

**Submitted October 9<sup>th</sup>, 2014**

**Summary of Constitutional Challenge to Bill 23**

**OTTAWA-** On Oct. 9, 2014 an application was filed in the Superior Court of Ontario seeking declaratory and other relief that provisions of Bill C-23, *An Act to amend the Canada Elections Act and other Acts* ("Bill C-23") infringe on and deny the right to vote guaranteed by s. 3 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

The applications are being made by the Canadian Federation of Students, the Council of Canadians and three electors who has previously sought orders annulling the results of the May 2011 federal election on the grounds that fraud affected the result in their ridings.

The applicants contend that amendments to the Act will suppress the vote of certain Canadians by denying them critical and timely information about the electoral process and their right to vote, and by making it far more difficult for them to obtain a ballot or register to vote on election day. They also contend that by stripping key powers from the Chief Electoral Officer, including by removing their authority to appoint and report upon the activities of the Commissioner of Canada Elections, Bill 23 makes it far less likely that Canadians will ever learn of electoral fraud like the kind that occurred in the last federal election.

The following provisions of the Bill are being challenged for interfering with the right of Canadians to vote and by reducing the role and the authority of the Chief Electoral Officer ("CEO"), which are essential for the exercise of voting rights;

Subsections 46 (2), (3) and (4) of the Bill amend ss. 143(2)(b), s. 143(2.1) and section 143(3) of the Canada Elections Act (the "Act") to:

- i) eliminate the authority of the CEO to authorize an elector to use the Voter Information Card or "VIC" to prove her or his address. The CEO has identified the VIC as a critical means for allowing electors, who would otherwise be unable to prove their address, the right to exercise their democratic franchise. Students, senior living residences and care facilities, and members of First Nations living on reserves are particularly affected.

- ii) removing the right of electors to prove their identity by availing themselves of the vouching provisions of the Act.

Section 7 of the Bill amends ss. 18(1) and (2) of the Act to:

- i) Eliminate the authority of the CEO to implement public education and information programs to make the electoral process better known to the public, particularly to those persons and groups most likely to experience difficulties in exercising their democratic rights
- ii) eliminate the authority of the CEO to use any media or other means that he or she considers appropriate, other than by transmitting advertising messages, to provide the public with information relating to Canada's electoral process, the democratic right to vote and how to be a candidate.

If the amendments stand, it is likely that tens, if not hundreds of thousands of eligible electors will be turned away from the polls in the next election.

The following provisions of the Act are being challenged for infringing the right to vote by limiting the independence and accountability of the Commissioner of Canada Elections who has responsibility for enforcing the Act:

s. 108 of the Bill, amends ss. 509(1) and (2) of the Act to remove the authority of the CEO to appoint, or to be consulted with respect to the appointment of the Commissioner, and grants that authority of appointment to the Director of Public Prosecutions who is accountable to the Government, not Parliament;

s. 114 of the Bill repeals s. 535.1 of the Act to eliminate the authority of the CEO to consult with the Director of Public Prosecutions with respect to enforcement measures taken under the Act, for the purposes of reporting to Parliament.

s. 152 of the Act amends s. 16(1) of the *Director of Public Prosecutions Act* to empower the Director to report on the activities of that office to the Attorney General, and to include a report from the Commissioner of Elections Canada which is not to include the details of any investigation.

Ss. 108, 114 and 152, effectively eliminate the authority of the CEO to oversee and report to Parliament upon the enforcement efforts of the Commissioner, curtailing the right of Canadians to know what efforts were made, or not made, to enforce the Act. Instead Canadians will learn of such matters, including of investigations into allegations

of misconduct by members of the Government, only if and when the Attorney General chooses to share that information with them.

It is expected that the application will be heard by the Court early next year.