

Presentation to Law Amendments Committee
Nova Scotia Legislature
Bill 83: Amendments to the Elections Act
April 13, 2015

Good afternoon, Madame Chairperson. Committee Members. Mr. Temporale.

I will confine my comments to the proposed amendments to Sections 50 and 99, which make it an offense to photograph a ballot.

These proposed amendments arise out of an incident in which I made a spur-of-the-moment decision to photograph and tweet my ballot at the advance poll for Victoria the Lakes in the 2013 election. I did this to make a point about two of the candidates standing for office in my riding. Since I don't usually vote PC, I wanted to *prove* I had done so, in a vivid way, that would generate political discussion. This was a deliberate act of political speech.

Elections Nova Scotia insisted the Elections Act *already* made it an offense to photograph a marked ballot. Based on this false claim, it badgered one citizen into signing a compliance agreement acknowledging he "breached provisions of the Elections Act." The Chief Electoral Officer has since acknowledged there was no breach, but to this day the false confession coerced by commission staff remains on Elections Nova Scotia's website.

Elections Nova Scotia offered me a chance to sign such a confession. I declined, and eventually, the Chief Electoral Officer acknowledged he had no case against me. Had I signed an agreement, I doubt we would be looking at these proposed amendments today.

I hope you will reject these amendments. Banning an act of political speech such as mine would violate the Canadian Charter of Rights and Freedoms, which guarantees free expression, including freedom of the press and other media of communications. The Charter calls these "fundamental freedoms."

The only question is whether these amendments would be considered reasonable limits under Section 1.

Many people think you shouldn't photograph ballots because doing so is undignified, or offends the sanctity of the ballot booth. But courts are unlikely to uphold an infringement of political expression simply because the restricted speech is undignified. Courts protect far ruder speech than this.

In reality, there is really only one serious argument in favor of banning ballot photography. "I am free to *tell* everyone how I voted," this argument goes, "but if I can *prove* how I voted, then my vote can be bought, sold, or extorted."

There are several problems with this position.

Vote buying was widespread in Nova Scotia two or three generations ago, but to all intents and purposes, it has disappeared. There have been no credible accounts of vote buying for decades. Indeed, the only kind of vote buying that takes place these days is the kind governments do with the public's money, and opposition parties do with foolhardy promises. The proposed restriction on free speech would combat behavior that no longer occurs.

The real problem facing our electoral system today is that young people don't vote. This distorts our politics. It gives old people like me disproportionate influence, and diminishes the influence of the very young people we need for this province to survive and prosper. If young people voted as often as old people, the government would never have blundered into killing our film industry.

I applaud Elections Nova Scotia's efforts to encourage young voters. I urge them to take these efforts further. Instead of penalizing people for photographing their ballots, invite them to do so, and encourage them to tweet, text, vine, pin, tumblr and storify their ballots.

There is an even bigger problem with the vote buying argument.

Elections Nova Scotia's website advertises "A Dozen Ways to Vote in Nova Scotia."

- You can vote from home, with a write-in ballot. You can even ask a neighbour, family member, care giver, or friend to "assist" you. It's not hard to see how that could lead to vote buying or extortion.
- You can vote in a long term care facility.
- From a homeless shelter.
- By mail, from anywhere outside Nova Scotia.
- University students can vote by mail from *inside* the province.
- You can vote from a hospital.
- And if you get locked up for photographing your ballot, you can even vote from jail.

So in eight of the 12 voting methods allowed by the act and promoted by Elections Nova Scotia, it would be child's play to prove how you voted, and therefore to buy, sell, or extort a vote. Yet the Act allows it. And Elections Nova Scotia encourages it. And no one abuses it.

In effect, the act leaves eight barn doors wide open to the abuse Elections Nova Scotia says it wants to combat. Only the Free Expression door is slammed shut. This is not a minimal impairment of the Charter right. It is a selective and gratuitous impairment, carried out under the guise of protecting against vote buying, when that protection is otherwise absent or lackadaisical.

You may well take the view that this is a trivial matter. Who cares whether Parker Donham or anyone else can photograph their ballot?

Those entrusted with our democracy should never treat any abridgement of free expression as trivial—especially not one that limits political speech. As the Supreme Court of Canada has counselled, such infringements should only be imposed in the rarest of circumstances for the strongest of reasons.

Freedoms are hard won. Democracy and freedom of political speech are under assault all over the world today. It is so easy to chip away at freedoms. Let this one go, because it doesn't seem all that important, and it will be that much easier to justify the next infringement, and the next, and the next.

The Canadian Charter of Rights and Freedoms is one of the great moral and political achievements of our time. It is, dare I say, a *Liberal* achievement. Don't be a party to its diminution even in a small way.

As legislators, you are guardians of our fundamental freedoms. You should never infringe them lightly, and I urge you not to do so in this case.

Parker Donham
Kempt Head, Nova Scotia