

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

BETWEEN:

GILLIAN FRANK AND JAMIE DUONG

Appellants

- and -

ATTORNEY GENERAL OF CANADA

Respondent

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA

Intervener

- and -

THE ATTORNEY GENERAL OF QUÉBEC

Intervener

FACTUM OF THE RESPONDENT,
ATTORNEY GENERAL OF CANADA
(Pursuant to r.42 of the *Rules of the Supreme Court of Canada*)

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PART I – STATEMENT OF FACTS

A. OVERVIEW

1. Parliament's 1993 choice to maintain the voting limit on long-term non-residents is a demonstrably justified infringement of the Charter right to vote. One of its purposes was to maintain the fairness of the electoral system to the resident Canadian. The legal responsibilities of long-term non-resident citizens under Canadian domestic law are much less than the responsibilities of resident Canadians.

2. This Court has recognized that at the heart of our democracy stands the relationship between the right to vote and the responsibility of citizens to obey the laws enacted by those elected officials. Resident citizens share equal legal responsibilities under Canadian law. The lesser legal responsibilities of long-term non-residents is a function of geography, the sovereignty of nations, and international law. When they resume residence in Canada they resume equal legal responsibilities with other resident citizens. This residence distinction is qualitatively different from invidious historic voting limits such as property ownership, gender, incarceration, and mental capacity.

3. The residency limit also satisfies the proportionality requirements of section 1 of the *Charter*. Courts here and abroad have repeatedly recognized the rational connection between a residency limit and the fairness of the electoral system. Such limits are ubiquitous in the other main Westminster Parliamentary systems. Parliament's definition of temporary non-residence should receive deference as being within a range of reasonable alternatives, and therefore is minimally impairing. In the final balancing, the negative impact of the temporary suspension of a long-term non-resident's right to vote is outweighed by the contribution to the fairness of the electoral system achieved by maintaining the long - standing residency requirement.

4. Ultimately, this case is about one of many policy choices Parliament could have made. Another Parliament may well conclude that in a shrinking world of electronic connection and international interdependence, some or no restrictions on the right to vote of non-residents are necessary. However, that legislative choice should not be elevated to a constitutional imperative as the limit is reasonable.

B. STATEMENT OF FACTS

i. The Residency Requirement in Canada – Statutory Scheme

5. Since 1920, ordinary residence in an electoral district in Canada has been a requirement for voting in federal elections. From 1867 to 1920, federal electoral laws (with limited exceptions) were based on provincially enacted franchise requirements.¹ In 1920, the *Dominion Election Act* prescribed the following individuals to be entitled to vote: every male or female British subject, at least 21 years of age, who had ordinarily resided in Canada for 12 months and in the particular electoral district for at least 2 months.² The 12-month residence in Canada requirement was removed in 1970.³

6. Part 1 of the *Canada Elections Act* (“CEA”), is entitled “Electoral Rights”, and provides the basic rules for voting in Canada. Under s. 3, Canadian citizens who are 18 years of age or older are qualified electors. Under s. 6, qualified electors are entitled to vote for a

¹ *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK), ss 40, 41, **Respondent's Book of Authorities (“RBA”) Tab 7, pp. 25-26** and Reply Affidavit of Jean-Pierre Kingsley, Exhibit “A”, *A History of the Vote in Canada*, 2nd ed (Ottawa: Office of the Chief Electoral Officer of Canada, 2007), p 40, **Appellants' Record (“AR”), Vol. VII, tab 5A, p. 63**

² *Dominion Elections Act* (1920), 10-11 George V, c 46, s 29, **RBA, Tab 9, pp. 48-49**. This Act also repealed the 1917 war-time election law: Affidavit of Professor Royce Koop (“Koop Affidavit”), para 43, **AR, Vol. XII, tab 12, p. 16**

³ Koop Affidavit, para 64, **AR, Vol. XII, tab 12, p. 22**

MP for the electoral district in which they ordinarily reside.⁴ The section provides that the qualified elector is entitled to vote in the polling division where he or she is ordinarily resident (each electoral district having many polling divisions).⁵

7. In *Opitz*, this Court describes the s. 3 *Charter* right to vote as being “for the Member of Parliament for the electoral district in which the voter resides.”⁶ This jurisprudence describes that s. 6 of the *CEA* is a complete definition of entitlement to vote unaltered by any other provision: ““Entitlement” consists only of the fundamental requirements of age, citizenship and residence”.⁷

8. Jean Pierre Kingsley, a former Chief Electoral Officer and witness for the Appellants, acknowledges that residence in Canada is one of the three basic requirements of voting, subject only to the exceptions found in the *Special Voting Rules (SVRs)* in s.11 of the *CEA*.⁸

9. Section 11 provides the entitlement to use a voting method other than placing a ballot in the ballot box. It provides:

⁴ *Opitz v Wrzesnewskij*, 2012 SCC 55 at para 11, [2012] 3 SCR 76 (“*Opitz*”),], **RBA, Tab 3, p. 7**

⁵ Section 8(1) *Canada Elections Act* (“*CEA*”) defines “ordinary residence” as “... the place that has always been, or that has been adopted as, his or her dwelling place, and to which the person intends to return when away from it.”

⁶ *Opitz*, para 30, **RBA, Tab 3, p. 8**

⁷ *Opitz*, para 32, **RBA, Tab 3, p. 9**

⁸ Transcript of Cross-examination of Jean-Pierre Kingsley on his affidavits, June 6, 2013 at 21 (Q 74, 75, 79), **AR, Vol. VIII, tab 6, pp. 22-23**

11 Any of the following persons may vote in accordance with Part 11:

- **(a)** a Canadian Forces elector;
- **(b)** an elector who is an employee in the federal public administration or the public service of a province and who is posted outside Canada;
- **(c)** a Canadian citizen who is employed by an international organization of which Canada is a member and to which Canada contributes and who is posted outside Canada;
- **(d)** *a person who has been absent from Canada for less than five consecutive years and who intends to return to Canada as a resident;*
- **(e)** an incarcerated elector within the meaning of that Part; and
- **(f)** any other elector in Canada who wishes to vote in accordance with that Part. [emphasis added]

11 Peuvent voter dans le cadre de la partie 11:

- **a)** les électeurs des Forces canadiennes;
- **b)** les électeurs qui appartiennent à l'administration publique fédérale ou d'une province en poste à l'étranger;
- **c)** les électeurs qui sont en poste à l'étranger auprès d'organismes internationaux dont le Canada est membre et auxquels il verse une contribution;
- **d)** les électeurs qui sont absents du Canada depuis moins de cinq années consécutives et qui ont l'intention de revenir résider au Canada;
- **e)** les électeurs incarcérés au sens de cette partie;
- f)** tout autre électeur au Canada qui désire se prévaloir des dispositions de cette partie. [nous soulignons]

10. The *SVRs* in Part 11 of the *CEA* then provide the rules for voting for those electors described in s. 11, including four exceptions to the requirement that an elector be a resident of Canada (including the impugned provisions found in Division 3 - sections 220-230 - which provides the rules for "Electors Temporarily Resident Outside Canada"). Generally speaking, the groups described in the *SVRs* are provided a mechanism by which they register their actual residence in Canada, last place of ordinary residence in Canada or some other residence to which they have some connection, and vote by sending their ballot by mail (hereafter referred

to either as “external” or “mail” voting).⁹ Their residence determines where their vote is counted.

11. The appellants seek to invalidate words in sections 11(d), 220, 221(1)(b) and (c), 222(1), 223(1)(e) and (f), 226(f), and to have read in to the statute new words in s. 11 in order to eliminate the limits on the 1993 extension of voting rights to citizens temporarily resident outside Canada.¹⁰ The requested order would allow external voting by long-term non-residents for the first time in Canada's history.

ii. The Important Place of Residence in Canada's Electoral System

12. Canadian elections are conducted according to rules of the single-member plurality (SMP) electoral system.¹¹ In SMP, citizens vote within geographically-defined areas,¹² casting their ballot at a polling station in the electoral district of their ordinary residence. Each elector votes for a single candidate and the candidate with the most votes is elected as the representative – the Member of Parliament (MP) – for that geographically-defined electoral district.

13. In Canada, as in other countries, ‘geography’ is recognized as a fundamental and legitimate structuring principle of representative government.¹³ Canadian citizens access the

⁹ See paras 17-26 of the Reasons for Judgment of the Court of Appeal for Ontario (“Appeal Judgment”), **AR, Vol. 1, tab 6, pp. 66-70**, describing more particularly the mechanics of the scheme.

¹⁰ See the underlined words in sections 11, 220, 221, 222, 223 & 226 in Schedule VII representing the words sought to be invalidated.

¹¹ Koop Affidavit, para 11, **AR, Vol. XII, tab 12, pp. 7-8**

¹² Koop Affidavit, para 11; **AR, Vol. XII, tab 12, pp. 7-8**; *CEA*, S.C. 2000, c. 9, s. 6

¹³ There are only two exceptions to the practice of territorial representation within a nation – Israel and the Netherlands – both are relatively small and politically compact territories that employ systems of proportional representation to allocate seats in their legislatures: Affidavit of Professor Donald Munroe Eagles (“Eagles Affidavit”), paras 8, 23, **AR, Vol. IX, tab 9, pp. 51, 57**

democratic process via the electoral districts in which they reside.¹⁴ A geographic territory defined by electoral district boundaries is the setting for meaningful human interaction between MPs and electors.¹⁵ Once local MPs are chosen, the process of parliamentary representation is similarly defined by residence.¹⁶

14. SMP ensures that Canadian elections incorporate local as well as national influences.¹⁷ Unlike “presidential systems”, Canada’s system of government does not have any formal “nationally-elected” positions and, therefore, a federal general election can in some important respects be understood as a collection of 338 local constituency elections held simultaneously.¹⁸

15. The primacy of residence is embedded within Canada’s Constitution,¹⁹ mandating a decennial census that counts residents and leads to the reallocation of seats in the House of Commons with a consequent redrawing of boundaries of electoral districts.

16. At Confederation, electoral districts and election laws in place in the four uniting provinces were maintained.²⁰ The number of Members for each province in the House of Commons was prescribed in the Constitution.²¹ Parliament may increase the number “provided the proportionate Representation of the provinces prescribed by this Act is not

¹⁴ Koop Affidavit, para 109, **AR, Vol. XII, tab 12, p. 34**

¹⁵ John Courtney, *Commissioned Ridings*, 2001, at 2008-2009 – quoted in Eagles Affidavit, para 43, **AR, Vol. IX, tab 9, pp. 64-65**

¹⁶ Koop Affidavit, paras 111-120, **AR, Vol. XII, tab 12, pp. 34-35**

¹⁷ Eagles Affidavit, para 88, **AR, Vol. IX, tab 9, p. 80**

¹⁸ Eagles Affidavit, para 88, **AR, Vol. IX, tab 9, p. 80**

¹⁹ *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK), **RBA, Tab 7, pp. 23-31**

²⁰ *Constitution Act, 1867*, ss 40, 41, **RBA, Tab 7, pp. 25-26**

²¹ *Constitution Act, 1867*, s 37: The first House of Commons had 181 members. The original four provinces had the following number of seats: Ontario (82), Quebec (65), Nova Scotia (19) and New Brunswick (15), **RBA, Tab 7, pp. 24-25**

thereby disturbed.”²² The number of MPs and the representation of the provinces in the House must be adjusted after each decennial census.²³ Today, the number of MPs for each province is determined using an electoral quotient and the application of prescribed rules.²⁴ Electoral districts are now established under the *Electoral Boundaries Readjustment Act*,²⁵ with boundaries commissions in the provinces created after every decennial census.²⁶

17. Residence is key to drawing electoral district boundary maps, with unique challenges to respect ‘representation by population’ without districts being so large so as to be unmanageable for campaigning or constituency service.²⁷ Boundary commissions use *decennial* census counts of residents to modify existing electoral boundaries to reflect population shifts.²⁸ The results of these ‘decennial’ processes are electoral maps that concretize a complex weighing of demographic, cultural and geographic characteristics – all considerations tied to residence in a particular geographic area.²⁹

iii. History of Legislative Exceptions to the Residency Requirement

18. Since the First World War (WWI), a statutory exception to the requirement of residence in Canada for voting has been made for soldiers.

²² *Constitution Act, 1867*, ss 51, 52, **RBA, Tab 7, pp. 28-31**

²³ The first census was to be in 1871: *Constitution Act, 1867*, s 51, as originally enacted, **RBA, tab 7, p. 30 (note 27)**

²⁴ *Constitution Act, 1867*, s 51, as presently in force, **RBA, Tab 7, pp. 28-31**, enacted by the *Fair Representation Act*, SC 2011, c 26, s 2, **RBA, Tab 13, p. 66**

²⁵ *Electoral Boundaries Readjustment Act*, RSC 1985, c E-3, **RBA, Tab 10, p. 51**

²⁶ In order to “consider and report on the readjustment of the representation of the provinces in the House of Commons”, *Electoral Boundaries Readjustment Act*, RSC 1985, c E-3, s 3, **RBA, Tab 10, p. 51**

²⁷ Eagles Affidavit, para 40, **AR, Vol. IX, tab 9, p. 63**

²⁸ Eagles Affidavit, para 15, **AR, Vol. IX, tab 9, p. 53**

²⁹ Eagles Affidavit, para 15, **AR, Vol. IX, tab 9, p. 53**

19. Twice during WWI, Parliament permitted deviation from the requirement of ordinary residence in Canada to enable soldiers to vote overseas.³⁰ After WWI's conclusion, these voting exceptions were repealed. The justification for the exception was the connection to Canada through enlistment and willingness to make the "ultimate sacrifice".³¹ As is discussed below, MPs raised two concerns in parliamentary debates: (i) the sufficiency of the soldiers' ongoing connection to the country; and (ii) fairness to the constituency (resident) electors whose votes might no longer have deciding influence in an election.³²

20. In 1917, the *Military Voters' Act* removed the requirement of any residence in Canada, prescribing that a 'military elector' be a British subject "whether or not ordinarily resident in Canada".³³ Opposition MPs said that residence was necessary to cast an informed vote, establish an interest in Canadian public affairs, and to develop a stake in the debates of the nation.³⁴ Future Prime Minister R.B. Bennett, in relation to the connection between a soldier and the right to vote in the state for which the soldier has served, stated: "... service given to the State by willing offer of one's life as a sacrifice upon the altar of patriotism, is the highest, the noblest, and most enduring service that this world can ever know".³⁵

³⁰ Koop Affidavit, paras 18-42, **AR, Vol. XII, tab 12, pp. 9-16**

³¹ Koop Affidavit, para 39, **AR, Vol. XII, tab 12, p. 15**, citing: Canada, *House of Commons Debates*, 12th Parl, 7th Sess ("1917 Commons Debates"), (24 August 1917) at 4902 (RB Bennett), **Respondent's Record ("RR"), Vol. I, Tab 2, p. 185**

³² Koop Affidavit, paras 23-25, 30-33, **AR, Vol. XII, tab 12, pp. 11-13**

³³ *The Military Voters Act, 1917*, 7-8 George V, c. 34 (20 September 1917), 34, s 2(c), **RBA, Tab 14, p. 69** and Koop Affidavit, para 32, **AR, Vol. XII, tab 12, p. 13**

³⁴ Koop Affidavit, para 30, **AR, Vol. XII, tab 12, p. 13**

³⁵ *1917 Commons Debates*, (24 August 1917) at 4902 (RB Bennett), **RR, Vol. I, Tab 2, p. 185**

21. In 1917, concerns were expressed that the military electors who had never resided in Canada could affect the vote,³⁶ including that their vote would take control of the constituency away from the ordinary elector.³⁷ The Justice Minister said that the “exceptional privilege” of voting was being granted only to a small group and that the Government was “not involving Canada in any serious danger that the people of Canada, as such, will not control the outcome of the election”.³⁸

22. During WWII, one aspect of ordinary residence in Canada was required for a Canadian Armed Forces (CAF) member serving abroad to vote – specifying a local Canadian address.³⁹

23. In 1955, the non-resident voting right of CAF electors was extended to their spouses while the CAF elector resided outside Canada.⁴⁰

24. In 1970, non-resident voting was further extended to the dependents of CAF electors, as well as to public servants serving the country by working in embassies and consulates (and their dependents).⁴¹

³⁶ Koop Affidavit, paras 30-35 **AR, Vol. XII, tab 12, pp. 13-14** and *1917 Commons Debates*, (20 August 1917) at 4691- 92 (Mr. Oliver), **RR, Vol. I, Tab 2, pp. 18-19**

³⁷ *1917 Commons Debates*, (20 August 1917) at 4708 (Justice Minister Doherty), **RR, Vol. I, Tab 2, p. 35**

³⁸ *1917 Commons Debates* (20 August 1917) at 4708 (Justice Minister Doherty), **RR, Vol. I, Tab 2, p. 35**

³⁹ Koop Affidavit, para 55, **AR, Vol. XII, tab 12, p. 19**

⁴⁰ Koop Affidavit, paras 57- 61, **AR, Vol. XII, tab 12, p. 20-21**

⁴¹ Koop Affidavit, para 64, **AR, Vol. XII, tab 12, p. 22**

iv. Legislative History Leading to the 1993 Extension of Voting rights to Temporary Non-Residents

(i) Pre-Charter

25. In 1980, Bill C-237 proposed voting by Canadians absent in the short term,⁴² with a 5 year time limit, but did not endorse voting by someone who left Canada 10 or 20 years ago.⁴³ The *Standing Committee on Privileges and Elections* recommended voting for non-residents “working outside Canada for a period of less than 5 years and their dependents”.⁴⁴ Bill C-237 did not reach Third Reading.⁴⁵

(ii) The Residency Limit to Voting was Considered a Justified Infringement of s. 3 in 1981

26. In 1981, the Honourable Robert Kaplan, Acting Minister of Justice, appeared before the Joint Senate and House of Commons Committee on the Constitution to answer questions on the proposed wording of the *Charter*, including the proposed s.3 in the form that was ultimately adopted. MP Svend Robinson specifically asked about the *CEA*'s ongoing requirement of residence for a citizen to vote, and whether that requirement would be unconstitutional. Mr. Kaplan advised Mr. Robinson that, in his view, non-resident Canadians may be justifiably deprived of the right to participate in an election:

“I wonder whether you would agree, Mr. Minister, that this would leave open to challenge in the courts – a challenge some of us consider to be a serious denial of the right to vote, and that is the question of citizens of Canada who may be outside of Canada at the time of an election but who certainly are still citizens of Canada and are denied the right to vote. Would you agree that this could at least be open to challenge in the courts?”

