

Valuing Canadians: the options for voting system reform in Canada

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Overview

There have been many calls of late for voting system reform in Canada. Critics maintain that the current system:

- is unfair to those political parties who win relatively few seats in proportion to their popular vote;
- promotes parties formed along regional lines;
- often leaves large areas of the country without any representatives in the caucus of the governing party;
- usually produces “artificial” majority governments, without achieving a majority of the popular vote. The governing party, thereafter, dominates the political agenda for up to five years.
- “wastes” a large percentage of votes cast. Unless a voter ballots for a winning local candidate, there is no connection between the voter’s choice and the eventual make-up of the House of Commons.

Even if voting system reform is desirable, the task of achieving it might well seem impossible – a great many theoretical alternatives are possible, and there appears to be no easy way to cut down the range of options to a manageable few.

Reform, however, is not as improbable as it might first appear.

Canadians who disagree on substantive political values in many ways may still be able to agree on a process to elect a legislature. Experiences in other countries suggest that when presented with a reasonable set of specific options, a majority of voters can form in support of one of them.

While at first sight the range of options to replace the current system is overwhelming, the range can be rendered manageable using two “filters”:

- **proven systems.** Canadians are not likely to choose an option that is inadequately tested in practice. Options will only be seen as viable if they have a

reasonable track record of use in Canada's own fairly recent history, or in countries whose societies and political systems bear a reasonable resemblance to our own; and

- **proposed by Canadians.** There is already in Canada an extensive body of official reports and academic articles that have studied voting system reform. It is unlikely that a proposal that has little or no support in this extensive literature will suddenly emerge and win broad public acceptance.

Using these two “filters”, it is possible to reduce the range of plausible options to only four or five. These include:

- the current system, which is often called “first past the post”. Voters elect one member in each constituency. They vote for one candidate only, and the candidate with the most votes wins, even if they do not achieve a majority of the votes cast.
- “PR (proportional representation) light”: a hybrid which continues most features of the current system, but adds a limited number of “proportional representation” seats to Parliament to counterbalance some of the inequities resulting from the current system;
- a full hybrid system (like that used in New Zealand) in which the number of “proportional representation seats” is about equal to the number of constituency seats;
- “the single transferable ballot” or “Irish” system. Voters in a constituency elect a number of members - say five. Voters rank candidates in order of preference. The fall-back choices of a voter are considered if their first-choice candidate either has more than enough votes to win anyway or has too little support to win election; and
- alternative voting. Only one member is elected from a constituency. Voters rank candidates in order of preference. After each round of counting, the candidate with the least support is eliminated, and the fallback choices of that candidate’s supporters are then distributed among the remaining candidates.

This study proposes a framework in which these options can be compared, contrasted and evaluated. It does so by identifying a set of fourteen criteria by which each option can be judged. There are sometimes trade-offs among criteria; a voting system that is perfect in terms of one criterion might necessarily be less impressive in other respects. Different citizens might weight the importance of various criteria differently. But a clear and concise set of criteria should still help to organize and facilitate public discussion.

The fourteen electoral criteria were identified through:

- studying the lists of criteria that have been proposed by non-partisan organizations in other countries, or at the international level, that are devoted to the study of voting systems;
- comparing and contrasting those lists with the Canadian literature on voting system reform. We made a special effort to find material in which the authors explicitly identify general criteria;
- synthesizing the teachings of the international and Canadian literature. In the end, fourteen criteria were tentatively identified that appeared to have substantial support in at least one of the two sources; and
- reviewing the history of Canadian constitutional texts, case law and legislation dealing with voting system reform. The objective was to see whether the tentative list of fourteen criteria is consistent with the values that are embedded in our traditions and practices.

The result of the last step was a finding that the tentative list of fourteen criteria was broadly compatible with Canadian legal practice and tradition. Some criteria, however, were more frequently cited in the literature on voting system reform; evidence of this is provided in tabular form. Finally, the five voting system options were compared by observing whether they tend to support or inhibit the expression of each of the fourteen electoral criteria.

This study suggests that “PR Light” might be particularly attractive option for Canada. This voting system allows for the expression of most of the electoral criteria identified in this study. It

retains most of the positive features in the current system, but reduces many of its inequities. It is also a relative easy system to initially implement and then revise further in light of experience.

Regardless of the ultimate choice of Canadians, however, it is hoped that the list of criteria formulated in this study will prove useful. It is intended to provide a coherent framework for evaluating and comparing the current system and possible alternatives. Public opinion on voting system reform is as yet in its preliminary stages of formation. A focused public debate might eventually produce a broad public judgment to either retain the status quo or adopt one of the plausible options. The final choice is a matter of political judgment. It must in the end be made by our legislatures, many of whom may choose to consult with the people by way of referendums.

It is important to note that voting system reforms can generally be implemented by an ordinary law of Parliament or of a province. The high level of federal-provincial agreement necessary for some formal changes to the constitution does not apply to voting system reforms. In Canada, any of the thirteen provincial and territorial jurisdictions could legislate a new system. Eventually, the federal level of government might choose to mirror successful innovations to provincial voting systems.

