

Non-Citizen Voting Rights: A Constitutional Perspective

By: Cara Faith Zwibel

The right to vote is a cornerstone of a free and democratic society. It is a right that is engrained in our constitutional system and enshrined in section 3 of the *Canadian Charter of Rights and Freedoms*. Section 3 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 to be qualified for membership therein.”¹ Indeed, the right to vote is considered so important that it is exempt from the *Charter’s* “notwithstanding clause” and thus cannot be expressly overridden by Parliament or a provincial legislature.² Significantly, however, the *Charter* right to vote is limited in two important ways. First, unlike many other *Charter* rights, it is conferred explicitly and exclusively on citizens. Whereas the right to freedom of expression is accorded to “everyone” and the right to equality guaranteed to “every individual”, section 3 is a right for “[e]very citizen of Canada”. Second, the right is confined to the election of “members of the House of Commons or of a legislative assembly.” Courts have interpreted this to mean that section 3 only addresses elections of the federal House of Commons and of provincial legislative assemblies. It does not apply to municipal elections or referenda.³

This paper will examine the scope of the right to vote and posit that denying non-citizens eligibility to vote in municipal elections is contrary to the *Charter* and also bad public policy. It will consider voter eligibility in municipal elections from an equality perspective and argue that the *Charter’s* guarantee of equality before and under the law creates an imperative to grant non-citizens this right. In particular, it will look at how the Supreme Court of Canada’s decisions addressing the right to equality for non-citizens, and its approach to section 3 of the *Charter*, lead to a strong constitutional argument for granting non-citizens the franchise.

¹ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, s. 3 (the “*Charter*”).

² Section 33(1) provides that “Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.”

³ See *Rheame v. Ontario (Attorney General)* (1992), 89 D.L.R. (4th) 11 (Ont. C.A.) and *Haig v. R.*, [1993] 2 S.C.R. 995.

Section 3 of the *Charter*: The Right to Vote

As already set out, section 3 of the *Charter* guarantees the right to vote to Canadian citizens. In respect of federal or provincial elections, the language of section 3 might be interpreted as excluding non-citizens from voter eligibility. Thus, it might be argued that section 3 establishes or sanctions a distinction between citizens and non-citizens that is based not on the actual needs, abilities or circumstances of non-citizens, but rather on an idea about the meaning or essence of citizenship and the special privileges citizenship affords. While this interpretation may be the dominant interpretation of section 3, there is nothing in the *Charter* that would preclude Parliament or a provincial legislature from changing the voter eligibility requirements to allow non-citizens to vote in their respective spheres. The *Charter* establishes the minimum level of rights below which the government may not fall. It does not preclude government from extending a right to a particular group.

To demonstrate this point, the structure of section 3 might be contrasted with another *Charter* right that explicitly mentions citizens. Section 6 of the *Charter* contains a number of provisions with respect to mobility rights and explicitly distinguishes between citizens and permanent residents.⁴ The courts have held, therefore, that a distinction between these groups, in the context of mobility rights, is justified under the *Charter*. However, there are important differences between section 6 and section 3 of the *Charter*. Section 6(1) explicitly grants Canadian citizens certain mobility rights while section 6(2) grants Canadian citizens and permanent residents a smaller subset of rights. Subsection 3 also contains some internal limitations on the rights set out in s. 6(2), making clear that the *Charter* contemplates that

⁴ Section 6 states:

- (1) Every citizen of Canada has the right to enter, remain in and leave Canada.
- (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
 - (a) to move to and take up residence in any province; and
 - (b) to pursue the gaining of a livelihood in any province.
- (3) The rights specified in subsection (2) are subject to
 - (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and
 - (b) any laws providing for reasonable residency requirements as a qualification for the receipt of public provided social services.
- (4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.

governments will premise the granting of certain rights and benefits on residency requirements. By contrast, section 3 of the *Charter* contains a single statement about the rights of citizens. It does not refer to non-citizens at all and therefore simply establishes that the government may not infringe the rights of citizens to vote without a reasonable justification. While it requires government to justify any law or action that denies citizens the right to vote, it is silent with respect to others.

In the context of a right that is explicitly provided to Canadian “citizens” it is also relevant that the term “citizen” is nowhere defined in the *Charter* itself. It is the Parliament of Canada that decides who is a citizen and this definition may be amended or modified as Parliament sees fit. The fact that Parliament may change the definition of “citizen” merely by amending a statute suggests that there is nothing particularly sacred about the benefits or privileges that attach to citizenship. Our conception of that term may change over time and, with it, the traditional privileges of citizenship, including the franchise, may be extended to others.

