

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

VOTER RESIDENCY, VOTER IDENTIFICATION, AND ABSENTEE VOTING BY MEMBERS OF THE CANADIAN FORCES SERVING OUTSIDE OF CANADA

REPORT OF THE WORKING GROUP¹

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**Winnipeg Manitoba
August 2011**

VOTER RESIDENCY, VOTER IDENTIFICATION, AND ABSENTEE VOTING

BACKGROUND

[1] In late 2009, the Uniform Law Conference of Canada (“ULCC”) Advisory Committee on Program Development and Management approved the formation of a working group to examine certain aspects of Canada’s election laws.

[2] Through a series of initial meetings, the working group members determined that there are certain areas of federal, provincial, and territorial election law which would benefit from harmonization, and where harmonization may be achievable. Three areas of election law, all where voter residency issues are problematic, were selected for review at this time:

1. *Basic Voter residency requirements – time and place*

[3] At present, there is a notable lack of uniformity in voter residency requirements across Canada. Although all jurisdictions require that an elector be domiciled, resident, or ordinarily resident in the jurisdiction to vote, the time of residence required before being eligible to vote and the rules for determining if or where one is resident are not uniform. For example, an individual is eligible to vote in an Ontario provincial election if they are resident in the electoral district on “general polling day”; there is no minimum period of residency in the Province of Ontario. Other jurisdictions require from 40 days to 12 months of residency in the province or territory before a person is eligible to vote.

[4] Rules for determining where a person is resident or ordinarily resident are equally varied. There is no consistency of treatment for voters who may have more than one place of residence, such as:

- Students living away from “home”, whether from within the province or territory or from another Canadian jurisdiction;
- inmates in correctional facilities;
- patients in long-term residential care facilities;
- persons with no place of residence or transient persons;
- military personnel, whether posted in Canada or overseas.

2. *Voter identification requirements*

[5] Voter identification requirements are relevant in two circumstances: first, when an individual is seeking to be placed on the voter’s list and second, when a voter arrives at a poll to vote. There are numerous differences in the voter identification requirements across Canada; for example some jurisdictions (see *Canada Elections Act*) permit vouching for individuals who do not have appropriate identification documents while other jurisdictions (Nova Scotia) do not. Some jurisdictions require voters to show ID at the polls in order to vote (for example, in Canada, Ontario and Quebec), while other jurisdictions do not require voters to show ID as long as a voter’s name is on the list before he or she arrives at the poll.

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[6] Voter identification is directly related to the basic residency issue, as two elements of identity must be proved before a person is allowed to vote: (i) who you are, including evidence that you are at least 18 years old and a Canadian citizen, and so fundamentally eligible to vote *somewhere* in Canada, and (ii) where you live, which determines in which district and on which voters list your name should appear. Almost all voters have some documentary evidence of who they are and their date of birth; many voters *do not* have documentary evidence of citizenship status, but electoral officials generally accept a person's own statement on this (and date of birth if need be). What is often most difficult for a voter to provide is documentary evidence of residence – not just the period of residence in the jurisdiction, but the specific place at which they reside. This can be an issue for anyone who has moved recently, for anyone who is boarding or sharing accommodations without being named on a lease or utility bills (many students and other young workers, construction or other contract workers, seasonal workers), or anyone with no fixed address (homeless people, many inmates in correctional facilities).

3. *Residency rules and Absentee voting procedures for members of the Canadian Forces serving outside of Canada*

[7] Members of the Canadian Forces serving outside of Canada have the right to vote, but exercising that right in a federal, provincial or territorial election can be problematic given the short time frames of Canadian elections. Uniform residency rules and procedures to facilitate voting by members of the Canadian Forces serving outside of Canada would benefit the individual electors and election administrators in Canada.

[8] There are inconsistent residency rules for military voters across the country, which may create confusion for military personnel as to if or where they are entitled to vote in a given election. Some jurisdictions, including Prince Edward Island and Canada, have specific residency rules for military personnel, and have directly addressed the issue of absentee voting by members of the Canadian Forces in legislation. Other provincial and territorial statutes do not provide special residency rules or procedures for absentee voting by members of the Canadian military, but treat them the same as any other voters out of the jurisdiction during an election. Absentee voting by members of the military has also been identified as an area of concern by the Uniform Law Commission of the United States.