Mr. Kaplan: Well, it could; but I think I ought to say for the record that it may well be a reasonable limit to exclude them; after all they are not affected.

⁴² Koop Affidavit, para 69, **AR, Vol. XII, tab 12, p. 23**

⁴³ Koop Affidavit, para 70, **AR, Vol. XII, tab 12, p. 24**; House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Privileges and Elections* (on bill C-237) No 7 (9 June 1981) at 7:7, **RR, Vol. II, Tab 3, p. 7**

⁴⁴ Koop Affidavit, para 71, **AR, Vol. XII, tab 12, p. 24**

⁴⁵ Koop Affidavit, para 69, **AR, Vol. XII, tab 12, p. 23**

Mr. Robinson: Are you saying “a reasonable limit” or is the test demonstrable justifiability?

Mr. Kaplan: I am sorry, demonstrable justifiability – it is both; and *I am suggesting that people who are Canadian citizens and who do not live in our country for one reason or another may be justifiably deprived of the right to participate in an election.*⁴⁶[emphasis added]

27. Mr. Robinson also raised the prohibition on prisoners voting in Canada. Mr. Kaplan responded: “It would be a very arguable case on behalf of inmates that they were given a right to vote by this *Charter of Rights and Freedoms*.”⁴⁷

(iii) *Post Charter Consideration of Postal Voting and Further Exceptions to the Residency Limit*

28. In his 1983 statutory report to Parliament, Jean-Marc Hamel, then Canada’s Chief Electoral Officer, considered the voting rights of resident citizens away from their polling district during an election, and non-resident citizens.⁴⁸ Testifying before the *Standing Committee on Privileges and Elections* in 1984, Mr. Hamel said that any extension of the vote must ensure the integrity of the electoral system.⁴⁹ Mr. Hamel stated that people on vacation, students, people working abroad for Canadian firms or missionaries were administratively disenfranchised by their having no mechanism to vote.⁵⁰ John M. Reid (MP for Kenora-Rainy River) cautioned that voting by non-residents should not “interfere with the local

⁴⁶ Senate and House of Commons, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, No 43 (22 January 1981) at 43:85, **RBA, Tab 21, p. 122**

⁴⁷ Senate and House of Commons, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, No 43 (22 January 1981) at 43:85, **RBA, Tab 21, p. 122**

⁴⁸ Koop Affidavit, para 73, **AR, Vol. XII, tab 12, p. 24**

⁴⁹ Koop Affidavit, para 74, **AR, Vol. XII, tab 12, p. 25**

⁵⁰ House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Privileges and Elections* (on 1983 Statutory Report of the Chief Electoral Officer), No 2, (10 April 1984) at 2:17, **AR, Vol. XIV, tab 21, p. 49**

constituency".⁵¹ The Committee recommended voting by non-resident citizens as long as they resided abroad for no more than 5 years.⁵²

29. In June 1986, the Government proposed a register of electors abroad in its *White Paper on Election Law Reform*.⁵³ The limits proposed in the White Paper for voting were that a citizen had resided in Canada at some point, and had filed a statement indicating an intention to return to Canada.⁵⁴ The paper recommended that the right to vote should not be limited to Canadians who have been abroad for less than 5 years as was proposed by the *Standing Committee on Privileges and Elections* in 1981 and 1984.⁵⁵ In other words, it substituted one proposed limit (ongoing intention to return) for the 1980 proposed limit of 5 years absence.

30. Bill C-79 followed the proposals, but was not enacted.⁵⁶ Bill C-268⁵⁷ also sought to extend the vote to travellers and students temporarily residing abroad,⁵⁸ but did not reach Third Reading.

31. In 1992, the Royal Commission on Electoral Reform and Party Financing (the Lortie Commission) briefly addressed non-resident voting.⁵⁹ The Lortie Commission did not

⁵¹ Koop Affidavit, para 76, **AR, Vol. XII, tab 12, p. 25**; House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Privileges and Elections* (on 1983 Statutory Report of the Chief Electoral Officer) No 2 (10 April 1984) at 1:30, **AR, Vol. XIV, tab 21, p. 30**

⁵² Koop Affidavit, para 77, **AR, Vol. XII, tab 12, p. 26**

⁵³ Koop Affidavit, para 78, **AR, Vol. XII, tab 12, p. 26**

⁵⁴ Canada, Privy Council, *White Paper on Election Law Reform* (June 1986) s 1.2 "Overseas Voters" at 5-7, **AR, Vol. XIV, tab 22, pp. 112-114**

⁵⁵ Koop Affidavit, para 79, **AR, Vol. XII, tab 12, p. 26**

⁵⁶ Koop Affidavit, para 81, **AR, Vol. XII, tab 12, p. 26**; Bill C-79, introduced in June 1987, was not considered in committee prior to the 1988 dissolution of Parliament.

⁵⁷ Bill C-268 (First reading, October 6, 1987) was a private member's bill introduced by Nelson A. Riis (MP for Kamloops-Shuswap), **RR, Vol. I, Tab 1, pp. 1-5**

⁵⁸ "Bill C-268", 2nd reading, *House of Commons Debates*, 33rd Parl, 2nd Sess, (30 November 1987) at 11332 (Nelson A. Riis), **AR, Vol. III, tab 4E, p. 184**

⁵⁹ Koop Affidavit, paras 89-90, **AR, Vol. XII, tab 12, p. 28**

recommend continuing the residence requirement, but proposed a different, third, limit, stating: "...we think it reasonable and fair to expect Canadians not resident in Canada to demonstrate their continuing attachment to the Canadian polity if they wish to participate in its political processes."⁶⁰ The Commission envisaged a registry by which non-residents could register to vote for up to three years, renewable as long as they could attest that they had not voted in a foreign election at a national level since leaving Canada.⁶¹

32. In February 1992, a House of Commons Special Committee on Electoral Reform began a comprehensive review of the Lortie Commission's Report, and recommended changes to the *CEA*.⁶² The Special Committee did not accept the Royal Commission's recommendation on non-resident voting, but instead proposed amendments to allow voting by citizens: (i) outside their electoral district on Election Day but within Canada; (ii) temporarily out of the country during the election period, but resident in Canada; and (iii) living abroad for less than 5 years and intending to return to Canada.⁶³ The recommendations were all enacted by Bill C-114, including the impugned provisions – extending the right to vote by mail to citizens temporarily residing outside Canada.⁶⁴

⁶⁰ Canada, Royal Commission on Electoral Reform and Party Financing, "Canadians Living Abroad" & Recommendation 1.2.8, in *Reforming Electoral Democracy: Final Report of the Royal Commission on Electoral and Party Financing* ("Royal Commission Report"), at 46-47, **AR, Vol. XVI, tab 24B, pp. 32-33**

⁶¹ *Royal Commission Report*, Vol 3, "Proposed Legislation", paras 168 and 169, **AR, Vol. XVI, tab 24C, p. 46**

⁶² House of Commons, Special Committee on Electoral Reform, *Third Report to the House of Commons*, No 7 (11 December 1992) at 7:3-7:5, **RR, Vol. II, Tab 5, pp. 67-69**

⁶³ House of Commons, Special Committee on Electoral Reform, *Third Report to the House of Commons*, No 7 (11 December 1992) at 7:4-7:5, **RR, Vol. II, Tab 5, pp. 68-69**

⁶⁴ A draft bill, part of the Special Committee's *Third Report*, included a new section 51.1 of the *CEA* and Schedule II, *Special Voting Rules*, in particular sections 20-22 in Part III, under the subheading, "Canadian Citizens Temporarily Residing Outside Canada": House of Commons, Special Committee on Electoral Reform, *Third Report to the House of Commons*, No 7 (11 December 1992) at 7:19 & 7:65-66, **RR, Vol. II, Tab 5, pp. 83 &**

33. The Minutes of the Proceedings and Evidence of this Special Committee indicate that the Special Committee held both public and *in camera* meetings. While the Special Committee met *in camera* on 10 days prior to the submission of its Third Report on December 11, 1992, there are public Minutes relevant to the enactment, which are further described at paragraphs 61-63 below.

34. In 2005, the Chief Electoral Officer of Canada reported to Parliament his opinion that the 5 year definition of temporary non-residence should be eliminated.⁶⁵ In 2006, the House of Commons Standing Committee on Procedure and House Affairs made the same recommendation.⁶⁶ While a number of Bills have been before Parliament with proposed amendments to the *CEA*, Parliament has not made the policy choice to proceed with the recommendations regarding the elimination of the 5 year requirement in the 1993 extension of voting rights to temporary non-residents.

v. Decisions Below

(i) *Decision at First Instance*

35. At first instance, the Attorney General argued: “allowing non-residents to vote is unfair to resident Canadians because resident Canadians live here and are, on a day-to-day basis, subject to Canada’s laws and live with the consequences of Parliament’s decisions.”⁶⁷

129-130. The Special Committee indicated that they had taken into account recent court decisions and the possible effects of the *Charter* and recommended bringing the *CEA* into conformity with the *Charter* in relation to the eligibility to vote and to be a candidate for election: *Third Report* at 7:4, **RR, Vol. II, Tab 5, p. 68**

⁶⁵ Elections Canada, *Completing the Cycle of Electoral Reforms: Recommendations of the Chief Electoral Officer on the 38th General Election (2005)* at 1.16, **AR, Vol. XVIII, tab 26B, p. 48**

⁶⁶ House of Commons, *Report of the Standing Committee on Procedure and House Affairs*, (June 2006) at 1.16 **AR, Vol. XVIII, tab 27, p. 69**; Dissenting opinion by the Bloc Québécois, at p 30 of *Report*, **AR, Vol. XVIII, tab 27, p. 92**

⁶⁷ Reasons for Judgment of the Honourable Mr. Justice Penny, Ontario Superior Court of Justice (“Penny J. Reasons”), paras 86-90, **AR, Vol. I, tab 3, pp. 24-25**

This argument was put forward in both the Attorney General's denial of a breach of s.3 and in the Attorney General's alternative argument that fairness to the resident voter was one of the pressing and substantial purposes in a s. 1 justification under of the *Charter*.

36. In the justificatory argument the objectives of the limited enfranchisement were explained by the Attorney General as: "extending the right to vote to non-resident citizens but not to the point of giving rise to unfairness for Canada's resident voters."⁶⁸ This was further explained: "Non-residents no longer have the same substantial connection to Canada in terms of their citizenship obligations. Resident voters remain subject to all laws enacted by those elected while non-residents may only be affected by some laws".⁶⁹

37. In his reasons, the application judge found that the purpose of the residence requirement was to ensure that the non-resident voter had a subjective connection to Canada.

38. The application judge concluded that subsection 11(d), paragraphs 222(1)(b) & (c), paragraph 223(1)(f), subsection 226(f), and the word "temporarily" in section 220, subsection 222(1) and paragraph 223(1)(e) of the *CEA* unjustifiably breach the rights of the Appellants under s. 3 of the *Charter*.

39. The appellants did not challenge, and the judgment does not affect, the requirement in the *CEA* that a non-resident elector – at any time before making an application to be on the international register – must have resided in Canada.⁷⁰

⁶⁸ Penny J. Reasons, para 102 **AR, Vol. I, tab 3, p. 27** and Appeal Judgment, para 188, **AR, Vol. I, tab 6, p. 127**

⁶⁹ Penny J. Reasons, para 103, **AR, Vol. I, tab 3, p. 28** and Appeal Judgment, para 189, **AR, Vol. I, tab 6, pp. 127-128**

⁷⁰ Section 222(1) (a) of the *CEA* provides that, to apply to be on the register, a citizen must have: "at any time before making the application, resided in Canada".

(ii) Court of Appeal for Ontario

40. Canada sought a stay of the Judgment from the Court of Appeal pending the determination of the appeal and in light of four by-elections being held on June 30, 2014. On June 23rd, 2014, Sharpe J.A. denied the stay.⁷¹

41. On July 20, 2015, in a divided decision, the majority in the Ontario Court of Appeal allowed the appeal finding that the provisions in question infringe s. 3 of the *Charter* but are saved by s. 1.

42. On appeal, the Attorney General described the mechanism that causes a residence limit to voting to achieve fairness in the electoral system by referring to the “social contract”, a political theory described and endorsed by this Court. The majority accepted that the purpose of the residence limit was to maintain the fairness of the electoral system, and that the residence limit met the three required elements of proportionality: it was rationally connected to its fairness purpose, it was minimally impairing, and the positive effects of the limit outweighed the negative impacts.

43. The dissenting judgment of Laskin J.A. disagreed with the majority on all points. He reasoned: i) the use of the phrase “social contract” constituted a new and unfair argument; ii) that the reliance on a purpose explained by the social contract was a shifting purpose; and iii) that the Attorney General failed on all of the required steps of the justification required under s. 1.

⁷¹ Decision of Sharpe JA on Stay Motion, Court of Appeal for Ontario, June 23, 2014, at para 32, **AR, Vol. I, tab 4, p. 56**

PART II – POINTS IN ISSUE

44. On June 2, 2016 the Chief Justice stated the following constitutional questions:
1. Do ss. 11(d), 222(1)(b) and (c), 223(1)(f), 226(f), and the word “temporarily” in ss. 220, 222(1) and 223(1)(e) of the *Canada Elections Act*, S.C. 2000, c. 9, infringe s. 3 of the *Canadian Charter of Rights and Freedoms*?
 2. If so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?
45. The Attorney General of Canada submits that the stated questions should be answered: yes - limiting the extension of mail voting rights to temporarily non-resident citizens infringed s. 3 of the *Charter*. Yes - the infringement is justified under s. 1 of the *Charter*.

PART III – ARGUMENT

A. PATRIATION OF THE CHARTER MADE MINIMUM AGE AND RESIDENCE INFRINGEMENTS OF S. 3

46. The Attorney General admits that in 1982 the residence limit to voting (like the minimum age requirement – the other essential element to voting)⁷² was recognized by those who had negotiated the new *Charter of Rights and Freedoms* as a *prima facie* infringement of the new, s. 3 guarantee that every citizen has a right to vote.⁷³ The answer to the first constitutional question stated by the Chief Justice must therefore be yes, the words of limitation in the 1993 extension of the right to vote by mail to temporary non-resident citizens was a breach of s. 3.

