



# **NEW VOTER IDENTIFICATION PROCEDURES AND RELATED IMPACTS ON ABORIGINAL PEOPLES AND COMMUNITIES IN CANADA**

## **Fifth Report of the Standing Senate Committee on Aboriginal Peoples**

The Honourable Gerry St. Germain, P.C.  
*Chair*

The Honourable Nick Sibbeston  
*Deputy Chair*

May 2009

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(Committee Business — Senate — 40<sup>th</sup> Parliament, 2<sup>nd</sup> Session)

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## MEMBERSHIP

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**THE STANDING SENATE COMMITTEE ON ABORIGINAL PEOPLES**  
**40<sup>TH</sup> PARLIAMENT, 2<sup>ND</sup> SESSION**  
(January 26, 2009 - )

The Honourable Gerry St. Germain, P.C.

Chair

The Honourable Nick G. Sibbeston

Deputy Chair

and

The Honourable Senators:

Patrick Brazeau

Bert Brown

Larry Campbell

Sharon Carstairs, P.C.

Lillian Eva Dyck

\*Céline Hervieux Payette, P.C. (or Claudette Tardif)

Elizabeth Hubley

Daniel Lang

\*Marjory LeBreton, P.C. (or Gerald Comeau)

Sandra Lovelace Nicholas

Robert W. Peterson

Nancy Greene Raine

\*Ex officio members

Committee Clerks:

Marcy Zlotnick

Gaëtane Lemay

Analyst from the Parliamentary Information and  
Research Service of the Library of Parliament:

Tonina Simeone



## ORDER OF REFERENCE

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Extract from the *Journals of the Senate* of Wednesday, February 25, 2009:

The Honourable Senator St. Germain, P.C., moved, seconded by the Honourable Senator Champagne, P.C.:

That the Standing Senate Committee on Aboriginal Peoples be authorized to examine and report on the federal government's constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Metis peoples and on other matters generally relating to the Aboriginal Peoples of Canada; and

That the Committee submit its final report to the Senate no later than March 31, 2010.

The question being put on the motion, it was adopted.

Paul C. Bélisle

*Clerk of the Senate*



## THE COMMITTEE'S FINDINGS

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On Wednesday, February 25, 2009, the Standing Senate Committee on Aboriginal Peoples was authorized to “examine and report on the federal government’s constitutional, treaty, political and legal responsibilities to First Nations, Inuit and Metis peoples and on other matters generally relating to the Aboriginal Peoples of Canada”. Pursuant to this order of reference, the committee agreed to consider the matter of new voter identification procedures and related impacts on Aboriginal peoples and communities in Canada and offers the following report.

The right to vote is widely recognized as a fundamental human right in a democratic society.<sup>(1)</sup> The ability of citizens to exercise that right is therefore paramount.<sup>(2)</sup> On 22 June 2007, Bill C-31, An Act to amend the Canada Elections Act and the Public Service Employment Act, received Royal Assent.<sup>(3)</sup> The bill was introduced primarily in response to concerns expressed by parliamentarians “about the integrity of the voting process and the potential for abuse.”<sup>(4)</sup> The

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- (1) Section 3 of the *Canadian Charter of Rights and Freedoms* guarantees the right to vote to every Canadian citizen.

The Universal Declaration of Human Rights adopted unanimously by the United Nations General Assembly in 1948, recognizes the integral role that transparent and open elections play in ensuring the fundamental right to participatory government. The Universal Declaration of Human Rights in Article 21 states:

Everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives.

Everyone has the right of equal access to public service in his country.

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures.

- (2) In Canada, universal adult suffrage was finally achieved federally in 1960, with the unqualified extension of voting rights to all Indians under the *Act to Amend the Canada Elections Act*.
- (3) For a more detailed explanation of the provisions contained in Bill C-31, please consult Michel Bédard and Sebastian Spano, *Bill C-31: An Act to amend the Canada Elections Act and the Public Service Employment Act*, LS-542E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, rev. 22 June 2007, [http://www.parl.gc.ca/common/Bills\\_ls.asp?lang=E&ls=c31&source=library\\_prb&Parl=39&Ses=1](http://www.parl.gc.ca/common/Bills_ls.asp?lang=E&ls=c31&source=library_prb&Parl=39&Ses=1).
- (4) Standing Senate Committee on Aboriginal Peoples, *Proceedings*, Chief Electoral Officer of Canada, Marc Mayrand, 11 March 2009.

legislation introduces new voter identification requirements for electors who must prove their identity *and* residence when voting. It also prohibits the use of successive vouching (a process whereby an elector who has established proof of identity and residence swears an oath to verify the residence of one other elector).<sup>(5)</sup>

The new voter identification requirements were first tested in the September 2007 and March 2008 by-elections.<sup>(6)</sup> An evaluation of those by-elections suggests that Aboriginal peoples, as well as voters in rural and northern communities, were disproportionately affected by the introduction of new voter identification requirements.<sup>(7)</sup> Committee members are deeply concerned that the new identification rules may have inadvertently restricted the exercise of the right to vote among these groups and therefore agreed to examine this issue further.

