Explore A History of the Vote in Canada

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CHRONICLE: A spotlight on 1920-1997

THE MODERN FRANCHISE, 1920-1997

We have seen how the right to vote expanded gradually until the First World War and then how the electorate virtually doubled when women gained the franchise. By 1920 nearly all adults had the vote, though many individuals were still disenfranchised by administrative arrangements, and some groups were disqualified on racial, religious, or economic grounds.

At the beginning of the period covered in this chapter, few special measures were in place to protect the right to vote by facilitating voting or encouraging those who had the franchise to exercise it. The conventional procedure for casting a ballot – an elector appearing in person at the polling station on the day set for the election – was the only procedure. Citizens were presumed to

- be present in the riding on the appointed day,
- have the time needed to get to a polling station and vote,
- hold employment that did not interfere with voting, and
- have no characteristics – such as a disability or language difficulty – that might pose an obstacle to voting.

By the end of the period, these assumptions were recognized as faulty and no longer held sway in electoral law and administration.

Modernizing the electoral machinery

This chapter traces how the law and election administration have been shaped and reshaped to accommodate the broad diversity that characterizes the Canadian electorate – legislative and administrative innovations that made voting more accessible and convenient, modernized the election machinery, and removed racial and religious disqualifications. In the final section we consider the impact of the *Canadian Charter of Rights and Freedoms*.

Progress in fits and starts

As we learned in Chapter 2, Sir Wilfrid Laurier feared the *War-time Elections Act* would open an abyss that might not close for generations. Sir Wilfrid was referring to a clash between Canadians of French and British origin, but in the first few years after the First World War, it seemed that the hysteria of 1917 might extend to other groups as well. Anti-German sentiments, for example, did not fade entirely with the end of the war. During social disturbances such as the Winnipeg General Strike of 1919, anti-alien feelings were widely expressed. In the 1920s, hostility to racial and religious minorities swept across North America, and these feelings intensified until 1945. One way this hostility was expressed was in exclusionary electoral laws.

But not all developments in the franchise were negative. The *War-time Elections Act* governed just one election, that of 1917, and Borden's Conservative government introduced the *Dominion Elections Act* in 1920.* The act established the post of Chief Electoral Officer (CEO) and isolated the incumbent from immediate political pressures by specifying appointment by a resolution of the House of Commons, not by the government of the day. Thus began the tradition of Elections Canada as the independent, non-partisan agency that administers federal elections and referendums.

The new act gave the Chief Electoral Officer the status of a deputy minister and the tenure of a superior court judge, which at that time was for life. During debate on the act, there was opposition to lifetime tenure. J.A. Currie, the MP for Simcoe North, said, "You are only setting up a form of Prussianism when you are appointing officers for life." Other MPs also questioned the value of the office. But many agreed with Norman Ward's assessment: "a most salutary reform". (Ward 1963, 181)

The first Chief Electoral Officer

The first CEO, Oliver Mowat Biggar, presided over what could have been the most chaotic election in years, with the appointment of 75,000 newly minted election officials to supervise a completely revamped system, in which new electors outnumbered those eligible to vote before 1917. Despite these innovations, Biggar recounted in his annual report that the problems involved in the election process itself were comparatively small given the large number of people involved.

An important job of the Chief Electoral Officer was (and is) to prepare a report after each election. The report, required under the *Canada Elections Act*, gives the CEO a regular opportunity to assess how the electoral law is working and to suggest reforms to Parliament. Many of these have concerned access to the vote – how to ensure that eligible electors can exercise their franchise. This too has had positive effects on the electoral system, as Parliament has adopted and extended many such recommendations.

Judicious recommendations

In his report after the 1921 election, for example, Colonel Biggar recounted the difficulties of electors – particularly women – who had been left off voters lists. He suggested the appointment of more revision officers and advised making more advance polls available. Parliament responded by reducing the number of voters needed for setting up an advance poll from 50 to 15.

Similarly, after the 1925 election, Colonel Biggar pointed out that with the election being held on a Thursday, the advance voting provisions had been of little use to commercial travellers: they were already out on the road when the advance polls opened for the three days preceding the election. In 1929 the law was changed to establish Monday as election day.

*The title was changed to the *Canada Elections Act* in 1951.

Canada's five Chief Electoral Officers

CEOs and their times

Just five people have held the position of Chief Electoral Officer (CEO) since it was established in 1920.

Oliver Mowat Biggar (1920-1927), the first CEO, oversaw development of federal election administration under the new law.

Jules Castonguay (1927-1949) launched the first attempt to establish a permanent list of electors. The last vestige of property qualification was eliminated during his tenure.

Nelson Jules Castonguay (1949-1966) saw the end of religious discrimination in the law, extension of the franchise to registered Indians, and introduction of the *Electoral Boundaries Readjustment Act*.

Jean-Marc Hamel (1966-1990) implemented many changes in election law and administration, including registration of political parties, establishment of election expense limits, and Charter-related changes.

Under ***Jean-Pierre Kingsley*** (1990-), Elections Canada continued the reform required to comply with the Charter, entered the information age of computerized election administration and mapping, gained a new mandate to inform and educate voters, and introduced the National Register of Electors and the 36-day election calendar, as well as various changes to make the process more voter friendly.

THE *DOMINION ELECTIONS ACT*

Parliament's overhaul of the electoral law in 1920 not only established the post of CEO but also centralized the financial and logistical operations of federal election administration for the first time. It was a comprehensive revision of the election law, yet flaws remained in the system, some of which were not removed until the 1980s.

The most serious deficiencies concerned continuing obstacles to voting for some female electors; exclusion from the franchise of specific groups for racial, religious or economic reasons; and administrative disenfranchisement of individual voters. In the last category were a number of small but irritating points, many of which were cleared up by periodic electoral reform between 1920 and 1982.

Voters lists

As was the case before 1920, the new law provided for elections to be conducted on the basis of lists of eligible electors; in urban areas, the lists to be used were provincial lists compiled previously, but in rural areas, an enumeration would be conducted. These lists proved contentious, not only in their compilation, but also in what they contained and how they were published. The most serious problem – placing the names of eligible women on the electoral rolls – was solved by 1929, but methods of preparation, revision and publication continued to be debated and modified over the years.

