

The Accessibility of Elections to Canadians with Cognitive Disabilities

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Abstract

It is enshrined in the *Charter of Rights and Freedoms* that all Canadian citizens are guaranteed the right to vote. This research paper explores whether persons with cognitive disabilities are able to exercise this right based on the accessibility provisions provided for in Canadian electoral law. A mixed methodology approach was used to investigate this topic, where qualitative interviews with persons with cognitive disabilities from countries and regions with similar social and policy contexts to Canada's were used to identify facilitators and barriers to voting. Canada's 14 different electoral acts were ranked based on the number of accessibility provisions they possessed that could facilitate voting. Ontario was identified as the jurisdiction with the most provisions that could facilitate voting in persons with cognitive disabilities. Trends in the secondary sourced data also revealed that a lack of electoral knowledge and a lack of social support were the most significant barriers to voting for persons with cognitive disabilities. A supportive social network was unanimously identified in the secondary data as a significant facilitator to voting. In fact, it was identified in the secondary data sources that persons with cognitive disabilities that did not have a supportive social network were unable to use the existing accessibility provisions in their region. This finding represents the limitations of Canada's current accessibility provisions in their ability to facilitate voting for persons with cognitive disabilities. None of Canada's provisions mandate that social service workers or election officials ensure that persons with cognitive disabilities receive the support they need to understand the electoral process prior to election day. This research paper makes the recommendation that such policy provisions are implemented in Canadian electoral law in order to increase the accessibility of elections to Canadians with cognitive disabilities.

1. Introduction

Canadian governments have affirmed the importance of accessible elections in law. Under section 121 of the Canada Elections Act, the Chief Electoral Officer is mandated to ensure that an accessible polling station is available in every electoral region (*Canada Elections Act*, 2000, s. 121). At the provincial/territorial level, Ontario, Quebec, Alberta, British Columbia, Nova Scotia, New Brunswick, Newfoundland, Prince Edward Island, Manitoba, Yukon and Nunavut have implemented similar provisions to ensure that polling stations are accessible for the physically disabled. However, disability activists have expressed the concern that accessibility provisions in Canadian electoral law do not address the barriers to electoral participation for persons with cognitive¹ disabilities (Kohn, 2008). While there are provisions under federal and provincial electoral law that *may* facilitate the accessibility for elections for persons with cognitive disabilities, such as the ability to mail ballots, to use proxy voting, and to have assistance filling out the ballot, accessibility provisions for persons with cognitive disabilities are not specifically mandated in electoral law (Kohn, 2008).

To date, no research has been published that investigates whether Canada's electoral laws are capable of delivering accessible elections to persons with cognitive disabilities. This research gap makes the hypothesis that persons with cognitive disabilities are not served by Canada's current electoral accessibility provisions nothing but conjecture. Therefore, this research paper seeks to investigate the research question, to what extent are the accessibility provisions in Canadian electoral law capable of addressing the barriers to electoral participation faced by persons with cognitive disabilities?

¹ The author uses 'cognitive disabilities' as an umbrella term to refer to a variety of medical conditions that affect reasoning, memory, learning and information processing. These types of disabilities have been alternatively referred to as developmental disabilities, learning disabilities and intellectual disabilities in the literature.

2. Background

a. Voting Rights of People with Cognitive Disabilities, Canada and Internationally

It is a basic democratic principle in countries with an elected government that every citizen be given the right to vote (Anderson, 2012). In Canada, the suffrage movements of different disadvantaged groups took place throughout the 19th and 20th centuries, which resulted in the removal of barriers to voting based on arbitrary differences, such as gender or race. The right of every Canadian to vote was further entrenched in the *Charter of Rights and Freedoms* in 1982, under section 3, which states “Every citizen of Canada has the right to vote in an election of the members of the House of Commons or of a legislative assembly and to be qualified for membership therein (*Charter of Rights and Freedoms*, 1982, s. 3).

For people with disabilities, being granted the right to vote in Canadian law has not necessarily meant that they have been able to easily exercise that right. The universal franchise of all Canadian citizens has historically not been enough to guarantee persons with disabilities were able to surpass the barriers they encountered to casting their ballot on election day (Prince, 2004). In the 1980s, a House of Commons Committee on the Disabled and the Handicapped heard from disabled Canadians throughout the country that polling stations were inaccessible to the physically disabled (Prince, 2004; McRae, 2020, n.p). This resulted in the Committee making recommendations to Parliament that elections be conducted to serve the needs of all voters. This included providing polling stations at nursing homes or hospitals and ensuring all polling stations are physically accessible. The federal government responded to these recommendations by passing Bill C-78, which mandated changes to voting to make it more accessible to persons with disabilities. The changes included requiring “level access at most polling stations, mobile polling stations that travel to voters who cannot leave their home [or institution] and tools to help blind or

visually impaired voters in marking their ballots” (McRae, 2020, n.p.). This legislated change in accessibility requirements for polling stations was significant for opening up the right to vote for persons with physical disabilities. As Valentine and Vickers (1996) commented, “for people with physical disabilities, full access to franchise was guaranteed only in 1992 when architectural accessibility of polling stations became mandatory” (p. 173).

While people with physical disabilities were implicitly deprived of their right to vote through physical barriers until 1992, persons with cognitive related disabilities faced a different barrier to voting until 1993. Persons with cognitive disabilities were explicitly disenfranchised in Canadian election law, under the section of the *Canada Elections Act* that denied the right to vote to “every person who is restrained of his liberty of movement or deprived of the management of his property by reason of mental disease” (*Canada Elections Act*, 1970 s. 14(4)). In 1988, the Federal Court of Canada ruled that this section was in conflict with section 3 of the *Charter of Rights and Freedoms* (*Canadian Disability Rights Council v. Canada*, 1988). In 1993, this section was officially removed from the *Canada Elections Act*, meaning that people with cognitive disabilities had achieved the legal right to vote at the national level. At the provincial level, restrictions on the right of persons with cognitive disabilities to vote have been removed in every province and territory except for Quebec and Nunavut (Prince, 2007). In Quebec, individuals who have been put under the ‘curatorship’ of another adult are unable to exercise the right to vote. Curatorship refers to a form of protective supervision for adults who are deemed by the provincial court to be incapable of managing their own affairs (Curateur Public Quebec, 2020; Educaloï, 2020). In Nunavut, a person deemed by court order to be incapable of understanding their actions or making decisions for themselves are disqualified from the right to vote (Elections Nunavut, 2020).