2010 REPORT TO ULCC

[9] The working group prepared a first report to the ULCC, which was presented by the Chair at the August, 2010 meeting in Halifax. That initial report focused on one issue which the working group had an opportunity to consider prior to the 2010 meeting: the minimum residency requirement for voters. As mentioned above, most jurisdictions require a person to have been resident in the province or territory from 40 days to 12 months before being eligible to vote, while Canada, Ontario and Newfoundland and Labrador have no minimum period of residency.

[10] The working group made the following comments on this subject in the 2010 report to the ULCC:

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[11] “The working group’s starting point was that the right to vote as guaranteed by the *Charter* should only be restricted by a minimum period of residency if there is a compelling reason for doing so. Traditional reasons cited for residency period requirements, of ensuring that “voters are properly informed of the issues in any election” and “have a sufficient connection with the [jurisdiction]”, no longer seem compelling in a modern, highly mobile, *Charter*-influenced society, though they were reiterated as recently as 2008 in the Anawak case in the Nunavut Court of Justice (*Anawak v. Nunavut (Chief Electoral Officer)*, 2008 NUCJ 26, at paragraph 72; this is one of the few Canadian cases, along with the *Yukon Reference* case in 1986, directly on the residency period issue.)

[12] There are two main reasons for imposing a specific residency requirement on voters in provincial, territorial and federal elections: first, to determine where in the jurisdiction it is most appropriate for an elector to vote and second, to prevent an elector from voting in more than one electoral district in the same election (which was entirely legitimate when property ownership determined voting rights, as it still does in many local elections).

[13] Given that these two objectives are accomplished at the federal level and in Ontario and Newfoundland and Labrador without imposing a mandatory residency period on electors, the working group expects to recommend in its final report that the federal, Ontario and Newfoundland and Labrador approach be adapted in all jurisdictions.

[14] This is also the most likely route to uniformity as these three jurisdictions are unlikely to impose new barriers to voting.”

WORK COMPLETED AUGUST 2010-AUGUST 2011

Uniform Criteria for Determining Residency

[15] The working group spent considerable time over the past year examining issues relating to voter residency. The working group determined that a uniform list of criteria for determining a voter’s residency (or “ordinary residency”) is desirable. There are also potential risks with a lack of uniformity in this area - a person who moves from one province or territory to another could conceivably be ineligible to vote in either place for a period of time, given the rules that exist in some jurisdictions about losing residency. Although all jurisdictions set out criteria or rules for determining residency, there is a notable lack of uniformity across the country in this area now. Working toward an appropriate uniform list of criteria based on the current best practices appears to be the most likely route to uniformity. The group concluded that the uniform criteria for determining a voter’s residency should be as concise as possible and be drafted in plain language.

[16] The group did not consider that the term “ordinary residency” had any special significance; in the Ontario legislation the term “residency” is used, and the working group will consider, through the course of drafting, if the Ontario approach is recommended.

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[17] The working group determined that establishing special residency rules for certain classes of voters, such as students, inmates and members of the Canadian Forces, is appropriate and necessary because of the unique factual circumstances which apply to these group of voters. Making clear and consistent rules for these groups may also encourage greater participation in the electoral process.

[18] The working group was conscious of the fundamental rule that a person be permitted to vote in only one place in a jurisdiction, i.e. “one person, one vote.” At the same time the group was aware of the current reality that many Canadians are highly mobile, and may have ties to a number of places within a jurisdiction. The working group adopted the position that, to the extent possible, people that have ties to a number of geographic locations, such as students or persons with more than one residence, should be given the option of electing their place of residency for voting purposes. Once an elector has chosen a location, they can only vote in that place. This approach recognizes that individuals may be highly mobile, and have ties to a number of places within a jurisdiction, but it also protects the equality of voters by ensuring that an individual elector votes only once in an election.

[19] The integrity of our democratic system also requires that consistent rules be developed to determine where an individual who does not have a permanent lodging place, such as a homeless person or a prison inmate, will vote. As noted above, the unique circumstances of these types of electors require special consideration.

