

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

MODEL ELECTION AMENDMENT ACT AND COMMENTARIES

**VOTING BY STUDENTS AND
BY MEMBERS OF THE CANADIAN FORCES**

REPORT OF THE WORKING GROUP

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.

**Victoria, British Columbia
August 2013**

UNIFORM LAW CONFERENCE OF CANADA

**MODEL ELECTION AMENDMENT ACT AND COMMENTARIES -
VOTING BY STUDENTS AND BY MEMBERS OF THE CANADIAN FORCES:**

[1] At the meeting of the Uniform Law Conference of Canada (ULCC) in Whitehorse, Yukon in August 2012 it was resolved as follows:

That the report of the working group be accepted; and that the working group continues with work and that it

- a) undertake further consultations with the provincial, territorial and federal chief electoral officers and with the office of the judge advocate general;
- b) prepare uniform Election Act provisions and commentaries, in accordance with recommendations contained in our report and the directions of the conference;
- c) report back to the conference at the 2013 meeting.

[2] Having completed the directed consultations, the working group is presenting the *Model Election Amendment Act* and Commentaries for adoption.

[3] The working group was chaired by Darcy McGovern, with the assistance of Peter Pagano, Q.C. and Susan Hardy of Alberta Justice, Ann McIntosh, Nunavut Justice, Elizabeth Strange of the Department of Justice and Attorney General, New Brunswick, Phil Reed, Department of Justice, Nova Scotia, and David Nurse formerly with the Department of Justice, Nova Scotia (former Chairperson).

[4] As directed, a consultation paper was sent to the Chief Electoral Officers and to the Office of the Judge Advocate General outlining the proposed changes to provide for unique residency requirements for students and for members of the Canadian Forces who are serving both within and outside provincial, territorial, and federal jurisdictions.

[5] The consultations provided limited results from the Chief Electoral Officers who in many cases noted that as statutorily independent officers, they would be reluctant to take a particular public position with respect to amendments to their governing legislation. Accordingly, these consultations did not garner consensus, direction or acceptance from this group.

[6] Officials with the Office of the Judge Advocate General were again consulted and the working group was provided with minor comments regarding wording within the draft legislation and commentaries. The draft Act and commentaries have benefited from these ongoing consultations, particularly with respect to technical wording in earlier drafts. We thank the Office of the Judge Advocate General for their assistance in seeking to provide additional tools to address the challenges which members of the Canadian Forces can face in participating in provincial and territorial elections.

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[7] The provisions are restricted to the unique mobility challenges presented by student and military voters. They are intended to enable these voters to participate as fully as possible in the democratic process in an effort to overcome the chronic low rates of voter participation in these two demographics.

[8] As previously debated, the proposed amendments would:

1. Remove minimum residency requirements to provide uniform general rules for voter residency;
2. Provide special residency rules for students; and,
3. Provide special residency rules for members of the Canadian Forces.

[9] Given the lack of uniformity between election legislation in the provincial and territorial jurisdictions, the proposed amendments are now being submitted as a Model Amending Act rather than a Uniform Act. The Working Group recognizes that Election legislation is complex and often highly contested legislation in each province and territory. In our view this Model Amending Act represents modest but achievable positive incremental change that can be included with local amendments to provincial and territorial election legislation as this legislation receives local legislative attention.

[10] Accordingly, for those provinces and territories considering amendments to their election legislation, we recommend adoption of the *Model Election Amendment Act* and Commentaries.

Appendix A

MODEL ELECTION AMENDMENT ACT AND COMMENTARIES

Eligibility to vote

I. An [individual]¹ is entitled to vote in an election being held in an [electoral district] if on polling day [voting day] he or she is

- (a) a Canadian citizen;
- (b) at least 18 years old;
- (c) a resident in the [jurisdiction];
- (d) a resident in the [electoral district].

Commentary - This uniform provision does not include any minimum residency requirement for an elector. Removing the minimum residency requirement for an elector to vote is considered the most likely path to uniformity in this area. If the elector will meet the conditions set out in this provision on polling day or voting day (as that day is defined in each jurisdiction), the elector is entitled to vote. It is assumed that an individual who meets, or will meet the criteria on polling day, would be entitled to vote at an advance voting opportunity during the writ period. For example, an individual who will turn 18 on polling day would be entitled to vote at an advance poll.

General rules

II. The following general rules apply in determining where an [individual] is resident for the purposes of voting at an election under this Act:

- (a) an [individual] is resident in that place where he or she ordinarily resides;
- (b) an [individual] can have only one residence and it does not change until the individual becomes resident in a new place;
- (c) an [individual] who leaves his or her residence and goes to another place for a temporary purpose, either within or outside [province or territory x], retains his or her ordinary residence;
- (d) an [individual] may be considered to be resident in temporary quarters such as a shelter, hostel or similar provider of food, lodging or social services if there is no other place that the [individual] considers to be his or her residence.

Commentary - These rules are intended to apply only for determining residency for voting purposes. If the same residency rules would be used for other purposes, such as for determining eligibility to be an election official or candidate, then the wording could

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be amended to say “for the purposes of this Act”. Some jurisdictions may choose to reference “for the purposes of this Part”.

The contents of this section and its analogies across Canada are derived from the concept “ordinarily resident”, at common law - we have found no synonym (“normal, usual, etc...”) that works as well in i) making the connection to that common law history or ii) in terms of statutory interpretation and plain language.

Special circumstances to be considered

III. Despite the general rules set out in section II, the special circumstances set out in sections IV to VI apply in determining where an [individual] is resident for the purposes of voting at an election under this Act.