While there are valid constitutional arguments that may be made for extending the right to vote to non-citizens at both the provincial and federal level, this paper will focus on municipal elections which are not within the scope of the section 3 right to vote, and will consider the issue from a section 15/equality perspective. In choosing this focus, I do not intend to discount the importance of the section 3 jurisprudence. Rather, I hope to enhance the equality analysis by drawing on judicial statements regarding the importance of the right to vote.

Citizenship and Section 15 of the *Charter*

Section 15(1) of the *Charter* provides that “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.” The Supreme Court of Canada’s approach to the section 15 equality guarantee has undergone a number of incarnations over the years. At its most fundamental, however, section 15 is said to prohibit discriminatory

distinctions in the law and in state action. A distinction is considered discriminatory within the meaning of section 15 if it is based on a ground specifically listed in the section or one similar (or analogous) to it, and if it perpetuates disadvantage and stereotyping.⁵

The first case that the Supreme Court decided under s. 15(1) of the *Charter* dealt with a distinction based on citizenship. In *Andrews v. Law Society of British Columbia*⁶ the Supreme Court considered a provision that denied non-citizens the right to practice law in the province. A majority of the Court in that case found that this distinction could not be upheld under the *Charter* and the Court unanimously held that citizenship was considered an analogous ground and thus a valid basis for a section 15(1) claim.

The Court's comments about the historical disadvantage and circumstances of non-citizens are worth revisiting in examining the exclusion of non-citizens from the right to vote. Justice Wilson, for example, noted that:

Relative to citizens, non-citizens are a group lacking in political power and as such vulnerable to having their interests overlooked and their rights to equal concern and respect violated. They are among "those groups in society to whose needs and wishes elected officials have no apparent interest in attending": see J. H. Ely, *Democracy and Distrust* (1980), at p. 151. Non-citizens, to take only the most obvious example, do not have the right to vote.⁷

Justice Wilson's comments underline the lack of power and disadvantage experienced by non-citizens and point to the denial of the right to vote as a primary source of this position. She implicitly recognizes that, without the right to vote, it becomes all too easy for the government to enact laws that deny these individuals rights and benefits enjoyed by others. Justice McIntyre, in a separate opinion, also held that non-citizens are a "discrete and insular minority" and found that

A rule which bars an entire class of persons from certain forms of employment, solely on the grounds of a lack of citizenship status and without consideration of educational and

⁵ See *R. v. Kapp*, [2008] 2 S.C.R. 483 for a discussion of how the Court's approach to section 15 has changed over the years, the criticisms of some of its jurisprudence, and an attempt to reconcile the approaches as, in essence, all aimed at the same purpose: substantive equality.

⁶ [1989] 1 S.C.R. 143, 1989 CarswellBC 16 (paragraph citations are to this version).

⁷ *Ibid.* at para. 51.

professional qualifications or the other attributes or merits of individuals in the group would, in my view, infringe s. 15 equality rights.⁸

Justice LaForest noted that it had been conceded in the case that citizenship was a personal characteristic that was similar in many ways to those specifically listed in s. 15(1). His comments also acknowledge that citizenship is not generally a matter of choice, stating that

The characteristic of citizenship is one typically not within the control of the individual and, in this sense, is immutable. Citizenship is, at least temporarily, a characteristic of personhood not alterable by conscious action and in some cases not alterable except on the basis of unacceptable costs.⁹

Echoing Justice Wilson's remarks, he went on to state that

...non-citizens are an example without parallel of a group of persons who are relatively powerless politically, and whose interests are likely to be compromised by legislative decisions. History reveals that Canada did not for many years resist the temptation of enacting legislation the animating rationale of which was to limit the number of persons entering into certain employment. Discrimination on the basis of nationality has from early times been an inseparable companion of discrimination on the basis of race and national or ethnic origin, which are listed in s. 15.¹⁰

Thus, it has been well-established that citizenship is an analogous ground under section 15 of the *Charter* and has been re-affirmed in subsequent cases. Significantly, one of the most important reasons for finding that non-citizens are disadvantaged in society stems from their exclusion from the franchise, which is seen as translating into political powerlessness, marginalization and exclusion. The recognition of citizenship as an analogous ground does not mean, however, that all distinctions drawn on that basis will be considered discriminatory within the meaning of section 15.