B. APPELLANTS' INCORRECT DESCRIPTION OF THE ISSUES BEFORE THIS COURT

47. The appellants and the dissenting appellate judgment make incorrect characterizations of the facts and issues engaged in this legal debate about the justification of the residence requirement. These errors will be described in order that the Attorney General's justification can be properly understood. Those errors are:

- a) The framers of the Charter abandoned the long-standing residence requirement for voting when they required only citizenship in s.3;
- b) The 1993 enactment stripped long-term non-resident voters of their voting rights;
- c) The use of the political science phrase "social contract" to describe how a residence limit preserves the fairness of the electoral system was a new and unfair argument;
- d) The social contract argument represents a shifting purpose.

⁷² *Opitz*, para 32, **RBA, Tab 3, p. 9**

⁷³ See para 26 above

(a) Framers Did Not Abandon the Residence Requirement to Voting

48. The appellants argue that, in 1981, the framers did not “focus on residence” or any other requirement of voting, instead intending that citizenship would be the defining feature to be able to exercise the democratic franchise.⁷⁴ The dissenting appellate judgment went further saying that: “...in 1982 the framers of the Charter discarded Canadian residence for another defining criterion: Canadian citizenship *and nothing more* [emphasis added].”⁷⁵ The dissenting view and the appellants’ arguments are incorrect. The officials involved in the negotiation of the Charter believed that the residence limit was justified under Canadian law stating: “people who are Canadian citizens and who do not live in our country for one reason or another may be justifiably deprived of the right to participate in an election”.⁷⁶

49. Residence was not discarded by those involved in the drafting of the *Charter*. Acting Minister of Justice Kaplan’s opinion shows that the limit was considered, and was intended to continue as a justified infringement. Residence was not discarded in preference to “a community defined by citizenship” as the appellants suggest.⁷⁷

50. This legislative history also rebuts the appellants’ suggestion that the residence requirement is merely an organizing or regulating mechanism of no independent importance.⁷⁸ In the view of the framers in 1981, the residence limit to voting was a reasonable limit to an otherwise guaranteed voting right, and was demonstrably justified in a free and

⁷⁴ Appellants’ factum, para 25

⁷⁵ Appeal Judgment, paras 170, 221, **AR, Vol. I, Tab 6, pp. 120-121 & 139**

⁷⁶ See paragraph 26, above, and Senate and House of Commons, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, No 43 (22 January 1981) at 43:85, **RBA, Tab 21, p. 122**

⁷⁷ Appellants’ factum, para 47

⁷⁸ Appellants’ factum, paras 19 &, 75

democratic society. It was much more than merely a mechanism indicating where a vote might be counted. Unquestionably the need to determine where a vote is counted is one purpose served by residence, but when viewed in historical context residency serves a much more significant purpose.

(b) No One was Stripped of a Voting Right by the 1993 Amendments

51. The appellants repeatedly describe Parliament's 1993 extension of mail voting rights to temporarily non-resident citizens as "directly and intentionally stripping Canadian citizens of the right to vote".⁷⁹ The factum similarly repeats the phrase that the provisions 'disenfranchise' a group of citizens.⁸⁰ This description is inaccurate.

52. Prior to 1993, the only non-residents with external voting rights under the *SVRs* were those resident abroad in service of Canada along with their families. The appellants and all other non-resident citizens would not have been able to vote because they did not meet the residence requirement found in s. 6 of the *CEA*, and they were not residing abroad in the service of Canada. The framers of the *Charter* intended to maintain what they viewed as a justified residence limit to voting in 1981.

53. The impugned provisions *enfranchised* non-resident citizens by allowing them to vote for the first time in Canadian history, for as long as they met the definition of being temporarily resident outside Canada. The residence limit, at least for putting a ballot in the ballot box is found in s. 6, not in the *SVRs* in Part 11 of the *CEA*. Residence in Canada was intended to continue as a requirement underpinning Canada's electoral system of local MPs.

⁷⁹ Appellants' factum, paras 2, 38, 41 &, 91

⁸⁰ Appellants' factum, paras 39, 46 &, 66

54. In *Sauvé #2*, this Court properly describes the inherent danger of a duly-elected legislature turning around and disenfranchising a group of the very voters that participated in the election of that legislative body.⁸¹ Such a disenfranchisement would be very problematic, interfering with the legitimacy of the elected body derived from the voters who elect it. The appellants cite this passage alleging their own disenfranchisement in 1993. However, no one was disenfranchised in 1993; rather, for the first time some non-residents who were not abroad in service of Canada were enfranchised.

(c) Use of the Phrase “social contract” Does Not Constitute a New Argument

55. The dissenting appellate decision is incorrect in suggesting that the Attorney General's use of the phrase “social contract” for the first time in the Court of Appeal represented a new and unfair argument. The expression “social contract” is a convenient shorthand to capture the argument that long-term non-resident voting engages questions about the mutuality and reciprocity of rights and responsibilities that the Attorney General formulated at first instance. While the expression may have been new, the argument was the same.⁸²

(d) No Shifting Purpose

56. Finally, the appellants and the dissenting appellate judgment state that the Attorney General's use of the phrase “social contract” is a shifting purpose when it is used to explain how Parliament's purpose of maintaining the fairness of the electoral system is achieved through the maintenance of the residence limit. They argue this because Hansard makes no reference to the social contract when the right to externally vote was extended to non-resident

⁸¹ *Sauvé v. Canada (Chief Electoral Officer)*, 2002 SCC 68 at para 32, [2002] 3 SCR 519 [S*auvé* #2], **RBA, Tab 6, p. 22**

⁸² See paras 35-36 above

citizens in 1993. However, as will be explained below, Hansard does indicate that one of the long-standing purposes of the residence limit is ensuring that the electoral system is fair to the resident voter. That was one of the purposes, and it did not shift simply because the Attorney General now uses social contract theory to explain how fairness is achieved.

C. THE RESIDENCE LIMIT IS DEMONSTRABLY JUSTIFIED IN A FREE AND DEMOCRATIC SOCIETY

i. Pressing and Substantial Objective

57. The first step in the justification analysis requires the Attorney General to establish that the objective of the infringing measure is sufficiently important to be capable in principle of justifying a limit on *Charter* rights and freedoms.⁸³ The objective must be consistent with the values of a free and democratic society, and should be directed at the realization of collective goals of fundamental importance. The identification of pressing and substantial objectives that lead Parliament to limit a *Charter* right is not an evidentiary contest. Multiple objectives can be determined through common sense and reasoning and do not require empirical evidence, including in electoral cases involving values and principles essential to a free and democratic society.⁸⁴

58. The 1993 amendments to the *CEA* enfranchised temporarily non-resident citizens (not in the service of Canada). The limits to that enfranchisement (the definition of temporary – less than 5 years absence, ongoing intention to return) on their face require that those using

⁸³ *RJR-MacDonald v. Canada (AG)*, [1995] 3 SCR 199 at paras 142-144, **Appellants' Books of Authorities ("ABA"), tab 24**

⁸⁴ *Sauvé # 2*, *supra* at para 18, **RBA, Tab 6, pp. 19-20**; and *Fitzgerald (Next friend of) v Alberta*, 2002 ABQB 1086 at paras 54-57, *aff'd* ABCA 184, leave to appeal to the SCC denied [2004] SCCA No 349, **RBA, Tab 1, pp. 2-3**; *R v. Bryan*, 2007 SCC 12 at para 22, [2007] 1 SCR 527, **RBA, Tab 4, p. 11**

the external voting mechanism to be predictably resuming residence in Canada. Long-term non-residents remain subject to the general residence requirement found in s. 6 of the *CEA*, because they are not given the external voting right granted by the *SVRs*. Mail voting is not available to them, and they must resume ordinary residence in an electoral district in Canada before being able to vote by placing a ballot in the ballot box.

59. In the debates on the amendments that ultimately resulted in the 1993 amendments, MPs spoke of the need for electors to have a “connection” to Canada. These references to a connection described more than the elector having a sentimental attachment, or even an ongoing knowledge and interest in Canada. In addition to these subjective measures of connection, MPs described the integrity and fairness of the electoral system and their concerns regarding the necessary connection between voting by resident citizens and those resident citizens being governed by the elected representatives they participated in choosing. These were the objective connections recognized by the majority decision in the appellate court below.

60. In 1984, Mr. Hamel testified that any extension of the vote must ensure the integrity of the electoral system.⁸⁵ The MP for Kenora-Rainy River cautioned that voting by non-residents (or prisoners) should not “interfere with the local constituency”.⁸⁶ The Committee

⁸⁵ Koop Affidavit, para 74, **AR, Vol. XII, tab 12, p. 25**

⁸⁶ Koop Affidavit, para 76, **AR, Vol. XII, tab 12, p. 25** and House of Commons, *Minutes of Proceedings and Evidence of the Standing Committee on Privileges and Elections* (on the 1983 Statutory Report of the Chief Electoral Officer), No 2 (10 April 11 (27 March 1984) at 1:30, (John M. Reid), **AR, Vol. XIV, tab 21, p. 30**

recommended voting by non-resident citizens as long as they resided abroad for no more than 5 years.⁸⁷

61. This concern for the local constituency was repeated in 1992 when the Special Committee on Electoral Reform was considering the comprehensive study of the Lortie Report (their work resulted in Bill C-114). Special Committee members wanted electors to have a "close enough connection to Canada".⁸⁸ Mr. Howard Crosby (MP for Halifax West) expressed concern that non-resident Canadian citizens (in his example, resident in Paris) could affect the outcome in an electoral district:

I'm not in favour of Canadians voting abroad in an unrestricted way. They would have to establish at least for me, that they have a connection with Halifax West, or Kingston and the Islands, or their constituency before they should be allowed to vote in a particular constituency. I think that it should be very restrictive [...]

No, no, which is the major point, because if you do that, maybe 150 people can get together and register in Halifax West and affect the ballot there, even though they have no connection with it."⁸⁹

62. Implicit in this evidence is that it would be unfair to resident electors to have their MP elected, in effect, by long-term non-residents who have a lesser stake in the outcome of the election by virtue of their lesser legal responsibilities under Canadian laws.

⁸⁷ Koop Affidavit, para 77, **AR, Vol. XII, tab 12, p. 26**

⁸⁸ House of Commons, *Minutes of Proceedings and Evidence of the Special Committee on Electoral Reform*, No 5 (24 November 1992) at 5:61 (Jim Hawkes, Chair), **AR, Vol. IV, tab 4K, p. 132**

⁸⁹ House of Commons, *Minutes of Proceedings and Evidence of the Special Committee on Electoral Reform*, No 3 (25 March 1992) at 3:30-3:31 (Howard Crosby), **AR, Vol. V, tab 4M, pp. 31-32**

63. In the spring of 1993, the Assistant Secretary, Legislation and House Planning, and Counsel, at the Privy Council Office testified before the Senate Committee on Bill C-114 about the Special Committee on Electoral Reform's conclusions.⁹⁰ She testified that it is not unreasonable for a democratic society to ensure electors "have some degree of connection with the country". She explained that the 5 year limit substitutes as a residence requirement⁹¹ to ensure that there is some degree of connection to Canada, with this period also being the maximum life of a Parliament.⁹²

64. In *Sauvé #2*, the Court describes the democratic principles at the heart of the relationship between electors and the legislators whom they elect. This relationship constitutes the social contract:

- The power of lawmakers flows from the voting citizen – the lawmaker acts as the citizen's proxy;
- This delegation gives the law its legitimacy or force;
- The legitimacy of the law and the obligation to obey it flows directly from the citizen's right to vote;
- All people within Canada's boundaries are required to obey its laws; and

⁹⁰ See para 33, above.

⁹¹ The 'less than five years non-residence requirement' was referred to as a "residence requirement" – see: Senate, *Proceedings of the Standing Senate Standing Committee on Legal and Constitutional Affairs* (5 May 1993) at 40:28, **RR, Vol. II, Tab 4, p. 54**

⁹² Senate, *Proceedings of the Standing Senate Standing Committee on Legal and Constitutional Affairs* (5 May 1993) at 40:27-28, **RR, Vol. II, Tab 4, pp. 53-54**; Note: section 50 of the *Constitution Act, 1867*: "Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer." **RBA, Tab 7, p. 28** and section 4 of the *Canadian Charter of Rights and Freedoms*: "No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members." **RBA, Tab 8, p. 43**

- Having a voice in making the law and being obliged to obey it is the vital, symbolic, theoretical and practical connection that stands at the heart of our system of constitutional democracy.⁹³ [Emphasis added.]

65. When a Canadian citizen resides in a foreign country, their absence from Canada's geographical boundaries attenuates their participation in Canada's social contract. The majority in the appellate court below correctly found that most Canadian domestic laws do not purport to apply extraterritorially, and international law provides that Canada's domestic laws cannot be enforced in the territory of a foreign state unless that state has agreed to this, such as by entering into a treaty with Canada.⁹⁴ As a result, citizens residing outside Canada's national boundaries have fewer legal responsibilities under domestic Canadian law than do resident citizens.

66. Resident citizens are unequivocally full participants in Canadian civic society. They pay income tax on their world-wide income; they are the most fully informed and engaged in local political processes – by virtue of being resident and being directly affected by decisions of their governments; and they are required to obey all domestic laws. Only resident citizens can be compelled to defend Canada in a war.⁹⁵

67. The appellants argue that this Court's description of the social contract as an essential feature of our system of constitutional democracy in *Sauvé #2* is taken out of context. This Court rejected the argument that prisoners' choice to break laws removed their right to vote,

⁹³ *Sauvé # 2*, *supra* at para 31, **RBA, Tab 6, pp. 21-22**

⁹⁴ Appeal Judgment, paras 74, 106, 133-139, **AR, Vol. I, tab 6, pp. 86, 96-97, 106-109**; *R v Hape*, 2007 SCC 26 at paras 40-46, [2007] 2 SCR 292 (“Principle of Respect for Sovereignty of Foreign States as a Part of Customary International Law and of Canadian Common Law”), **RBA, Tab 5, pp. 13-17**

⁹⁵ Eagles Affidavit, para 70, **AR, Vol. IX, tab 9, p. 74-75**

and used social contract theory to explain how their incarceration exemplified how they bear the responsibilities of Canadian law. The Court also rejected the evaluation of the worthiness of prisoners implicit in the argument justifying the loss of their vote.

68. The *CEA* does not make any subjective valuation of the personal characteristics of long-term non-residents. It simply recognizes that, when they are living abroad, the laws that most affect them are no longer the laws of Canada. As the appellate court stated:

As a practical matter, Canada does not purport to legislate extra-territorially in most cases. Nor does it attempt to enforce its laws outside the country. While the respondents will be subject to Canadian laws when they come to Canada, the same is true of any visitor. On a day-to-day basis, the respondents are subject to an array of U.S. municipal, state and federal laws that affect every aspect of their lives. Their tax dollars are directed to the support of U.S. policies, programs and institutions, not Canadian ones. They may well have an interest in Canadian politics, but their taxes go to Washington, not Ottawa.⁹⁶

69. The responsibilities of the non-resident under Canadian law are certainly different and less onerous than the responsibilities of the resident citizen under Canadian law. A temporarily non-resident intends and will predictably return to resume the same responsibilities as the resident Canadian citizen, the long-term non-resident will not predictably resume either Canadian residence or the full legal responsibilities of citizenship that follow residence in Canada. This difference is factual and certain as it flows from international law and the sovereignty of nations.

70. The difference between long-term non-residents and resident citizens is not changed because Canada requires tax to be paid on income generated in Canada regardless of the taxpayer's residence. That tax obligation applies to everyone in the world who has the

⁹⁶ Appeal Judgment, para 106, *AR*, Vol. I, tab 6, p. 96-97

privilege of earning money in Canada.⁹⁷ Only Canadian residents pay income tax on their world income.⁹⁸ Similarly, the fact that domestic laws often affect resident citizens differently, does not change the fact that most Canadian laws do not apply to non-residents, and none can be enforced outside Canada without the consent of the foreign state.⁹⁹

71. The appellants clearly have strong subjective connections to Canada. Parliament's 1993 choice to extend voting rights to all non-resident citizens meeting the definition of temporary non-residence struck a balanced and nuanced approach to non-residents who formerly had no voting right by virtue of s. 6 of the *CEA*. Temporary non-residents were recognized by Parliament as a group of non-residents who, by virtue of their limited time residing outside Canada can be expected to have a stake and ongoing connection to Canada.