Internationally, the right of people with cognitive disabilities to vote has been reaffirmed and protected by only a select set of countries. In 2005, the United Kingdom removed any common law standard that disenfranchised persons because of a ‘mental disease’ (Redley et al., 2010). Sweden and the Netherlands have removed the disenfranchisement of citizens with intellectual disabilities from their constitutions (Ryan, Henderson & Bonython, 2016). Similarly, Austria has removed mental capacity based exclusions from voting from their code (Ryan, Henderson & Bonython, 2016). France has exclusions from voting based on mental capacity, but this exclusion is based on an individual basis, as deemed by a judge (Ryan, Henderson & Bonython, 2016). The voting rights of persons with cognitive disabilities is inconsistent across the United States as state’s have significant powers to determine voting exclusions (Ryan, Henderson & Bonython, 2016). As some academics have documented, despite the existence of federal law that support the right of persons with disabilities to vote, not all states can guarantee an accessible electoral process (Prince, 2007).

At the supranational level, the right of persons with cognitive disabilities to vote is established in the United Nations *Convention on the Rights of Persons with Disabilities (CRPD)* (2008), which is a convention that Canada has ratified (Prince, 2012; Anderson, 2012). The full text of the relevant article, Article 29, of the CRPD is as follows:

State Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake: (a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to

understand and use; (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate; (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice. (CRPD, 2008, Article 29)

One interpretation of this section is that it is not enough to universally enfranchise persons with disabilities if the proper supports are not put in place to facilitate their ability to exercise their vote. As Anderson (2012) found, “the CRPD articulates the universal rights to political participation in a way that radicalizes the correlative duties of members states proactively to take all reasonable measures to *enable* full participation... It is not enough for Member States to ensure that citizens are not disenfranchised directly; they are obliged to actively intervene in ensuring that individuals are included in society and have real, effective access to participation on par with others” (p. 106). To phrase it another way, Member States have a positive obligation to ensure that all persons with disabilities are able to politically participate, as is their right under the CRPD. To that end, the next section of the paper will examine the supports in place in Canadian electoral policy that facilitate the political participation of persons with cognitive disabilities.

b. Current Accessibility Provisions Provided by Canadian Electoral Agencies for Persons with Cognitive Disabilities and International Comparisons

In each jurisdiction, there is an electoral agency that is empowered to administer elections and their mandate is to provide elections that adhere to that region’s electoral law. The accessibility provisions provided by these electoral agencies are often mandated by their empowering statute. An example of this can be seen with Ontario. Ontario’s elections are governed by the *Elections*

Act, R.S.O. 1990. The Chief Electoral Officer and the electoral agency, Elections Ontario, are empowered under the *Elections Act*. In the *Elections Act*, under section 13.1, it states the following:

In establishing the locations of polling places under section 13, the returning officer shall ensure that each polling place is accessible to electors with disabilities. (*Election Act*, 1990, s. 13.1)

This section requires Elections Ontario to ensure that every polling place is accessible to persons with disabilities. Michael Prince (2012), a professor of Social Policy at the University of Victoria, did a comprehensive review of the accessibility provisions provided by the 14 different electoral jurisdictions in Canada. He found that overall, there were 22 types of legislative based provisions for persons with disabilities that were intended to make voting more accessible (Prince, 2012). The most legislated accessibility provision across jurisdictions was the allowance of absentee/mail-in ballots (13 of 14 jurisdictions) and level access to polling stations on election day (13 of 14) (Prince, 2012, p. 38). The accessibility provisions provided by electoral agencies that may help facilitate voting by people with cognitive disabilities include the following: absentee/mail-in voting, mobile voting, transfer certificates, proxy voting, assistance to the elector by the deputy returning officer, and allowing assistance to the elector by another individual. (Prince, 2012). Prince (2012) comments that these results reflect a legislated focus on increasing the accessibility of polling stations, with less of a focus on other accessibility provisions that remove non-physical barriers to voting.

In countries where there are no statutory exclusions on voting for people with cognitive disabilities, the accessibility provisions provided to people with cognitive disabilities are similar to those found in Canada. In the United Kingdom, Netherlands and Austria, persons with cognitive

disabilities are able to request assistance with voting (Inclusion Europe, 2011). In Sweden, electoral officials make the decision on whether a person can have help voting on an individual basis (Inclusion Europe, 2011). Sweden and the United Kingdom reported making information and guides to voting available in an easy-to-read format (Inclusion Europe, 2011). Sweden also provides training to electoral officials on how to assist people with cognitive disabilities (Inclusion Europe, 2011). The United Kingdom, Sweden and Austria provide the option for persons with disabilities to vote by mail, and Sweden, the United Kingdom and the Netherlands provide the option to vote by proxy (Inclusion Europe, 2011). Austria reported undertaking an educational campaign on voting directed specifically at people with intellectual disabilities (Inclusion Europe, 2011).

c. The Argument for More Help

An argument has been raised by disability advocates in response to the inclusion of accessibility principles in electoral law. This argument is that the accessibility principles being implemented in electoral law are focused on facilitating the voting rights of persons with physical disabilities, with a lack of focus on what will help people with cognitive disabilities (Kohn, 2008; Prince, 2007; Prince, 2012). While there are provisions in electoral law that *may* facilitate the accessibility for elections for persons with cognitive disabilities, such as the ability to mail-in ballots, to use proxy-voting, and to have assistance filling out the ballot, accessibility provisions for persons with cognitive disabilities are not specifically mandated in electoral law to the same degree that physical access to polling stations are almost universally mandated in Canadian electoral law (Prince, 2012; Kohn, 2008). This is argued by advocates, such as Anderson (2012) to be a violation of the human right of political participation, as governments have a positive obligation to ensure that all citizens are able to exercise their ability vote. The major problem

impacting the validity of these critiques of electoral policy is that Canadian and provincial election agencies do not collect the participation rates of persons with cognitive disabilities. Therefore, it cannot be empirically proven that the current accessibility provisions in Canadian electoral law are failing to make elections accessible to persons with cognitive disabilities.

