



Assembly of First Nations Chief Perry Bellegarde predicted indigenous voters could affect the outcome in 51 ridings. Strong First Nations and youth voter turnout, partly in protest to the vouching provisions of the Fair Elections Act, helped seal the fate of the Conservatives. Adam Scotti photo

# How the “Fair Elections Act” Backfired and Helped Defeat the Harper Government

Bruce Carson

*The Conservative government's Fair Elections Act, one of the most controversial pieces of legislation of the final years of the Harper era, was a pre-election gambit designed to disenfranchise key constituencies, hamstringing the Chief Electoral Officer and re-write election spending rules in a way that many thought was intended to benefit the incumbent regime. It backfired.*

Section three of Canada's Charter of Rights and Freedoms 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 and be qualified for membership therein.” So when Pierre Poilievre, then Minister of State for Democratic Reform, in February 2014 introduced

the Fair Elections Act in the House of Commons, one would naturally have assumed that such legislation would build on the Charter right to vote. One could believe that a bill bearing such a title would make it easier for Canadian citizens to vote and address other matters that needed to be fixed in the Canada Elections Act.

The time between the bill's introduction and its receiving Royal Assent on June 19, 2014, was just over four months. However, the issues raised in this attempt to amend the Canada Elections Act dominated political discourse in a fashion heretofore unseen, at least in recent memory, particularly on a bill purportedly bringing a greater degree of fairness to Canada's electoral system.

There is no question that the bill was wide-ranging, attempting to provide answers to a number of recommendations contained in reports and studies from Elections Canada and the House of Commons Procedure and House Affairs Committee.

During the study of this bill, the opposition parties raised a number of objections and offered amendments concentrating on five significant areas. There were many more criticisms and many more areas where amendments were proposed, but it is these areas that stand out and in fact almost three pages of the Liberal election platform were dedicated to the topic of "open and fair elections," proposing to repeal the sections of the Fair Elections Act which they found most egregious.

The five areas that drew the majority of comments were: proposals to eliminate vouching as a means of voter identification; the raising of campaign finance limits; communications between the Chief Electoral Officer (CEO) and voters; the role of the Commissioner of Canada Elections; and the imposition of provisions dealing with robocalls.

One series of amendments that did not provoke serious objections were those that entrenched an Advisory

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Committee of Political Parties in the Canada Elections Act. The purpose of this committee is to provide the CEO with advice and recommendations relating to elections and political financing. In the days when Jean-Marc Hamel was CEO (1966-1990), such an *ad hoc* advisory group met with Hamel on a fairly regular basis ironing out issues before they became problematic either for the parties or Hamel. In the years since his departure, such a group was consulted irregularly.

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If there was an overarching theme to the criticism raised about this bill, it was that it tilted the electoral playing field in the direction of the Conservative government and even if it didn't go that far, it at the very least addressed a number of matters that had irritated the government for some time. Marc Mayrand, the CEO who was appointed by the Conservative government, in interviews and committee appearances, indicated that the role of the CEO

was diminished by this bill.

Dealing with the areas that drew the most comments, the Act made significant changes to campaign financing rules. Individual contribution limits were increased, as were election spending limits for political parties, candidates and nomination contestants. There was even a clause that allowed for incremental increases in spending limits should the election period last longer than 37 days. When the October 19 election was called on August 4, the conventional wisdom was that this clause would benefit the Conservatives, as they had the largest bank account. Events proved otherwise.

Attempts in the bill to limit communications by the CEO with voters were just plain stupid. While the original proposal was changed somewhat in committee, this is an area that should be reviewed by the new government. The CEO should be able to engage in public education in order to increase the number of votes cast in an election. The CEO should be able to deal with Canadians regarding the right to vote and the importance of exercising this right.

The position of the Commissioner of Canada Elections has changed as a result of the Act. The Commissioner, while still responsible for investigations of alleged offences under the CEA, is now appointed by the Director of Public Prosecutions (DPP) for a non-renewable term of seven years. The position of the Commissioner is now within the Office of the DPP. While the Commissioner took great exception to this change during committee hearings, it could be of some benefit in the long run. One of the main criticisms of Elections Canada is the

interminably long time that investigations take and if the move to put the Commissioner in with the DPP can speed up this process, it would be an improvement. The Trudeau government should review this part of the Act to determine if this move has resulted in efficiencies. The government should also consider broadening the investigatory tools available to the DPP.

**W**hile it may be too early to conclude that the new provisions set out in the Act were effective in relation to robocalls, at this point, given the lack of complaints, it may be concluded that they provided a significant chill so that a situation comparable to the 2011 election in the Guelph constituency did not arise. When this part is reviewed, the role of the Canadian Radio-Television and Telecommunications Commission should be examined. The CRTC was inserted here because of its expertise dealing with telemarketers and a review should focus on whether the CRTC is the right entity to police robocalls, or whether it should fall within the jurisdiction of the Commissioner and the DPP.

While it may be arguable that some of the above noted changes brought about by the Act have some legitimacy, there is no valid reason behind the changes brought about to the vouching provisions of the Canada Elections Act other than to suppress the votes of certain groups.

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Arguments came from the Conservatives that these changes were necessary to protect the integrity of the electoral system. The poten-

tial damage that could have resulted from changes to the vouching provisions far outweighs any benefit. These changes, when added to the elimination of the Voter Information Card as valid proof of identity, became the lightning rod for those who opposed the Act. In the words of CEO Mayrand, “Eliminating vouching and the information card would do little to improve the integrity of the voting process and have taken away the ability of many qualified electors to vote.” While changes were made to allow a limited form of vouching with regard to addresses through an oath system, the damage had been done.

An unsuccessful court challenge was brought seeking an injunction. However, when dealing with the case, Judge David Stinson of the Ontario Superior Court stated, “There is a risk that some individuals who would otherwise rely on the Voter Identification Card to enable them to vote will be unable to do so, which would result in irreparable harm.”

It is arguable that these provisions of the Act, designed to suppress voter turnout, actually had the exact opposite effect as they galvanized both university students and Canada’s indigenous population to obtain the identification required under the Act and vote in numbers never before seen in a federal election.

Before the election was called, Perry Bellegarde, national chief of the Assembly of First Nations stated quite unequivocally that the results in 51 ridings could be affected by a strong turnout of indigenous voters. He was tapping into an anger that had been growing for some time. The First Nations’ Rock the Vote movement was in full swing, ensuring that record numbers of First Nation members were being registered and would have the identification necessary to enable them to vote. In some communities, voting increased by 270 per cent over 2011 numbers. The Fair Elections Act, which they believed was drafted to suppress their vote, the possible

effects of the Anti-Terror Act on indigenous protests and the platforms of the Liberals and NDP, which specifically addressed indigenous issues, spurred on Canada’s indigenous peoples to exercise their right to vote.

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**W**hen the final chapter is written on the 2015 general election, no doubt many political analysts will say the tipping point occurred during the campaign. They will argue that it could have been the leaders’ debates, the lack of new policy ideas from the Conservatives, the Syrian refugee crisis, the niqab controversy or the final Conservative grasp for votes via the barbaric cultural practices snitch line.

I would argue that the tipping point came more than a year before the election was called with the passage of the Fair Elections Act, which spurred on those whom the Act attempted to disenfranchise to cast their ballots against the party that attempted to silence them. **P**

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