The Right to Vote (5:VII)

This information applies to British Columbia, Canada. Last reviewed for legal accuracy by the Law Students' Legal Advice Program on 11 August 2025.

A. Introduction

The right to participate in the selection of their elected representatives is a basic right enjoyed by the citizens of any democracy. While this has always been recognized to some extent in Canada, in 1982 the right to vote was entrenched in the constitution by section 3 of the *Canadian Charter of Rights and Freedoms*. Under section 3, "[e]very citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein".

While this right is qualified by section 1 of the *Charter*, it is not subject to the overriding power provision (the "notwithstanding clause") of section 33. As a result, any government wishing to place restrictions on the right to vote must do so in a manner that is reasonable and demonstrably justified in a free and democratic society under section 1.

In this chapter, the discussion of voting rights will focus primarily on the requirements a person must meet to be eligible to vote in provincial, federal, and municipal elections.

B. British Columbia Provincial Elections

Eligibility requirements for BC provincial elections are outlined in the *Election Act*, RSBC 1996, c 106. Individuals should consult this act for a specific problem as the *Act* is too lengthy to be discussed in detail in this chapter.

1. General Information

The province is divided into various electoral districts, each represented by an elected Member of the Legislative Assembly (MLA). Each district has a registrar of voters whose duty is to ensure that the election of candidates in that district is carried out properly. The elections process is supervised by the Chief Electoral Officer. Elections BC can be contacted at:

Elections British Columbia

Online	Website [1] Email: electionsbc@elections.bc.ca
Address	P.O. Box 9275 Stn Provincial Government Victoria, BC V8W 9J6
Phone	Toll-free: 1 (800) 661-8683

2. Who Is Eligible to Vote

Section 29 of the *Election Act* sets out who is eligible to vote in provincial elections. It states that in order to be eligible to vote in an electoral district, an individual must be a Canadian citizen over the age of 18, must be a registered resident of the electoral district, must have been a resident of British Columbia for at least six months, and must not be otherwise disqualified.

Although the requirement for individuals to be resident in British Columbia for six months seems to constitute a violation of section 3 of the Charter, case law has held similar provisions to be constitutional. In *Re Yukon Election Residency Requirements* [2], [1986] 2 BCLR (2d) 50 (CA), the BC Court of Appeal sitting as the Yukon's Court of Appeal upheld a 12-month residency requirement imposed by the territorial government. The court found that this was a reasonable limit that was justified because of the desirability of having only persons familiar with local conditions voting for local representatives.

Section 30 disqualifies the following individuals from voting: the chief electoral officer, the deputy chief electoral officer, and anyone prohibited from voting under Part 12 of the *Election Act*.

Keep in mind that this is just a general guide and is not meant to be an exhaustive list. Consult the *Election Act* for more detailed and extensive information.

Section 32 of the *Election Act* provides that individuals may only vote in an electoral district in which they are resident. The *Act* defines a residence as the place where a person's habitation is fixed, and to which, if they are absent, they intend to return. Note the following additional considerations:

- Leaving one's home temporarily does not affect one's residency status, but if a person leaves with the intention to remain away either indefinitely or permanently, that person loses their status as a resident in BC.
- Persons entering the province temporarily are not considered to be resident for election purposes.
- Generally, a person's residence is the place where their family resides, but if a person moves out of the family home and does not intend to return, the person's residence will be the new place they have moved to.
- Single people reside where they sleep, regardless of where they eat or work.
- A change of residence occurs only if a person moves to and intends to remain in another place.
- Canadian military personnel who reside in BC do not lose their resident status by leaving the province for extended periods of time in the course of their employment. Spouses and children who accompany military personnel may also retain their BC residence status.

3. Registration and Voting Procedures

Eligible voters who are not presently on the voters' list in their district may obtain an application form from the registrar of the Electoral District in which they reside. Occasionally the Registrar General will hire Deputy Registrars to visit residences to obtain new applications.

Upon receiving an application and being satisfied that the application is valid and correct, the District Registrar will add the applicant's name to the voters' list. That person is then eligible to vote in the next provincial election.