72. Reliance on the social contract to explain how a residence limit to voting serves the purpose of preserving the fairness of Canada's electoral system is not reliance on a vague social philosophy that cannot be proven as the appellants argue. The importance of the reciprocity between exercising the right to vote and bearing the responsibilities of the laws that are enacted is specifically described by this Court and endorsed as being essential to the architecture of the political system.¹⁰⁰ The greater legal responsibilities of resident citizens under Canadian domestic law as compared to non-residents are real, measurable and certain. The concern of Parliamentarians that external voting by long-term non-residents should not affect a local constituency is neither vague nor theoretic.

⁹⁷ Affidavit of Kevin Shoom ("Shoom Affidavit"), para 8, **AR, Vol. XIII, Tab 14, p. 4**

⁹⁸ Shoom Affidavit, paras 10, 11, **AR, Vol. XIII, Tab 14, p. 4-5**

⁹⁹ *R v Hape, supra*, at paras 40-46, **RBA, Tab 5, pp. 13-17**

¹⁰⁰ *Sauvé # 2, supra* at para 31, **RBA, Tab 6, pp. 21-22**

73. The framers of the *Charter* did not believe that limiting external voting to temporarily non-resident citizens was inconsistent with Charter values of dignity, autonomy, democracy, inclusiveness and equality. The Charter value of equality must require more than formal equality of treatment (particularly when the responsibilities of non-residents under Canadian law are not equal to the responsibilities of residents). Distinguishing the voting rights of citizens based on residence does not perpetuate prejudice against, or stereotype long-term non-residents, it simply recognizes and in this way corresponds to the differences caused by where they live. Their voting rights resume when they resume their residence in Canada. Democratic principles are achieved by the distinction as evidenced by similar residence requirements found in the other Westminster parliamentary systems most closely similar to Canada.¹⁰¹

74. The external voting by temporarily non-resident citizens since 1993, as well as by soldiers, diplomats, and others who are living abroad in service of Canada does not prove that the residence limit is unnecessary, as the appellants' argue. The appellate court properly found that soldiers and others living abroad in service of Canada, and their families, are in a very different position than other citizens.¹⁰² They are living abroad in order to carry out the political objectives of the government of Canada. They bear a much more focussed and heavy responsibility directly resulting from the decisions of elected officials. In the case of soldiers, their very lives are at stake because of the political decisions of the elected government. No doubt this is why exceptions to the residence requirement of voting have been recognized

¹⁰¹ see paras 83-8682-85 below

¹⁰² Appeal Judgment, para 143, **AR, Vol. I, tab 6, p. 110**

since WWI. The appellate court also noted that many domestic laws of Canada continue to apply to those living abroad in service of Canada.

75. The appellants rely on the lack of injury or complaint arising from the external voting of temporarily non-resident citizens since 1993. However, this can be explained by the fact that those voters have explicitly indicated their ongoing intention to return, and are required to do so within 5 years. Upon that predictable return, resident voters know that the returning citizen will be fully subject to Canadian laws.

ii. Proportionality

(i) *Rational Connection*

76. In the second, proportionality stage of the *Oakes* analysis, the Attorney General must satisfy this Court that: i) there is a rational connection between the impugned legislation and the constitutionally valid objective; ii) that the right is minimally impaired; and iii) in the final balancing stage that the law's salutary benefits outweigh its deleterious effects.¹⁰³

77. The first requirement in this second stage is that the government demonstrate that the infringing measure is rationally connected to its objective. The government need not establish that the measure will inevitably achieve Parliament's objective. It must show by reason, logic or evidence that there is a causal relationship between the measure and the objective.¹⁰⁴

78. The appellate court correctly found that the rational connection between the residence limit to voting and Parliament's 1993 objective of maintaining the fairness of Canada's

¹⁰³ *R v Oakes*, [1986] 1 SCR 103, at pp 138-139, **ABA, tab 19**

¹⁰⁴ *Mounted Police Association of Ontario v Canada (AG)*, 2015 SCC 1 at para 143, [2015] 1 SCR 3, **RBA, Tab 2, p. 5**

electoral system is proven in the social contract theory endorsed by this Court in *Sauvé #2*, in provincial and territorial electoral legislation (and judicial decisions explaining their purpose), in the electoral laws of other Western democracies, and in international jurisprudence.¹⁰⁵ This Court's judgment in *Sauvé #2*, its endorsement of the social contract, and its explanation of the important reciprocity between the voting right and the consequent legal responsibility that follows has already been described.

(a) Provincial Residence Requirements

79. Residence is a requirement for voting in all provinces and territories. As in the *CEA*, Ontario and Quebec also provide statutory exceptions for temporary non-residents to continue voting. To do so, a temporary non-resident must have: (i) resided in the province for at least 12 months prior to leaving; (ii) resided outside the province for less than 2 years; and (iii) must intend to resume residence in the province.¹⁰⁶

80. The validity of these provincial residence requirements has been challenged in three cases which have upheld their constitutionality as justified infringements of the *Charter*.¹⁰⁷ In all of the cases, the residence limits were found to be reasonably necessary to those governments' purpose of ensuring the fairness of the provincial and territorial elections, particularly for other resident voters. In one case, the limits were found to prevent the

¹⁰⁵ Appeal Judgment, paras 118-143, **AR, Vol. I, tab 6, pp. 100-110**

¹⁰⁶ Koop Affidavit, para 137, **AR, Vol. XII, tab 12, p. 42** and *Election Act*, RSO 1990, c E-6, s 15, **RBA, Tab 11, p. 53** and *Election Act*, CQLR, c E-3.3, ss 281-283, **RBA, Tab 12, p. 60**

¹⁰⁷ *Storey v Zazelenchuk*, [1984] SJ No 800 (CA) [*Storey*], **ABA, Vol. 2, tab 32**; *Anawak v Nunavut (Chief Electoral Officer)*, 2008 NUCJ 26 [*Anawak*] **ABA, Vol. 1, tab 1**; *Re Yukon Election Residency Requirements*, [1986] YJ No 14 (CA) [*Yukon Election*], **ABA, Vol. 1, tab 21**

parachuting of electors into the territory that might influence the vote.¹⁰⁸ In another the residence limit was found to assure the integrity of the electoral process.¹⁰⁹ In the third, the 12 month residency requirement was justifiable because allowing newcomers to vote could have a major impact in many constituencies with a few voters.¹¹⁰ The decisions found that this would “lessen the confidence” of residents in the electoral system.¹¹¹

81. The appellants incorrectly argue that these provincial and territorial residence requirements simply prevent citizens from voting when they have no attachment to a new place of residence.¹¹² The judgments, however, recognize the purpose as being the prevention of unfairness to resident voters. This is proof of the rational connection between a residence limit and maintenance of the fairness of an electoral system.

(b) International Comparators

82. All other comparable countries with Westminster Parliamentary systems require residence in order to vote.¹¹³ The three main comparators also provide an exception to the residence requirement to electors who are temporarily resident outside the country. In the United Kingdom (UK), non-resident citizens can vote for members of the UK and European

¹⁰⁸ *Anawak*, paras 59, 89-90, **ABA, Vol. 1, tab 1**

¹⁰⁹ *Storey*, paras 106-108, **ABA, Vol. 2, tab 32**

¹¹⁰ *Yukon Election*, pp. 3-4, **ABA, Vol. 1, tab 21**

¹¹¹ *Anawak*, para 83, **ABA, Vol. 1, tab 1**

¹¹² Appellants' factum, para 92

¹¹³ Eagles Affidavit, para 23, **AR, Vol. IX, tab 9, p. 57**; United Kingdom: *Representation of the People Act 1983*, (UK) 1983, c 2, s 1(1), **RBA, Tab 19, p. 95**; Australia: *Commonwealth Electoral Act 1918*, as amended, s 93, **RBA, Tab 16, p. 76**; New Zealand: *Electoral Act 1993*, (NZ), 1993/87, s 74(1), **RBA, Tab 18, p. 89**

Parliaments for up to 15 years.¹¹⁴ This limit was arrived at after trials with a 5 year and then 20 year limit.¹¹⁵

83. Non-resident Australian citizens can register to vote as “eligible overseas electors” provided they have not lived away for more than 6 consecutive years and intend to return to resume residence in Australia within that period.¹¹⁶ Those ceasing to intend to return within the 6 years, yet intending to resume residence in Australia at a later time, may apply to remain on the electoral roll in 1 year increments.¹¹⁷

84. Non-resident New Zealand citizens are subject to the most restrictive limit on external voting¹¹⁸ – 3 years – but those who return to visit during each 3 year period can restart the clock with a new 3 year period.¹¹⁹

¹¹⁴ Eagles Affidavit, para 76, **AR, Vol. IX, tab 9, p. 76**

¹¹⁵ Eagles Affidavit, para 76, **AR, Vol. IX, tab 9, p. 76**; see *Representation of the People Act 1985*, (UK) 1985, c 50, s 1 (5 years), amended by *Representation of the People Act 1989*, (UK) 1989, c 28, s 2 (20 years) and further amended by *Political Parties, Elections and Referendums Act 2000* (UK) 2000, c 41, s 141(a) (15 years), **RBA, Tab 19, pp. 98, 101, 107**

¹¹⁶ Eagles Affidavit, para 78, **AR, Vol. IX, tab 9, p. 77**; Section 94(1B) of the *Commonwealth Electoral Act, 1918*, as amended: Australian citizens who have not applied for enrolment as overseas voters within 3 years after ceasing to reside in Australia will be disenfranchised, **RBA, tab 16, p. 79**

¹¹⁷ Section 94(8) of the *Commonwealth Electoral Act 1918*, as amended, **RBA, tab 16, p. 80**

¹¹⁸ Eagles Affidavit, para 80, **AR, Vol. IX, tab 9, pp. 77-78**

¹¹⁹ Eagles Affidavit, para 80, **AR, Vol. IX, tab 9, pp. 77-78**; see also: s 80 of the *Electoral Act 1993* (NZ): “The following persons are disqualified for registration as electors: (a) a New Zealand citizen who (subject to subsection 3) is outside New Zealand and has not been in New Zealand within the last 3 years”. **RBA, Tab 18, p. 91**

85. Beyond these comparable jurisdictions, studies of other jurisdictions show that limiting the right of non-resident citizens to continue voting in national elections is widespread.¹²⁰

86. The appellants argue that Parliament's 1993 choice to define temporary non-residence as including less than 5 years absence (combined with an ongoing intention to return) is arbitrary and irrational, citing debate over the temporal limit prior to the enactment of the 5 years. The majority below correctly identified this argument as properly relating to the minimal impairment inquiry of the proportionality analysis. Parliament's choice of a period of time that allows the objective definition of "temporary" is not arbitrary or irrational given the similar choice of a time period by comparable Westminster Parliamentary systems.

(c) Decisions of the European Court

87. The European Court has twice rejected challenges to Convention signatory countries' legislation limiting external voting to temporarily non-resident citizens. In *Shindler*, the European Court ruled that the UK Parliament, in enacting the 15 year limit, was "pursuing the legitimate aim of confining the franchise to those citizens with a close connection with the United Kingdom and who would therefore be most directly affected by its laws."¹²¹ The Court held that the limit to Mr. Shindler's right to vote was "proportionate to the legitimate aim pursued".¹²² In *Hilbe*, similar limits were upheld for 4 reasons, including: "the legitimate

¹²⁰ Eagles Affidavit, paras 83, 84, **AR, Vol. IX, tab 9, pp. 78-79** and IDEA [International Institute for Democracy and Electoral Assistance], *Voting from Abroad – The International IDEA Handbook*, (Stockholm, 2007,) Annex "A" - External Voting: a world survey of 214 countries and territories, at 234-245, **RBA, Tab 20, pp. 108-119**

¹²¹ *Shindler v The United Kingdom*, European Court of Human Rights ("ECtHR"), No 19840/09 (7 May 2013) at para 107 [*Shindler*], **ABA, tab 31**

¹²² *Shindler*, at para 118, **ABA, tab 31**

concern the legislature may have to limit the influence of citizens abroad in elections on issues which, while admittedly fundamental, primarily affect persons living in the country.”¹²³

88. The appellants argue that these decisions of the European Court do not establish a rational connection between residence limits on mail voting and the fairness of an electoral system, because the European Court interprets a convention between individual sovereign states and does so giving a wider margin of appreciation than does this Court in its application of s. 1. The majority accepted these points of distinction, but correctly found that the decisions of the European Court (along with the evidence described above) strongly support a rational connection: “the authorities, provincial and international, provide strong support for the logical connection between limits on non-resident voting and the legitimacy and fairness of the electoral system.”¹²⁴

(ii) Minimal Impairment

89. The majority decision acknowledged this Court’s instruction in *Sauvé #2* that a stringent justification standard must be applied to a limitation on a core democratic right. It recognized that, while this narrowed the range of reasonable options from which Parliament may choose, the direction should not mean that the courts are entitled to craft their own policy ideals to replace those chosen by Parliament.¹²⁵ This is particularly the case where the limit must be clear and discernable in order to be applied uniformly in an election, and where its purpose is to maintain a long-standing requirement of the electoral system, that is not - unlike prisoners, property ownership, gender and mental ability - an evaluation of some subjective characteristic of a person.

¹²³ *Hilbe v Liechtenstein*, ECtHR, No 31981/96 (7 September 1999) at p. 459, **ABA, tab 10**

¹²⁴ Appeal Judgment, para 129, **AR, Vol. I, tab 6, p. 105**

¹²⁵ Appeal Judgment, para 154, **AR, Vol. I, tab 6, pp. 113-114**

90. The 5 year element of the temporary non-resident definition is very much like the other long-standing and objective limit to voting – the minimum age of 18 years. The temporal aspect of the definition of temporary absence, like the age when a young person has sufficient maturity and judgment to responsibly vote, is peculiarly a matter of the judgment of Parliament, albeit subject to judicial scrutiny as to whether it falls within a range of reasonable alternatives.¹²⁶ For both: “any cut-off point will produce some arbitrariness at its boundaries, but if it is a principled rule it is capable of constituting a reasonable limit”.¹²⁷

91. Five years is the maximum life of a Parliament, permitting a citizen to be away for a full electoral cycle and still maintain the right to vote.¹²⁸ It is generally enough time to complete a university degree, and it is comparable to the temporal limit in Australia (6 years) and New Zealand (3 years). The life of a Parliament in New Zealand is 3 years, like its definition of temporary absence.¹²⁹ The life of an Australian House of Representatives is also three years, but only one half of its Senate is elected in each cycle. Thus, like Australia’s 6 year definition of temporary non-residence, its elected legislature is refreshed every 6 years.¹³⁰

92. A temporal limit of five years was also recommended by the *Standing Committee on Privileges and Elections* in 1981, and again in 1984.

¹²⁶ Appeal Judgment, para 154, **AR, Vol. I, tab 6, pp. 113-114**

¹²⁷ Appeal Judgment, para 149, **AR, Vol. I, tab 6, p. 112**

¹²⁸ Appeal Judgment, para 151, **AR, Vol. I, tab 6, p. 113**

¹²⁹ *Constitution Act 1986* (NZ), 1986/114, s 17, **RBA, Tab 17, p. 87** and *Electoral Act 1993* (NZ) 1993/87, s 80(1)(a), **RBA, Tab 18, p. 91**

¹³⁰ *Commonwealth of Australia Constitution Act*, 1900 (UK) as amended, c 1, s 7 (term of Senators), s 13 (rotation of Senators), s 28 (duration of House of Representatives), **RBA, Tab 15, pp. 72-74**

93. The requirement of an intention to return to Canada to resume residence applies to all groups in the *SVR* except Canadian Armed Forces members.¹³¹ Their service to Canada involves their placing their lives at risk in carrying out the political choices of their government. It is also reasonable for Parliament to presume that CAF members will return to resume residence in Canada when their service is over and they are ordered to return home. All will therefore fully resume the legal obligations under domestic Canadian law that are the corollary of the right to vote.

(iii) Final Balancing

94. The final step under s. 1 is to weigh the proportionality between the salutary effects of the impugned measures in advancing Parliament's objectives and the deleterious effects on the exercise of the right or freedom so limited. It bears repeating in this case that Parliament's extension of voting rights to temporary non-residents in 1993 did not take away any statutory rights previously enjoyed by long-term non-residents. Non-resident citizens cannot vote in person by virtue of s. 6 of the *CEA*. The Appellants did not challenge that general statutory residency requirement.

