



democracy Watch
émocratie en surveillance

P.O. Box 821, Str. B, Ottawa K1P 5P9
Tel: 613-241-5179 Fax: 613-241-4758
Email: info@democracywatch.ca Internet: <http://democracywatch.ca>

Greg Essensa, Chief Electoral Officer
Elections Ontario
51 Rolark Drive
Toronto, Ontario
M1R 3B1
Email: info@elections.on.ca

RE: Request that you advertise to voters the real, compelling reasons to vote, and that you fulfill your legal duty to inform voters of all their voting rights (including right to decline their ballot)

January 8, 2018

Dear Mr. Essensa:

Democracy Watch was consulted by Elections Ontario before the October 2011 provincial election concerning voter turnout and voter education, and strongly recommended that Elections Ontario do advertising that contained the following key messages:

- *“If you don’t vote, you don’t count”* — making it clear that politicians don’t really care about you if you don’t vote because non-voters do not help them get elected, or defeated, and;
- *“You never know when your vote may count”* — with examples from past provincial elections such as 1985 and 1990, and from specific ridings in various elections, all of which show clearly that provincial election results cannot be predicted in advance.

Democracy Watch also called on you in 2011 to inform voters of all of their voting rights with your advertisements and on the voter registration card, including the right voters have under [section 53](#) of the *Elections Act* to decline their ballot and have it counted separately from a vote for a candidate or a spoiled ballot.

[Section 53](#) of Ontario’s *Election Act* states as follows:

“Declined ballot

53. An elector who has received a ballot and returns it to the deputy

returning officer declining to vote, forfeits the right to vote and the deputy returning officer shall immediately write the word “declined” upon the back of the ballot and preserve it to be returned to the returning officer and shall cause an entry to be made in the poll record that the elector declined to vote. R.S.O. 1990, c. E.6, s. 53.”

You did neither of these things, and although Elections Ontario spent \$4.45 million on advertising and communication with voters during the 2011 election, voter turnout dropped to a record low 48.2% of eligible voters (4,336,817 ballots cast out of 8,997,545 people on registered voters list), the first time in history that turnout was below 50%.

In addition to the incomplete and inaccurate information on its website, Elections Ontario’s newspaper advertisements and voter registration cards mailed to voters in 2011 also failed to mention the right to decline your ballot, even though both had lots of blank space in which this information could have easily been provided.

Ineffective reasons for voting and illegally incomplete voter rights information provided leading up to and during the 2014 election

Between the October 2011 election and the June 2014 election, you did nothing to correct the incomplete and inaccurate information on Elections Ontario’s website and in the public education materials you made available to teachers and the general public. All of this information neglected to inform voters of their right to decline their ballot.

On the “Mission” page of Elections Ontario’s website in 2014, it stated that among the “values that will be the foundation” of everything Elections Ontario does is “that the democratic rights of all electors must be protected.”

However, Elections Ontario failed to mention in its May 7, 2014 news release about the launch of the provincial election that Ontario voters have the democratic right to decline their ballot. On the “How To Vote” page of its so-called “We Make Voting Easy” website that existed through that election, Elections Ontario also did not mention the right to decline the ballot, and the sub-pages on that page entitled “Voting in Person” etc. all failed to inform voters of this right. The right was also not mentioned on the “More Days, More Ways” page and on the “About Elections” page that also existed leading up to and during the 2014 election.

In its advertising for the 2014 election, Elections Ontario failed to mention the right to decline your ballot, and also failed to give any effective reasons why a voter should vote or decline their ballot. See a sample 2014 ad [here](#) (PDF).

On the voter registration card for the 2014 election, Elections Ontario also failed to mention the right to decline your ballot. See a copy of the front and back of the 2011 card (which was very similar to the 2014 card) [here](#) (PDF).

In 2014, Elections Ontario's "VOTE" mailing to voters (See front of it [here](#), back [here](#), inside part A [here](#) and inside part B [here](#) (all PDFs)), and its materials for teachers, and "Voting in Ontario" information pamphlet for first time voters, also failed to mention the right to decline the ballot, and its "Voting Rules toolkits" also fail to clearly disclose this information. As a result, Elections Ontario misled young and new voters about their voting rights for the 2014 provincial election.