Students

[20] In the case of students, there was general agreement among working group members that a flexible approach is recommended. A flexible approach would allow a student to elect their place of residency if they have connections to more than one electoral district – for example, a student may have a connection to the district in which their family home is located, and the district where they live while attending an educational institution. The working group also considered, and may ultimately adopt, the approach taken to student residency in Saskatchewan. Saskatchewan’s legislation permits students who have left the jurisdiction for school to vote in their home jurisdiction, and also permits students from outside the Province attending school in Saskatchewan to vote.

Inmates

[21] The working group recognized that there could be political opposition to a rule that allowed inmates to choose a correctional facility as their place of ordinary residence due to the possible distortion of election results. The working group members are likely to recommend an approach similar to that in Saskatchewan, British Columbia and Nunavut. In these jurisdictions, the law permits the individual inmate to choose one of two places as their place of ordinary residence – an individual can choose the place where they were ordinarily resident before coming into custody, or the place where a spouse, parent or dependent is ordinarily resident. The option of voting where the institution is located should only be available if neither of the two options above were available, for example where a voter was not ordinarily resident in the

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jurisdiction at the time of incarceration and has no family or dependents in the jurisdiction.

Members of the Canadian Forces

[22] A number of provinces establish clear residency rules for members of the Canadian Forces, civilian teachers working at military bases overseas, and diplomats. These rules are designed to allow Canadians serving outside the country in a variety of capacities the opportunity to vote in provincial and territorial elections. The working group expects to adopt a model based on the existing provincial models (ex. Prince Edward Island, Manitoba, although the details of the uniform legislation are to be determined).

Voter Identification Requirements

[23] Most jurisdictions require satisfactory evidence of a person's identity, basic qualifications to vote, and address before adding them to the voters list. What constitutes "satisfactory evidence" varies from one jurisdiction to another, based on local circumstances. The working group concluded that for the purposes of this project, it was unnecessary to address the precise kinds of ID that should be required. The model legislation should allow for local variation in the kinds of ID that is available. In situations where a voter has ID that identifies who they are, but is unable to show his or her current address, the voter could be required to sign a declaration as to their residency. For situations where a voter has no ID whatsoever, which is rare, or simply has no ID with them when they wish to get added to the voters list or to vote, vouching may be the only option. The different treatment between the two situations reflects that in one case, the voter at least can prove their identity. A person without ID cannot do so, but the voucher arguably provides some comfort in that regard, as the voucher must swear or affirm that they do know the person for whom they are vouching.

[24] A voter who wants to be added to the voter's list is sometimes asked to take an oath to confirm he or she is eligible to vote (i.e. over 18, Canadian citizen, etc.). The oath is generally included as part of a registration form that sets out the voter's name, address, and date of birth information. This registration form is then used by election officials to add the voter to the permanent voter's list. Alberta has eliminated formal oaths from its legislation and now requires a voter to sign a declaration, and the legislation sets out penalties for signing a false declaration. The working group will consider whether the Alberta approach should be recommended as part of the uniform legislation.

[25] Legislation across the country varies on whether a voter on the voter's list needs to provide ID before they can receive a ballot. The federal government, Quebec, and Ontario now require ID. This is a fairly recent change. Smaller jurisdictions would likely see little need for ID from those already on the voter's list. The working group will continue to review this issue in 2011-12.

NEXT STEPS

[26] The working group will continue to meet through 2011 with a view to providing a final

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report and recommended uniform law for consideration at the August 2012 meeting of the ULCC.

[27] The working group is very pleased with the progress to date. We are very fortunate that Mr. Peter Pagano, QC, has joined the working group. The working group will engage a French-language drafter at the earliest possible opportunity.

[28] Readers are cautioned that this report reflects the preliminary findings of the working group in a number of areas and that drafting of uniform legislation is expected to begin in summer 2011.

[29] The working group also plans to consult with the country's Chief Electoral Officers regarding this project. The appropriate method of consultation is to be determined. Christine McCulloch, QC, Nova Scotia's Chief Electoral Officer is a member of the working group.

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