95. The salutary effect of Parliament limiting the extension of mail voting to temporary non-residents was a choice to expand the right to vote while maintaining the long-standing residency requirement which contributes to the fairness of the electoral system. Citizens voting in a federal election will either have the same citizenship responsibilities as other voters, or will be reasonably presumed to soon resume them. As the majority below put it:

¹³¹ *CEA*, SC 2000, c 9, ss 11(b), (c) and s 222(2)

“the legitimacy of elected officials is strengthened by the fact that they are elected by, and are answerable to, those who live in the jurisdiction”.¹³²

96. The deleterious effect of this limit is that long term non-resident Canadians will continue to be required to resume residence in Canada before resuming their entitlement to vote. As the majority put it:

The voter's rights are not stripped, nor are they permanently denied. Their choice is reversible and, as Canadian citizens, they are free to return to Canada at any time and remain without restriction. They are entitled to vote as soon as they return to reside in Canada.¹³³

97. In many cases their diminished participation in Canada's social contract will be replaced by their acquisition of dual citizenship and their full participation in the polity of the place of their residence. Mr. Duong, for example, holds U.S. citizenship and has voted in elections in that country.¹³⁴

¹³² Appeal Judgment, para 156, AR, Vol. I, tab 6, p. 115

¹³³ Appeal Judgment, para 157, AR, Vol. I, tab 6, p. 115

¹³⁴ Affidavit of Jamie Duong, para 25, AR, Vol. II, tab 2, p. 16

Conclusion

98. The appellants and interveners argue that Canada's residence requirement to voting is similar to other historic limits such as property ownership, gender, incarceration and mental ability. These other limits have been invalidated as failing to meet the justification requirements of s. 1 of the *Charter*. However, the residence requirement is different from those other limits. It makes no valuation of the subjective qualities of individual voters. It simply recognizes that long-term non-residents have different and less onerous responsibilities under Canadian law by the objective measure of geography and international law.

99. Parliament's 1993 choice to maintain the residence limit to voting while extending mail voting rights to temporary non-residents had the pressing purpose of maintaining the fairness of the democratic system and was a proportional limit. If a new Parliament makes the judgement that the maintenance of this limit is not required any longer to ensure the fairness of the electoral system that is a judgement that should be made by elected officials and Parliament. It is not required by the *Charter*.

PART IV – COSTS


100. The Attorney General does not ask for her costs of this proceeding.

PART V – NATURE OF ORDER SOUGHT

101. The Attorney General of Canada asks this Court to answer “yes” to the two stated constitutional questions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Toronto this 20th day of October, 2016.

For 
Peter Southey / Sean Gaudet / Gail Sinclair
Of Counsel for the Attorney General of
Canada

PART VI – TABLE OF AUTHORITIES

<i>Cases</i>	<i>Cited at Pages</i>
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<i>IDEA [International Institute for Democracy and Electoral Assistance], Voting from Abroad – The International IDEA Handbook, Stockholm, 2007, Annex “A” - External Voting: a world survey of 214 countries and territories</i>	34
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APPENDIX "A" – STATUTES RELIED ON

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<i>Commonwealth Electoral Act 1918</i> , (Cth)	32, 33
<i>Commonwealth of Australia Constitution Act, 1900 (UK)</i> as amended, c 1	36
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<i>Dominion Elections Act</i> (1920), 10-11 George V, c. 46	2
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<i>Political Parties, Elections and Referendums Act 2000 (UK)</i> 2000, c 41	33
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S.C. 2000, c. 9

L.C. 2000, ch. 9

An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts

Loi concernant l'élection des députés à la Chambre des communes, modifiant certaines lois et abrogeant certaines autres lois

[Assented to 31st May 2000]

[Sanctionnée le 31 mai 2000]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

Short Title

Titre abrégé

Short title

1 This Act may be cited as the *Canada Elections Act*.

Titre abrégé

1 *Loi électorale du Canada*.

Interpretation

Définitions

Definitions

2 (1) The definitions in this subsection apply in this Act.

advance poll means a vote held under Part 10. (*vote par anticipation*)

advance polling station means a polling station established under subsection 168(3). (*bureau de vote par anticipation*)

broadcaster means a person who is licensed by the Canadian Radio-television and Telecommunications Commission under the *Broadcasting Act* to carry on a programming undertaking. (*radiodiffuseur*)

broadcasting means broadcasting, as defined in subsection 2(1) of the *Broadcasting Act*, that is regulated and supervised by the Canadian Radio-television and Telecommunications Commission pursuant to section 5 of that Act. (*radiodiffusion*)

Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

agent de campagne à la direction Personne nommée en vertu du paragraphe 478.5(1), y compris l'agent financier d'un candidat à la direction. (*leadership campaign agent*)

agent de circonscription Personne nommée en vertu du paragraphe 456(1), y compris l'agent financier d'une association enregistrée. (*electoral district agent*)

agent enregistré Personne nommée en vertu du paragraphe 396(1), y compris l'agent principal d'un parti enregistré. (*registered agent*)

agent officiel Personne nommée au titre du paragraphe 477.1(1) ou remplaçant de celle-ci nommé au titre de l'article 477.42. (*official agent*)

Broadcasting Arbitrator means the person appointed as Broadcasting Arbitrator under subsection 332(1). (*arbitre*)

by-election means an election other than a general election. (*élection partielle*)

candidate means a person whose nomination as a candidate at an election has been confirmed under subsection 71(1) and who, or whose official agent, has not yet complied with sections 477.59 to 477.72 and 477.8 to 477.84 in respect of that election. (*candidat*)

capital asset means any property with a commercial value of more than \$200 that is normally used outside an election period other than for the purposes of an election. (*bien immobilisé*)

chief agent means the chief agent named in the application of a political party to become a registered party as required under paragraph 385(2)(h) or a chief agent's replacement appointed under subsection 400(1). (*agent principal*)

close of nominations means the deadline for the receipt of nominations set out in subsection 70(2). (*clôture des candidatures*)

closing day for nominations means the day referred to in section 69. (*jour de clôture*)

commercial value, in relation to property or a service, means the lowest amount charged at the time that it was provided for the same kind and quantity of property or service or for the same usage of property or money, by

(a) the person who provided it, if the person is in the business of providing that property or service; or

(b) another person who provides that property or service on a commercial basis in the area where it was provided, if the person who provided the property or service is not in that business. (*valeur commerciale*)

Commissioner means the Commissioner of Canada Elections appointed under subsection 509(1). (*commissaire*)

common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year. (*conjoint de fait*)

contribution means a monetary contribution or a non-monetary contribution. (*contribution*)

agent principal Personne mentionnée dans la demande d'enregistrement d'un parti politique au titre de l'alinéa 385(2)h) ou remplaçant de celle-ci nommé au titre du paragraphe 400(1). (*chief agent*)

annulé S'agissant du bulletin de vote ou du bulletin de vote spécial au sens de l'article 177 :

a) le bulletin de vote qui n'a pas été déposé dans l'urne mais que le scrutateur a trouvé sali ou imprimé incorrectement;

b) le bulletin de vote annulé dans le cadre des paragraphes 152(1), 171(1) — dans la mesure où il prévoit l'application du paragraphe 152(1) aux bureaux de vote par anticipation — , 213(4), 242(1) ou 258(3). (*spoiled*)

appartenance politique En ce qui touche un candidat, la désignation du parti politique qui le soutient ou la désignation « indépendant », selon le cas, mentionnée dans son acte de candidature conformément au sous-alinéa 66(1)a)(v). (*political affiliation*)

arbitre Personne nommée en vertu du paragraphe 332(1). (*Broadcasting Arbitrator*)

association de circonscription Regroupement des membres d'un parti politique dans une circonscription. (*electoral district association*)

association enregistrée Association de circonscription inscrite dans le registre des associations de circonscription visé à l'article 455. (*registered association*)

bien immobilisé Bien d'une valeur commerciale supérieure à 200 \$ normalement utilisé en dehors d'une période électorale à des fins autres qu'électorales. (*capital asset*)

bref Bref d'élection. (*writ*)

bureau de scrutin Lieu établi pour le vote des électeurs en vertu des articles 120, 122, 125, 205, 206, 207, 253 ou 255. (*polling station*)

bureau de vote par anticipation Bureau de vote établi en vertu du paragraphe 168(3). (*advance polling station*)

candidat Personne dont la candidature à une élection a été confirmée au titre du paragraphe 71(1), mais qui ne s'est pas encore confirmée — ou dont l'agent officiel ne s'est pas encore confirmé —, relativement à cette élection, aux articles 477.59 à 477.72 et 477.8 à 477.84. (*candidate*)

election means an election of a member to serve in the House of Commons. (*élection*)

election documents means the following documents:

- (a) the writ with the return of the election endorsed on it;
- (b) the nomination papers filed by the candidates;
- (c) the reserve supply of undistributed blank ballot papers;
- (d) documents relating to the revision of the lists of electors;
- (e) the statements of the vote from which the validation of results was made; and
- (f) the other returns from the various polling stations enclosed in sealed envelopes, as required by Part 12, and containing
 - (i) a packet of stubs and unused ballot papers,
 - (ii) packets of ballot papers cast for the various candidates,
 - (iii) a packet of spoiled ballot papers,
 - (iv) a packet of rejected ballot papers,
 - (v) a packet containing the list of electors used at the polling station, the written authorizations of candidates' representatives and the used transfer certificates, if any, and
 - (vi) a packet containing the registration certificates;
- (g) the prescribed forms referred to in section 162 and any other prescribed form to be used at a polling station that contains personal information relating to an elector. (*documents électoraux*)

election officer means a person referred to in subsection 22(1). (*fonctionnaire électoral*)

election period means the period beginning with the issue of the writ and ending on polling day or, if the writ is withdrawn under subsection 59(1) or is deemed to be withdrawn under subsection 31(3) of the *Parliament of Canada Act*, on the day that the writ is withdrawn or deemed to be withdrawn. (*période électorale*)

elector means a person who is qualified as an elector under section 3. (*électeur*)

candidat à la direction Personne inscrite dans le registre des candidats à la direction visé à l'article 478.4 relativement à une course à la direction, mais qui ne s'est pas encore conformée — ou dont l'agent financier ne s'est pas encore conformé —, relativement à cette course, aux articles 478.8 à 478.97. (*leadership contestant*)

candidat à l'investiture Personne visée à l'alinéa 476.1(1)c) dont le nom figure à titre de candidat à l'investiture dans le rapport déposé au titre du paragraphe 476.1(1) relativement à une course à l'investiture, mais qui ne s'est pas encore conformée — ou dont l'agent financier ne s'est pas encore conformé —, relativement à cette course, aux articles 476.75 à 476.94. (*nomination contestant*)

circonscription Division territoriale représentée par un député à la Chambre des communes. (*electoral district*)

clôture des candidatures L'heure limite prévue au paragraphe 70(2). (*close of nominations*)

commissaire Le commissaire aux élections fédérales nommé au titre du paragraphe 509(1). (*Commissioner*)

conjoint de fait La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*)

contribution Toute contribution monétaire et toute contribution non monétaire. (*contribution*)

contribution monétaire Toute somme d'argent versée et non remboursable. (*monetary contribution*)

contribution non monétaire La valeur commerciale d'un service, sauf d'un travail bénévole, ou de biens ou de l'usage de biens ou d'argent, s'ils sont fournis sans frais ou à un prix inférieur à leur valeur commerciale. (*non-monetary contribution*)

course à la direction Compétition en vue de la désignation du chef d'un parti enregistré. (*leadership contest*)

course à l'investiture Compétition visant à choisir la personne qui sera proposée à un parti enregistré en vue de l'obtention de son soutien comme candidat dans une circonscription. (*nomination contest*)

dépense de campagne à la direction Dépense raisonnable entraînée par une course à la direction et engagée par un candidat à la direction ou pour son compte pendant la course, y compris toute dépense personnelle de celui-ci au sens de l'article 478. (*leadership campaign expense*)

electoral district means a place or territorial area that is represented by a member in the House of Commons. (*circonscription*)

electoral district agent means a person appointed under subsection 456(1), and includes the financial agent of a registered association. (*agent de circonscription*)

electoral district association means an association of members of a political party in an electoral district. (*association de circonscription*)

eligible party means a political party that satisfies the criteria for registration set out in section 387. (*parti admissible*)

judge, when used to define the judicial officer on whom is conferred specific powers, means

(a) in relation to the Province of Ontario, a judge of the Superior Court of Justice;

(b) in relation to the Province of Quebec, a judge of the Superior Court of Quebec;

(c) in relation to the Provinces of Nova Scotia, British Columbia and Prince Edward Island, a judge of the Supreme Court of the Province;

(d) in relation to the Provinces of New Brunswick, Manitoba, Saskatchewan and Alberta, a judge of the Court of Queen's Bench of the Province;

(e) in relation to the Province of Newfoundland and Labrador, a judge of the Trial Division of the Supreme Court of Newfoundland and Labrador;

(f) in relation to the electoral district of Yukon, a judge of the Supreme Court of Yukon;

(g) in relation to the electoral district of the Northwest Territories, a judge of the Supreme Court of the Northwest Territories;

(h) in relation to the electoral district of Nunavut, a judge of the Nunavut Court of Justice; and

(i) in relation to any place or territory in Canada,

(i) if a vacancy exists or arises in the office of any such judge or if such a judge is unable to act by reason of illness or absence from their judicial district, the judge exercising the jurisdiction of that judge,

(ii) if there is more than one judge exercising that jurisdiction, the senior of them, and

dépense de campagne d'investiture Dépense raisonnable entraînée par une course à l'investiture et engagée par un candidat à l'investiture ou pour son compte pendant la course, y compris toute dépense personnelle de celui-ci au sens de l'article 476. (*nomination campaign expense*)

dépouillement judiciaire S'entend du dépouillement effectué dans le cadre de la partie 14. (*recount*)

député Membre de la Chambre des communes. (*member*)

documents électoraux

a) Le bref et le rapport figurant à l'endos;

b) les actes de candidature produits par les candidats;

c) les bulletins de vote en blanc non distribués;

d) les documents se rapportant à la révision des listes électorales;

e) les relevés du scrutin d'après lesquels s'est effectuée la validation des résultats;

f) les autres rapports des divers bureaux de scrutin placés sous enveloppes scellées, prévus à la partie 12, et contenant :

(i) un paquet des bulletins de vote inutilisés et des souches,

(ii) des paquets de bulletins de vote déposés en faveur des divers candidats,

(iii) un paquet des bulletins de vote annulés,

(iv) un paquet des bulletins de vote rejetés,

(v) un paquet contenant la liste électorale utilisée au bureau de scrutin, les autorisations écrites des représentants des candidats et, le cas échéant, les certificats de transfert utilisés,

(vi) un paquet contenant les certificats d'inscription;

g) les formulaires prescrits visés à l'article 162 ainsi que tout autre formulaire prescrit à utiliser au bureau de scrutin qui comportent des renseignements personnels concernant un électeur. (*election documents*)

électeur Personne qui a qualité d'électeur en vertu de l'article 3. (*elector*)

(iii) if no judge is exercising that jurisdiction, a judge designated for the purpose by the Minister of Justice. (*juge*)

leadership campaign agent means a person appointed under subsection 478.5(1), and includes the financial agent of a leadership contestant. (*agent de campagne à la direction*)

leadership campaign expense means an expense reasonably incurred by or on behalf of a leadership contestant during a leadership contest as an incidence of the contest, including a personal expense as defined in section 478. (*dépense de campagne à la direction*)

leadership contest means a competition for the selection of the leader of a registered party. (*course à la direction*)

leadership contestant means a person who has been registered in the registry of leadership contestants referred to in section 478.4 in respect of a leadership contest and who, or whose financial agent, has not yet complied with sections 478.8 to 478.97 in respect of that leadership contest. (*candidat à la direction*)

list of electors means the list showing the surname, given names, civic address and mailing address of every elector in a polling division and the identifier that is assigned to the elector by the Chief Electoral Officer. (*liste électorale*)

member means a member of the House of Commons. (*député*)