The Lavoie Division: Competing Philosophies on Citizenship

In *Lavoie v. Canada*¹¹ the Supreme Court once again considered a scheme that sought to limit the number of non-citizens entering into a particular form of employment. The case

⁸ *Ibid.*, at para. 31. McIntyre J. ultimately concluded that the exclusion of non-citizens from the B.C. law society could be justified under section 1 of the *Charter*.

⁹ *Ibid.*, at para. 75

¹⁰ *Ibid.*, at para 76.

¹¹ [2002] 1 S.C.R. 769.

concerned a preference given to citizens in entering the federal public service and the Court was split on whether the distinction drawn by the scheme at issue was discriminatory within the meaning of section 15(1) of the *Charter* and whether, if it was, it could be justified under section 1. Two judges held that the preference given to citizens did not violate section 15(1), while four others concluded it did, but could be justified under section 1. The four-judge plurality that found a violation of section 15(1) that could be saved by section 1 acknowledged that the preference for citizens in the public service created a distinction which “in some cases, functions to impair the dignity and freedom of non-citizens”. Those judges nevertheless concluded that Parliament attempted to achieve its goals (encouraging naturalization and enhancing citizenship) in a reasonable and proportionate manner. Significantly, however, the plurality’s reasoning, particularly at the rational connection stage of the section 1 analysis, seems more concerned with showing deference to Parliament than with protecting the rights of those the Court itself characterizes as marginalized and disadvantaged.

Three judges, including Chief Justice McLachlin, dissented in *Lavoie*, finding the scheme discriminatory and not justified under section 1.¹² The division in the Court reflects a fundamental difference of opinion about the meaning of citizenship and the federal government’s ability to define that classification. The division might best be summed up by drawing on the words of the dissenting judges:

It is argued that a law giving citizens an advantage in connection with Public Service employment is rationally connected to the legislative objective of enhancing citizenship. With respect, we think this characterization misses the crucial point, which is that the impugned provision confers an advantage upon citizens by discriminating against non-citizens. Far from being rationally connected to the goal of enhancing citizenship, the impugned provision undermines this goal, by presenting Canadian citizenship as benefiting from, as nourished by, discrimination against non-citizens...It seems to us that such reasoning is incompatible with the view of Canadian citizenship as defined by “tolerance”, “a belief in equality” and “respect for all individuals”.¹³

¹² Justices Iacobucci, Gonthier, Bastarache and Major concluded that the preference given to citizens violated section 15(1) but could be justified under section 1 as a scheme to enhance the value of Canadian citizenship and encouraging non-citizens to naturalize. Justices Arbour and LeBel concluded that there was no violation of section 15(1) while Chief Justice McLachlin and Justices Binnie and L’Heureux-Dubé dissented finding the law discriminatory and not saved by section 1.

¹³ *Lavoie*, *supra* note 11 at para. 10.

The judges of the Court clearly disagreed about the meaning of citizenship, its importance, and the legitimacy of the government's attempts to define it.

Regardless of the division in *Lavoie*, the Court has affirmed that non-citizens are a discrete and insular minority and has held that distinctions on the basis of citizenship are inherently suspect. Drawing on the Court's previous jurisprudence, it is likely that the exclusion of non-citizens from the right to vote would be found discriminatory within the meaning of section 15. This conclusion is based in part on the Court's directive in *R. v. Kapp*¹⁴ to consider whether an impugned distinction perpetuates disadvantage and prejudice and whether it is based on stereotyping. Denial of the opportunity to vote certainly perpetuates disadvantage and leads to political marginalization and disempowerment. As noted above, the Court has commented on the denial of the right to vote as one of the reasons for its finding that citizenship is an analogous ground under s. 15(1). With respect to stereotyping, historically non-citizens have been characterized as "aliens", "foreigners" and "others". They have been treated as less worthy of consideration or respect and have been seen as less loyal than citizens. In an era of globalization, relatively easy movement across borders, and an increasingly mobile labour force, stereotypes about non-citizens and their level of commitment to Canada must be called into question. Further, we must bear in mind that citizenship is not always within an individual's control. When citizenship is based on place of birth or bloodlines it is more a matter of luck than individual will or personal choice. Even acknowledging Canada's relatively liberal citizenship regime, individuals who naturalize in Canada may face serious and significant consequences in their home country and their children may be denied certain rights or benefits as a result of their decision. These considerations must be weighed carefully in making the decision about whether to naturalize. We must also remember that naturalizing may take time and that individuals are not even eligible to become Canadian citizens until they are permanent residents and have resided in Canada for three of the previous four years. Thus, even if we accept that becoming a Canadian citizen is merely a matter of personal choice, this does not allow the government to enact discriminatory laws. As Chief Justice McLachlin and

¹⁴ *Supra* note 5.