Commentary - This section provides an introduction to the provisions to follow. It confirms that the general rules for establishing residency are set out in section II, but that specific rules are needed for specific classes of electors.

Students

IV. (1) If an [individual] leaves his or her residence in [province or territory X] to study at an educational institution outside [province or territory X], the [individual] is, while pursuing his or her studies, considered to be resident in the place where he or she was resident immediately before commencing his or her studies.

(2) If an [individual] leaves his or her residence in [province or territory X] to study at an educational institution elsewhere in [province or territory X], the [individual] may, while pursuing his or her studies, consider one of the following as his or her place of residence:

(a) the place where he or she was resident immediately before commencing his or her studies;

(b) the place where the [individual] is residing.

(3) If an [individual] leaves his or her residence in a province or territory other than [province or territory X] to study at an educational institution in [province or territory X], the [individual] is, while pursuing his or her studies in [province or territory X], considered to be resident in the place where the [individual] is residing.

Commentary - The draft uniform provisions address three specific scenarios. The first scenario addresses students who leave their “home” jurisdiction to attend an educational institution outside the jurisdiction, whether in another province or outside the country. These students are considered to maintain their residency in their “home” jurisdiction for the duration of their studies. In the second scenario - students studying at a second location within their home province or territory - the draft allows a student to elect their place of residency. The student can choose the district in which their family home is located, or the district where they live while attending an educational institution. For the

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third scenario - students studying in a jurisdiction other than their home jurisdiction - the working group recommends that the policy approach taken to student residency in

Saskatchewan and Alberta be adopted nationally. Their legislation expressly permits students from outside the province attending school in the province to vote in a provincial election.

Canadian Forces

V. (1) In this section, "*member of the Canadian Forces*" means

- (a) a member of the regular force or the special force of the Canadian Forces; or
- (b) a member of the reserve force of the Canadian Forces who is on full-time training or service or on active service.

(2) If an [individual] leaves his or her residence in [province or territory X] to serve as a member of the Canadian Forces outside [province or territory X], the [individual] is, while serving as a member of the Canadian Forces, considered to be resident in the place where he or she was last ordinarily resident.

(3) If an [individual] leaves his or her residence in [province or territory X] to serve as a member of the Canadian Forces elsewhere in [province or territory X], the [individual] may, while serving as a member of the Canadian Forces [in province or territory X], consider one of the following as his or her place of residence:

- (a) the place where he or she was last ordinarily resident;
- (b) the place where the [individual] is residing.

(4) If an [individual] leaves his or her residence in a province or territory other than [province or territory X] to serve as a member of the Canadian Forces in [province or territory X], the [individual] is, while serving as a member of the Canadian Forces in [province or territory X], considered to be resident in the place where the [individual] is residing.

Commentary - The uniform provisions regarding members of the Canadian Forces are largely based on Saskatchewan's provisions on students, and address three potential circumstances and the rules that apply in each circumstance. First, where a member of the Canadian Forces leaves a jurisdiction to serve as a member of the Canadian Forces, they are considered to remain resident in the jurisdiction in which they lived most recently. Second, where a member moves within a jurisdiction while serving, they may elect to be resident in either their original place of residence or the place where they are serving. In the third scenario, a member of the Canadian Forces who comes into a jurisdiction from another jurisdiction during their service, whether for a temporary or indefinite assignment, is considered resident in their new jurisdiction, even though they may still be considered resident in their former jurisdiction under its residency rules.

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As noted in the attached report, the above sections regarding students and members of the Canadian Forces are intended to provide special residency rules for students and

members of the Canadian Forces. These rules, if adopted nationally, would result in students and members of the Canadian Forces being able to elect one residence in a jurisdiction where they have two possible choices, and would entitle some to vote in concurrent provincial or territorial elections. In the working group's view this flexible approach still respects the "one person, one vote" rule, because no individual will be entitled to vote twice in the same election.

[Spouse] or dependant

VI. If an [individual] leaves his or her residence in an [electoral district in province or territory X] because he or she lives with an [individual] referred to in sections IV or V as the [spouse] or dependant of that [individual], his or her place of residence may be determined as follows:

- (a) he or she is considered to be resident in the place where the [individual] referred to in sections IV or V resides; or
- (b) in the case where the [spouse] or dependant lives with an [individual] referred to in subsections IV(2) or V(3), one of the places referred to in those subsections may be considered as his or her place of residence.

Commentary – This section provides that spouses and dependants of those persons in the classes listed above (students and members of the Canadian Forces) who leave the jurisdiction because they reside with a student or a member of the Canadian Forces, are considered to be resident in the electoral district they resided in before leaving the electoral district or jurisdiction.

Election Officers' Authority

VII. If the general rules and special circumstances set out in sections I to VI are not sufficient to determine an [individual's] place of residence, [the appropriate election officer] may determine the [individual's] place of residence by reference to all the facts of the case.

Commentary - This section confirms the approach seen in many jurisdictions today. Where the rules set out in the statute are not sufficient to establish a person's place of residence, the appropriate election officer is given the authority to determine the individual's place of residence by reference to all the facts in the case.

This wording would be consistent with the common law, e.g. *Thompson v. Canada* (MNR) [1946] S.C.R. 209; <http://canlii.ca/t/22x5t>, *Haig v. Canada*; *Haig v. Canada* (Chief Electoral Officer), 1993) 2 S.C.R. 995, *Martin v. Mailman et al.*, 2004 NLSCTD 208 (CanLII), <http://canlii.ca/t/1j316>, *Anawak v. Nunavut* (Chief Electoral Officer), 2008 NUCJ 24 (CanLII), <http://canlii.ca/t/212rb>. Also, it mirrors s. 9 of the *Canada Elections Act*.

