Voter ID Requirements Threaten Aboriginals' Right to Vote

A report from the Standing Senate Committee on Aboriginal Peoples warns that recent changes to federal voting requirements have "adversely affected the ability of First Nations, Inuit and Métis electors to exercise their fundamental right to vote."[1]

Section 3 of the *Charter* guarantees: "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."[2] In the *Saskatchewan Electoral Boundaries Reference*, the Supreme Court of Canada held the purpose of section 3 was the right of every citizen to "effective representation" in Parliament or provincial legislatures.[3] More recently, in *Harper v. Canada*, the Court found that section 3 guaranteed a citizen's right to have a "meaningful role" in the electoral process.[4]

Bill C-31, *An Act to amend the Canada Elections Act and the Public Service Employment Act*,[5] was enacted in June 2007. It put in place new requirements for voters to prove their identity and residence when voting. Proof of identity may be provided in three different ways:

- provide one original piece of identification issued by any level of government in Canada that shows the voter's name, photo and address (for example, a driver's license);
- provide two original pieces of identification from a list authorized by Elections Canada, with one showing the voter's address; or
- swear an oath and be vouched for by a registered voter who has the required identification.[6]

First Nations voters are allowed to use the Certificate of Indian Status ("status card") as a piece of identification. However, because the certificate does not include an address it cannot be used as proof of identity on its own.[7] Elections Canada added a "letter of attestation of residence" issued by an Indian band to the list of acceptable identification, to be used in conjunction with the Certificate of Indian Status.

The Senate committee is concerned that this option for First Nations voters sets up a barrier to voting: it places a burden on band administrators and faces "reluctance on the part of some electors to ask for a letter of attestation from their band council."[8] The committee argues that the Certificate of Indian Status

combined with an individual's voter information card should be sufficient voter identification under the *Canada Elections Act*.[9]

The Senate committee emphasized a conclusion from the *Report of the Chief Electoral Officer of Canada on the 40th General Election of October 14, 2008*: "Aboriginal peoples, seniors, students, residents of long-term care facilities and the homeless experienced particular challenges in meeting the new voter identification requirements."[10]

While this issue has yet to come before the courts, section 15(1) of the *Charter* guarantees: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."[11]

With a federal election perpetually around the corner, the argument that federal voter identification legislation is discriminatory may come before the courts sooner rather than later.

Further Reading

James R. Robertson and Sebastian Spano, "Electoral Rights: Charter of Rights and Freedoms" *Library of Parliament* (29 September 2008).

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[1] Standing Senate Committee on Aboriginal Peoples, *New Voter Identification Procedures and Related Impacts on Aboriginal Peoples and Communities in Canada*, Senate of Canada (May 2009) at 6.
[2] *Constitution Act, 1982*, section 3.
[3] [1991] 2 S.C.R. 158 at 32.
[4] 2004 SCC 33 at para. 70.
[5] 1st Sess., 39th Parl., 55-56 Elizabeth II, 2006-07.
[6] *Canada Elections Act*, R.S.C., 2000, c. 9, s. 143.
[7] *Supra* note 1 at 3.
[8] *Ibid*. at 4.
[9] *Ibid*. at 6.
[10] *Ibid*. at 3.
[11] *Constitution Act, 1982,* section 15(1).