The argument that more cognitive related accessibility provisions should be implemented in Canadian electoral law is mediated by the school of thought that argues that all people have to cognitively “self-qualify” to vote. Meaning, while people with physical disabilities have a right to receive accommodation through the law to express a political decision, if non-physical assistance, but cognitive-based assistance, is required for people with cognitive disabilities to make political decisions, than they are not qualified to be making those decisions (Dahl, 1989; Vorhaus, 2005). With arguments on one end of the spectrum suggesting that no cognitive-based accommodations should be implemented in electoral policy, and arguments on the other end, suggesting that Canada is not doing enough to facilitate the cognitive disability vote, a literature review was conducted to assess the schools of thought on the philosophical and practical question: to what extent can accessibility provisions for persons with cognitive disabilities in electoral policy help facilitate their ability to vote?

3. Literature Review

The first school of thought, which can be referred as the No Accommodations school, emphasizes that persons with cognitive disabilities would not benefit from protected electoral accommodations in law because voting requires a degree of reasoning abilities and mental competency that persons with cognitive disabilities lack. Therefore, extending specific protections will not make elections more accessible, as most persons with cognitive disabilities will still be unable to understand and appreciate the voting process. This school of thought is defended by Dahl (1989) in his book, *Democracy and Its Critics*. Dahl’s (1989) arguments are based in a

philosophical reasoning that persons that are unable to care for themselves, such as those under guardianship, should not automatically qualify for the right to vote because they have limited conceptual understanding of the implications of their political choice. Vorhaus (2005), a more contemporary philosophical scholar, reiterates Dahl's school of thought, reasoning that while persons with cognitive disabilities may have the ability to express a political choice, they lack the competency required to vote. Vorhaus (2005) defends his point of view through a metanalysis of what the philosophers Locke (1667), Mill (1865), Cohen (1975) and Gutmann (1999) discuss as relevant to the concept of citizenship and voting capacity. Vorhaus (2005) concludes that persons with cognitive disabilities are setting themselves up to fail if they seek to define their citizenship by their ability to demonstrate political opinion. The No Accommodations school of thought is significantly underrepresented in the literature in an explicit sense; however, it is represented implicitly in the theory behind voting law in multiple states in the United States, where individuals under guardianship are prohibited from voting until they demonstrate their ability to vote through mental capacity tests (Schriner & Ochs, 2000).

The second school of thought is connected to the No Accommodations school, as it reiterates that policy is not the most important influence on whether persons with cognitive disabilities experience electoral accessibility. However, this school does not explicitly state that no policy accommodations should be made for persons with cognitive disabilities. Research coming from this school of thought argues that the social network that surrounds persons with cognitive disabilities is the most important influence on the accessibility of elections to persons with cognitive disabilities. Therefore, this school of thought will be called the Social Support school. The most cited research that has contributed to this school has stemmed from Sweden, where, similar to Canada, persons with cognitive disabilities are granted the full right to vote. After

Tideman (2000) established that 31% of people with cognitive disabilities voted in comparison to 86% of the general population in the 1994 Swedish election, Kjellberg and Hemmingson (2013) attempted to discover the correlates of voting for persons with cognitive disabilities. Their qualitative research study used a semi-structured interview format to uncover the voting habits of a sample of persons with cognitive disabilities from a longitudinal perspective. Their research revealed that family and social staff support were the most important correlates of increased voting habits (Kjellberg and Hemmingson, 2013). Persons with cognitive disabilities reported that engagement from persons close to them who were willing to discuss political events led to increased interest and understanding of political positions (Kjellberg & Hemmingson, 2013). These findings were supported by Keeley, Redly, Holland and Clare (2008) who found that the attitudes of heads of households were critical determinants of whether people with cognitive disabilities voted in the 2005 UK election. Keeley studied this by comparing the names and addresses of those who use cognitive disability services to the voter registration list. Keeley et al. (2008) found that 80% of those registered at the disability service did not vote, as compared to 39% of voters in the UK. This is despite the UK having universal voting rights for persons with cognitive disabilities and additional accessibility supports for person with disabilities. Keely et al. (2008) and Kjellberg and Hemmingson (2013) both came to the conclusion that a supportive social network, as opposed to policy support, is one of the most crucial factors as to whether persons with cognitive disabilities exercise their right to vote. These findings have also been corroborated in qualitative research conducted in the United States by Agran, MacLean and Andren (2016). Agran et al. (2016) conducted semi-structured interviews with adults with cognitive disabilities who resided in the Western Rocky Mountain region of the United States. Interviews were conducted to ascertain what perspectives they had on their experiences related to voting in elections. Agran et

al.'s (2016) conclusions were that personal relationships had more to do with whether persons with cognitive disabilities voted than technological, technical or administrative barriers.

The third school of thought does not reject the premise of the Social Support school but does emphasize that policy can increase the accessibility of elections, regardless of the social network available to persons with cognitive disabilities. This school of thought will be called the Unconditional Accommodations school. Some of the most important authors of this field include Anderson (2012), Prince (2007) and Kohn (2008). Anderson (2012) argued that universal and unconditional suffrage is necessary to guarantee human rights to every person with a cognitive disability. Anderson (2012) critiques law that limits voting rights based on a person with a cognitive disability's ability to pass mental capacity tests, such as those implemented in many US states. Anderson (2012) argues that, in order to protect the human rights of all persons, governments have a positive obligation to not just grant equal voting rights in law, but to take steps to ensure everyone can be included in the political process. This creates conflict between the No Accommodations school of thought and the Unconditional Accommodations school of thought. Where the No Accommodations school of thought believes voting is exercised by people with a "qualified" state of mind, this school of thought sees voting as something that the government should take every measure to extend to its citizens up until the point of undue hardship (Anderson, 2012). While Anderson (2012) argues for governments to take positive steps to remove barriers to voting on the basis of their theoretical obligation to human rights, Prince (2007) makes the same argument based on an analysis of the gaps in electoral accessibility policy. Prince (2007) reviewed the existing accessibility of elections through a case study analysis of the accessibility provisions provided for in multiple Canadian elections. He found that accessibility provisions need to be more specific in preventing cognitive based barriers in order to make elections accessible for people

with cognitive disabilities. Prince (2007) also found that accessibility provisions in Canadian electoral policy are largely tailored towards persons with physical disabilities. He finds that more outreach actions are necessary to spread information in the community about the various voting processes available to people with special needs. His research aligns with the Unconditional Accommodations school of thought, as his argument is that group rights should be more specific in law because the broad right to vote is not enough to make elections accessible to persons with cognitive disabilities.