According to Appendix P of its [2014-2015 annual report](#), Elections Ontario spent \$4.83 million during the 2014 election on advertising and communication with voters.

However, according to the [Statistical Summary for the 2014 election](#), voter turnout increased by only 3% compared to 2011, and was the second lowest ever as only 51.3% of voters cast a ballot (4,885,493 ballots cast out of 9,523,278 people on the registered voters list).

That increase included a 1,282% increase in the number of declined ballots cast compared to 2011. A total of 29,937 voters declined their ballot in 2014 compared to 2,335 in 2011 (and the numbers of declined ballots were similar to 2011 in provincial elections from 1999 on).

Why did this increase occur? Not because of anything Elections Ontario did – in fact it was media and social media coverage of Elections Ontario's illegal refusal to inform voters of their right to decline their ballots, generated by Democracy Watch and others, that led to many voters learning that they had the right to decline their ballot.

Ineffective reasons for voting and illegally incomplete voter rights information provided since the June 2014 provincial election

Since the June 2014 election you have deleted some of the above-cited webpages on Elections Ontario's website and replaced them with new webpages. However, you have still not added any information concerning the right of Ontario voters to decline their ballot, except for one brief mention in one document.

On the new ["How to Vote"](#) webpage, the right to decline your ballot is not mentioned.

On the new [“Frequently Asked Questions” webpage](#) there is no question about declining your ballot, and the right to decline your ballot is not mentioned in the answers to any of the listed questions.

In the new [“Voting in Ontario” information brochure](#), the right to decline your ballot is not mentioned. In fact, in the “What happens at the polls?” section it says that you have only “voted successfully” if you mark a candidate as your choice.

On the new [“Glossary” webpage](#), “Declining Your Ballot” is not included as one of the listed terms in the glossary.

On the new [“Learning about Elections” webpage](#), the right to decline your ballot is not mentioned.

In the “Learning tools” section of that same webpage, the right to decline your ballot is not mentioned in the 26-page [“Voting PowerPoint” presentation](#) document (NOTE: the word “presentation” is spelled “presention” in the title of the subsection about that document).

In the “Voting Rules!” section of that webpage, the right to decline your ballot is not mentioned in the 86-page [“Voting Rules: Grade 10 Toolkit”](#) lesson book for teachers to use in the classroom, nor in the 92-page [“Voting Rules: Grade 5 Toolkit”](#) for teachers.

The right to decline your ballot is only mentioned once in one of the 11 documents that can be downloaded on that webpage – as one of the points on the 1-page [“Ontario Voter Rights poster”](#) which is under the “Learning tools” section of that webpage.

As well, Elections Ontario does not include the number of declined ballots in its [“Summary of Valid Ballots Cast”](#) (PDF) for the past four provincial elections (although it has a vaguely titled “Unregistered Political Interests” row in that table) even though declining your ballot is a completely valid way to cast your ballot in an Ontario provincial election or by-election.

Ongoing failure of Elections Ontario to properly use its legal powers to inform voters of all their voting rights, and why they should turn out

Given that the “Ontario Voter Rights poster” identifies declining your ballot as a voter right in Ontario, it raises the question of why this right is not mentioned (let alone described in detail) anywhere else on the Elections Ontario website or in any of the more than 200 pages in the many documents concerning voting that can be downloaded from the website?

On the “About Us” page of the current website (as of January 8, 2018), it says in the “Our mission” section that: “Our mission is to uphold the integrity and accessibility of the electoral process and to manage elections in an efficient, fair and impartial manner.” It also says in the “Integrity” subsection of the “Our values” section that: “We believe in administering transparent and non-partisan processes that maintain integrity and the democratic rights of all electors.” As it says in the “Responsiveness and innovation” subsection of the “Our values” section that: “We believe that, in administering the electoral process, we must respond to changing needs and encourage innovation.”

Some voters may not support any party that has a candidate in their riding, or may not support any of the parties’ platforms, and they have the right to be informed by Elections Ontario that they have the right to vote for “none of the above” by declining their ballot.