An eligible voter may also register at a voting place on the day of the election. Amendments to the *Election Act* enacted in 2008 require that the applicant produce identification in the form of either (section 41(3)):

- One document, issued by the Government of British Columbia or Canada, that contains the applicant's name, photograph, and place of residence;
- One document, issued by the Government of Canada, that certifies that the applicant is registered as an Indian under the *Indian Act* (Canada); or
- At least 2 documents of a type authorized by the chief electoral officer, both of which contain the applicant's name and at least one of which contains the applicant's place of residence.

Alternatively, section 41.1 allows eligible voters without documentation to be "vouched" for by a voter registered in the applicant's electoral district with documentation, a family member, or "a person having authority under the

common law or an enactment to make personal care decisions in respect of the applicant."

> **NOTE:** In the 2013 provincial election, prescription pill bottles or inhalers with the applicant's name were accepted as a valid form of identification. This was done to address the unique challenges individuals with no fixed address and those without government-issued identification face when exercising their right to vote.

When an election writ is issued, the District Registrar will advertise in newspapers announcing the closing day for applications to register.

According to the court in *Hoogbruin v BC (Attorney General)* [3] (1985), 70 BCLR 1 (CA), individuals have a constitutional right to use absentee ballots. The procedure for absentee balloting is outlined in section 105 of the *Election Act*. Section 27 requires that general voting day for an election is the 28th day after the date on which the election is called. If that day is a holiday, the election will be on the next day that is not a holiday. On election day itself, polls are open from 8:00 a.m. to 8:00 p.m.

If a voter does not understand English, section 269(3) states that a sworn interpreter may be used to translate the required oath to the voter. Under section 269(4), before acting as a translator under subsection (3), an individual must make a solemn declaration that the person will be able to make the translation and will do so to the best of their abilities.

Section 109 deals with special circumstances whereby voters with physical disabilities or difficulties in reading or writing are able to get assistance in marking their ballots.

Employees are entitled by section 74 to four **consecutive hours** off during poll hours to attend a polling station, without loss of wages. However, the employer is entitled to choose which four hours are most convenient.

Upon arrival at the polling station, the voter must sign their name in a voting book (section 274), and confirm their present address. Refusing to comply with this demand will disqualify the voter. Upon receiving a ballot, the voter proceeds to a screened compartment, marks the ballot, and returns the ballot to the Returning Officer, who, in full view of the voter, must place the ballot in the ballot box. The voting must be by a secret ballot as per section 90. Each individual present at a voting place, including people such as voters and ballot counters, must not interfere with an individual marking a ballot, attempt to discover how an individual voted, or communicate information regarding how another person voted or marked their ballot. The voter is then required to leave the premises.

4. Complaints about Elections BC

If you have a complaint about contraventions of the *Election Act*, RSBC 1996, c 106, *Local Elections Campaign Financing Act*, SBC 2014, c 18, or the *Recall and Initiative Act*, RCBC 1996, c 398, you may make a complaint to Elections BC in writing by:

- Mail: PO Box 9275 Stn Prov Govt, Victoria BC, V8W 9J6; or
- Email: investigations@elections.bc.ca

Please see the Elections BC website here for information to include in your complaint: https://elections.bc.ca/resources/investigations/how-to-make-a-complaint/[4].

C. Federal Elections

The rules and regulations governing federal elections are set out in the *Canada Elections Act*, RSC 2000, c 9. Many of these rules and regulations are similar to those applicable to BC provincial elections discussed above. A brief survey of the federal *Act* is included below.

Canadian citizens who are 18 years of age or older on election day are generally eligible to vote in federal elections (section 3).

While federal residency requirements do exist, they are more relaxed than those applicable to BC provincial elections. A person may vote only once, in the area in which they are "ordinarily resident" (section 8(1)). This is defined in much the same way as "resident" is defined in section 32 of BC's *Election Act*. A person who moves between the enumerator's visit and the day of the election could be forced to vote in the former riding if ordinarily resident there when the enumeration occurred.