Kohn (2008) takes this school of thought further, specifying specifically what provisions in electoral law would facilitate the election accessibility for persons with cognitive disabilities. Kohn (2008) agrees with the Social Support school of thought, finding that family and assisted living staff can serve as facilitators to electoral participation, but Kohn (2008) argues they can also serve as barriers. To overcome said barriers, persons with cognitive disabilities must be empowered through information and political teachings, which should be mandated in electoral policy. Additional policy measures put forward by Kohn (2008) include the creation of accessible ballots that communicate political choice in a plain language format. One of the most recent contributions to this school of thought was by van Hees, Boeije and de Putter (2019), who found that even in countries with advanced electoral accessibility policy, persons with physical disabilities were the ones that benefited from the policies, but persons with cognitive disabilities still experienced barriers because of the lack of targeted accessible procedures. Both Kohn (2008) and Prince (2007) suggest that based on their analysis of current Canadian electoral law, reform could take place that would likely address some of the barriers faced by persons with cognitive disabilities. That being said, an analysis of the impact of accessible electoral provisions on persons

with cognitive disabilities has not been completed in Canada to date, meaning the existence of barriers to voting for this group has, as of yet, not been found.

4. Research Question

A research gap that stands out from this literature review is an analysis of whether persons with cognitive disabilities *actually do* encounter barriers to voting in Canada, and if so, what these barriers are. While Canada, like the Netherlands, the UK, and Sweden, has granted the universal right to vote to every citizen 18 years and over, the literature reviewing barriers is largely only from the Netherlands, the UK and Sweden, as well as the US (Prince, 2012). This leads us to the research question guiding the study:

To what extent are the accessibility provisions in Canadian electoral law capable of addressing the barriers to electoral participation faced by persons with cognitive disabilities?

5. Data sources

a. Secondary source research

Ideally, the efficacy of Canadian electoral policy in its ability to remove barriers to voting for persons with cognitive disabilities would be studied by interviewing Canadian voters with cognitive disabilities. However, the scope of this project prevented the author from conducting this primary research. Therefore, secondary source research data will be used to investigate the barriers individuals with cognitive disabilities face when voting, specifically in countries and regions that provide legislated accessibility supports to persons with cognitive disabilities. Therefore, the selection criteria for the secondary research is as follows: the study had to have taken place in a country or region where there are no statutory voting exclusions on people with cognitive disabilities and the study must explore the barriers to electoral participation, where the person with a cognitive disability was allowed to provide input, as opposed to the data coming from a support worker's or family member's perspective.

In 2014, the European Union Agency for Fundamental Rights (FRA) conducted a study of the electoral accessibility provisions for people with cognitive disabilities in European Union states. The FRA (2014) found that 7 out of the 28 EU Member States allowed for people with cognitive disabilities to vote without restrictions. These countries were Austria, Croatia, Italy, Latvia, the Netherlands, Sweden and the United Kingdom (prior to the UK leaving the European Union). Studying research studies from all of these regions is not within the scope of this paper and would not necessarily shed light on the barriers that Canadians with cognitive disabilities face due to the legal and social differences between the nations. Therefore, the selection criteria was narrowed to studies on the defined topic that originate from the United Kingdom, the Netherlands or Sweden and the states of the United States that have no exclusions on voting. The European Union states were chosen because Inclusion Europe (2011) and Prince (2012) found that the accessibility provisions provided for in the electoral policy of the United Kingdom, Sweden and the Netherlands were very similar to the provisions in Canada's electoral laws. Further, Canada, the United Kingdom, Sweden and the Netherlands all have progressive social welfare systems and universal health care (Holland et al., 2011). The similarities between these countries creates sufficiently similar policy contexts such that the barriers identified by citizens in the studied countries are likely to be comparable to those experienced in Canada (Holland et al., 2011). The states, of the United States, that have no exclusion on voting for people with cognitive disabilities are also expected to have similar social and policy contexts as to that of Canada's, and therefore were included within the scope of the selection criteria (Prince, 2012).

The type of research selected as a data source for this study were qualitative or mixed quantitative/qualitative studies where persons with cognitive disabilities have had the chance to self-identify and describe the barriers they faced to voting. These types of studies were chosen

because obtaining the descriptions of barriers from people with cognitive disabilities is the best way to gather rich detail that can be verified as coming from the voter as opposed to from a family member or support staff. Studies that use a quantitative approach only, such as those that have pre-determined answers in response to a question, may not represent the authentic perspective of a person with a cognitive disability. The answer they provide on a survey, for example, may be skewed by the influence of a third party or by the phrasing of the question itself (Bell & Bryman, 2019). However, due to the limited number of qualitative studies available on this subject in the literature, mixed qualitative/quantitative studies were considered acceptable sources of data for identifying the barriers people with cognitive disabilities face when voting.