Under the legislation, in order to cast a ballot, eligible voters must prove their identity and residence in one of the following three ways:

- They can provide one original piece of identification, issued by any level of government in Canada or an agency of that government. This must show the elector's photo, name and address.
- They can provide two original pieces of identification from a list authorized by the Chief Electoral Officer of Canada. Both must show the name of the elector, and one must also show the elector's address.

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(5) The requirement in Bill C-31 that electors prove their identity and residence represents a significant change to voting procedures. Prior to the enactment of Bill C-31, eligible voters could cast a ballot if their name appeared on the list of electors and identification was required only if challenged by an election official, the candidate, or his or her representative at a polling station.

(6) The results of the 17 March 2008 by-election in the federal electoral district of Desnethé—Missinippi—Churchill River in northern Saskatchewan (a predominantly Aboriginal and rural riding) indicate, for example, that a substantial number of eligible voters experienced confusion over the new identification requirements, thus contributing to low voter-turnout in the riding.

(7) Elections Canada, *Report of the Chief Electoral Officer of Canada on the 40<sup>th</sup> General Election of October 14, 2008*, February 2009, [http://www.elections.ca/gen/rep/re2/sta\\_2008/stat\\_report\\_e.pdf](http://www.elections.ca/gen/rep/re2/sta_2008/stat_report_e.pdf).



- They can 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 acceptable identification.

The legislation also provides that a document issued by the Government of Canada certifying a person to be an Indian within the meaning of the *Indian Act* constitutes an authorized piece of identification. The Certificate of Indian Status, however, does not provide a mailing address and, as such, can not be used as a stand-alone piece of identification satisfying the requirements of the first option.

The Canadian general election of 14 October 2008 was the first general election in which the new voter requirements were administered. In his February 2009 report to Parliament, the Chief Electoral Officer of Canada, Marc Mayrand, identified three areas of the electoral process that he believed warranted the attention of Parliament because of difficulties encountered in the 40<sup>th</sup> general election.<sup>(8)</sup> Among these, voter identification requirements figure prominently.<sup>(9)</sup> Among the report's key findings was that very few documents issued by governments meet all of the requirements set out in the first option.

On 11 March 2009, the Standing Senate Committee on Aboriginal Peoples received evidence from Canada's Chief Electoral Officer concerning the impacts of the new voter identification requirements on Aboriginal peoples.<sup>(10)</sup> According to the Chief Electoral Officer, Aboriginal peoples, seniors, students, residents of long-term care facilities and the homeless experienced particular challenges in meeting the new voter identification requirements.<sup>(11)</sup> These include, for example, not having the required pieces of identification when arriving at the polls, confusion about the new process and which pieces of identification were acceptable, and the inconsistent

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(8) *Report of the Chief Electoral Officer of Canada on the 40<sup>th</sup> General Election of October 14, 2008*, February 2009, p. 37.

(9) Two other areas of concern identified were issues relating to political financing rules and administrative processes.

(10) The February 2009 report of the Chief Electoral Officer does not provide a breakdown on how First Nations, Inuit and Métis electors, respectively, were affected by the new identification requirements. Rather, the term "Aboriginal" is used throughout the report.

(11) *Report of the Chief Electoral Officer of Canada on the 40<sup>th</sup> General Election of October 14, 2008*, February 2009, p. 43.

application of new rules by polling station officers.<sup>(12)</sup> In addition to these issues, the committee heard that Aboriginal electors,<sup>(13)</sup> in particular, also experienced the following challenges:

- The Certificate of Indian Status issued by the Government of Canada certifying a person to be an Indian within the meaning of the *Indian Act* constitutes an authorized piece of identification. However, it cannot be used as a stand-alone piece of identification by First Nations electors since it does not provide a civic address.<sup>(14)</sup>
- Although a “letter of attestation of residence” issued by a responsible authority of an Indian band was added to the list of authorized pieces of identification by the Chief Electoral Officer of Canada, preliminary evidence suggests that this measure may not have been sufficient to mitigate the challenges experienced by First Nations electors in exercising their right to vote. The committee heard that some electors were unable to provide additional pieces of identification, that it placed a burden on administrators who needed to be available on a timely basis to complete these forms and that there was reluctance on the part of some electors to ask for a letter of attestation from their band council.
- While every effort has been made by Elections Canada to ensure that there are polling stations in, or close to, reserve communities across the country, the recruitment and training of polling workers remains a challenge in this regard.<sup>(15)</sup>
- The legislation is not sufficiently flexible to account for geographic differences. In particular, the requirements set out in the legislation may be inadvertently restrictive for rural and northern communities, where community populations are small and civic addresses are

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(12) *Proceedings*, 11 March 2009.

(13) The term “Aboriginal” is used here because it reflects the terminology applied in the report of the Chief Electoral Officer. However, if it is clear that the issue is one that directly relates to reserve communities, the term First Nations elector is applied.

(14) The Certificate of Indian Status provides an individual’s photo and name but not a mailing address.

(15) According to documentation provided by Elections Canada, it is estimated that for the 40<sup>th</sup> general election, approximately 480 polling sites (32%) were located in First Nations reserve communities, and 1,000 (68%) were situated at an average distance of 22 kilometres from reserve communities.

not readily available. On this point, the Chief Electoral Officer of Canada acknowledged that in smaller communities “where poll officials and electors know one another” tensions arose when electors were asked to “first state their name and address and then provide the document to prove their name and address.”<sup>(16)</sup>

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(16) *Proceedings*, 11 March 2009.

## RECOMMENDATIONS

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Members of this committee are deeply concerned that the introduction of new voting requirements, though unintentional, has adversely affected the ability of First Nations, Inuit and Métis electors to exercise their fundamental right to vote.<sup>(17)</sup> The committee acknowledges that the Chief Electoral Officer of Canada will present a report to Parliament in the coming months and that it will contain recommendations for the improved administration of the Act. In their evaluation of the report, committee members urge parliamentarians to consider measures to reduce the barriers experienced by First Nations, Inuit and Métis electors during the last general election as a result of the introduction of new voter requirements. The committee suggests that consideration be given by Parliament, as well as by Elections Canada, to the following issues:

- That the Certificate of Indian Status in combination with the voter information card received by all registered electors be sufficient to meet the requirements of proof of voter eligibility for First Nations individuals.
- That adequate support is made available to Elections Canada for the recruitment and training of polling officers in order to ensure that a greater number of polling stations are situated in or near reserve communities across Canada.

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(17) For example, in a 19 March 2008 letter to the Chief Electoral Officer of Canada, the NDP candidate for the riding of Timmins—James Bay suggested that Aboriginal voters, in particular, were refused a ballot due to inadequate identification verifying their residence. See also, “Tories take Saskatchewan by-election,” *The Globe and Mail*, 18 March 2008.

- That Elections Canada work closely with Aboriginal organizations, such as the Congress of Aboriginal Peoples, the National Association of Friendship Centres, the Métis National Council, and the Inuit Tapiriit Kanatami, to better determine the needs of off reserve, urban, Métis and Inuit electors.<sup>(18)</sup>
- That Elections Canada be provided with sufficient flexibility in the application of law to better meet the unique circumstances of northern and rural communities.

The right to vote is a basic democratic right of all Canadian citizens and is guaranteed by the *Canadian Charter of Rights and Freedoms*. To be given its full expression, no citizen must be unfairly burdened in the exercise of that right. The committee appreciates that the intention of Bill C-31 is to prevent potential abuses of this fundamental right. However, preliminary evidence suggests that the legislation's provision of new voter identification requirements has had disruptive effects on certain segments of the population, and in particular, eligible Aboriginal voters. The committee feels strongly that the negative impacts of the law must be immediately investigated and that any unintended burden on the exercise of the right to vote be remedied.

#### **List of Witnesses**

Agency and Spokesperson	Meeting Date
<b>Representatives of Elections Canada</b> <ul style="list-style-type: none"> <li>• Mark Mayrand, Chief Electoral Officer of Canada</li> <li>• Belaineth Deguefé, Director General, Outreach, Communications and Research</li> </ul>	<p>March 11, 2009</p>

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(18) In preparation for the 40<sup>th</sup> general election, Elections Canada partnered with the Assembly of First Nations to inform First Nations electors about the electoral process and the new voter identification requirements. The Committee believes that such partnerships should be expanded to include all representative Aboriginal groups.