The reason for the distinction between 'rural' and 'urban' polling divisions and the two different methods of compiling and revising voters lists was concern about the completeness and accuracy of existing voters lists in rural areas. This fear was borne out in the 1921 election, when lists from rural Ontario proved virtually useless.

Registering on election day

The law therefore stipulated that in rural polls (places with a population of less than 1,000) lists were to be 'open'. People would be enumerated by specially appointed 'registrars' in a door-to-door canvass. (The term 'enumerators' was avoided because it was associated with the 1917 election, when enumerators were widely seen as partisan.) Voters missed by the enumeration could swear themselves in on election day, as long as another eligible voter vouched for them.

But in urban polls, voters left off a provincial list had to apply to a revisions registrar – one was available in each constituency for 10 hours a day for 6 days. After this time, urban lists were 'closed' until the next election. The argument used to justify this difference in treatment was that rural areas were harder to canvass, so election-day swearing in was needed to protect rural voters' franchise. It was not until 1993, when Bill C-114 eliminated the distinction between urban and rural polling divisions, that urban voters had access to this provision.

The urban/rural distinction appears to have been a significant impediment to the exercise of the franchise for many electors. Some constituencies contained both rural and urban polls, and voters did not always know which type of poll they lived in – which meant that they might not take the steps necessary to have their names added to the list. In addition, to add to electors' confusion, a few months before the 1921 election, the definition of 'rural' polls was changed. Now towns with a population of less than 2,500 were considered 'rural'. (This number was subsequently revised several times.)

The need to create federal lists

But the most serious impact that became apparent in the 1921 election was that large numbers of women seemed to have been prevented from voting, despite the removal of legal restrictions in 1917-18.

In Quebec, for example, women did not have the vote in provincial elections. (Indeed, Alexandre Taschereau asserted that they would never get it so long as he was premier – which he was until 1936.) As a result, women's names did not appear on provincial voters lists. In rural polls, women left off the lists could swear an oath on voting day; in urban areas, they had to apply to a registrar within the specified period to have their names added to the list.

The results are apparent in the figures on elector registration. In Ontario, 99.74 per cent of the population age 21 and older was registered; the comparable figure in Quebec was 90.55 per cent. The 9-point difference is the equivalent of 107,259 people. As there were 581,865 women age 21 and over in Quebec in 1921, it seems likely that the vast majority of unregistered people were women who were thus unable to exercise the federal franchise.

In 1929 the act was amended to abolish the use of provincial voters lists, making it much easier for Quebec women to be registered on federal voters lists, even though they did not gain the provincial franchise until 1940.

These changes did not come without protest. The Conservative leader, Arthur Meighen, felt that allowing swearing-in on election day in towns of 2,500 could lead to fraud. Charles G. ('Chubby') Power, a Liberal cabinet minister, agreed, saying that some people might show their patriotism "through their willingness to vote more often than the law considers judicious". (*Debates*, 19 June 1925, 4540-4548) Despite these warnings, there appears to have been little such "patriotism" in the ensuing decades.

Preparing voters lists

Beginning with the election of 1930 and until the 1990s, most federal elections were conducted using lists assembled by enumerators during the election period. For most of this period, urban enumerators worked in pairs; in rural areas, there was only one enumerator per poll. In urban areas, enumerators were appointed from lists of names submitted to each returning officer by the parties of the candidates placing first and second in the electoral district in the previous election.

Once lists were compiled through enumeration, voters – particularly in urban polls – had to make sure that their names appeared if they wanted to be able to cast a ballot. Distribution of the lists enabled voters to check on the accuracy of the enumeration. In his 1925 report, Colonel Biggar reported that the lists had been drawn up in haste, that publicly posted lists were subject to damage by weather and vandals, and that many people felt they had been left off "on party grounds". Since revising officers were normally partisan appointees, simple mistakes were often attributed to bad faith. Biggar suggested that there should be a wider distribution of the lists so people could check their accuracy easily.

Publishing voters lists

Jules Castonguay, the second CEO, took up the issue again after the 1930 election, reporting that there was no easy way for voters to protect their right to vote by ensuring they were on the voters list. He suggested that every household receive a copy of the list for the relevant poll. This recommendation was adopted – eventually – after a different method was tried in 1934.

The 1934 innovation was to send each registered elector a postcard showing where to vote. The CEO's report described this as "quite onerous", because each card had to be addressed individually. The postcards were dropped after this election, and from the 1940 election until 1982 (when postcards were reintroduced), voters were sent a copy of the list showing the name, address, and occupation of all voters in the relevant poll.

The first permanent voters list

The government of R.B. Bennett also introduced a standing list of electors (a form of permanent voters list) in 1934. There was to be a final enumeration, and constituency registrars would revise the lists annually after that. All voters lists, both rural and urban, would be 'closed' – anyone left off inadvertently would have to apply to be put on and could not vote until that was done.

One annual revision was undertaken, and the list was used for the election of 1935, but financial constraints prevented revision of the electoral register after that. The technology of the day was insufficient to overcome the logistical obstacles, so the effort was abandoned in 1938, and enumeration was restored as the method of compiling lists.

MPs who had experienced Bennett's electoral register system saw it as far too expensive and cumbersome, and even the Chief Electoral Officer, whose reports were normally circumspect, said that it was no improvement on the pre-election enumeration system. Jules Castonguay observed that the updated elections act had not worked effectively. Sending individually addressed postcards to notify eligible electors was costly and time-consuming, he said. The government adopted Mr. Castonguay's suggestion of sending a poll list to each voter, and the idea of a permanent list did not resurface until the 1980s.

Access to the vote

A significant innovation of the 1920 elections act was the provision for voting in advance of election day by specified groups of voters: commercial travellers, railwaymen, and sailors could vote during the three days (excluding Sundays) preceding an election.