By failing to inform voters that they have this right on your website, and in your advertising and public information materials, Elections Ontario did not protect the democratic rights of all electors in 2011 or 2014 or manage those elections in an “impartial manner” or “encourage innovation.”

Instead, it denied that one of Ontarian’s voting rights even existed, and skewed its management of those elections in favour of people who intended to vote for one of the registered political parties.

With six months to go before election day for the 2018 Ontario provincial election, the fact that Elections Ontario only mentions the right to decline your ballot once briefly in only one out of more than a dozen documents concerning voting on its website, Elections Ontario continues to fail to maintain processes that protect the democratic rights of all electors, and to manage the upcoming election in an impartial manner that encourages innovation.

As a result of the above, Democracy Watch’s position is that you have failed to properly use your legal powers to educate voters about their voting rights (set out in [subsection 114.1\(2\)](#) and [section 114.2](#) of the Ontario *Elections Act*).

Subsection 114.1(2) allows Elections Ontario to “provide the public with information about Ontario’s electoral process, the right to vote...” Elections Ontario has chosen to provide the public with information about the right to vote on its website, but 99% of the information provided fails to fulfill the statutory requirement because it only contains partial information about the right to vote – it fails to mention the right to decline your ballot as part of the right to vote.

Subsection 114.2(1) requires Elections Ontario to “prepare information packages for new electors...” and “make them available, annually, to school boards for distribution to students who have reached voting age or will soon do so” and

subsection 114.2(2) requires that the information package “shall contain information about... (b) the right to vote”. On its website, Elections Ontario provides information for new electors (for example, including information about the right to vote, but 99% of the information provided fails to fulfill the statutory requirement because it only contains partial information about the right to vote – it fails to mention the right to decline your ballot as part of the right to vote.

To fulfill its legal mandate correctly, Democracy Watch requests that you correct the Elections Ontario website, advertising, voter registration card, and online educational materials for teachers, youth and first-time voters to include information that clearly informs Ontario voters that they have the legal right to decline their ballot, and how to exercise this right.

Democracy Watch’s requests – inform voters of all their rights effectively

The right to decline one’s ballot has existed in the Ontario provincial elections law for more than 40 years. Democracy Watch requests that Elections Ontario finally inform voters of this key democratic right. As well, Democracy Watch requests that Elections Ontario include key, compelling points in the information it provides to voters concerning why they should turn out at a polling station.

Please confirm by reply letter that Elections Ontario will fulfill its legal duties properly by:

1. adding information about the right to decline your ballot to all of the above-mentioned pages on the Elections Ontario website (which can be done in a few days);
2. ensuring that all Elections Ontario advertisements before and during the upcoming election campaign period will contain information about the right to decline your ballot;
3. ensuring that the voter registration cards and any other materials Elections Ontario sends to Ontario voters will also have a line on it something like: “You have a right to vote for one candidate, or to decline your ballot, at the following polling station location” and;
4. ensuring that all of Election Ontario’s online and print educational materials for teachers, youth, and new voters contains clear information in all sections concerning voting that voters have the right to decline their ballot.

Please also confirm by reply letter that Elections Ontario’s website, advertising, mailings to voters, and teacher, youth and new voter educational materials will also contain the two key reasons mentioned at the beginning of this letter concerning why people should vote.

If Democracy Watch does not receive this confirmation from you soon, it plans to file an application in court for an order mandating Elections Ontario to provide on its website, and in Election Ontario's advertising and public education materials and voter registration card, key information about the right of Ontario voters to decline their ballot in provincial elections.

We look forward to hearing back from you very soon, and hope you will do the right thing by properly fulfilling your legal duty to inform voters of all of their voting rights.

We also hope that your website, advertising, mailings to voters, and teacher, youth and new voter educational materials will also be changed to include the two key reasons mentioned at the beginning of this letter concerning why people should vote.

Sincerely,

A handwritten signature in blue ink, appearing to read "Duff Conacher". The signature is fluid and cursive, with a large initial "D" and "C".

Duff Conacher, Co-founder of Democracy Watch
On behalf of the Board of Directors of Democracy Watch