With the above criteria set out to guide the selection of articles, the following academic article databases were searched: Google Scholar, York Library's Omni Search Tool, Scholars Portal Journals, Public Affairs Information Services (PAIS), Worldwide Political Science Abstracts, and ProQuest Search. The following key terms were searched: "cognitive disability" or "intellectual disability" or "mental disability", "voting", "vote", "election(s)", "barrier(s)", "Sweden" or "United Kingdom" or "Netherlands," or "the United States". After narrowing the search results to those that conformed to the selection criteria, this search produced six articles for analysis (Kjellberg & Hemmingsson, 2013; James, Harvey & Hatton, 2018; van Hees, Boeije & Putter, 2019; Willis, McGlade, Gallagher & Menabney, 2016; Friedman, 2018, Agran MacLean & Andren, 2016). The type of analysis used for this data source is content coding, to identify themes in how barriers are described by persons with cognitive disabilities. This will be explained in the methods section.

b. Provincial, territorial and the federal electoral policy in Canada (n=14)

The second data source used are the provincial, territorial and federal electoral policies in Canada. A chart of the electoral policies analyzed and the jurisdiction they apply to is outlined below.

| Electoral Legislation | Jurisdiction |
|---|-----------------------------|
| <i>Canada Elections Act</i> (S.C. 2000, C. 9) | Canada (national elections) |
| <i>Elections Act</i> (S.N.L. 1992, C. E 3.1) | Newfoundland and Labrador |
| <i>Election Act</i> (R.S.P.E.I. 1988, C E-1.1) | Prince Edward Island |
| <i>Elections Act</i> (R.S.N.B. 1973, C E-3) | New Brunswick |
| <i>Elections Act</i> (S.N.S. 2011, C. 5) | Nova Scotia |
| <i>Election Act</i> (R.S.Q. C. E-3.3) | Quebec |
| <i>Election Act</i> (R.S.O., 1990, C. E.6) | Ontario |
| <i>The Elections Act</i> (C.C.S.M. C. E30) | Manitoba |
| <i>The Election Act</i> (SS. 1996, C. E-6.01) | Saskatchewan |
| <i>Election Act</i> (R.S.A. 2000, C. E-1) | Alberta |
| <i>Election Act</i> (R.S.B.C. 1996, C. 106) | British Columbia |
| <i>Elections Act</i> (R.S.Y. 2002, C. 63) | Yukon |
| <i>Elections and Plebiscites Act</i> (S.N.W.T. 2006, C. 15) | Northwest Territories |
| <i>Nunavut Elections Act</i> (S.N. 2002, C. 17) | Nunavut |

Table 1: Electoral legislation in Canada by jurisdiction

6. Methodology

The methodology for analyzing these data sources is a mixed methods approach. The research question for this project was: “To what extent are the accessibility provisions in Canadian electoral law capable of addressing the barriers to electoral participation faced by persons with cognitive disabilities?”

a. First phase – Secondary source data analysis

The first step to investigating this research question involves the identification of what barriers persons with cognitive disabilities faced when voting in Canada. As noted previously, this is not answered in the current literature, and in fact, there is a clear research gap. Therefore a search was conducted to find studies on what barriers persons with cognitive disabilities faced in other countries with similar electoral accessibility provisions to Canada (Prince, 2012; Kjellberg &

Hemmingsson, 2013; James, Harvey & Hatton, 2018; van Hees, Boeije & Putter, 2019; Willis, McGlade, Gallagher & Menabney, 2016; Friedman, 2018) and a content analysis was conducted to identify the themes that come out of these articles. Content analysis is a type of qualitative research method that involves reviewing documents or texts for trends or themes (Bryman & Bell, 2019). It can be used to test an existing hypothesis, or it can be used to develop a new one based on the findings of the analysis. The elements analyzed depend on the research question. The categories or themes that the content is analyzed for can be pre-determined or it can be an iterative process, where the elements are defined as the content is analyzed (Bryman & Bell, 2019). For content analysis approach, a coding manual is developed which outlines the categories and responses the selected articles are analyzed for. After the articles are coded in a content analysis, the number of times a certain coding response appears can be used to identify trends or major themes in the responses.

Through an iterative process, a coding manual was created to track the trends in how persons with cognitive disabilities responded to questions and described barriers and facilitators to voting in the secondary sourced data. The coding manual was also designed to identify if voting by persons with cognitive disabilities was facilitated by common accessibility provisions in electoral policy provided by Canada and abroad (Prince, 2012). The categories therefore captured if persons with cognitive disabilities mentioned certain accessibility provisions helping them, and they also captured how persons with cognitive disabilities described the barriers they experienced and the supports they received that facilitated the voting process. The complete coding manual (Appendix A) and coding results (Appendix B) can be reviewed in the appendices of this paper.

b. Second phase – Electoral policy analysis

This phase involves analyzing the 14 electoral policies in Canada and assessing the accessibility provisions that are mandated to be provided by electoral agencies in their respective jurisdictions. Using Prince's (2012) comprehensive analysis of the legislated accessibility provisions provided by the 14 different electoral policies as a guide to categorize the types of accessibility provisions available, a chart was created to assess and compare the different accessibility provisions in Canadian electoral law. These provisions include, but are not limited to, mandating physically accessible polling stations, allowing proxy voting, allowing the Chief Electoral Officer to establish a polling station in a health care or long-term care institution (mobile polls), allowing mail-in voting, and allowing an election official, friend or relative to help a person vote. See Appendix C for the complete chart of the accessibility provisions in Canadian electoral law identified by this analysis. Prince's (2012) analysis of the accessibility provisions took place in 2012. Since that time, several electoral acts were updated with additional accessibility provisions, while some electoral acts had accessibility provisions removed. Overall, the most frequently provided accessibility provisions were the opportunity to be helped by an election official, friend or relative and the opportunity to cast a vote through a mail-in ballot. Ontario and Canada had the most accessibility provisions legislated. The additional accessibility provision of requiring election material to be produced in accessible formats was found in some electoral acts, which was not found by Prince his original analysis (2012). With the existing accessibility provisions in Canadian electoral legislation identified, the third phase of the research approach took place.

c. Third phase – Comparing legislated accessibility provisions to the barriers faced by persons with cognitive disabilities

The third phase of this study involved taking the barriers and facilitators to voting identified in phase one and comparing them to the existing accessibility provisions in Canadian electoral law

identified in phase two. The comparison conducted was designed to answer the research question, to what extent are the accessibility provisions in Canadian electoral law capable of addressing the barriers to electoral participation faced by persons with cognitive disabilities? The coding manual measured the responses in the secondary research in relation to whether persons with cognitive disabilities reported benefiting from proxy voting, mail-in voting, assistance at the polls, their social support network, and accessible information and communication. It also contained coding categories that assessed the most reported barriers to voting and the most reported aids that helped with voting.