Although most people would consider advance voting a positive step, the provision was controversial from the first. A former minister of finance, W.S. Fielding, saw it as a waste of money; it was, he said, "like creating a steam engine to run a canoe" for a mere handful of voters. Fielding maintained that railwaymen and others should cast their votes by proxy. This would interfere with the secrecy of the ballot, he conceded, but most men, at least in his home province of Nova Scotia, made no secret of how they voted, so the loss of secrecy did not matter much. (*Debates*, 13 April 1920, 1163)

This grudging attitude toward advance voting endured for decades. In 1934, it was extended to workers in "airships" (as they were described in the law until 1960) and to fishermen – although MPs pointed out that fishermen were unlikely to be in port for the brief advance polling period if it occurred during fishing season.

Advance polling was available only to voters who expected to be absent from the constituency on business on election day; they had to swear to this and obtain a certificate. It was thus no easy matter to vote at an advance poll, even if a voter was among the lucky few who qualified.

Another step improving access to the vote was a clause increasing the amount of time off to vote. The measure was first introduced in 1915, when employers were required to give their workers an hour off while the polls were open (in addition to their lunch hour). In 1920 this was increased to two hours.

During the interwar years, the only new group that obtained the vote was inmates of charitable institutions (who had not been enumerated in the past because they lacked a 'home' address), who were enfranchised in 1929. On the whole, the two decades after the First World War were marked by modest but steady improvements in the conditions under which eligible electors exercised the right to vote.

THE SECOND WORLD WAR AND ITS AFTERMATH

The next stage in the evolution of the franchise saw the lifting of racial and religious restrictions on voting, some of which had been in effect for many years. It was also a period of innovation in the accessibility of the vote, with legislative and administrative changes to facilitate voting and make it more convenient.

The interval between the world wars saw the spread of antagonism toward minority groups in Canada. A degree of mistrust or suspicion of 'aliens' had persisted since the First World War. As is common in periods of economic distress, this blossomed as hostility toward minorities during the Great Depression of the 1930s, exacerbating the social conflicts arising from competition for scarce jobs and societal resources. Finally, the crisis of the Second World War provoked further racial animosity, particularly toward Canadians of Japanese origin.

One result of these powerful social currents was the continued disqualification of particular groups on racial or religious grounds. Many ordinary Canadians seemed to accept these developments as a fact of life. To their credit, some MPs from all parties opposed racism and social injustice in impassioned speeches in the Commons. But in the pervasive climate of intolerance, especially in the 1930s, their voices did not prevail.

When the Second World War was over, Canadians seemed to realize that they had mistreated minority groups, and disenfranchisements of earlier years began to be reversed. By 1960, disqualifications on racial and religious grounds had been eliminated. At the same time, legislative and administrative change was making it possible for more and more eligible Canadians to exercise their right to vote in various ways.

Racial exclusions

One of the significant exceptions to universal adult suffrage in the *Dominion Elections Act* of 1920 was a clause stating that people disenfranchised by a province "for reasons of race" would also be excluded from the federal franchise. In 1920, only one province – British Columbia – discriminated against large numbers of potential voters on the basis of race. British Columbia excluded people of Japanese and Chinese origin, as well as "Hindus" – a description applied to anyone from the Indian subcontinent who was not of Anglo-Saxon origin, regardless of whether their religious affiliation was Hindu, Muslim, or any other. Saskatchewan also disenfranchised people of Chinese origin (although the number of individuals affected by the exclusion was much smaller than in British Columbia).

British Columbia had a long history of such discrimination: when it entered Confederation, 61.7 per cent of the province's population was of Aboriginal or Chinese origin, while people of British origin accounted for 29.6 per cent of residents. Measures excluding Aboriginal people and people of Oriental origin from the franchise were extended as immigration increased toward the end of the nineteenth century.

Legal discrimination

The exclusion was challenged in the *Homma* case of 1900, but in 1903 the Judicial Committee of the Imperial Privy Council (at that time the ultimate court of appeal for Canada) upheld the prerogative of the B.C. legislature to decide who could vote in provincial elections.

Denial of the franchise had far-reaching implications, because provincial law also required that pharmacists, lawyers, and provincial and municipal civil servants be registered on the voters list. As a result, Canadians of Japanese and Chinese origin were barred from these professions and from contracting with local governments, which had the same requirement.

Limited universality

Even military service was not enough to qualify them for the vote. After the First World War, the B.C. legislature decided, after much debate, not to give the vote to returning veterans of Japanese origin, much less to other Japanese Canadians. Some had voted in the 1917 federal election, under the terms of the *Military Voters Act*. Provincial disqualification did not deprive them of the federal vote. In the debate on the 1920 elections act, however, Hugh Guthrie, the solicitor general of the day, made clear his objection to enfranchisement:

> So far as I know, citizenship in no country carries with it the right to vote. The right to vote is a conferred right in every case... This Parliament says upon what terms men shall vote... No Oriental, whether he be Hindu, Japanese or Chinese, acquires the right to vote simply by the fact of citizenship...
>
> *Debates*, 29 April 1920, 1862

Guthrie maintained that his government was not discriminating but merely recognizing "the provincial disqualification imposed by the law of any province by reason of race."

In 1936, a delegation of Japanese Canadians asked the House of Commons to extend the franchise to them. Prime Minister Mackenzie King said that he had been unaware that they wanted the franchise. A.W. Neill, MP for Comox-Alberni, an area with a significant Japanese Canadian population, said the request for the franchise was "sob stuff" and "claptrap". Another B.C. member, Thomas Reid, suggested that the whole affair was a plot to enable the Japanese government to plant spies in British Columbia. Needless to say, given such views, the franchise was not extended.

More on racial exclusions

The war years and the bombing of Pearl Harbor brought expulsions and internment for Canadians of Japanese origin. In 1944, the federal government amended the *Dominion Elections Act* to deny the vote to the Japanese Canadians forced to leave British Columbia and relocate in provinces where they had not previously been disqualified from voting. Extending British Columbia's racially based disenfranchisement laws to the rest of Canada provoked considerable reaction from MPs representing other provinces.