Justice L'Heureux-Dubé noted in *Lavoie* “the fact that a person could avoid discrimination by modifying his or her behaviour does not negate the discriminatory effect.”¹⁵

Examining some of the contextual factors the Court laid out in its decision in *Law v. Canada (Minister of Employment and Immigration)*¹⁶ also suggests that the denial of the right to vote would be held to constitute a breach under section 15(1). First, pre-existing disadvantage has already been discussed and has been held by the Court to describe the situation of non-citizens. The second contextual factor calls for a consideration of the degree of correspondence between the differential treatment and the claimant group’s actual circumstances. In this case, there is nothing about non-citizens that would tend to suggest that they are less able to exercise an informed vote than citizens, particularly if there is a reasonable residency requirement in place to ensure that voters have sufficient familiarity with the jurisdiction before voting. The plurality’s decision on this contextual factor in *Lavoie* is instructive:

...to the extent non-citizens are differently situated than citizens, it is only because the legislature has accorded them a unique legal status. In all relevant respects – sociological, economic, moral, intellectual – non-citizens are equally vital members of Canadian society and deserve tantamount concern and respect. The only recognized exception to this rule is where the Constitution itself withholds a benefit from non-citizens...¹⁷

As already discussed, the Constitution is silent on voting rights at the municipal level. This factor therefore militates in favour of a finding of a breach of section 15(1). The third contextual factor from *Law* looks at whether the impugned provision has an ameliorative purpose or effect and is not applicable in the case of voting rights. Finally, the nature of the interest affected, the fourth *Law* factor, is extremely significant in this case. The right to vote is at the core of our democracy and helps to maintain our system of government. The right as set out in the *Charter* - conferred on citizens for federal and provincial elections - has been jealously guarded by the courts, which have held governments to a stringent standard in

¹⁵ *Lavoie*, *supra* note 11 at para. 5.

¹⁶ [1999] 1 S.C.R. 497. The Court’s approach to discrimination in *Law* was to look at a number of contextual factors in assessing the impugned provision’s impact on human dignity. The Court re-visited this decision in *R. v. Kapp*, *supra* note 5, stating that these factors should not be read as “legislative dispositions” but rather as a means of focussing on the central concern of section 15(1) – combating discrimination. While it appears that litigants no longer need to go through these contextual factors in establish a breach of section 15(1), they remain useful markers of discriminatory treatment.

¹⁷ *Lavoie*, *supra* note 11 at para. 44.

justifying any incursions or limits. In light of the foregoing, there is a strong argument that denying non-citizens the right to vote in municipal elections is discriminatory within the meaning of section 15(1) and must therefore be justified under section 1 or must be struck out.

Section 1 of the Charter: Holding Government to a High Standard

As set out above, the courts have been mindful of the importance of voting rights in our society and have required compelling arguments to displace the right to vote. In *Sauvé v. Canada (Chief Electoral Officer)*,¹⁸ the Court considered whether excluding inmates from voting in federal elections violated section 3 of the *Charter*.¹⁹ Chief Justice McLachlin, writing for the majority in striking down the exclusion, rejected a deferential approach and affirmed that:

The right to vote is fundamental to our democracy and the rule of law and cannot be lightly set aside. Limits on it require not deference, but careful examination. This is not a matter of substituting the Court's philosophical preference for that of the legislature, but of ensuring that the legislature's proffered justification is supported by logic and common sense.²⁰

In the case of non-citizen voting rights, the *Charter* breach at issue is section 15(1) rather than section 3. Nevertheless, given that the benefit or right that is withheld is the right to vote, a high level of deference would be equally inappropriate. The Alberta Court of Queen's Bench took this view in considering whether the minimum voting age requirements at both the provincial and municipal levels could withstand constitutional scrutiny. Even though the Court ultimately concluded that the breaches could be justified under section 1, it also held that the legislature deserved very little deference since voting rights were at stake, there was no competition between the interests of two groups, and there was no ameliorative purpose to the legislation.²¹ The same holds true in considering non-citizen voting rights.

In the absence of a live legal challenge to the exclusion of non-citizens from municipal voting regimes, it is difficult to know what objectives the government might put forward in attempting to justify these schemes. While there may be a number of different objectives at

¹⁸ [2002] 3 S.C.R. 519.