Minister means the member of the Queen's Privy Council for Canada designated by the Governor in Council for the purposes of this Act. (*ministre*)

monetary contribution means an amount of money provided that is not repayable. (*contribution monétaire*)

nomination campaign expense means an expense reasonably incurred by or on behalf of a nomination contestant during a nomination contest as an incidence of the contest, including a personal expense as defined in section 476. (*dépense de campagne d'investiture*)

nomination contest means a competition for the selection of a person to be proposed to a registered party for its endorsement as its candidate in an electoral district. (*course à l'investiture*)

nomination contestant means a person who is named as a nomination contestant under paragraph 476.1(1)(c) in a report filed in accordance with subsection 476.1(1) in

élection L'élection d'un député à la Chambre des communes. (*election*)

élection partielle Élection autre qu'une élection générale. (*by-election*)

fonctionnaire électoral Personne visée au paragraphe 22(1). (*election officer*)

jour de clôture Le jour prévu à l'article 69. (*closing day for nominations*)

jour du scrutin Le jour fixé pour la tenue du scrutin dans le cadre de l'alinéa 57(1.2)c). (*polling day*)

juge Lorsque cette expression est employée pour définir le magistrat à qui des pouvoirs spécifiques sont conférés :

a) relativement à la province d'Ontario, un juge de la Cour supérieure de justice;

b) relativement à la province de Québec, un juge de la cour supérieure du Québec;

c) relativement aux provinces de la Nouvelle-Écosse, de la Colombie-Britannique et de l'Île-du-Prince-Édouard, un juge de la Cour suprême de la province;

d) relativement aux provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et d'Alberta, un juge de la Cour du Banc de la Reine de la province;

e) relativement à la province de Terre-Neuve-et-Labrador, un juge de la Section de première instance de la Cour suprême de Terre-Neuve-et-Labrador;

f) relativement à la circonscription du Yukon, un juge de la Cour suprême du Yukon;

g) relativement à la circonscription des Territoires du Nord-Ouest, un juge de la Cour suprême des Territoires du Nord-Ouest;

h) relativement à la circonscription du territoire du Nunavut, un juge de la Cour de justice du Nunavut;

i) relativement à tout endroit ou territoire du Canada :

(i) dans lequel il existe ou se produit une vacance au poste d'un juge, ou dans lequel un juge est incapable d'agir pour cause de maladie ou d'absence de son district judiciaire, le juge qui exerce la juridiction d'un tel juge,

(ii) s'il y a plus d'un juge exerçant une telle juridiction, le doyen,

respect of a nomination contest and who, or whose financial agent, has not yet complied with sections 476.75 to 476.94 in respect of that nomination contest. (*candidat à l'investiture*)

non-monetary contribution means the commercial value of a service, other than volunteer labour, or of property or of the use of property or money to the extent that they are provided without charge or at less than their commercial value. (*contribution non monétaire*)

oath includes a solemn affirmation and a statutory declaration. (*serment*)

official agent means a person appointed under subsection 477.1(1) or an official agent's replacement appointed under section 477.42. (*agent officiel*)

official list of electors means the list of electors prepared by the returning officer under section 106. (*liste électorale officielle*)

periodical publication means a paper, magazine or periodical that is published periodically or in parts or numbers and that contains public news, intelligence or reports of events, or advertisements. (*publication périodique*)

personal information means personal information as defined in section 3 of the *Privacy Act*. (*renseignements personnels*)

political affiliation, in respect of a candidate, means the name of the political party that has endorsed him or her or the word "independent", as the case may be, included in the nomination paper in accordance with subparagraph 66(1)(a)(v). (*appartenance politique*)

political party means an organization one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election. (*parti politique*)

polling day, in relation to an election, means the date fixed under paragraph 57(1.2)(c) for voting at the election. (*jour du scrutin*)

polling division means a polling division referred to in section 538. (*section de vote*)

polling station means a place established under section 120, 122, 125, 205, 206, 207, 253 or 255 for electors to cast their votes. (*bureau de scrutin*)

(iii) si aucun juge n'exerce cette juridiction, tout juge désigné à cette fin par le ministre de la Justice. (*judge*)

liste électorale Liste dressée pour une section de vote et indiquant les nom, prénoms et adresses municipale et postale de chaque électeur ainsi que l'identificateur attribué à l'électeur par le directeur général des élections. (*list of electors*)

liste électorale officielle Liste électorale dressée par le directeur du scrutin au titre de l'article 106. (*official list of electors*)

liste électorale préliminaire Liste électorale dressée par le directeur général des élections au titre du paragraphe 93(1). (*preliminary list of electors*)

liste électorale révisée Liste électorale dressée par le directeur du scrutin au titre de l'article 105. (*revised list of electors*)

ministre Le membre du Conseil privé de la Reine pour le Canada désigné par le gouverneur en conseil pour la présente loi. (*Minister*)

parti admissible Parti politique répondant aux critères liés à l'enregistrement et prévus à l'article 387. (*eligible party*)

parti enregistré Parti politique inscrit à titre de parti enregistré dans le registre des partis politiques visé à l'article 394. (*registered party*)

parti politique Organisation dont l'un des objectifs essentiels consiste à participer aux affaires publiques en soutenant la candidature et en appuyant l'élection d'un ou de plusieurs de ses membres. (*political party*)

période électorale La période commençant à la délivrance du bref et se terminant le jour du scrutin ou, le cas échéant, le jour où le bref est retiré dans le cadre du paragraphe 59(1) ou est réputé l'être en vertu du paragraphe 31(3) de la *Loi sur le Parlement du Canada*. (*election period*)

prescrit Autorisé par le directeur général des élections, en ce qui concerne un formulaire ou un serment. (*prescribed*)

publication périodique Journal, magazine ou autre périodique publié périodiquement ou par parties ou par numéros et contenant des nouvelles publiques, des renseignements ou des reportages d'événements, ou encore des annonces. (*periodical publication*)

preliminary list of electors means the list of electors prepared by the Chief Electoral Officer under subsection 93(1). (*liste électorale préliminaire*)

prescribed, in relation to a form or an oath, means one that is authorized by the Chief Electoral Officer. (*prescrit*)

recount means a recount of votes by a judge under Part 14. (*dépouillement judiciaire*)

registered agent means a person appointed under subsection 396(1), and includes the chief agent of a registered party. (*agent enregistré*)

registered association means an electoral district association that is registered in the registry of electoral district associations referred to in section 455. (*association enregistrée*)

registered party means a political party that is registered in the registry of political parties referred to in section 394 as a registered party. (*parti enregistré*)

Register of Electors means the Register of Electors established under section 44. (*Registre des électeurs*)

revised list of electors means the list of electors prepared by the returning officer under section 105. (*liste électorale révisée*)

spoiled, in relation to a ballot or a special ballot as defined in section 177, means

(a) one that has not been deposited in the ballot box but has been found by the deputy returning officer to be soiled or improperly printed; or

(b) one that is dealt with under subsection 152(1), including in relation to advance polls by virtue of subsection 171(1), or subsection 213(4), 242(1) or 258(3). (*annulé*)

volunteer labour means any service provided free of charge by a person outside their working hours, but does not include such a service provided by a person who is self-employed if the service is one that is normally charged for by that person. (*travail bénévole*)

writ means a writ of election. (*bref*)

Commercial value of capital assets

(1.1) For the purposes of this Act, the commercial value of any capital asset that is used during an election period is the lower of

radiodiffuseur Titulaire d'une licence, attribuée par le Conseil de la radiodiffusion et des télécommunications canadiennes sous le régime de la *Loi sur la radiodiffusion*, l'autorisant à exploiter une entreprise de programmation. (*broadcaster*)

radiodiffusion S'entend de la radiodiffusion, au sens du paragraphe 2(1) de la *Loi sur la radiodiffusion*, réglementée et surveillée par le Conseil de la radiodiffusion et des télécommunications canadiennes en application de l'article 5 de cette loi. (*broadcasting*)

Registre des électeurs Registre tenu au titre de l'article 44. (*Register of Electors*)

renseignements personnels S'entend au sens de l'article 3 de la *Loi sur la protection des renseignements personnels*. (*personal information*)

section de vote Zone territoriale visée à l'article 538. (*polling division*)

serment Sont assimilées à un serment l'affirmation solennelle et la déclaration solennelle. (*oath*)

travail bénévole Services fournis sans rémunération par une personne en dehors de ses heures normales de travail, à l'exclusion de ceux qui sont fournis par une personne travaillant à son compte et pour lesquels elle demande habituellement une rémunération. (*volunteer labour*)

valeur commerciale En ce qui concerne la fourniture de biens ou de services ou l'usage de biens ou d'argent, le prix le plus bas exigé pour une même quantité de biens ou de services de la même nature ou pour le même usage de biens ou d'argent, au moment de leur fourniture, par :

a) leur fournisseur, dans le cas où il exploite une entreprise qui les fournit;

b) une autre personne qui les fournit sur une échelle commerciale dans la région où ils ont été fournis, dans le cas où leur fournisseur n'exploite pas une telle entreprise. (*commercial value*)

vote par anticipation Scrutin tenu dans le cadre de la partie 10. (*advance poll*)

Valeur commerciale des biens immobilisés

(1.1) Pour l'application de la présente loi, la valeur commerciale d'un bien immobilisé utilisé pendant une période électorale correspond à la valeur commerciale de la location d'un bien de même nature pendant la période où

(a) the commercial value of the rental of the same kind of asset during the period during which the capital asset was used, and

(b) the commercial value of the same kind of asset if one were purchased.

No commercial value

(2) For the purposes of this Act, other than section 477.9, the commercial value of property or a service is deemed to be nil if

(a) the property or service is provided by a Canadian citizen, or a permanent resident as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*, who is not in the business of providing that property or service; and

(b) the commercial value of the property or service is \$200 or less.

Satisfactory proof of identity and residence

(3) For the purposes of this Act, satisfactory proof of an elector's identity and satisfactory proof of residence are established by the documentary proof of the elector's identity and residence that is prescribed by the Chief Electoral Officer.

Time

(4) A reference to a time of day in this Act is a reference to local time.

Descriptive cross-references

(5) If, in any provision of this Act, a reference to another provision of this Act or a provision of any other Act is followed by words in parentheses that are or purport to be descriptive of the subject-matter of the provision referred to, those words form no part of the provision in which they occur but are inserted for convenience of reference only.

Definition of *polling day*

(6) If a writ for an election is withdrawn under subsection 59(1) or is deemed to be withdrawn under subsection 31(3) of the *Parliament of Canada Act*, then, in Parts 16.1 and 17 and Divisions 1, 2, 4 and 5 of Part 18, *polling day* means the day that the writ is withdrawn or deemed to be withdrawn.

2000, c. 9, s. 2, c. 12, s. 40; 2001, c. 21, s. 1; 2002, c. 7, s. 90; 2003, c. 19, s. 1; 2004, c. 24, s. 1; 2006, c. 9, s. 39; 2007, c. 21, s. 1; 2014, c. 12, ss. 2, 155.

le bien immobilisé est utilisé ou, si elle est inférieure, à la valeur commerciale d'un bien de même nature si celui-ci était acheté.

Absence de valeur commerciale

(2) Pour l'application de la présente loi, à l'exclusion de l'article 477.9, la valeur commerciale d'un bien ou d'un service est réputée nulle si, à la fois :

a) le bien ou le service est fourni par un citoyen canadien ou un résident permanent au sens du paragraphe 2(1) de la *Loi sur l'immigration et la protection des réfugiés* qui n'exploite pas une entreprise fournissant ce bien ou ce service;

b) elle est de 200 \$ ou moins.

Preuve suffisante d'identité ou de résidence

(3) Pour l'application de la présente loi, la preuve suffisante d'identité et la preuve suffisante de résidence sont établies par la production de pièces d'identité déterminées par le directeur général des élections.

Heure

(4) Pour l'application de la présente loi, toute mention d'une heure vaut mention de l'heure locale.

Renvois descriptifs

(5) Dans la présente loi, les mots entre parenthèses qui, dans un but purement descriptif d'une matière donnée, suivent dans une disposition un renvoi à une autre disposition de la présente loi ou d'une autre loi ne font pas partie de la disposition et y sont insérés pour la seule commodité de la consultation.

Définition de *jour du scrutin*

(6) Si le bref délivré pour une élection est retiré dans le cadre du paragraphe 59(1) ou est réputé l'être en vertu du paragraphe 31(3) de la *Loi sur le Parlement du Canada*, *jour du scrutin* s'entend, aux parties 16.1 et 17 et aux sections 1, 2, 4 et 5 de la partie 18, du jour où le bref est retiré ou est réputé l'être.

2000, ch. 9, art. 2, ch. 12, art. 40; 2001, ch. 21, art. 1; 2002, ch. 7, art. 90; 2003, ch. 19, art. 1; 2004, ch. 24, art. 1; 2006, ch. 9, art. 39; 2007, ch. 21, art. 1; 2014, ch. 12, art. 2 et 155.

PART 1

Electoral Rights

Persons qualified as electors

3 Every person who is a Canadian citizen and is 18 years of age or older on polling day is qualified as an elector.

Disentitlement from voting

4 The following persons are not entitled to vote at an election:

- (a) the Chief Electoral Officer;
- (b) the Assistant Chief Electoral Officer; and
- (c) every person who is imprisoned in a correctional institution serving a sentence of two years or more.

Prohibition

5 No person may

- (a) vote or attempt to vote at an election knowing that they are not qualified as an elector or not entitled to vote under section 4; or
- (b) induce another person to vote at an election knowing that the other person is not qualified as an elector or not entitled to vote under section 4.

Persons entitled to vote

6 Subject to this Act, every person who is qualified as an elector is entitled to have his or her name included in the list of electors for the polling division in which he or she is ordinarily resident and to vote at the polling station for that polling division.

Only one vote

7 No elector who has voted at an election may request a second ballot at that election.

Place of ordinary residence

8 (1) The place of ordinary residence of a person is the place that has always been, or that has been adopted as, his or her dwelling place, and to which the person intends to return when away from it.

One place of residence only

(2) A person can have only one place of ordinary residence and it cannot be lost until another is gained.

PARTIE 1

Droits électoraux

Personnes qui ont qualité d'électeur

3 A qualité d'électeur toute personne qui, le jour du scrutin, est citoyen canadien et a atteint l'âge de dix-huit ans.

Personnes inhabiles à voter

4 Sont inhabiles à voter :

- a) le directeur général des élections;
- b) le directeur général adjoint des élections;
- c) toute personne incarcérée dans un établissement correctionnel et y purgeant une peine de deux ans ou plus.

Interdictions

5 Il est interdit à quiconque :

- a) de voter ou de tenter de voter à une élection, sachant qu'il n'a pas qualité d'électeur ou que l'article 4 le rend inhabile à voter;
- b) d'inciter une autre personne à voter, sachant que celle-ci n'a pas qualité d'électeur ou que l'article 4 le rend inhabile à voter.

Personnes qui ont le droit de voter

6 Sous réserve des autres dispositions de la présente loi, toute personne qui a qualité d'électeur a le droit de faire inscrire son nom sur la liste électorale pour la section de vote où elle réside habituellement et de voter au bureau de scrutin établi pour cette section de vote.

Vote unique

7 L'électeur qui a voté à une élection ne peut demander un autre bulletin de vote pour la même élection.

Lieu de résidence habituelle

8 (1) Le lieu de résidence habituelle d'une personne est l'endroit qui a toujours été, ou qu'elle a adopté comme étant, son lieu d'habitation ou sa demeure, où elle entend revenir après une absence.

Lieu de résidence unique

(2) Une personne ne peut avoir qu'un seul lieu de résidence habituelle; elle ne peut le perdre que si elle en acquiert un autre.

Temporary absence

(3) Temporary absence from a place of ordinary residence does not cause a loss or change of place of ordinary residence.

Place of employment

(4) If a person usually sleeps in one place and has their meals or is employed in another place, their place of ordinary residence is where they sleep.

Temporary residence

(5) Temporary residential quarters are considered to be a person's place of ordinary residence only if the person has no other place that they consider to be their residence.

Temporary residential quarters

(6) A shelter, hostel or similar institution that provides food, lodging or other social services to a person who has no dwelling place is that person's place of ordinary residence.

Interpretation of ordinary residence

9 If the rules set out in section 8 are not sufficient to determine the place of ordinary residence, it shall be determined by the appropriate election officer by reference to all the facts of the case.