The Co-operative Commonwealth Federation (CCF) member for Cape Breton South, Clarence Gillis, said,

> While we know that the war with Japan is a serious matter and that many atrocities have been committed by the people of that country, there is no reason why we should try to duplicate the performances of that country.

Arthur Roebuck, the Liberal MP for Toronto-Trinity, said that he

> could not face the minority groups in my own city – the Ukrainians, the Poles, yes the Italians, and many others – if I allowed this occasion to pass without making myself absolutely clear before this house and the country that, when it comes to racial discrimination against anybody, count me out.

Not all members were of like mind, however. A.W. Neill supported the disenfranchisement, stating that the evacuees were "being spread all over Canada like the smallpox disease. ...This is a white man's country, and we want it left a white man's country."

The elimination of racial restrictions

Prime Minister King denied that the policy was racist: a Japanese Canadian who had lived in Alberta before 1938 would not lose his vote, he argued, only a Japanese Canadian who moved there from B.C. after 1938. The evacuees were "still citizens of British Columbia", he said, and subject to its laws even though they no longer lived in the province. (*Debates*, 17 July 1944, 4912-4937)

After the Second World War, the most virulently anti-Japanese MPs lost their seats to more moderate members, and public opinion began to shift as well. Travel and other restrictions on Japanese Canadians continued until 1948, when Parliament deleted the reference to discrimination in the franchise on the basis of race. The discussion was brief, occupying just one column in the House of Commons debates for 15 June 1948. Although some Aboriginal people would not be enfranchised for at least another decade, this particular form of racism in Canadian electoral law now belonged to history.

Religious exclusions

Several religious groups were disenfranchised by the *War-time Elections Act* of 1917, mainly because they opposed military service. Most prominent among them were the Mennonites and the Doukhobors. This disenfranchisement ended with the end of the First World War, but the treatment later accorded the two groups in the development of the franchise varied enormously.

Mennonites migrating to Canada in the 1870s had been given an exemption from military service by an order in council dated 3 March 1873, but they lost the franchise during the First World War because they spoke an "enemy language" (German). They regained the vote when the *Dominion Elections Act* of 1920 superseded the *War-time Elections Act*.

The Mennonites attracted relatively little anti-alien hostility, as their way of life allowed them to blend into the farming communities of the prairies. By contrast, the Hutterites and the Doukhobors aroused more animosity, not so much because of their pacifist beliefs, but because they practised communal farming. The Hutterites had migrated to Canada from the United States in 1918, to avoid conscription. Although they sparked some opposition locally where they settled, generally they attracted little notice, and they rarely voted.

The Doukhobors were another matter. In 1917, and again from 1934 to 1955 (when the ban on voting by conscientious objectors was lifted), Doukhobors lost the federal franchise, ostensibly because their faith forbade them from bearing arms. The debates in the House of Commons showed clearly, however, that the MPs who opposed giving Doukhobors the vote were less concerned about military service than about the Doukhobors' social views and behaviour.

Debate on the 1934 *Dominion Elections Act* in particular revealed the fear and narrowmindedness of some British Columbia MPs, by contrast with more widespread support for freedom of religion from MPs of other provinces.

W.J. Esling, the Conservative member for Kootenay-West, stated that if MPs from other provinces had been in his constituency, they "would all have been quite willing to disenfranchise this religious sect."

Another Conservative MP, Grote Stirling, soon to be minister of national defence, said the Doukhobors behaved "with disgusting indecency". In particular he resented the fact that they "voted Liberal en bloc", on the orders of their leader.

A.W. Neill, the Independent MP for Comox-Alberni, said that only "sickly sentimental" MPs wanted Doukhobors to have the franchise.

One of the MPs who did support the Doukhobors was J.S. Woodsworth, leader of the CCF. He praised the Doukhobors for their industriousness and protested against "religious tenets being made the basis for disfranchisement." Woodsworth and a number of Liberal MPs participating in the debate pointed out that the Doukhobors could hardly become good citizens if they and their descendants were disenfranchised.

Debating further revisions to the elections act in 1938, Esling, Stirling and Neill again opposed giving Doukhobors the vote. T.C. Love, provincial member for the B.C. region where the most Doukhobors had settled, claimed that giving them the vote would be the "end of true democracy in the West Kootenays". (*Vancouver Province*, 7 April 1938) The Doukhobors remained disenfranchised.

Discrimination ends

After the Second World War, as part of the general easing of racial and religious discrimination, racial disqualifications from the franchise were gradually dropped. In 1955, in yet another revision of the *Canada Elections Act*, the following appeared:

> 4. (1) Subsection (2) of section 14 of the said Act is amended by adding the word "and" at the end of paragraph (g) thereof, by repealing paragraph (h) thereof, and by relettering paragraph (i) thereof as paragraph (h).

An MP who looked up "paragraph h" would find that it referred to Doukhobors (though not by name). There was no debate on this clause, which removed the last vestige of discrimination against a religious group in Canadian electoral law.

ABORIGINAL PEOPLE AND THE FRANCHISE

"Indians" in most parts of Canada had the right to vote from Confederation on – but only if they gave up their treaty rights and Indian status through a process defined in the *Indian Act* and known as 'enfranchisement'. Quite understandably, very few were willing to do this. Métis people were not excluded from voting; few were covered by treaties, so there were no special rights or other basis on which to justify disqualifying them. Inuit were not excluded either, but no steps were taken to include them. Most were geographically isolated well into the twentieth century, so in the absence of special efforts to enable them to vote, they had no means to exercise the franchise.

Aboriginal peoples had formed social groupings and elaborated systems of government well before their first contacts with Europeans. Many therefore looked unfavourably on nineteenth-century proposals for enfranchisement for at least two reasons: first, it would mean an end to their recognition as distinct nations or peoples – as signified by their treaties with France, Great Britain and later Canada – and the beginning of assimilation into non-Aboriginal society.

An alien system

Second, voting in Canadian elections would mean participating in a system of government that was quite alien to the traditions, conventions and practices of governance of many Aboriginal peoples. Further, electoral participation would have been essentially redundant – they already had their own systems for choosing leaders and governing themselves.

