

ElectoFacts launched by Elections Canada | Gerald Chipeur

By **Gerald Chipeur**

Law360 Canada (January 18, 2024, 10:49 AM EST) -- ElectoFacts is a new resource that Canadians can use to verify the accuracy of information about Canada's federal electoral process.

ElectoFacts is a part of Election Canada's overall effort to give Canadians the information they need to participate in federal elections. According to Elections Canada, "Canadians should have easily accessible and accurate information about the federal electoral process and the safeguards in place to protect it, directly from the source."

Elections Canada is an independent non-partisan agency that reports directly to Parliament.



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From a review of the information available on ElectoFacts, there are four legislative initiatives that Parliament can undertake to help Elections Canada better safeguard the electoral process.

Proof of citizenship

ElectoFacts states that in order to be registered to vote an individual must declare or confirm their Canadian citizenship, and that there are many safeguards in place to ensure that voter registrations are accurate and up to date.

However, the only step an individual in Canada needs to take in order to vote is to make a simple declaration that they are a Canadian citizen. On their website, Elections Canada states:

While we clearly communicate the citizenship requirement to vote, we depend on individuals to accurately indicate their Canadian citizenship.

Elections Canada describes the process for proving citizenship at this link.

A mere declaration of citizenship would never be accepted by Transport Canada, Canada Border Services or Immigration, Refugees and Citizenship Canada. For example, in order to receive a passport, the *Canadian Passport Order, SI/81/86 (Order)* requires proof of Canadian citizenship. The Order allows the minister to request from an applicant a certificate of Canadian citizenship, a certificate of naturalization or a birth certificate in order to prove their Canadian citizenship.

The exercise of the right to vote under s. 3 of the *Canadian Charter of Rights and Freedoms* (Charter) is just as important as the right to travel.

The right to vote is the only right unique to citizenship. The right and power to vote deserves better safeguards than merely the word of an individual who might be mistaken about their own citizenship status, or worse, intent on subverting democracy. A requirement to at least once in one's life prove citizenship in order to be placed on Canada's voters list is not too much to ask. It is a reasonable burden to protect democracy.

Residence and identity

ElectoFacts states that in order to vote an individual must prove their identity and address. However, residence and identity, like citizenship, may also be established by a process based upon mere declaration, as long as another elector “vouches” for the identity of the declaring individual.

The policy of Elections Canada for proof of residence and identity is accessible [here](#).

Residence and identity is easy to determine for tax or health insurance purposes. In Alberta, individuals must provide documentation to prove their residency in Alberta and their identity in order to receive coverage under the Alberta Health Care Insurance Plan (AHCIP). Documents the AHCIP will accept for proof of residency include a driver’s licence, bills (utilities or phone), mortgage or rental agreement, home insurance, or vehicle registration. For proof of identity, the documents the AHCIP will accept include a passport, driver’s licence, permanent resident card or certificate of Indian Status.

It should be possible to require similar evidence to prove residence and identity in the context of an election. A declaration is just not enough, particularly when elections are often determined by just one or two votes.

Laundering of foreign election expenditures

ElectoFacts states that Elections Canada takes the threat of foreign interference very seriously.

Elections Canada indicates that “undue foreign influence” occurs when an individual who does not reside in Canada or who is not a Canadian citizen or permanent resident knowingly incurs expenses to directly promote or oppose a candidate or a leader of a registered party in an election. It is the role of Elections Canada to resist “undue foreign influence.” Unfortunately, Canada’s election laws currently allow just this kind of “undue foreign influence.”

The *Canada Elections Act*, SC 2000, c 9, allows foreign individuals, nation states, corporations, associations and foundations to spend money in Canada to influence federal elections. This may be accomplished legally and with full disclosure.

Pursuant to s. 349.01(1) and s. 349.4(2)(b) of the *Canada Elections Act*, a foreign corporation need only incorporate a subsidiary in Canada or “carry on business in Canada” to legally and freely funnel foreign money to any third party in Canada for the purpose of influencing an election.

Parliament may assist Elections Canada by closing this hole in the border through which the equivalent of Brinks trucks filled with gold or cash may currently proceed.

Repeal of the regulation of nomination contests

According to ElectoFacts, Elections Canada plays no role in the process that registered parties use to select the candidates they endorse in each riding.

However, Part 18, Division 4 of the *Canada Elections Act* is specifically aimed at governing registered party nomination contests. In order to ensure that Elections Canada in fact plays no role in the selection of candidates by political parties, Parliament should repeal Part 18, Division 4 of the *Canada Elections Act*.

Such an amendment would align the law with this guidance from the Court of Appeal of Ontario in *Longley v. Canada*, 2007 ONCA 852 at paragraph 74:

Care should be taken to ensure that the impartiality of [the Chief Electoral Officer] is not unnecessarily compromised — actually or potentially, in the eyes of the public — by enacting a regime that would call upon the Chief Electoral Officer to make judgment calls on how a political party is conducting its internal affairs or spending its funds.

Amend the Canada Elections Act

In summary, Parliament is in a position to act before the next federal election to:

1. Enact safeguards to require proof of citizenship;
2. Enact safeguards to require proof of residence and identity;
3. Prohibit foreign-funded or foreign-controlled corporations from directly influencing Canada's elections; and,
4. Repeal the regulation of nomination contests.

These amendments will help ensure that Elections Canada has the tools to ensure that the right to vote under s. 3 of the Charter is meaningful for every Canadian.

Gerald (Gerry) Chipeur, KC, is a partner in the law firm of Miller Thomson LLP. For over 35 years, his practice has focused on public policy and the removal of administrative red tape. Private sector and public sector clients rely on him to navigate the rules that regulate business and government. As a trial and appellate lawyer, he has pleaded cases before administrative tribunals and the courts, including over two dozen matters in the Supreme Court of Canada. He also serves on the Alberta Review Board and as a commercial arbitrator.

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