All voters must present one piece of government-issued ID with a photograph and residential address before being allowed to vote (section 143(2)(a)). If a voter cannot provide the required photo ID, they may still be allowed to vote if they do one of two things (section 143(2)(b) and (3)):

> (a) Provide two pieces of acceptable identification to establish the voter's identity, at least one of which establishes the voter's residence (a list of "acceptable identification" is to be published by the Chief Electoral Officer); or
>
> (b) Prove their identity and eligibility by swearing an oath in writing. The voter must also be accompanied by an individual who is **registered to vote in the same polling division**, has **proper identification**, and vouches for the person without ID under oath and in the prescribed form. An individual can only vouch for one person at an election (subject to an exception for employees of long-term care homes), and an individual who has been vouched for cannot vouch for someone else.

Vouching was substantially restricted under the *Fair Elections Act*, passed in 2014, posing significant challenges to low-income individuals without official identification. These restrictions were largely reversed in 2018, but the fact that a person may only vouch for one other person and the requirement that the voucher lives and is on the elector's list in the same polling station as the intended vouchee remain barriers for some low-income individuals.

Many other provisions of the *Canada Elections Act*, such as an employee being entitled to receive time off work to cast a ballot, provisions for people with disabilities, and balloting procedures are very similar to BC provincial regulations and thus are not repeated here. Further inquiries and/or complaints can be sent to the Chief Electoral Officer at:

Elections Canada

Online	Website [5]
Address	350 Victoria Street Gatineau, Quebec K1A OM6
Phone	1 (800) 463-6868

Please see the following link for more information on making complaints about federal elections: https://www.cef-cce.ca/content.asp?section=comp&document=index&lang=e

> **Note:** Changes to the *Canada Elections Act* in 2018 included the repeal of many of the controversial elements of the *2014 Fair Elections Act*. The 2018 *Elections Modernization Act* restored vouching for voters without identification, transferred investigative powers back to Elections Canada, reinstated the ability for voters to use their voter information cards as identification, and removed restrictions on Elections Canada encouraging voter participation.

The Supreme Court of Canada struck down previous prohibitions preventing inmates from voting in *Sauvé v Canada (Chief Electoral Officer)* [6], 2002 SCC 68. A key consideration in this decision was that, by denying the vote to all prisoners, the *Act* failed to balance the right to vote against the seriousness of the conduct of prisoners.

D. Municipal Elections

Municipal election procedures in BC are outlined in the *Local Government Act*, RSBC 1996, c 323, beginning at section 33. Please note, however, that elections in the City of Vancouver are governed by a separate provincial act, the *Vancouver Charter*, SBC 1953, c 55.

To be eligible to vote, a person must normally be a Canadian citizen and 18 years of age or older on the day the election is held. A person qualified in such a way must be a Canadian citizen and a resident of BC for six months immediately before election day. Furthermore, to be qualified, the person must have been a resident of the jurisdiction (as per section 64) for at least 30 days immediately before election day.

A person who qualifies as outlined above with the exception that they do not reside in the municipality may still vote in an election if they are the owner or tenant of property in that municipality (section 66). The general residency rules are similar to those outlined in the *BC Election Act*.

Applications to register should be made to the clerk of the municipality.

Voters who are not yet registered on election day may apply to have their name added to the list on election day in a manner similar to that used in provincial elections (see sections 72-73).

A person who is unable to produce identification can be registered as a voter. In order to do so, the individual must complete an application for registration and be accompanied by someone who is a registered voter in the applicant's electoral district, an adult family member, or someone who has the authority to make personal care decisions in respect of the applicant. The applicant and the voucher must both make a solemn declaration, in writing, as to the applicant's identity and place of residence. A person can only vouch for one person, and an individual who has been vouched for cannot vouch for another person.

> **NOTE:** A literal interpretation of both the *Canada Elections Act* RSC 2000, c 9, and the *BC Election Act*, RSBC 1996, c 106, suggests that it is practically impossible for individuals with no fixed address to vote. However, the provincial electoral officer facilitates voting by homeless people through an administrative policy of allowing a flexible definition of "residence".

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References

[1] http://www.elections.bc.ca
[2] https://canlii.ca/t/g91lk
[3] https://canlii.ca/t/213r9
[4] https://elections.bc.ca/resources/investigations/how-to-make-a-complaint/
[5] http://www.elections.ca
[6] https://canlii.ca/t/50cw

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