In short, Aboriginal people were unenthusiastic about having the right to vote if it meant giving up their individual and group identity. Thus, until the government of Canada extended the vote to Indian persons unconditionally in 1960, there is little evidence that Aboriginal people wanted it or sought it.

A lengthy debate

Proposals from non-Aboriginal politicians to extend the franchise date at least to 1885, although they met a great deal of hostility. Isaac Burpee, MP for Saint John, said that the Indian knew no more of politics "than a child two years old", while A.H. Gillmor, the member for Charlotte, called the proposal to give Indians the vote "the crowning act of political rascality" on the part of Sir John A. Macdonald.

One reason for this opposition, apart from prevailing paternalistic or racist social attitudes, was the notion that Aboriginal people would become the dupes of non-Aboriginal politicians. Both Canada and the United States have a long tradition of newly-enfranchised voters voting en bloc, often as directed by their community leaders. As these voters gained more education and became more integrated into North American society, they tended to drift away from the influence of political 'bosses'.

For almost a century after the 1885 debate, there was little pressure to extend the franchise to Aboriginal citizens, though it was extended in 1924 to Aboriginal veterans of the First World War, including veterans living on Indian reserves.

"We are all united"

A great many Aboriginal people served with distinction in the Canadian forces during the Second World War, and this was among the reasons leading many Canadians to conclude that the time had come for all Aboriginal people to have the full rights of citizenship. A parliamentary committee recommended in 1948 that they be given the vote. The chairman of the Indian affairs committee said

> a great step would be taken toward the assimilation of the Indian into the population of the Dominion of Canada, and it would make not only Indians but the other Canadians realize that we are all united.

The government did extend the franchise to Inuit – who did not have treaties or reserves and so were considered 'ordinary citizens' already – but Indian people who wanted the vote would still have to waive their right to tax exemptions. Not surprisingly, given the significance of this treaty right, few did so.

The right to vote for all Aboriginal peoples

It was not until John Diefenbaker became prime minister that the franchise was extended with no strings attached. Mr. Diefenbaker had long advocated extending the vote to Aboriginal people. In his memoirs, he described how he had met many Indians as a child and had committed himself to getting them the right to vote. (*One Canada*, I, 29-30)

On 10 March 1960, after a debate marked by virtually unanimous support, the House of Commons finally gave Aboriginal people the vote without making them give up treaty rights in exchange. Mr. Diefenbaker then appointed James Gladstone to the Senate, where he was the first member of Aboriginal origin. In 1968, the first Aboriginal person elected to the House of Commons was Len Marchand, representing the B.C. constituency of Cariboo. More Aboriginal people have been elected since then, though by no means in proportion to their presence in the Canadian population.

No special act

In each of the instances just recounted – extension of the vote to Canadians of Japanese and Chinese origin, to the Doukhobors, and to Aboriginal people – change was accomplished by amending the existing electoral law. Such advances in the franchise might have been trumpeted as great achievements in human and democratic rights. For instance, J.W. Pickersgill, minister of citizenship and immigration in the previous Liberal government, suggested adoption of a special act to solemnize the 1960 enfranchisement of on-reserve Indians. But Ellen Fairclough, Canada's first female cabinet member, who was charged with seeing the amendments through the house, said that this would be "merely gilding the lily". (*Debates*, 10 March 1960, 1957)

Accessibility and the electoral process

Mechanisms to ensure that eligible voters could exercise their franchise multiplied in this period. In 1948, for example, time off to vote was increased to three hours. This rose to four hours in 1970, before settling back at three hours in 1996, when polling hours were extended, making the extra time off unnecessary.

A greater departure in voting procedures was the postal ballot for members of the armed forces. The Mackenzie King government instituted the system for military personnel serving overseas during the Second World War, allowing some 342,000 members of the armed forces to vote in the 1945 general election.

For the same election, proxy voting was introduced for Canadians being held as prisoners of war. Proxy votes (some 1,300 in 1945) were cast by the nearest relatives of those being held prisoner. The provision was restored in 1951 and used again during the Korean conflict, when 18 Canadians were prisoners of war.

Voting by people who were away from home on election day was accommodated by several innovations in this period. In 1951, special arrangements were introduced in sanatoriums and chronic care hospitals. Voting at polling stations set up in these locations (and in homes for the elderly after 1960) would be suspended temporarily so that election officials (with permission from those in charge of the facility) could take the voting equipment from room to room, enabling anyone who was bedridden to vote if they wished to do so.

In addition, the military postal ballot was extended to the spouses of armed forces personnel in 1955, so that they could vote while accompanying their husbands or wives on a posting away from the home constituency.

Consolidation and review, 1961-1982

By 1960, then, amendments to Canada's electoral law had resulted in significant advances over the situation in 1920: racial and religious discrimination was no longer a factor in voter qualifications, and no major group was deprived of the franchise deliberately or directly. The most significant changes in the law were concerned mainly with refining the electoral system – changes that affected how the system worked, rather than the extent or nature of the franchise.

Among these modifications were recognition of political parties in the law and the appointment of impartial commissions to set new constituency boundaries to reflect demographic change. Both changes had significant effects on the electoral process; but from an elector's perspective, the most discernible result was probably the appearance of candidates' party affiliations on the ballot and the opportunity to make a tax-deductible contribution to a political party.

This period also saw numerous changes affecting individual voters, including extension of advance voting provisions to all voters, adjustments to voters lists, and reduction of the voting age to 18. In addition, this was a period when the rights and concerns of people with disabilities began to gain greater public recognition, resulting in changes in their access to the polls and privacy in casting their ballots. Finally, the passage of official languages legislation meant that voters everywhere would have access to election materials in both official languages.

Advance voting

When first introduced in 1920, voting at advance polls had been limited to only a few classes of voters. Advance voting was extended to members of the RCMP and the armed forces in 1934 and to members of the military reserves in 1951. In each case, a voter at an advance poll had to swear on oath that he or she would be away on business on election day.