The cross analysis between the accessibility provisions in the electoral acts and the barriers and facilitators to voting has been done by assessing the number of “helpful” provisions in each electoral act and ranking the electoral acts based on those with the most “helpful” provisions. “Helpful” provisions were identified by analyzing the coding results and identifying trends in whether persons with cognitive disabilities mentioned using these provisions to vote. Provisions capable of addressing the barriers to voting and facilitators to voting was also be used to mark accessible electoral policy provisions as “helpful”. The electoral acts with the most “helpful” provisions, able to remove the reported barriers, were considered more capable of providing an accessible election to persons with cognitive disabilities, and those with fewer “helpful” provisions and potentially barrier-removing provisions were considered less capable of providing an accessible election to persons with cognitive disabilities.

7. Results and Discussion

a. Results

The results of the coding of the secondary data showed that, of the accessibility provisions in electoral policy discussed in the studies, mail-in voting and assistance at the polls were thought of as more helpful to persons with cognitive disabilities than voting by proxy (Willis et al, 2016;

van Hees, Joeje & Putter, 2019). Individuals with cognitive disabilities expressed concern with proxy voting because it did not allow them to explicitly express their own opinion (van Hees, Boeje & Putter, 2019). This led some to fear that their vote was not represented accurately by their assigned proxy. Others found the process for signing up for proxy voting difficult (van Hees, Boeje & Putter, 2019; Willis et al., 2016). Mail-in voting was largely seen as a way to circumvent the difficulty and complexity of going to the polling station (Willis et al., 2016). Accessible information was helpful to persons with cognitive disabilities in the areas that it was provided, but in many regions, it was not available, or individuals needed help accessing the information (Kjellberg & Hemmingsson, 2013; Willis et al., 2016). Assistance from an election official or a family/friend/resource person was found to be helpful in most circumstances, but some polling help was conducted inconsistently even though it was mandated in the electoral policy (Willis et al., 2016). For every study coded, the social support network was determined to be a critical determiner as to whether persons with cognitive disabilities were able to cast their vote (Kjellberg & Hemmingsson, 2013; James, Harvey & Hatton, 2018; Fried, 2018; Agran et al., 2016; Willis et al., 2016; van Hees, Boeije & Putter, 2019).

The major barrier to voting that all of the studies identified was that a lack of knowledge and awareness about the voting process. While participants of the studies generally expressed great interest in voting (Kjellberg & Hemmingsson, 2013; Friedman, 2018; Agran et al., 2016), a lack of knowledge about the process prevented them from casting their vote successfully. Another major barrier to voting was lack of support from their social network (Friedman, 2018; Kjellberg & Hemmingsson, 2013). When family, friends and the social agencies that support persons with cognitive disabilities failed to support a person with a cognitive disability's interest in voting, they often did not vote (Agran et al., 2016, Friedman, 2018; Kjellberg & Hemmingsson, 2013, van Hees,

Boeije & Putter, 2019). Overall, the coding results revealed that certain accessibility provisions were more helpful than others, but that the existence of a supportive social network was the most important determiner of whether persons with cognitive disabilities voted. For the above reasons, the accessibility provisions of allowing mail-in voting, requiring information is provided in an accessible format, and allowing assistance at the polls are deemed to be “helpful” facilitators to voting for persons with cognitive disabilities. Further, provisions that potentially address the most significant barriers of limited knowledge and awareness and lack of social support, are deemed to be “helpful” to persons with cognitive disabilities. Of the twenty-three accessibility provisions present in electoral law in Canada, eleven had the potential to address barriers to voting for persons with cognitive disabilities. This is outlined in Table 2.

| “Helpful” Provisions - Provisions that may remove barriers and facilitate voting in persons with cognitive disabilities | Accessibility Provisions in Canadian Electoral Legislation |
|---|---|
| | Powers of the Chief Electoral Officer |
| X | To carry out studies on alternative voting methods |
| X | Test alternative voting methods |
| X | Public education and information program |
| | Training |
| X | Employee training program regarding issues of sensitivity for disabled electors |
| | Obligation to report on |
| | Level of accessibility of polling sites |
| | Type of accessibility equipment used |
| | Type of alternative voting technologies |
| | Voting methods |
| X | Absentee, write-in and mail-in ballot |
| X | Voting at home |
| X | Mobile poll |
| | Transfer certificate |
| | Proxy voting |
| | Level access/physically accessible |
| | Advance polls |
| | Polling day |
| | Returning office |

| | |
|---|--|
| | Interpretation |
| | Language |
| | Sign language |
| | Assistance to the elector |
| | Template (for visually impaired electors) |
| X | By the deputy returning officer or election officer |
| X | By another individual (friend/family or support staff) |
| | Transportation of material to elector (bed-ridden within institutions) |
| X | Transportation of elector to polling site |
| X | Accessible information and communication |

Table 2: Accessibility provisions currently in Canadian election legislation that may remove barriers to voting for persons with cognitive disabilities

The powers to test and study alternative voting methods were marked as potentially “helpful” due to the electoral agencies being given the power to implement new methods of supporting persons with cognitive disabilities and their caregivers and support workers. The provision for a mobile poll refers to allowing electoral agencies to set up polling stations in institutional environments, which can be moved depending on the needs of the electors in that institution (Prince, 2012). This was marked as “helpful” as it may reduce a person with a cognitive disability’s reliance on their social support network to transport them or assist them. Voting at home was not mentioned in the studies, although this accessibility provision would likely also reduce a person’s reliance on their social network and would bring an elector official’s assistance straight to a person with a cognitive disability’s home. For this reason, it was marked as potentially “helpful.”

