

The Council of Canadians and the Canadian Federation of Students delivered more than 30,000 petitions calling on the federal government to enact legislation that puts an end to voter fraud. At the same time, people across Canada called their MPs asking them to revise – or scrap entirely – the so-called “Fair” Elections Act.



“Unfair” Elections Act Will Do Little to Curb Election Fraud

by Steven Shrybman

Editor’s note: At the time *Canadian Perspectives* went to press, Bill C-23 was still under consideration despite Conservative government efforts to pass it quickly through Parliament.

On February 4, 2013, the Harper government tabled Bill C-23, the “Fair Elections Act,” to amend the Canada Elections Act. Unfortunately, the amendments, if passed, will do little to curtail the type of electoral fraud that took place during the May 2011 federal election. They will however, make it much less likely that those involved will be prosecuted.

To understand the bill, one must remember that in May 2013, and contrary to Conservative government denials, the Federal Court found that a “deliberate attempt at voter suppression” took place “across the country” during the 2011 general election which targeted non-Conservative Party supporters, and identified the Conservative Party’s CIMS database as the likely source of information for those efforts.

The court also found that “the respondent MPs engaged in trench warfare in an effort to prevent this case from coming to a hearing on the merits.”

The judicial proceedings that gave rise to those findings were brought by 8 electors who, supported by the Council of Canadians, sought to annul the election results in six ridings across the country. During the 2011 election, those electors received calls falsely claiming to be made by, or on behalf of Elections Canada, misrepresenting the location of their polling stations. At the time, the electors assumed the calls were innocent mistakes. But 10 months later, when Marc Mayrand, Canada’s Chief Electoral Officer, informed a parliamentary committee that he had received more than 1,000 complaints of similar calls, it became apparent the calls were part of an organized effort to deprive Canadians of their democratic right to vote.

Under current election law, there are two remedies for addressing voter

fraud. The first is to prosecute anyone engaged in such activity. That is the job of the Commissioner of Canada Elections. The potentially more significant remedy is the right of individual electors to seek a court order annulling the result of an election when fraud occurs. But the risk an election could be annulled depends upon electors discovering the fraud in time to do something about it, and Bill C-23 would make that far less likely to occur.

As for the risk that perpetrators of voter fraud would be prosecuted by the Commissioner of Elections, the increased penalties in Bill C-23 have to be weighed against the risk of getting caught. To be sure, the Commissioner’s current record on that score is far from exemplary. Of the 200 ridings in which voter fraud is reported to have occurred during the May 2011 election, charges have been laid in only one riding. But the likelihood of prosecution is further reduced under Bill C-23, because the Commissioner of Elections would no longer be appointed

by the Chief Electoral Officer, who is accountable to Parliament and not to the particular government in power. Instead, the Commissioner would be appointed by a civil servant and report to the Justice Minister.

To ensure that no one learns of any such investigation, the bill precludes the Commissioner from revealing that any investigation is underway without the consent of all involved, including the person or political party under investigation.

Finally, and perhaps most importantly, nothing in the bill would hold a political party accountable for the unauthorized use of its database by those who have access to it. That is precisely what the “Pierre Poutines” (yes, likely more than one) did in 2011. Until such accountability is established, voter fraud will probably remain a feature of the Canadian electoral process.

Steven Shrybman is a public interest lawyer and a member of the Council of Canadians’ Board of Directors.

Update

After weeks of intense and mounting opposition, in late April the Harper Conservatives announced they were retreating on many parts of their anti-democratic bill.

Some key changes Council of Canadians supporters helped bring about include:

- Vouching will be permitted as proof of address. The elimination of vouching threatened to disenfranchise hundreds of thousands of voters, mostly students, seniors and First Nations.
- Records of robocalls will be kept longer. Companies contracted by political parties to call voters will now be required to keep phone records for three years as opposed to one to assist potential investigations into fraud.
- Fewer restrictions on Elections Canada. The agency will be allowed to continue promoting when and where the public can vote, but it remains muzzled from running its pro-democracy public awareness campaigns.

■ Election fundraising loophole is closed. In what essentially meant the end of campaign spending limits, closing the loophole prevents the deep pockets of Conservative party donors from influencing elections.

While these are significant improvements, serious flaws in the act remain. The most serious omission is the failure to grant the Commissioner of Elections the power to compel evidence when investigating fraud.

This lack of power severely hampered investigations into the 2011 robocall scandal. In the landmark legal case – which was funded by Council of Canadians supporters – Federal Court Justice Richard Mosley ruled, “Despite the obvious public interest in getting to the bottom of the allegations, the [Conservative Party of Canada] made little effort to assist with the investigation at the outset despite early requests.”

The Council of Canadians will continue to fight for a truly “Fair” Elections Act.



Help wipe out their legal bill!

While a huge legal victory was achieved by the 8 Canadians who bravely stepped forward to challenge the robocall scandal in court, sadly, they are still facing more than \$100,000 in outstanding legal costs.

In his ruling, Federal Court Judge Richard Mosley declared: “The applicants [supported by the Council of Canadians] sought to achieve and hold the high ground of promoting the integrity of the electoral process while

the respondent MPs engaged in trench warfare in an effort to prevent this case from coming to a hearing on the merits.”

The Conservatives’ trench warfare tactics needlessly drove up legal costs and have saddled the applicants with this unfair burden.

Will you chip in \$50, \$100 or even \$500 to help to wipe out their bill? One hundred per cent of all donations will go to paying down the applicants’ legal costs. You can donate online at www.canadians.org, by phone at 1-800-387-7177, or by mail to: The Council of Canadians 700-170 Laurier Avenue West, Ottawa ON K1P 5V5