The election of 1953 was held in August, when many potential voters were on vacation. Turnout was only 68 per cent, compared with 75 per cent in the June 1949 election and 75 per cent in the June 1957 election. The Progressive Conservatives felt that they had been especially hard-hit by this.[*] After the Conservatives gained power at the 1957 election, the advance vote was extended to all electors who had reason to believe they would be absent from their polling division on election day and therefore unable to vote. Electors still had to swear an affidavit, however, under this 1960 amendment to the act. At the next general election – in 1962 – voter response was remarkable. The number of advance votes rose from an average of 10,000 in previous elections to nearly 100,000 and has risen steadily ever since.

In 1977, the requirement to swear an affidavit was dropped. At the same time, a provision was introduced allowing people to vote at the returning officer's office during the electoral period if they could not vote at an advance poll or on election day. This provision was dropped in 1993, when the special ballot rendered it unnecessary.

Voter notification

As we have seen, the 1934 provision requiring that a postcard be sent to each registered elector proved too expensive. Instead, voters were sent a copy of the list of electors for their poll. This system continued for several decades, but by the 1970s many voters were objecting to what they considered an unacceptable invasion of privacy – in particular, women living alone and people who thought their occupation or the identity of the members of their households was no one's business but their own. There were also concerns that the lists – which together contained the names, addresses, and occupations of the adults in every household in the country – could be used for other than electoral purposes.

In 1982 this provision was therefore dropped from the act. Instead, in a move reminiscent of 1934, each registered elector would receive a postcard confirming registration and showing where to vote; technological change had made this approach much more feasible and affordable than it had been in 1934. Electors who did not receive a card would know that they had to take steps to register if they wanted to vote.

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[*] *Debates*, 27 January 1954, 1515. J.W. Pickersgill, replying for the Liberals, said that "if there are a great number of Canadians who value their holidays more than their franchise, that does not mean they were disfranchised."

Opening up the process

In the largest expansion of the vote since women were enfranchised in 1918, people between the ages of 18 and 20 got the vote in 1970 and used it for the first time in the 1972 election. Although reducing the voting age to 18 expanded the electorate considerably – by some two million young people in all – this change was not quite like removing religious or racial discrimination from the electoral law. After all, nearly everyone who gained the franchise in 1970 would have done so within a few years anyway, simply by growing older; a significant number of them would have been able to vote in 1972 even if the voting age had not been lowered. The same could not be said of citizens excluded from the vote on racial or religious grounds. Also, unlike extension of the franchise to racial and religious minorities, lowering the voting age aroused relatively little controversy. It was the ’70s, the youth culture was at its height, and a general opening up of social and political life had begun as the politics of participation took hold.

This same social climate gave rise to greater recognition of the rights of voters with disabilities and others who might be excluded from voting for reasons related to physical abilities or illness. This recognition produced some legislative change, but for the most part voters’ special needs were addressed through administrative measures that were later incorporated in the law. Thus, for example, a 1977 amendment to the law introduced transfer certificates, allowing electors to vote at an advance poll with level access if their own was inaccessible. At the same time, throughout the 1970s, polling stations were located increasingly in public buildings, so that level access became more widely available. Special templates were also devised so that voters who were blind or visually impaired could preserve the secrecy of the vote, casting their ballots without assistance. These administrative arrangements became part of the law in 1992.

Voting by proxy and voting outside Canada

Proxy voting was extended twice in this period – to fishermen, sailors and prospectors in 1970, along with people who were ill or had physical disabilities, and to airplane crews, forestry and mapping teams, and trappers in 1977. (In 1993, proxy voting was repealed when the special mail-in ballot made it redundant.)

A third set of changes opened the vote to certain classes of electors living abroad. Public servants (mainly diplomats) and their dependants posted outside Canada became eligible to use the special voting rules – previously available only to military personnel and their dependants – in 1970, as did civilian employees of the military (usually teachers and administrative support staff at schools on Canadian forces bases) in 1977. But ordinary Canadians who happened to be away from home in an election period still could not vote.

A final set of administrative changes related to the *Official Languages Act*, which applied to constituencies where at least 5 per cent of the population spoke the minority official language. There were 92 such electoral districts across the country.

One slight narrowing of the franchise occurred in this period. In 1970, the law was amended to provide that British subjects who had not adopted Canadian citizenship would be disqualified from voting unless they took out citizenship by 1975. Before then, British subjects were qualified electors, but they had to be “ordinarily resident in Canada”.

THE CHARTER: A WATERSHED

No doubt the most significant influence on electoral law in the post-war years was adoption of the *Canadian Charter of Rights and Freedoms*, which came into effect on 17 April 1982. Sections 2 to 5 of the Charter set out fundamental freedoms and democratic rights. Section 3 states that

> Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly [of a province or territory] and to be qualified for membership therein.

Many Canadians probably assumed that their right to vote was assured well before 1982. But as we have seen throughout this book, many people had been denied the franchise – some on racial or religious grounds, and others because they could not get to a poll on voting day, because of mistakes in compiling voters lists, or for other largely administrative reasons.

The primacy of principles

Even when improvements in election law were proposed – for instance, extending advance polling to groups other than railway workers and commercial travellers – they sometimes provoked resistance and grumbling in Parliament. We have seen, for example, how it took 50 years to extend advance voting to everyone who wanted it; each time a new group was given the 'privilege' of advance voting, there was opposition, generally on the basis of cost or administrative convenience. Arguments based on democratic rights and principles were heard less often.

The Charter signalled a different approach. It guaranteed the right to vote, as well as freedom of thought, expression, and association – subject only to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Moreover, legislatures cannot override the right to vote (as they can some other Charter provisions) using the so-called 'notwithstanding' clause.

Implementing the Charter

The Charter also provides a basis on which to challenge losses or infringements of rights. Someone denied the franchise, for example, could appeal to the courts; if the appeal was successful, the courts might strike down part of the law or require changes in the administrative rules that resulted in disenfranchisement – and this is indeed what has happened on occasion since 1982.

