

Scan of original letter:

Monsieur Nicolas Duchastel de Montrouge

12415 NE 154th Place

Woodinville, WA, 98072

USA

Monsieur Duchastel de Montrouge,

La-présente fait suite à votre lettre du 9 janvier 2012, dans laquelle vous nous demandiez de clarifier comment vous pouvez exercer votre droit de vote en dépit du fait que vous ne pouvez plus voter en vertu des règles électorales spéciales selon la Loi électorale du Canada (la Loi).

En effet, la Loi permet à un électeur résidant à l'étranger de voter par bulletin de vote spécial si l'électeur a résidé à l'extérieur du Canada pour une période de moins de cinq ans et que l'électeur à l'intention de revenir résider au Canada. Pour un électeur qui ne satisfait pas ces critères, l'exercice du droit de vote ne peut se faire qu'à un bureau de vote par anticipation ou à un bureau de vote ordinaire, le jour du scrutin. A moins que l'électeur n'ait acquis un nouveau lieu de résidence au Canada, il devra continuer d'exercer son droit de vote au lieu de sa dernière résidence habituelle au pays, comme c'est le cas lors du vote en vertu des règles électorales spéciales. Il devra toutefois être en mesure de présenter une preuve d'identité et d'adresse correspondant à ce lieu, ce qui peut présenter des difficultés additionnelles pour l'électeur.

Nous reconnaissons que la possibilité de voter à un bureau de vote par anticipation ou un bureau de vote ordinaire ne constituent pas des options accessibles à la grande majorité des électeurs résidant à l'étranger. Néanmoins, dans l'éventualité où vous seriez présent au Canada lors des jours du vote par anticipation ou le jour du scrutin, et que vous désiriez voter, nous vous invitons à nous contacter au 1-888-222-2565 au préalable afin que nous puissions vous aviser des modalités à suivre pour l'exercice de votre droit de vote.

Je vous remercie de l'intérêt manifesté à l'égard du système électoral fédéral et vous prie d'agréer, Monsieur, mes salutations distinguées.

Lyne Morin

Administratrice des règles électorales spéciales

Automatic translation (using <http://www.microsofttranslator.com/>):

Mr Nicolas Duchastel Montrouge

12415 Does 154th Place

Woodinville, WA, 98072

USA

Mr Duchastel Montrouge,

The present fact due to - your letter of January 9, 2012, in which you request to clarify how you can exercise your right to vote despite the fact that you can no longer vote under the special voting rules according to the electoral law of the Canada (the Act).

Indeed, the Act allows an elector residing abroad to vote by special ballot if the voter has resided outside Canada for a period of less than five years and that the voter intends to return to Canada. For an elector who does not meet these criteria, the exercise of the right to vote cannot be only to a polling, polls or ordinary polling the polling day. Unless the voter has acquired a new place of residence in the Canada, it must continue to exercise its right to vote instead of his last residence in the country, as is the case in the vote under the special voting rules. However, it must be able to present proof of identity and address corresponding to this place, which can present additional difficulties for the voter.

We recognize that the opportunity to vote at an advance poll or ordinary polling are not options available to the vast majority of voters residing abroad. Nevertheless, in the event where you would be present at the Canada in the days of the polls or the day of the election, and that you wanted to vote, we invite you to contact us at the 1-888-222-2565 in advance so that we can notify you terms and conditions for the exercise of your right to vote.

I thank for the interest the federal electoral system and ask you sincerely, Sir, my sincerely.

Lyne Morin

Administrator of the special voting rules

Analysis by Nicolas:

The key part is this one.

“Pour un électeur qui ne satisfait pas ces critères, l'exercice du droit de vote ne peut se faire qu'à un bureau de vote par anticipation ou à un bureau de vote ordinaire, le jour du scrutin.”

If we do not satisfy for special voting (i.e. within 5 years outside Canada), we can still vote using 'normal' voting mechanisms: a) pre-voting or normal voting at the polls on the day of.

Another part is this one:

“...il devra continuer d'exercer son droit de vote au lieu de sa dernière résidence habituelle au pays”

Which basically confirms that the voter must vote in the last riding he/she resided when left Canada.

The only problem or difficulty is to present proof of residency at that address:

« en mesure de présenter une preuve d'identité et d'adresse correspondant à ce lieu »

The letter doesn't clearly spell out the fact that the proof must be for the time when the citizen left Canada; but, I think that it is implied. Also, When I called and talked with someone at Elections Canada, she told me that yes, the purpose was to have proof from that time (i.e. when you left the country). This does bring up a few questions – see below.