Members and persons living with members

10 Each candidate at a general election who, on the day before the dissolution of Parliament immediately before the election, was a member, and any elector living with the candidate on that day who would move, or has moved, with the candidate to continue to live with the candidate, is entitled to have his or her name entered on the list of electors for, and to vote at the polling station that is established for, the polling division in which is located

(a) the place of ordinary residence of the former member;

(b) the place of temporary residence of the former member in the electoral district in which the former member is a candidate;

(c) the office of the returning officer for the electoral district in which the former member is a candidate; or

(d) the place in Ottawa or in the area surrounding Ottawa where the former member resides for the purpose of carrying out parliamentary duties.

Absence temporaire

(3) Une absence temporaire du lieu de résidence habituelle n'entraîne pas la perte ni le changement de celui-ci.

Lieu de travail

(4) Lorsqu'une personne couche habituellement dans un lieu et mange ou travaille dans un autre, le lieu de sa résidence habituelle est celui où elle couche.

Résidence temporaire

(5) Des locaux d'habitation temporaire sont considérés comme le lieu de résidence habituelle d'une personne si celle-ci n'a aucun autre lieu qu'elle considère comme sa résidence, et seulement dans ce cas.

Refuges

(6) Les refuges, les centres d'accueil et les autres établissements de même nature qui offrent le gîte, le couvert ou d'autres services sociaux aux personnes sans abri sont les lieux de résidence habituelle de ces personnes.

Facteurs pertinents

9 Si l'article 8 ne permet pas de déterminer le lieu de résidence habituelle, le fonctionnaire électoral compétent le détermine compte tenu de tous les facteurs pertinents.

Députés et électeurs demeurant avec lui

10 Chaque candidat à une élection générale qui, la veille de la dissolution du Parlement précédant l'élection, était un député ainsi que tout électeur qui demeurerait avec lui à ce moment et qui a déménagé ou déménagerait avec lui pour continuer de demeurer avec lui ont le droit de faire inscrire leur nom sur la liste électorale établie pour l'un des endroits suivants et de voter au bureau de scrutin correspondant à cette liste :

a) le lieu de la résidence habituelle de l'ancien député;

b) le lieu de la circonscription où l'ancien député se porte candidat et où est situé, à l'élection, le lieu de sa résidence temporaire;

c) le bureau du directeur du scrutin de la circonscription où l'ancien député se porte candidat;

d) le lieu situé dans Ottawa ou dans la région avoisinante et où l'ancien député habite afin de s'acquitter de ses fonctions parlementaires.

Part 11

11 Any of the following persons may vote in accordance with Part 11:

- (a) a Canadian Forces elector;
- (b) an elector who is an employee in the federal public administration or the public service of a province and who is posted outside Canada;
- (c) a Canadian citizen who is employed by an international organization of which Canada is a member and to which Canada contributes and who is posted outside Canada;
- (d) a person who has been absent from Canada for less than five consecutive years and who intends to return to Canada as a resident;
- (e) an incarcerated elector within the meaning of that Part; and
- (f) any other elector in Canada who wishes to vote in accordance with that Part.

2000, c. 9, s. 11; 2003, c. 22, s. 100.

Residence at by-election

12 (1) No elector is entitled to vote at a by-election unless his or her place of ordinary residence on polling day is situated in the same electoral district that includes the polling division in which was situated the elector's place of ordinary residence at the beginning of the revision period established by section 96.

Address change within electoral district

(2) For the purpose of a by-election only and despite anything in this Act, an elector who, during the period between the beginning of the revision period and ending on polling day, has changed his or her place of ordinary residence from one polling division to another polling division in the same electoral district may register his or her name on the list of electors in the new polling division.

Partie 11

11 Peuvent voter dans le cadre de la partie 11 :

- a) les électeurs des Forces canadiennes;
- b) les électeurs qui appartiennent à l'administration publique fédérale ou d'une province en poste à l'étranger;
- c) les électeurs qui sont en poste à l'étranger auprès d'organismes internationaux dont le Canada est membre et auxquels il verse une contribution;
- d) les électeurs qui sont absents du Canada depuis moins de cinq années consécutives et qui ont l'intention de revenir résider au Canada;
- e) les électeurs incarcérés au sens de cette partie;
- f) tout autre électeur au Canada qui désire se prévaloir des dispositions de cette partie.

2000, ch. 9, art. 11; 2003, ch. 22, art. 100.

Résidence lors d'une élection partielle

12 (1) Un électeur ne peut voter à une élection partielle que s'il continue, jusqu'au jour du scrutin, à résider habituellement dans la circonscription où se trouve la section de vote où il résidait habituellement au début de la période de révision fixée dans le cadre de l'article 96.

Changement d'adresse dans la circonscription

(2) Uniquement dans le cas d'une élection partielle et par dérogation aux autres dispositions de la présente loi, l'électeur qui, entre le début de la période de révision et le jour du scrutin, change son lieu de résidence habituelle d'une section de vote à une autre dans la même circonscription peut faire inscrire son nom sur la liste électorale de la nouvelle section de vote.

(c) any unused or spoiled special ballots and unused inner envelopes; and

(d) in a separate and clearly identified parcel, every statement of ordinary residence completed at the time of voting.

Duties of commanding officer

(2) On receipt of the documents referred to in subsection (1), the commanding officer shall

(a) deal with the originals and copies of the statements of ordinary residence in accordance with this Division; and

(b) deliver to the Chief Electoral Officer all other documents and election materials received from the deputy returning officers.

DIVISION 3

Electors Temporarily Resident Outside Canada

Definitions

220 The definitions in this section apply in this Division.

elector means an elector, other than a Canadian Forces elector, who resides temporarily outside Canada. (*électeur*)

register means the register referred to in subsection 222(1). (*registre*)

Inclusion in register of electors temporarily resident outside Canada

221 An elector may vote under this Division if his or her application for registration and special ballot is received in Ottawa by 6:00 p.m. on the 6th day before polling day and his or her name is entered on the register.

Register of electors

222 (1) The Chief Electoral Officer shall maintain a register of electors who are temporarily resident outside Canada in which is entered the name, date of birth, civic and mailing addresses, sex and electoral district of each elector who has filed an application for registration and special ballot and who

(a) at any time before making the application, resided in Canada;

c) les bulletins de vote spéciaux inutilisés ou annulés et les enveloppes intérieures inutilisées;

d) dans un colis distinct et clairement identifié, les déclarations de résidence habituelle établies au moment du vote.

Obligations du commandant après le vote

(2) Sur réception des documents visés au paragraphe (1), le commandant :

a) traite, conformément à la présente section, les originaux et les copies des déclarations de résidence habituelle qui lui ont été transmises;

b) transmet au directeur général des élections tous les autres documents et le matériel électoral qu'il a reçus des scrutateurs.

SECTION 3

Électeurs résidant temporairement à l'étranger

Définitions

220 Les définitions qui suivent s'appliquent à la présente section.

électeur Électeur résidant à l'étranger temporairement, à l'exclusion d'un électeur des Forces canadiennes. (*elector*)

registre Le registre visé au paragraphe 222(1). (*register*)

Inscription sur le registre

221 Un électeur a le droit de voter à une élection en vertu de la présente section si sa demande d'inscription et de bulletin de vote spécial est reçue à Ottawa au plus tard à 18 h le sixième jour précédant le jour du scrutin et si son nom est inscrit au registre.

Registre

222 (1) Le directeur général des élections tient un registre des électeurs résidant temporairement à l'étranger où il inscrit les nom, date de naissance, sexe, adresses municipale et postale et circonscription des électeurs qui ont présenté une demande d'inscription et de bulletin de vote spécial et qui satisfont aux conditions suivantes :

a) avoir résidé au Canada antérieurement à la présentation de la demande;

(b) has been residing outside Canada for less than five consecutive years immediately before making the application; and

(c) intends to return to Canada to resume residence in the future.

Exception

(2) Paragraph (1)(b) does not apply to an elector who is

(a) employed outside Canada in the federal public administration or the public service of a province;

(b) employed outside Canada by an international organization of which Canada is a member and to which Canada contributes;

(c) a person who lives with an elector referred to in paragraph (a) or (b); or

(d) a person who lives with a member of the Canadian Forces or with a person referred to in paragraph 191(d).

2000, c. 9, s. 222; 2003, c. 22, s. 103.

Inclusion in register

223 (1) An application for registration and special ballot may be made by an elector. It shall be in the prescribed form and shall include

(a) satisfactory proof of the elector's identity;

(b) if paragraph 222(1)(b) does not apply in respect of the elector, proof of the applicability of an exception set out in subsection 222(2);

(c) the elector's date of birth;

(d) the date the elector left Canada;

(e) the address of the elector's last place of ordinary residence in Canada before he or she left Canada or the address of the place of ordinary residence in Canada of the spouse, the common-law partner or a relative of the elector, a relative of the elector's spouse or common-law partner, a person in relation to whom the elector is a dependant or a person with whom the elector would live but for his or her residing temporarily outside Canada;

(f) the date on which the elector intends to resume residence in Canada;

(g) the elector's mailing address outside Canada; and

(h) any other information that the Chief Electoral Officer considers necessary to determine the elector's

b) résider à l'étranger depuis moins de cinq années consécutives au moment de la présentation de la demande;

c) avoir l'intention de rentrer au Canada pour y résider.

Exceptions

(2) L'alinéa (1)b) ne s'applique pas aux électeurs qui :

a) appartiennent à l'administration publique fédérale ou d'une province en poste à l'étranger;

b) sont, à l'étranger, au service d'organismes internationaux dont le Canada est membre et auxquels il verse une contribution;

c) demeurent avec des personnes visées aux alinéas a) ou b);

d) demeurent avec des membres des Forces canadiennes ou des personnes visées à l'alinéa 191d).

2000, ch. 9, art. 222; 2003, ch. 22, art. 103.

Demande d'inscription

223 (1) La demande d'inscription et de bulletin de vote spécial est faite selon le formulaire prescrit et doit contenir les éléments suivants, en ce qui concerne l'électeur :

a) une preuve suffisante de son identité;

b) si l'alinéa 222(1)b) ne s'applique pas à lui, une preuve du fait qu'une exception prévue au paragraphe 222(2) s'applique à lui;

c) sa date de naissance;

d) la date à laquelle il a quitté le Canada;

e) l'adresse soit du lieu de sa résidence habituelle au Canada avant son départ pour l'étranger, soit du lieu de la résidence habituelle au Canada de son époux, de son conjoint de fait, d'un parent, d'un parent de son époux ou de son conjoint de fait, d'une personne à la charge de qui il est ou de la personne avec laquelle il demeurerait s'il ne résidait pas temporairement à l'étranger;

f) la date à laquelle il a l'intention de rentrer au Canada pour y résider;

g) son adresse postale à l'étranger;

entitlement to vote or the electoral district in which he or she may vote.

Optional information

(2) In addition to the information specified in subsection (1), the Chief Electoral Officer may request that the elector provide other information that the Chief Electoral Officer considers necessary for implementing agreements made under section 55, but the elector is not required to provide that information.

2000, c. 9, s. 223, c. 12, s. 40.

Prohibition — change of address

224 The address chosen as the place of ordinary residence in Canada in the application for registration and special ballot cannot be changed after the elector's name is entered in the register.

Information to be provided

225 The Chief Electoral Officer may require an elector whose name appears in the register to provide, within the time fixed by the Chief Electoral Officer, any information that is necessary to update the register.

Deletion of names from register

226 The Chief Electoral Officer shall delete from the register the name of an elector who

- (a) does not provide the information referred to in section 225 within the time fixed by the Chief Electoral Officer;
- (b) makes a signed request to the Chief Electoral Officer to have his or her name deleted from the register;
- (c) has died and concerning whom a request has been received to have the elector's name deleted from the register, to which request is attached a death certificate or other documentary evidence of the death;
- (d) returns to Canada to reside;
- (e) cannot be contacted; or
- (f) except for an elector to whom any of paragraphs 222(2)(a) to (d) applies, has resided outside Canada for five consecutive years or more.

Sending of special ballot and envelopes

227 (1) After approving an application for registration and special ballot and after the issue of the writs, the Chief Electoral Officer shall send a special ballot, an

h) tout autre renseignement que le directeur général des élections estime nécessaire pour déterminer si l'électeur est habile à voter ou la circonscription dans laquelle il peut voter.

Renseignements dont la communication est facultative

(2) En sus des renseignements prévus au paragraphe (1), le directeur général des élections peut demander à l'électeur de lui communiquer tous autres renseignements qu'il estime nécessaires à la mise en œuvre d'accords qu'il peut conclure au titre de l'article 55. La communication de ces renseignements est toutefois facultative.

2000, ch. 9, art. 223, ch. 12, art. 40.

Interdiction de modification de l'adresse

224 L'adresse du lieu choisi comme lieu de résidence habituelle au Canada dans la demande d'inscription et de bulletin de vote spécial ne peut être remplacée après l'inscription dans le registre.

Demande de renseignements supplémentaires

225 Le directeur général des élections peut demander à l'électeur dont le nom figure au registre de lui fournir dans le délai qu'il fixe les renseignements qu'il peut juger nécessaires pour la mise à jour du registre.

Radiation

226 Le directeur général des élections radie du registre le nom de l'électeur dans les cas suivants :

- a) l'électeur ne lui a pas fait parvenir les renseignements prévus à l'article 225 dans le délai fixé;
- b) l'électeur lui envoie une demande de radiation signée;
- c) une demande de radiation, accompagnée du certificat de décès ou d'un autre document attestant le décès de l'électeur, lui est présentée;
- d) l'électeur rentre au Canada pour y résider;
- e) l'électeur ne peut être rejoint;
- f) sauf s'il est visé au paragraphe 222(2), l'électeur a résidé à l'étranger pendant cinq années consécutives ou plus.

Envoi du bulletin de vote spécial

227 (1) Après l'approbation de la demande d'inscription et de bulletin de vote spécial et la délivrance des brefs, le directeur général des élections transmet à l'électeur dont

inner envelope and an outer envelope to every elector whose name is entered in the register, at the address referred to in paragraph 223(1)(g).

Voting by special ballot

(2) An elector shall vote by special ballot by

- (a) writing the name of the candidate of his or her choice on the ballot;
- (b) placing the ballot in the inner envelope and sealing it;
- (c) placing the inner envelope in the outer envelope; and
- (d) signing the declaration on the outer envelope and sealing it.

Writing candidate's name

(3) The candidate shall be indicated on a special ballot by writing the candidate's given name or initials and surname. If two or more candidates have the same name, their political affiliation shall be indicated.

Sending of outer envelope

228 An elector shall send the sealed outer envelope to the Chief Electoral Officer

- (a) by mail or any other means; or
- (b) by delivering it to a Canadian Embassy, Canadian High Commission or Canadian Consular Office, to a Canadian Forces base or to any place that the Chief Electoral Officer may designate.

Deadline for return of vote

229 The special ballot must arrive at the office of the Chief Electoral Officer in Ottawa not later than 6:00 p.m. on polling day in order to be counted.

Responsibilities of elector

230 For the purpose of this Division, an elector has the sole responsibility to ensure that

- (a) his or her application for registration and special ballot is made within the period specified; and
- (b) his or her special ballot is received within the period specified to be counted.

le nom figure au registre un bulletin de vote spécial, l'enveloppe intérieure et l'enveloppe extérieure. L'envoi se fait à l'adresse donnée dans le cadre de l'alinéa 223(1)(g).

Vote

(2) L'électeur vote de la façon suivante :

- a) il inscrit sur le bulletin de vote spécial le nom du candidat de son choix;
- b) il met le bulletin de vote dans l'enveloppe intérieure et la scelle;
- c) il met l'enveloppe intérieure dans l'enveloppe extérieure;
- d) il signe la déclaration figurant sur l'enveloppe extérieure et la scelle.

Façon d'indiquer le nom du candidat

(3) Le candidat est désigné par son prénom ou ses initiales et son nom de famille ainsi que, si plusieurs candidats ont le même nom, par son appartenance politique.

Transmission au directeur général des élections

228 L'électeur transmet l'enveloppe extérieure scellée au directeur général des élections :

- a) soit en l'envoyant par la poste ou par tout autre mode de livraison;
- b) soit en la remettant à une ambassade, un haut-commissariat ou un consulat canadiens, à une base des Forces canadiennes ou à tout autre endroit désigné par le directeur général des élections.

Délai

229 Pour être compté, le bulletin de vote spécial doit parvenir au bureau du directeur général des élections, à Ottawa, au plus tard à 18 h le jour du scrutin.

Obligation de l'électeur

230 Pour l'application de la présente section, il appartient à l'électeur seul de veiller à ce que sa demande d'inscription et de bulletin de vote spécial et son bulletin de vote spécial soient remplis et soient reçus dans les délais fixés.