¹⁹ The provision at issue in *Sauvé* excluded inmates serving a sentence of two years or more from voting.

²⁰ *Sauvé*, supra note 18 at para. 9.

²¹ *Fitzgerald (Next Friend of) v. Alberta*, 2002 ABQB 1068 at para. 52; aff'd [2004] 6 W.W.R. 416 (Alta.C.A.); leave to appeal refused 371 A.R. 399 (SCC Jan 6, 2005).

play, it is reasonable to assume that some of these objectives might include those at issue in *Lavoie*, namely enhancing citizenship and encouraging naturalization. It might also be argued by some that denying non-citizens the right to vote is appropriate because the right to vote should be linked to a long-standing commitment or level of loyalty to Canada and citizenship is viewed as a proxy for these values.²² While some of these objectives may be pressing and substantial, denying non-citizens the right to vote at the municipal level is neither a proportionate nor justified approach to achieving these goals.

In *Lavoie*, the dissenting judges rejected the notion that Canadian citizenship could be enhanced by discriminating against non-citizens and thus held that the preference for citizens in the public service was not rationally connected to this objective. The plurality decision in *Lavoie* did not develop a strong argument to refute this point, but simply held that Parliament was entitled to deference in determining whether a particular privilege advances a compelling state objective. There are a few factors that arise in considering voting rights which, in my view, lead to a much less deferential approach than the majority thought appropriate in *Lavoie*. First, in *Lavoie* the preference for citizens in the public service gave citizens an advantage over non-citizens because public service positions are finite and limited. A job for one person means another is out of luck. In the context of the right to vote, granting one individual this right does not take anything away from the rights of existing voters. In other words, voting is not a zero sum game. In fact, increasing the pool of eligible voters should assist in rendering government more representative and responsive to the needs of society, which benefits all residents. Second, while the employment opportunities at stake in *Lavoie* were important, the right to vote, as discussed above, is a foundational democratic right and should be considered in a different light.

Another factor that may be relevant to a court's consideration at the section 1 stage is the federal/provincial division of powers. Although all levels of government may have an interest in encouraging citizenship, only the federal government has authority over the area of citizenship. It is exclusively the Parliament of Canada that may alter the definition of 'citizen' and determine the rights and privileges that flow from citizenship. As a result, the federal

²² Legislative debates and legislative history would also be relevant in determining the government's objective although these objectives may differ depending on the jurisdiction at issue.

government may be entitled to more deference in attempting to enhance the meaning or value of citizenship than other levels of government. Since eligibility to vote in municipal elections is a matter within provincial jurisdiction, the legislative objective of enhancing citizenship is less compelling. This argument also holds true for the objective of encouraging naturalization. Moreover, the reality is that the vast majority of immigrants to Canada do naturalize. According to the 2006 census 85.1% of eligible foreign-born people were Canadian citizens.²³ It is hard to say why Canada's naturalization rate is so high but it would likely be very difficult to establish a causal connection between the denial of the right to vote at the municipal level and the decisions of most immigrants to naturalize. As the dissenters in *Lavoie* noted "That the impugned provision was in effect at a time when the naturalization rate was high does not prove that the impugned provision caused the high naturalization rate."²⁴

Finally, some may argue that the right to vote should be reserved exclusively for citizens as they have a long-standing commitment to Canada and a certain level of loyalty to the country. This argument gives rise to a problem that is common in equality cases. If this is the government's objective, the exclusion of non-citizens is not particularly well-tailored to meet that objective. The group that is granted the benefit (citizens who have the right to vote) do not universally have a long-standing commitment to Canada or loyalty to the country. Canadian citizens are not all born in Canada and some may have never even lived in this country. Some provinces grant the right to vote in municipal elections to citizens who do not reside in the municipality but simply own property there.²⁵ In this way, the exclusion of non-citizens from the right to vote is under-inclusive in meeting the stated objective. Many individuals who have no commitment to or interest in the affairs of the jurisdiction have the right to vote there. The other side of the coin is that there are many non-citizens who are deeply committed to Canada but could not, for one reason or another, become citizens. For example, they may have made a difficult decision not to seek citizenship because it would mean

²³ Statistics Canada, *Immigration in Canada: A Portrait of the Foreign-born Population, 2006 Census: Citizenship* by Tina Chui, Kelly Tran and H el ene Maheux (Ottawa: Minister of Industry, 2007); available online at: <http://www12.statcan.ca/census-recensement/2006/as-sa/97-557/pdf/97-557-XIE2006001.pdf> at p. 23.