The results of the analysis of which electoral acts contained the most “helpful” provisions are laid out in Table 3.

| Jurisdiction | No. of Accessibility Provisions that help Persons with Cognitive Disabilities |
|-----------------------|---|
| Ontario | 10 |
| Canada | 9 |
| Nova Scotia | 7 |
| Alberta | 7 |
| Northwest Territories | 6 |

| | |
|----------------------|---|
| Nunavut | 6 |
| Quebec | 6 |
| Manitoba | 6 |
| Prince Edward Island | 5 |
| New Brunswick | 5 |
| British Columbia | 5 |
| Yukon | 5 |
| Newfoundland | 5 |
| Saskatchewan | 5 |

Table 3: Ranking of jurisdictions based on number of electoral accessibility provisions that remove barriers to voting for persons with cognitive disabilities

b. Discussion

The results of this study revealed several findings that can be used to answer the research question. First, eleven out of the twenty-three accessibility provisions in Canadian electoral policy have the potential to remove barriers to voting faced by persons with cognitive disabilities. The rest of the accessibility provisions in electoral law relate to ensuring the physical accessibility of the polling site and the voting process, and the administrative duties of electoral agencies to report on providing a physically accessible voting process. This focus on ensuring the physical accessibility of polling stations reflects the similar assertions put forward by Prince (2007; 2012) and Kohn (2008), that Canada's current accessibility provisions put more focus on increasing the physically accessible process of voting rather than the cognitively accessible process. The province with the most accessibility provisions that can help persons with cognitive disabilities was Ontario. Several provinces provided only five accessibility provisions that could make voting easier for persons with cognitive disabilities, but there was no trend as to which provinces these were geographically or socially. Therefore, a person with a cognitive disability's experience of an accessible election will vary between regions (Prince, 2007; 2012; Kohn, 2008). This complicates the process for persons with cognitive disabilities, especially if there are different accessibility supports available between national and provincial elections (Prince, 2012). With knowledge and

understanding of the electoral process identified as the most significant barrier to voting for persons with cognitive disabilities based on the article coding, the differences between electoral processes based on regional policy may exacerbate this barrier.

The provisions found to be “helpful” to persons with cognitive disabilities in facilitating a vote included those that gave persons with cognitive disabilities more time to vote and assistance voting, such as mail-in ballots and the allowance of help at the polling booth. Accessible electoral information, printed in plain-language, was also deemed to be “helpful” in allowing persons with cognitive disabilities to understand the electoral process, but it was also discussed in the studies that these plain-language guides were hard to locate and many persons with cognitive disabilities needed assistance acquiring them (Kjellberg & Hemmingson, 2013; van Hees, Boeije & Putter, 2019). In Canada, only national and Ontario election material must be translated into plain-language formats. While mail-in ballots are capable of helping persons with cognitive disabilities and physical disabilities vote, plain-language translation is an accessible provision purely focused on helping people with cognitive disabilities – the only one of its type provided for in Canadian electoral law. This again affirms the theory that electoral policy in Canada has largely not been designed to increase the accessibility of elections to persons with cognitive disabilities.

The unanimous coding result of the importance of the social network to whether persons with cognitive disabilities were able to vote speaks to the limitation of Canada’s current accessibility provisions. While some existing provisions in Canadian electoral policy have been identified as “helpful” to removing barriers to voting for persons with cognitive disabilities (Kjellberg & Hemmingson, 2013, van Hees, Boeije & Putter, 2019), the secondary sources revealed that these provisions were ultimately only “helpful” if there was a social support network in place that helped persons with cognitive disabilities use these provisions. Across all of the

studies, persons with cognitive disabilities highlighted the importance of the help they received from staff at their care facilities or family and friends in the lead up to election day. For example, they were able to help them apply for and submit special ballots, transport them to the polling station, cast their vote in the polling booth or even understand the importance of voting in general (Kjellberg & Hemmingson, 2013; van Hees, Boeije & Putter, 2019) This is consistent with the findings of the Social Support school of thought, which finds that persons with cognitive disabilities will face barriers to voting in the absence of support from friends, family or social support workers, regardless of the other administrative and technical supports being provided through law. This means that the existing accessibility provisions in electoral law identified to “help” Canadians with cognitive disabilities vote are only as helpful as the social network of the person with a cognitive disability allows them to be. Therefore, the answer to the research question, “to what extent are the accessibility provisions in Canadian electoral law capable of addressing the barriers to electoral participation faced by persons with cognitive disabilities?” is that they are only capable of making the voting process easier for a person with a cognitive disability, if that person has a network of family, friends, and resource persons in place to support their use of the accessibility provisions available.

c. Research recommendations

The research recommendations that stem from this research project is that a qualitative study should be conducted to investigate the lived experience of Canadian electors with cognitive disabilities. While this research project has been designed to the best of the authors’ ability to capture what the lived experience is likely to be, and to assess the efficacy of policy based on this, this cannot replace the value of conducting interviews with the subjects concerned, where the voices of Canadian’s with cognitive disabilities are heard and documented. Similar to how Agran

et al. (2016) designed their study, interviewing groups based on being voters, inconsistent voters, and non-voters would be useful for elucidating why persons with cognitive disabilities have voted and have not voted in Canada.

d. Policy recommendations

The policy recommendations that stem from these findings are as follows:

- **Universalizing the accessibility provisions in electoral policy across Canada will facilitate an easier voting process for people with cognitive disabilities.** As it was identified in the secondary source data, the knowledge and understanding of the electoral process is the biggest barrier to most when they attempt to vote. Having a universal set of accessibility provisions would at least make election accessibility supports consistent between national and provincial elections. Given that national elections are experienced in every jurisdiction and that national electoral law contains a significant number of accessibility provisions (18 out of the 23 offered across Canada), it is recommended that provinces look to Canadian electoral policy as the standard to bring their own electoral policy up to, in terms of accessibility provisions offered.
- **Introducing accessibility provisions specifically focused on increasing the electoral knowledge and awareness of persons with cognitive disabilities would address the most common barrier to voting experienced by this group.** The accessibility provision of mandating that election material be printed in accessible formats and communicated in accessible ways would be beneficial to addressing the knowledge barriers persons with cognitive disabilities experience. Currently, this is only required for national and Ontario elections, meaning in all other provinces, electoral information

has to be translated by family or support staff into plain language for a person with a cognitive disability. This increases the dependency of persons of cognitive disabilities on their social support network.

