 1996 and 2001). Other examples are the 2004 International Mission for Iraqi Elections and the 2005 International Mission for Monitoring Haitian Elections.

Elections Canada also participates in multilateral and regional fora, such as the Commonwealth Electoral Network, the Réseau des compétences électorales francophones, the Four Countries Partnership (Australia, Canada, New Zealand and the United Kingdom) and networks of election authorities in the Americas and Europe. It also contributes to the ACE Electoral Knowledge Network, an online repository of electoral knowledge.

Within Canada, the Chief Electoral Officer chairs the Advisory Committee of Electoral Partners, which is composed of Elections Canada and its provincial and territorial counterparts. Elections Canada also maintains data-sharing agreements with Canadian provinces and territories. This collaboration is intended to share best practices and to streamline processes with the aim of providing better services for all electors.

As electoral regulation and the threats faced by electoral bodies become increasingly complex, Elections Canada's collaboration with its Canadian and international partners helps foster better understanding of the ever-changing environment.

CONCLUSION

The history of the first century and a half of Canada's electoral system—from its beginnings in the colonies that would form Canada to the appointment of the country's first Chief Electoral Officer in 1920—is mainly the story of how voting rights were extended to people who had been excluded because of their income or gender.

Following the creation of the office that would become Elections Canada, the story revolves around how the electoral process and its administration have been transformed. In part, this was done by enfranchising those who had been deliberately excluded because of their race or religion and by eliminating most cases of inadvertent disenfranchisement. That part of the story is an account of how legislators, courts and election officials have worked to ensure that everyone who is eligible to vote can exercise this fundamental democratic right of citizenship freely, easily and confidentially.

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Set in Stone

This carved limestone panel, titled Vote, *is one of a series adorning the House of Commons Chamber.*

The "X" in the centre represents the most common symbol made by voters when marking their ballots. The faces symbolize that all Canadian citizens have the right to vote.

Since the adoption of the *Canadian Charter of Rights and Freedoms* in 1982, further legislative and administrative reforms have resulted in greater access to the vote. Today, with advance polls, mail-in ballots, polling-day registration and uniform level access at polling places, virtually all citizens age 18 or older have both the right to vote and the means to do so. The regulation of election finances and of activities of political entities and third parties has given further substance to voting rights by controlling the influence of money on elections in this country and by advancing fairness and transparency in elections.

Reviewing the history of the vote as Elections Canada marks its 100th anniversary reminds us that progress has been uneven. Our centralized federal electoral system evolved from a patchwork of disparate practices in the

colonies that formed Canada. The vote, once a privilege restricted to property-owning men, has become a universal right of citizenship, but restrictions on voting for religious and racial minorities as well as for the Inuit and for First Nations people registered under the *Indian Act* persisted up to the mid-20th century. Other restrictions—for judges, prisoners, expatriates and certain people with mental disabilities—were removed only after being challenged under the Charter. Likewise, a legal challenge led to the development of criteria for identifying physically accessible polling places.

While many restrictions have been identified and addressed, certain groups continue to face barriers to voting or running for office in a federal election. Reducing these barriers to ensure a meaningful and healthy electoral democracy is one of Elections Canada's priorities. So is educating young people about the federal electoral process so they are prepared to participate once they reach voting age.

However, Elections Canada cannot accomplish these priorities alone. There are many ways to participate in our democracy, such as by voting, working for a candidate or as an election officer, or running for office. By getting involved in these and other ways, Canadians ensure that our democracy continues to grow and evolve.

Nothing in democracy is set in stone. As we have seen throughout this book, the rights and institutional protections that are the legacy of history are not static or impervious to change. But the very qualities that make them flexible and adaptable to shifting social values also make them fragile and potentially vulnerable. Like democracy itself, they must be tended with care and given the means to flourish. This is the challenge that must be met afresh by each new generation of voters.

Learning About Elections

During the 2019 general election, some 1.2 million elementary and secondary students experienced the voting process firsthand through Student Vote*. CIVIX, a charitable organization engaged by Elections Canada, delivered the program, in which students learned about government and the electoral process, researched political parties and their platforms, and cast ballots for the candidates in their schools' electoral districts.*

The Evolution of the Vote Through the Decades

Many important changes have taken place in the federal electoral system over the past 100 years. Here are some highlights:

1920 The *Dominion Elections Act* consolidates Parliament's control of the federal franchise, introduces advance voting and establishes the post of Chief Electoral Officer.

1921 The first federal election is held at which women vote on the same basis as men after the *Act to confer the Electoral Franchise upon Women* was passed in 1918.

1930 The government introduces a standing list of electors to replace enumeration, but after one election, this approach is found to be impractical and expensive and is abandoned.

1950 Inuit are granted the right to vote.

1955 The last vestiges of discrimination against religious groups, such as the Mennonites and the Doukhobors, are removed from the federal elections Act.

1960 The government extends the right to vote unconditionally to all "registered Indians."

1970 The voting age is lowered from 21 to 18; 18-year-olds vote for the first time in the 1972 general election.

1982 The *Canadian Charter of Rights and Freedoms* entrenches the rights to vote and to be a candidate.

1992 Measures are formalized to ensure access to the vote for people with disabilities. The *Referendum Act* provides the legal and administrative framework for conducting federal referendums on any question related to Canada's Constitution.

1993 Special ballot voting is expanded to include voting by anyone who cannot vote on election day or at an advance poll, including Canadians living or travelling abroad. Also, inmates serving sentences of less than two years, judges and certain people with mental disabilities are qualified to vote.

1996 The *Canada Elections Act* is amended to provide for the establishment of the National Register of Electors, eliminating door-to-door enumeration.

1996 Longer and staggered voting hours are introduced.

2002 The Supreme Court decision in *Sauvé v. Canada* strikes down the *Canada Elections Act* restriction of voting rights for inmates serving sentences of two years or longer.

2018 Bill C-76 repealed the requirements for electors living abroad to have been away from Canada for less than five years and to express intent to return to Canada to live.

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This publication was last updated in 2020. For more recent developments or for supplementary information, such as data on voter turnout, please visit **elections.ca**.

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