Significant advances in election law and administration occurred before the advent of the Charter, of course – denial of the franchise on the basis of sex, religion, race and income had been removed from the law, and administrative steps had been taken to improve access to the vote for people with disabilities, people away from home on election day, and members of the public service and the military serving abroad.

Notwithstanding the changes since the Second World War, disqualifications remained for judges, prisoners, and people with mental disabilities, and some people were still administratively disenfranchised. In addition, some citizens' electoral participation had also been curtailed: civil servants in some jurisdictions, for example, were prohibited from engaging in activities that would reveal partisan preferences.

Legal and administrative progress

Step by step since 1982, many of these problems have been addressed through steps by Parliament and by election officials to ensure that Canada's electoral system is not only legally but also administratively consistent with Charter principles, making the vote accessible to everyone entitled to cast a ballot.

Assistance in this task was provided by the Royal Commission on Electoral Reform and Party Financing, appointed by the federal government in 1989 to review, among other issues, the many anomalies identified by Charter challengers. The Commission's recommendations were reviewed by Parliament, with advice and support from the Chief Electoral Officer. The result was the passage of Bill C-78 in 1992 and Bill C-114 in 1993, which together initiated significant change in the way electoral law dealt with access to the vote.

In the following pages, each of these developments – enfranchisements as a result of Charter challenges, and legislative change since the Charter – is examined in turn.

Charter enfranchisements

To date the principal beneficiaries of Charter challenges to electoral law have been judges, prisoners, and people with mental disabilities.

Judges appointed by the federal cabinet had been legally disqualified from voting since 1874. The law remained in place until 1993, but a Charter-based court ruling at the time of the 1988 general election rendered the provision inoperative. About 500 federally appointed judges then became eligible to cast ballots in federal elections after a court struck down the relevant section of the *Canada Elections Act*, declaring it contrary to the Charter's guarantee of the right to vote.

Voting by prisoners

Prisoners had not been allowed to vote since 1898 – although according to at least one MP, Lucien Cannon, some inmates appear to have found a way around the rules:

> I know a case where the prisoners were allowed, under a sheriff's guard, to go and register their votes and they came back afterwards.
>
> *Debates*, 19 April 1920, 1820

The solicitor general of the day appeared not to credit this story, replying that prisoners might be on voters lists, but since they could not get to a ballot box, they would be disenfranchised in any event.

Until 1982, there was little parliamentary support for ensuring that prisoners could exercise the right to vote. Since 1982, however, inmates of several penal institutions have relied on the Charter to establish through the courts that they should indeed be able to vote. They began by challenging provincial election laws, where they had some success. Then, during the 1988 federal election, the Manitoba Court of Appeal ruled that the judiciary should not be determining which prisoners should or should not be disenfranchised; this was a matter for legislators, not judges.

Since then, judicial opposition to a general disqualification of prisoners has been demonstrated in various court decisions: by the Federal Court of Canada in 1991, the Federal Court of Appeal in 1992, and the Supreme Court of Canada in 1993, and indeed, prisoners were allowed to vote at the 1992 federal referendum as a consequence of court decisions.

Challenged exclusions

These cases determined that a general or blanket disqualification of all inmates would no longer be tolerated under the Charter, but the courts did not establish what specific disqualifications would be acceptable, leaving that decision to legislators. In 1993, Parliament removed from the law the disqualification for prisoners serving sentences of less than two years, but for prisoners serving longer terms, the disqualification remained in effect.

The new provision was challenged by an inmate serving a longer sentence. The Federal Court agreed with the inmate in a 1996 decision, stating that the new provision was incompatible with section 3 of the Charter and did not constitute a “reasonable limit” in a free and democratic society. This decision has been appealed, but in the meantime, the 1996 ruling stands, and all prisoners can vote.

The rights of people with disabilities

In the 1980s and early ’90s, several changes in election administration and the law improved access to the vote for electors with disabilities. One group of people with disabilities remained disenfranchised, however – people “restrained of [their] liberty of movement or deprived of the management of [their] property by reason of mental disease”. In 1985, a Commons committee recommended that they be enumerated and have the same right to vote as other Canadians, and the Royal Commission reached a similar conclusion in its 1991 report.

In the meantime, the provision was struck down by the courts. In 1988, the Canadian Disability Rights Council argued in a Charter challenge that the *Canada Elections Act* should not disqualify people who were under some form of restraint because of a mental disability. The court agreed, although the ruling did not specify what level of mental competence would qualify a voter. In 1993, Parliament removed disqualification on the basis of mental disability as part of a broader overhaul of the statute.

The legislative record

The principal post-Charter innovations in the electoral system were embodied in three legislative measures: Bill C-78 in 1992, Bill C-114 in 1993, and Bill C-63 in 1996.

Following on recommendations from the Royal Commission on Electoral Reform and Party Financing, a parliamentary committee, and the Chief Electoral Officer, Bill C-78 contained amendments to the *Canada Elections Act* (along with several other federal statutes) to assure access to the electoral process for people with disabilities (see box). The Chief Electoral Officer was also given a specific mandate to initiate public education and information programs to make the electoral process better known to the public, especially those most likely to experience difficulties exercising the franchise – whether because of disabilities, language barriers, or other factors.

Bill C-114 took accessibility another step forward, introducing the so-called special ballot – a mail-in registration and voting system – for Canadians away from their home constituencies, prison inmates, and any other elector who cannot vote in person on election day or at an advance poll. At last, all Canadians living or travelling outside the country – not just military personnel and diplomats – could vote, provided they had not been absent from Canada for more than five years and intended to return home at some time. Bill C-114 also removed the legislative disqualification of several additional groups, including people with mental disabilities.

Access to the vote

Among the main provisions of Bill C-78 (1992) were these:

- mobile polling stations for institutions where seniors and persons with disabilities live, to enable election officials to bring a ballot box to people who might have difficulty getting to the ordinary polling place.
- templates for the use of voters who are blind or have low vision.
- level access at all polling stations and the returning officer's office, with unavoidable exceptions permitted only with the authorization of the Chief Electoral Officer.
- a procedure to enable people with disabilities to vote at a different poll if their own poll was still inaccessible.