- **Mandating that social service agencies or designated electoral employees help persons with cognitive disabilities understand the electoral process may be the necessary next step to ensure the enfranchisement of all Canadian citizens.** If policy makers are able to look beyond the current design of accessibility provisions in electoral law, it is argued by some that any person with a cognitive disability that wants to vote, could be supported with policy to allow them to cast their vote (Anderson, 2012; Kjellberg & Hemmingson, 2013). This step would be consistent with the “Unconditional Accommodations” school of thought, which holds that governments have an obligation to ensure that their laws empower all people to vote (Anderson, 2012).

e. Limitation of findings

This research paper is limited by the fact that the original transcripts from the interviews are not attached to the secondary data sources, therefore, the responses and descriptions of barriers being assessed are based on how the authors reported them. As noted previously, ideally primary research, in the form of qualitative interviews with persons with cognitive disabilities, would have been conducted to complete this research project, but resource and time limitations prevented the author from completing this type of research. Therefore, the coding of secondary sourced interviews is the alternative research approach taken to identify how persons with cognitive disabilities described the barriers they face to participating in elections, and the supports they received that helped them cast their vote.

Another limitation of this research is that the secondary sourced data comes from countries and regions other than Canada. This means that the data on people's experiences of elections are not valid representations of the accessibility of Canadian elections. The studies chosen were specifically based on locations with similar accessibility voting provisions as those found in Canada, however, barriers encountered may reflect differences in how elections are administered as opposed to ineffective legislation. In other words, Canadian elections may be administered more effectively than they are in the regions studied, meaning the barriers persons with cognitive disabilities encountered in the studies do not reflect the inability of accessibility provisions to remove barriers, but rather poor electoral administration in the studied regions.

The credibility of this method of identifying barriers and facilitators to voting is also threatened by the accuracy of the content being analyzed. This limitation cannot be safeguarded against to a large extent due to the nature of the method. Studying secondary sourced data that has already taken place prevents this author from doing member checks to determine whether the articles are accurate reflections of opinions of the study participants. The interpretation of the answers and themes in the articles during the coding process may also introduce chances for misinterpretations of the study subject's words. These limitations are acknowledged by the author. The other measures of good qualitative research, including dependability, transferability, and confirmability have been safeguarded in this research project to some degree as a clear description of the research process is provided. The dependability of the findings can be confirmed by reviewing the process and seeing if the inferences are logical, the transferability can be confirmed through the use of thick description of the research context, and the confirmability relates whether this author was neutral in their findings, which can be confirmed through an audit of the research process.

8. Conclusion

The argument has been raised by academics and disability advocates in recent years (Kohn, 2008; Prince, 2007) that Canada's electoral accessibility provisions are designed to make elections accessible only to the physically disabled. However, to date, this argument has not been investigated through research in Canada. This project explored this research gap, investigating the research question of: to what extent can the accessibility provisions in Canada's electoral policy address the barriers persons with cognitive disabilities face when voting? This project used a mixed methods approach that relied on qualitative studies from regions and countries with similar electoral accessibility provisions to Canada's. Through a content analysis of these qualitative studies, barriers to voting were identified, as well as accessibility provisions that had helped persons with cognitive disabilities exercise their right to vote. After a systematic analysis of the provisions provided by Canadian electoral policy was conducted, a comparison analysis revealed which jurisdictions in Canada were providing the most provisions capable of facilitating the cognitive disability vote, and which were falling short. Ontario came out as providing the most provisions that could address barriers to voting, while New Brunswick, British Columbia, Yukon, Newfoundland and Labrador, and Saskatchewan tied for the regions providing the least amount of provisions. However, the overall findings of the study were that the accessibility provisions in Canada's electoral laws are limited in their ability to address the most reported barrier (a lack of knowledge and understanding about elections) and are incapable of providing the most important facilitator of voting (a supportive social network.) Therefore, the most important policy recommendation to come out of this paper is that Canadian electoral policy mandate service agencies or election staff facilitate and support electoral knowledge and understanding in persons with cognitive disabilities prior to election day.

The policy recommendation that social support be mandated aligns with the argument that governments have a positive obligation to ensure their citizens are able to exercise their right to vote and that there should be no limitations to the policy approaches governments should consider to achieve this (Anderson, 2012). Indeed, if Canada intends to remain a socially progressive country that embodies the principles of the UN Convention on the Rights of Persons with Disabilities, Canadian policy makers need to reconsider what an “accessible” election looks like to every Canadian citizen that wants to exercise their right to vote.

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Appendix A

Coding manual

Proxy voting

01. Helped them vote
02. Did not help them vote
03. Was not mentioned
04. They did not know about it
05. It was not offered in their region

Mail-in voting

01. Helped them vote
02. Did not help them vote
03. Was not mentioned
04. They did not know about it
05. It was not offered in their region

Assistance at polls

01. Helped them vote
02. Did not help them vote
03. Was not mentioned
04. They did not know about it
05. It was not offered in their region

Accessible information about voting

01. Helped them vote
02. Did not help them vote
03. Was not mentioned
04. They didn't know about it
05. It was not offered in their region

Social support network

01. Helped them vote
02. Did not help them vote
03. Was not mentioned

Most reported barrier to voting

01. Lack of knowledge
02. Lack of social support
03. Encountered accessibility barriers at polling station
04. Unclear

Most reported aid that helped with voting

01. No aid required; able to vote independently
02. Social network helped them understand election process and exercise vote
03. Benefited from the accessibility provisions in the electoral process
04. Unclear

Appendix B

| Case No: | Proxy voting | Mail-in voting | Assistance at polls | Accessible information | Social support network | Most reported barrier to voting | Most reported aid that helped with voting |
|----------|--------------|----------------|---------------------|------------------------|------------------------|---------------------------------|---|
| 1 | 3 | 3 | 1 | 1 | 1 | 1 | 2 |
| 2 | 2 | 1 | 1 | 3 | 1 | 1 | 2 |
| 3 | 1 | 5 | 5 | 5 | 1 | 1 | 2 |
| 4 | 2 | 1 | 2 | 5 | 1 | 1 | 2 |
| 5 | 3 | 3 | 3 | 1 | 1 | 2 | 2 |
| 6 | 3 | 3 | 1 | 3 | 1 | 2 | 2 |

| | | | | | | | | | | | | | | |
|--|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| By another individual (friend or individual) | x | x | x | x | x | x | x | x | x | x | x | | x | x |
| Transportation of material to elector | x | x | x | x | x | x | x | x | x | x | | x | | |
| Transportation of elector to polling site | | x | | | | | | | | | | | | |
| Accessible information and communication | x | | | | | | x | | | | | | | |

*Polling stations must be convenient for electors, which could include being located in a physically accessible building