

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

Readers are cautioned that the ideas or conclusions set forth in this paper, including any proposed statutory language and any comments or recommendations, may not have been adopted by the Uniform Law Conference of Canada. They may not necessarily reflect the views of the Conference and its Delegates. Please consult the Resolutions on this topic as adopted by the Conference at the Annual meeting.

August 2010

Halifax, Nova Scotia

UNIFORM LAW CONFERENCE OF CANADA

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] The members of the working group held their first meeting by teleconference in March and reviewed the project proposal originally submitted to the Advisory Committee in July 2009. The working group members determined that there are certain areas of provincial/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/territory or from another Canadian jurisdiction;
- inmates in correctional facilities;
- patients in long-term residential care facilities;
- 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 *Elections Act* (Canada)) permit vouching for individuals who do not have appropriate identification documents to be added to the voters list while other jurisdictions (Nova Scotia) do not. Some jurisdictions require voters to show ID at the polls in order to vote (Canada, Ontario, Quebec), while many jurisdictions do not require voters to show

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

ID as long as a voter's name is on the list before he or she arrives at the poll.

[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, creating 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, such as Nova Scotia's *Elections Act*, 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.

[9] The working group intends to provide a comprehensive report, and if possible, uniform legislation to the ULCC in August 2011.

PROGRESS TO DATE

UNIFORM LAW CONFERENCE OF CANADA

[10] The working group meets monthly by teleconference and held meetings in March, April, May, June, and July of this year.

[11] The working group is making progress. Our initial meetings focused on narrowing the scope of the project as described in the Background section above. Since settling on the appropriate scope of the project we have had a number of interesting and informative discussions regarding voter residency requirements.

[12] One issue which the working group has reviewed in depth is the minimum residency requirement for voters in place in most jurisdictions. 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.

[13] 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.)

[14] 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).

[15] 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.

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

NEXT STEPS

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

[17] During the fall of 2010 the working group will review each of the subject areas described above and lay the ground work for the drafting of uniform legislation in spring 2011.

¹ Sarah Dafoe, Alberta Justice, Christine McCulloch, QC, Chief Electoral Officer, Nova Scotia, Darcy McGovern, Minister of Justice and Attorney General, Saskatchewan Ann McIntosh, Department of Justice, Nunavut, Christine Mosher, Department of Justice, Nova Scotia, David Nurse, Department of Justice, Nova Scotia (Chair)