So, basically, this letter confirms a total reversal of policy from Elections Canada and confirms what I had originally read in the law; i.e. even though there is special rules for Canadian citizens living outside Canada for up to 5 years; there is nothing which bars citizens from voting after 5 years; or even showing up in their old riding – before or after the 5 years anniversary of their departure from Canada.

Of course, the fact that one would have to physically show up at their old riding does make it complicated. Also, I can only image the confusion by the poll workers when one shows up with an outdated proof of address! This is why I have communicated (on Thursday May 17th) on the phone with Elections Canada staff. I asked them a few questions. These questions will be passed on to Mrs. Lynn Morin who will contact me back within the next 2 weeks.

Questions asks:

a) What proof are needed?

The preliminary answer was that 'normal' proof of address such as a driver's permit, bank statement, hydro bill, etc... should be accepted.

I did ask how Elections Canada, and in particular poll workers on the day of the vote (either the actual vote date or the anticipation vote date) could distinguish someone who has moved out of Canada and has an outdated proof of address and someone who still lives in Canada and simply tries to vote with outdated documents in another riding. They will have to consider this.

b) Can I be added to the Registry of Electors?

Section 45 of the law states that Elections Canada must include all valid electors on that register. Since it has now been established that our situation qualifies us as valid Electors, we must now be permitted to be on the Register.

This is essential to make voting on the actual day much easier; think of all the problems trying to explain yourself at the clerk on the voting day.

- c) Can the web site and other documentations be updated with this new information?
The web site and other documentation still indicate that if you are out of Canada for more than 5 years; you cannot vote. That needs to be fixed.
- d) What would happen for a citizen who never lived in Canada?
This is not directly related to our situation right now; but, it will occur in the future. In my case, I have 2 children born in the USA; they have never lived in Canada. Based on the Charter, and, more importantly, based on the law as it stands, they are permitted to vote; but where!?

Another question which I forgot to ask; but need to ask:

- e) There are always 3 ways to vote: i) vote at the poll (either on the day or by anticipation); ii) vote using special rules; or iii) vote by mail. This last one, vote by mail, is offered to any citizen in Canada, not just people outside within 5 years. So, Why can't I vote by mail? i.e. not using Part 11 and its complicated rules (e.g. limit of 5 years, must want to come back etc..).

Some interesting sections of the law:

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.

So, even if the law is flawed and does not properly address our case (i.e. Canadian citizen living outside Canada for more than 5 years), e.g. how do you determine the "place of residence", section 9 above does give the power to Election Canada officials to make rules to fix it. So, for example, they could setup a system where Canadian Citizen who register as living outside Canada can be added into a Register with their 'place of residence' for the Election Act being set to where they lived when they left Canada.

44. (1) The Chief Electoral Officer shall maintain a register of Canadians who are qualified as electors, to be known as the Register of Electors.

Contents of Register

(2) The Register of Electors shall contain, for each elector who is included in it, his or her surname, given names, sex, date of birth, civic address, mailing address and any other information that is provided under subsections 49(2), 194(7), 195(7), 223(2), 233(2) and 251(3).

Identifier

(2.1) The Register of Electors must also contain, for each elector, a unique, randomly generated identifier that is assigned by the Chief Electoral Officer.

Inclusion optional

(3) Inclusion in the Register of Electors is at the option of the elector.

This shows the requirement of the law: Everyone must be on the Register. Now, I can understand that for implementation details they decided to only add people living in Canada in their 1st database and keep a separate database for people outside Canada; living less than 5 years outside Canada

and satisfying Part 11. But, frankly, that is not my problem. They can either create a 3rd database or just create 1 database, with an extra field as a state = { LivingInCanada, OutsideLessThan5Years, OutsideMoreThan5Years }.

Finally, some other editorial notes.

To me, it does look that someone probably wanted to implement the law such that people living in Canada more than 5 years could not vote. The problem with this is that it is anti-constitutional; i.e. the law is invalid if trying to do that. But, more importantly, the law was badly written and it does not accomplish this – everyone is permitted to vote; although in a complicated way.

The best outcome would be to re-write the law and fix these issues. The solution cannot be a new law which completely bars Canadian living outside Canada for more than 5 years; that would be anti-constitutional. A solution would be to keep track of where people lived when they left; but, again, that would not address the situation of Canadian citizens who never lived in Canada. The best solution would be to establish some outside-Canada ridings; e.g. maybe 1 for Europe, 1 for Asia etc...