According to the Longitudinal Survey of Immigrants to Canada, 91% of individuals asked about their intentions six months after arriving in Canada expressed an intention to settle permanently and become citizens.

²⁴ *Lavoie*, *supra* note 11 at para. 16.

²⁵ See e.g. *Municipal Elections Act, 1996*, S.O. 1996, c. 32, Sched, s. 17(2).

losing their citizenship in their country of origin, with significant consequences for themselves or their children. They may have been unable to meet the minimum language or knowledge requirements due to difficult life circumstances or a disability. Finally, many may have every intention of naturalizing but are not yet eligible to do so. These individuals may be particularly engaged or interested in Canadian politics and may work to become increasingly knowledgeable about their adopted country. From their perspective, the exclusion of non-citizens from the right to vote is over-inclusive, since many persons with the desired characteristics are ineligible to vote. Even accepting that the legislature may not be able to achieve a “perfect fit” between the objective of a law and the means it uses to achieve that objective, the exclusion of non-citizens is not rationally connected to its objective and does not impair rights as little as possible.

Residency and the Right to Vote

In assessing the reasonableness of an infringing legislative provision under section 1, it is helpful to consider what other means the legislature might have used to achieve its goals. In the context of municipal elections, a minimum residency requirement is likely to achieve many important government objectives in ensuring an informed and engaged electorate and establishing a minimum level of familiarity with and commitment to the jurisdiction where the vote will be exercised.²⁶ Residents also typically pay taxes and make use of municipal services including public transportation, public schooling, and utilities and other municipal infrastructure. In a healthy democracy, these are the people who should have a say in how these resources are managed and who is responsible for this task. Allowing residents to vote before attaining citizenship may also lead to a greater level of engagement or interest in the political process early on and can help immigrants integrate into society.²⁷ Finally, extending

²⁶ Voter eligibility criteria that includes residency requirements have been challenged under section 3 of the *Charter* but upheld. In *Reference re Yukon Election Residency Requirements* (1986), 27 D.L.R. (4th) 146 (Y.C.A.) the Yukon Territory Court of Appeal found that a 12 month residency requirement was reasonable in light of the particular circumstances of the northern territories and the shifting nature of the population in that part of the country. See also *Arnold v. Ontario (Attorney General)* (1987), 61 O.R. (2d) 481 (Ont. H.C.) which upheld a six month residency requirement.

²⁷ See Myer Siemiatycki, *The Municipal Franchise and Social Inclusion in Toronto: Policy and Practice* (October 2006) for a more in-depth discussion on the benefits of extending the municipal franchise to non-citizens. See also

the right to vote also helps to legitimize government action and holds government accountable to more of its constituents. In *Sauvé*, Chief Justice McLachlin noted that the “delegation from voters to legislators gives the law its legitimacy or force.”²⁸ If it is accepted that only citizens should have the right to vote we must consider how this reflects on our values and principles and how it affects those who are denied the opportunity to participate in the political process and select their representatives. Finally, changing voter eligibility at the municipal level is not a particularly dramatic or fundamental change to our system of government. It could be accomplished relatively easily and would significantly improve our system of representative government and further our goals of a multicultural society.

Conclusion

There are a number of strong policy arguments to be made for granting non-citizens the right to vote, particularly at the municipal level where decisions most affect the daily lives of residents. While reasonable people may disagree on this issue as a question of policy, the *Charter’s* guarantee of equality under the law must be considered in any case where the law draws a distinction on the basis of an enumerated or analogous ground. Moreover, the *Charter’s* equality protection must be vigilantly guarded. Where the right is infringed, a stringent standard must be applied in examining the justification, particularly where the distinction leads to the denial of a core democratic right.

This paper has set out in broad strokes what a *Charter* challenge to the exclusion of non-citizens from the municipal franchise might look like. Although each individual law would have to be considered in its own particular context and on its own record, there are strong constitutional arguments militating in favour of granting non-citizens the right to vote. As we continue to examine the meaning of citizenship, the time may be ripe to consider expanding the right to vote to create a more inclusive society and political system.

Daniel Munro, *Integration Through Participation: Non-Citizen Resident Voting Rights in an Era of Globalization*, Int. Migration & Integration (2008) 9:43-80.

²⁸*Sauvé*, *supra* note 18 at para. 31.