DIVISION 4

Electors Residing in Canada

Definition of *elector*

231 For the purpose of this Division, *elector* means an elector, other than a Canadian Forces elector or an incarcerated elector, who resides in Canada and who wishes to vote in accordance with this Division.

Conditions for voting by special ballot

232 An elector may vote under this Division if his or her application for registration and special ballot is received after the issue of the writs and before 6:00 p.m. on the 6th day before polling day

- (a) by a returning officer in an electoral district; or
- (b) by the special voting rules administrator.

Information required for application

233 (1) The application for registration and special ballot shall be in the prescribed form and shall include the following information:

- (a) the elector's name and place of ordinary residence;
- (b) the elector's date of birth;
- (c) satisfactory proof of the elector's identity and residence;
- (d) the elector's mailing address; and
- (e) any other information that the Chief Electoral Officer considers necessary to determine the elector's entitlement to vote or the electoral district in which he or she may vote.

Electors in danger

(1.1) An elector who would be under reasonable apprehension of bodily harm if he or she were to indicate the mailing address of his or her dwelling place for the purpose of paragraph (1)(d) may apply to the returning officer or special voting rules administrator to use another address for that purpose. The returning officer or special voting rules administrator, unless he or she considers that it would not be in the public interest to do so, shall grant the application and shall not reveal that other address except as required to send the special ballot to the elector. For greater certainty, the granting of the application does not change the elector's place of ordinary residence for the purposes of this Act.

SECTION 4

Électeurs résidant au Canada

Définition de *électeur*

231 Pour l'application de la présente section, *électeur* s'entend de l'électeur, à l'exclusion d'un électeur des Forces canadiennes et d'un électeur incarcéré, qui réside au Canada et qui désire voter en vertu de la présente section.

Conditions requises pour voter

232 Tout électeur a le droit de voter en vertu de la présente section si sa demande d'inscription et de bulletin de vote spécial est reçue entre la délivrance des brefs et le sixième jour précédant le jour du scrutin, à 18 h, par un directeur du scrutin dans une circonscription quelconque ou par l'administrateur des règles électorales spéciales.

Contenu de la demande

233 (1) La demande d'inscription et de bulletin de vote spécial est faite selon le formulaire prescrit et doit contenir les éléments suivants, en ce qui concerne l'électeur :

- a) son nom et l'adresse du lieu de sa résidence habituelle;
- b) sa date de naissance;
- c) une preuve suffisante de son identité et de sa résidence;
- d) son adresse postale;
- e) tout autre renseignement que le directeur général des élections estime nécessaire pour déterminer si l'électeur est habile à voter et la circonscription dans laquelle il peut voter.

Électeur en danger

(1.1) L'électeur ayant des motifs raisonnables d'appréhender des lésions corporelles s'il révèle l'adresse postale de son lieu d'habitation pour l'application de l'alinéa (1)d) peut demander au directeur du scrutin ou à l'administrateur des règles électorales spéciales de l'autoriser à indiquer une autre adresse. Le directeur ou l'administrateur accepte la demande, sauf s'il juge qu'il n'est pas dans l'intérêt public de le faire, et ne peut révéler l'autre adresse que pour les fins de l'envoi du bulletin de vote spécial à l'électeur. Il est entendu que l'autorisation n'a pas pour effet de modifier la résidence habituelle de l'électeur pour l'application de la présente loi.

Optional information

(2) In addition to the information specified in subsection (1), the Chief Electoral Officer may request that the elector provide other information that the Chief Electoral Officer considers necessary to implement agreements made under section 55, but the elector is not required to provide that information.

Information provided

(3) An elector who makes an application for registration and special ballot shall indicate whether his or her name is already on a list of electors.

2000, c. 9, s. 233; 2014, c. 12, s. 59.

Name of elector previously included on list of electors

234 (1) The special voting rules administrator shall inform the returning officer of any elector whose name is on a list of electors for the returning officer's electoral district and who has received a special ballot from another electoral district. The returning officer shall indicate on the list of electors that the elector has received a special ballot.

Name of elector not previously included on list

(2) If an elector's name is not already included on a list of electors, the special voting rules administrator shall so inform the returning officer for the electoral district in which the elector is to vote by special ballot. The returning officer shall enter the elector's name on the list of electors for the appropriate polling division in that electoral district and shall indicate that the elector has received a special ballot.

Vote by special ballot only

235 Once an elector's application for registration and special ballot has been accepted, the elector may only vote under this Division.

Note on the list of electors

236 If an elector applies for registration and special ballot in his or her electoral district, the returning officer shall, if necessary, add the elector's name to the appropriate list of electors and shall indicate on the list that the elector has received a ballot in accordance with this Division.

Provision of ballot

237 Subject to section 237.1, on acceptance of an elector's application for registration and special ballot, the elector shall be given a special ballot, or, if section 241

Renseignements dont la communication est facultative

(2) En sus des renseignements prévus au paragraphe (1), le directeur général des élections peut demander à l'électeur de lui communiquer tous autres renseignements qu'il estime nécessaires à la mise en œuvre d'accords qu'il peut conclure au titre de l'article 55. La communication de ces renseignements est toutefois facultative.

Renseignements à fournir

(3) L'électeur qui présente une demande d'inscription et de bulletin de vote spécial est tenu d'indiquer si son nom figure déjà sur une liste électorale.

2000, ch. 9, art. 233; 2014, ch. 12, art. 59.

Transmission des renseignements au directeur du scrutin compétent

234 (1) Si le nom de l'électeur figure déjà sur une liste électorale d'une circonscription autre que celle où il a reçu un bulletin de vote spécial, l'administrateur des règles électorales spéciales en informe le directeur du scrutin de la circonscription du lieu de sa résidence habituelle et celui-ci indique sur la liste que l'électeur a reçu un bulletin de vote spécial.

Inscription sur la liste électorale

(2) Si le nom de l'électeur ne figure pas déjà sur une liste électorale, l'administrateur des règles électorales spéciales avise le directeur du scrutin qui veille à ce que le nom de l'électeur soit inscrit sur la liste électorale appropriée et à ce que soit indiqué sur celle-ci que l'électeur a reçu un bulletin de vote spécial.

Exercice du droit de vote

235 Une fois sa demande d'inscription et de bulletin de vote spécial approuvée, l'électeur ne peut voter qu'en vertu de la présente section.

Indication sur la liste

236 Si un électeur présente sa demande dans la circonscription où il est habile à voter, le directeur du scrutin l'inscrit sur la liste électorale appropriée s'il ne l'est pas déjà et indique sur la liste que l'électeur a reçu un bulletin de vote en vertu de la présente section.

Bulletin de vote

237 Sous réserve de l'article 237.1, après l'approbation de sa demande d'inscription et de bulletin de vote spécial, l'électeur qui a fait la demande reçoit un bulletin de

applies, a ballot, an inner envelope and an outer envelope.

2000, c. 9, s. 237; 2014, c. 12, s. 60.

Proof of identity and residence

237.1 (1) If an elector goes to the office of a returning officer to receive his or her ballot or special ballot, then before receiving it the elector shall prove his or her identity and residence in accordance with section 143.

Presence of candidate or representative

(2) A candidate or their representative may be present at the office when the elector

- (a) receives the ballot;
- (b) places the folded ballot in the inner envelope and seals it; and
- (c) places the inner envelope in the outer envelope and seals it.

Examination of identification documents

(3) The candidate or representative may examine but not handle any piece of identification provided by the elector.

Prohibition — attesting to residence of more than one elector

(3.1) No elector shall attest to the residence of more than one elector at an election.

Prohibition — attesting to residence (own residence attested to)

(3.2) No elector whose own residence has been attested to at an election shall attest to another elector's residence at that election.

Application of provisions

(4) For the purposes of this section, the following provisions apply with any necessary modifications in respect of the location in the returning officer's office where the elector receives his or her ballot or special ballot as though that location were a polling station:

- (a) sections 135 to 137;
- (b) sections 143 and 144;
- (c) subsection 164(1);
- (d) section 166; and

vote spécial — ou, dans le cas visé à l'article 241, un bulletin de vote —, l'enveloppe intérieure et l'enveloppe extérieure.

2000, ch. 9, art. 237; 2014, ch. 12, art. 60.

Preuve d'identité et résidence

237.1 (1) L'électeur qui se présente au bureau du directeur du scrutin pour recevoir son bulletin de vote ou son bulletin de vote spécial est tenu, avant de recevoir ce bulletin, d'établir son identité et sa résidence conformément à l'article 143.

Présence du candidat ou de son représentant

(2) Le candidat ou son représentant peut être présent au bureau lorsque l'électeur :

- a) reçoit son bulletin de vote;
- b) met le bulletin de vote plié dans l'enveloppe intérieure et la scelle;
- c) met l'enveloppe intérieure dans l'enveloppe extérieure et la scelle.

Examen des pièces d'identité

(3) Le candidat ou son représentant peut examiner toute pièce d'identité présentée par l'électeur mais ne peut la manipuler.

Interdiction : attester de la résidence de plus d'un électeur

(3.1) Il est interdit à un électeur d'attester de la résidence de plus d'un électeur à une élection.

Interdiction : attester d'une résidence (propre résidence attestée)

(3.2) Il est interdit à l'électeur pour lequel un autre électeur a attesté de sa propre résidence d'attester de la résidence d'un autre électeur à la même élection.

Application de dispositions

(4) Pour l'application du présent article, les dispositions ci-après s'appliquent, avec les adaptations nécessaires, à l'emplacement, au bureau du directeur du scrutin, où l'électeur reçoit son bulletin de vote ou son bulletin de vote spécial comme si cet emplacement était un bureau de scrutin :

- a) les articles 135 à 137;
- b) les articles 143 et 144;
- c) le paragraphe 164(1);
- d) l'article 166;

(e) paragraph 489(3)(c).

2014, c. 12, s. 60.

Voting by special ballot

238 An elector who has received a special ballot may vote in accordance with subsections 227(2) and (3).

Sending to Chief Electoral Officer

239 (1) An elector who does not vote in his or her electoral district shall send the sealed outer envelope to the special voting rules administrator

(a) by mail or any other means; or

(b) by delivering it to a Canadian Embassy, High Commission or Consular Office, to a Canadian Forces base outside Canada or to any place that the Chief Electoral Officer may designate.

Deadline for receipt

(2) In order to have the special ballot counted, an elector shall ensure that the ballot is received

(a) if the special ballot is cast in the elector's electoral district, at the office of the returning officer before the close of the polling stations on polling day; or

(b) if the special ballot is cast outside the elector's electoral district, at the office of the special voting rules administrator in Ottawa, not later than 6:00 p.m. on polling day.

Responsibilities of elector

240 For the purpose of this Division, an elector has the sole responsibility to ensure that

(a) his or her application for registration and special ballot is made within the period specified; and

(b) his or her special ballot is received within the period specified to be counted as a vote.

Elector to be given regular ballot

241 An elector who applies to vote in person at the office of the returning officer for his or her electoral district after ballots for the electoral district have been printed shall be given a ballot that is not a special ballot and shall immediately vote in the manner described in paragraphs 151(1)(a) and (b) and 227(2)(b) to (d) and return the outer envelope to the election officer.

e) l'alinéa 489(3)c).

2014, ch. 12, art. 60.

Vote

238 Sur réception d'un bulletin de vote spécial, l'électeur vote selon les modalités prévues aux paragraphes 227(2) et (3).

Transmission à l'administrateur

239 (1) L'électeur qui ne vote pas dans sa circonscription transmet l'enveloppe extérieure scellée à l'administrateur des règles électorales spéciales :

a) soit en l'envoyant par la poste ou par tout autre mode de livraison;

b) soit en la remettant à une ambassade, un haut-commissariat ou un consulat canadiens, à une base des Forces canadiennes à l'étranger ou à tout autre endroit désigné par le directeur général des élections.

Délai

(2) Pour que son vote soit compté, l'électeur est tenu de veiller à ce que son bulletin de vote spécial parvienne :

a) s'il est déposé dans sa circonscription, au bureau du directeur du scrutin, avant la fermeture des bureaux de scrutin, le jour du scrutin;

b) dans le cas contraire, au bureau de l'administrateur des règles électorales spéciales, à Ottawa, au plus tard à 18 h le jour du scrutin.

Obligation de l'électeur

240 Pour l'application de la présente section, il appartient à l'électeur seul de veiller à ce que sa demande d'inscription et de bulletin de vote spécial et son bulletin de vote spécial soient remplis et parviennent au fonctionnaire électoral compétent dans les délais fixés.

Vote immédiat

241 Si l'électeur présente en personne sa demande au bureau du directeur du scrutin de sa circonscription après que les bulletins de vote ont été imprimés, un bulletin de vote qui n'est pas un bulletin de vote spécial lui est remis; dans ce cas, il vote sur-le-champ selon les modalités prévues aux alinéas 151(1)a) et b) et 227(2)b) à d) et remet l'enveloppe extérieure au fonctionnaire électoral.

Spoiled ballot

242 (1) If an elector has inadvertently handled a ballot or a special ballot in such a manner that it cannot be used, the elector shall return it to the election officer who shall mark it as a spoiled ballot and give the elector another ballot.

Limit

(2) An elector shall not be given more than one ballot under subsection (1).

Assistance

243 (1) When an elector personally goes to the office of the returning officer and is unable to read or because of a physical disability is unable to vote in the manner described in this Division, the designated election officer shall assist the elector by

- (a)** completing the declaration on the outer envelope and writing the elector's name where his or her signature is to be written; and
- (b)** marking the ballot as directed by the elector in his or her presence.

Note on outer envelope

(2) An election officer who assists an elector under subsection (1) shall indicate, by signing the note on the outer envelope, that the elector was assisted.

Registration, voting at home

243.1 (1) On application of an elector who is unable to read, or who is unable to vote in the manner described in this Division because of a physical disability, and who is unable to personally go to the office of the returning officer because of a physical disability, the designated election officer shall go to the elector's dwelling place and, in the presence of a witness who is chosen by the elector, assist the elector by

- (a)** completing the declaration on the outer envelope and writing the elector's name where the elector's signature is to be written; and
- (b)** marking the ballot as directed by the elector in the elector's presence.

Note on outer envelope

(2) The election officer and the witness who assist an elector under subsection (1) shall indicate, by signing the note on the outer envelope, that the elector was assisted.

Bulletin de remplacement

242 (1) Si l'électeur s'est par inadvertance servi d'un bulletin de vote, spécial ou non, de manière à le rendre inutilisable, il le remet au fonctionnaire électoral désigné; celui-ci annule le bulletin de vote et en remet un autre à l'électeur.

Limite

(2) L'électeur ne peut recevoir qu'un seul bulletin de vote en vertu du paragraphe (1).

Limitation fonctionnelle

243 (1) Lorsqu'un électeur qui se présente en personne au bureau du directeur du scrutin ne peut lire ou a une limitation fonctionnelle qui le rend incapable de voter de la manière prévue par la présente section, le fonctionnaire électoral désigné l'aide :

- a)** en remplissant la déclaration figurant sur l'enveloppe extérieure et en inscrivant le nom de l'électeur à l'endroit prévu pour sa signature;
- b)** en marquant le bulletin de vote selon le choix de l'électeur, en présence de celui-ci.

Note

(2) Le fonctionnaire électoral en présence duquel est donné le vote de l'électeur en vertu du paragraphe (1) indique que l'électeur a été aidé en signant la note figurant sur l'enveloppe extérieure.

Limitation fonctionnelle : à domicile

243.1 (1) Sur demande d'un électeur incapable, à la fois, de se présenter en personne au bureau du directeur du scrutin et de voter de la manière prévue par la présente section à cause d'une limitation fonctionnelle ou parce qu'il ne peut lire, le fonctionnaire électoral désigné se rend au lieu d'habitation de l'électeur et, en présence d'un témoin choisi par celui-ci, l'aide :

- a)** en remplissant la déclaration figurant sur l'enveloppe extérieure et en inscrivant le nom de l'électeur à l'endroit prévu pour sa signature;
- b)** en marquant le bulletin de vote selon le choix de l'électeur, en présence de celui-ci.

Note

(2) Le fonctionnaire électoral et le témoin en présence desquels est donné le vote de l'électeur en vertu du paragraphe (1) indiquent que l'électeur a été aidé en signant la note figurant sur l'enveloppe extérieure.