Bill C-63

Bill C-63, passed in December 1996, introduced three significant changes:

- Polls are now open longer – 12 hours instead of 11 – on election day, and voting hours are staggered, so that election results become available at about the same time across the country. Longer polling hours mean greater convenience for voters, and staggered poll closing times help deal with a long-standing grievance of western voters: the release of election results from eastern and central Canada before some electors in the west have had a chance to vote.
- The law now provides for the establishment and regular updating of a permanent register of electors, in the form of an automated data base. This provision eliminates the need for door-to-door enumeration at each election. The new register, used for the first time to generate the preliminary voters lists for the 1997 general election, continues Canada's tradition of reaching out to voters and making it easy for eligible electors to safeguard their right to vote by getting their names on the voters list.
- This in turn permits another change long advocated by many voters – a shorter election campaign. The minimum time required between the issue of the election writs and polling day is reduced to 36 days from 47.

A permanent register of electors

The subject of a permanent register of electors – first broached in the 1930s – came up again in the 1980s. In 1991, the Royal Commission recommended that provincial lists be used for federal purposes, judging that the right conditions for establishing a federal register had not yet been met. These conditions appeared to be in place by 1995, when Elections Canada established a working group to look at the many technical, legal, financial, and other issues involved in establishing a register.

Once the National Register of Electors was established – through one last enumeration in April 1997 – elections and referendums could be conducted using preliminary voters lists generated from the register, which would be updated regularly using data from a variety of sources. For example, the 3.2 million Canadians who move every year (about 16 per cent of the electorate) will have their new address added to the register of electors automatically when they submit a change of address for their driver's licence.

As a result, enumeration to compile voters lists – a time-consuming and expensive undertaking involving more than 100,000 enumerators at each election – takes its place in history, alongside oral voting, proxy voting and other procedures of the past.

CONCLUSION

The modern era in the history of the vote in Canada – beginning with the new approach to the federal franchise embodied in the 1920 elections act and continuing to this day – can be seen as four distinct periods to date. The first, beginning with the 1920 *Dominion Elections Act* and lasting until 1939, was a period of modest, mostly administrative changes, with few advances in the franchise itself. The overwhelming majority of Canadians age 21 and over had the vote by this time, but there was still clear discrimination against several groups: immigrants of Asian origin and their descendants, certain religious groups, and "status Indians", who had to give up that status and the rights it entailed if they wanted to vote.

The second period, 1940-1960, saw the end of discrimination against groups singled out for disenfranchisement on racial and religious grounds. There were also numerous legislative and administrative changes that made it convenient for more people to vote or extended existing access measures to more classes of electors.

The third period, 1960-1982, saw significant improvements in election administration – many designed to ensure that eligible voters could cast a ballot even if they had a disability – as well as the lowering of the voting age. By the time the *Canadian Charter of Rights and Freedoms* came into effect in 1982, most Canadians age 18 and over had the vote,[*] and there had been great improvements in electors' access to the polls.

The Charter and electoral rights

The final period, which began with the advent of the Charter in 1982, has been characterized in part by court-driven reforms stemming from Charter-based challenges and in part by changes initiated by the executive and legislative branches, through a royal commission, parliamentary committees, and reports of the Chief Electoral Officer. Three sets of electoral law revisions in the 1990s resulted in greater accessibility of the vote and better administrative practices to ensure that the electoral system has the flexibility to meet the evolving needs of the electorate. With advance polls, the special (mail-in) ballot, polling-day registration, and uniform level access at polling places, virtually all Canadians age 18 and older have both the right to vote and the means to do so. Interestingly, even with these improvements in access to the vote, the vast majority of electors (more than 90 per cent at the last general election) still choose to exercise the franchise at an ordinary polling station on election day.

[*] Those excluded from voting in federal elections are the Chief Electoral Officer, the Assistant Chief Electoral Officer, the 301 returning officers (except in the case of a tie between the two leading candidates in a constituency), and people convicted of fraud or corruption offences under the *Canada Elections Act*.

In short, as the franchise was transformed in its first century, the electoral system itself has been transformed since 1920 – by enfranchising groups or classes of citizens that had been deliberately excluded by law and by eliminating most cases of inadvertent administrative disenfranchisement. If the first century and a half of Canada's electoral history – from 1759 to 1920 – was mainly a story of extending the vote to people previously excluded by reason of income, sex, race or religion, the second half of the story was and continues to be an account of how legislators, courts and election officials have worked to ensure that everyone eligible to vote can exercise this fundamental democratic right of citizenship freely, easily and confidently.

As we have seen throughout the narrative recounted in this book, the rights and institutional protections that are the legacy of history are not static or impervious to change. But the very qualities that make them flexible and capable of adaptation to changing social values also make them fragile and potentially vulnerable. Like democracy itself, they are living organisms that must be tended with care and given the means to flourish. This is the challenge that must be met afresh by each new generation of voters.

SUMMARY: THE VOTE THROUGH THE DECADES

1920 *Dominion Elections Act* consolidates Parliament's control of federal franchise, introduces advance voting and establishes post of Chief Electoral Officer.

1921 First federal election at which women vote on the basis of the universal franchise.

1930 Government of R.B. Bennett introduces standing list of electors to replace enumeration, but abandons the approach as impractical and expensive after one election.

1940 Women gain the provincial franchise in Quebec.

1948 Disqualifications on the basis of race eliminated from federal electoral law.

1955 Last vestiges of religious discrimination removed from federal elections act.

1960 Government of John Diefenbaker extends the franchise unconditionally to "registered Indians".

1971 Voting age lowered to 18; 18-year-olds vote for the first time in 1972 general election.

1982 *Canadian Charter of Rights and Freedoms* entrenches the right to vote.

1992 Bill C-78 formalizes measures to ensure access to the vote for people with disabilities.

1993 Introduction of special ballot (Bill C-114) permits voting by anyone who can't vote on election day or at an advance poll, including Canadians living or travelling abroad.

1996 National Register of Electors (Bill C-63) eliminates door-to-door enumeration. Bill also introduces longer and staggered voting hours.