Democracy in Canada

Canada adopted a template for democracy in 1867 that included a system of electing representatives to govern the country. One hundred and thirty-five years later, for many citizens that voting system no longer fits with who we are as a people and the times we live in. Canada's voting system is now routinely criticized – by academic experts, media pundits, political parties and social activists alike – as substantively unfair and undemocratic.

Assuming for a moment their collective complaints have merit, is there any real possibility of changing the system?¹ And even if changes are possible, how do you begin to design a *new* Canadian voting system?

The voting system any democracy uses should be designed to reflect the values of its citizens. This is the starting point for any democratic reform. But in a country as diverse as Canada, are there *values* that Canadians actually agree upon? And if by some remarkable turn of events Canadians agreed on broad political values might we still part company over which voting system best serves those values? Recent failures at constitutional reform, over the last two decades, show how hard it is to reach consensus. Why bother to engage in a political debate over the immutable?

Although the obstacles to electoral reform appear formidable, on closer examination, they are not insurmountable. The task with respect to electoral reform is different from the task of ordinary law making. With electoral reform, citizens are not asked to agree on substantive political principles or specific policy outcomes. They are simply asked to achieve a reasonable measure of concurrence on a *process* for making political decisions. Canadians who may

¹ It is mathematically demonstrable that there is no “perfect system.” Arrow's theorem states that when many options are open to voters, the outcome will often depend not only on underlying preferences but also on the choice of voting system – e.g., the way options are grouped and the order in which they are considered. While theoretical perfection is not possible, we believe that it is possible to arrive at systems that are on balance reasonable and broadly supported.

disagree in the substance of their politics can therefore agree on fair procedures to make those decisions.²

History teaches that individuals or groups that fundamentally disagree about outcomes can agree on a process for reaching decisions. Millions of deliberative bodies – from annual meetings of charitable societies to closed-door meeting of corporate directors – have been able to agree that policy decisions will be made by majority rule in which every individual (or in the corporate context, every share) counts equally. The range of processes Canadians use for electing representatives to guide their organizations is rather narrow. This suggests there is already wide concurrence on the types of electoral models that are just.

International examples of change further suggest that electoral system development is not only possible but is a frequent occurrence, globally.³ The European Union now comprises fifteen states. The states have nonetheless been able to agree, unanimously, on a voting system for the new European Parliament. European Union members have also agreed on a complex system for counting votes in the European Council.⁴ New Zealand, Scotland and several other societies that share Canada's tradition of British Parliamentary democracy have also adopted

² To this end, Fair Vote Canada, a new non-partisan citizens' campaign for voting reform was launched at a March 30, 2001 conference in Ottawa. The mandate of the group is to inform Canadians about the problems with the current system, explicate the alternatives, and press for change of the current electoral system. Fair Vote Canada, "An Overview of the Issues and the Citizens' Campaign for Voting System Reform", paper, August 2001. Also of note, within the last year, Provincial governments in Prince Edward Island, Quebec and British Columbia have announced a willingness to look at changing their electoral system.

³ It is, to be sure, much easier to get everyone to agree that something is wrong than it is to win agreement on how to fix it. But experience in other countries suggests that it is possible to win popular support for major changes in an electoral system. In New Zealand, a proposal to introduce proportional representation was supported by a majority of voters in a national referendum. Citizen reaction to the change has been mixed, but there appears to be little support for returning to the "first-past-the-post" system. The people of Wales and Scotland both voted in favour of a British government proposal on "devolution." It involved delegating lawmaking power from the British Parliament to local assemblies in Wales and Scotland. The proposal stipulated that the electoral system for both places would include a large percentage of seats allocated on the basis of proportional representation.

⁴ The body that ratifies European Union legislation uses a finely tuned system of weighted voting. More populous countries have the most votes, but less populous ones receive a higher percentage of votes than their populations would ordinarily warrant.

new voting systems. In each case, reform was backed by the support of the public through a referendum.

This paper is written with a view to this possibility: that Canadians might be prepared to now engage in a broad debate about changing our system of electing governments. It will attempt to explore whether there are any identifiable Canadian values that could help inform and guide Canadians as they consider reforms.

1 ! Canadian Values and Electoral Criteria

The starting point for any debate on electoral options might reasonably be to ask, what fundamental political values do Canadians share? Electoral models that do not reflect current Canadian values ought to be disregarded as a ‘poor fit.’ Models that are in sync with shared values ought to be debated rigorously to determine if they would be viable in Canada. But there are indeed difficulties with this direct approach. An intermediate step may be necessary to bridge the gap between abstract values and concrete electoral models.

In preparation for what became the Charlottetown constitutional round of negotiations, on November 1, 1990, the federal government announced the creation of the Citizen’s Forum on Canada’s Future. The forum was designed to determine what kind of country Canadians envision for themselves and their children. Many participants in the Citizen’s Forum on Canada’s Future (1991) expressed a strong sense of a distinct Canadian society, which set Canada apart from any other country. Written and oral submissions to the forum were analyzed in an effort to determine core Canadian values. The results included:

- a belief in tolerance and fairness in a democratic society;
- belief in consultation and dialogue;
- importance of accommodation and tolerance;
- support for diversity;
- compassion and generosity;
- attachment to Canada’s natural beauty;
- a commitment to freedom, peace and non-violent change.⁵

If we reflect on the above list of core values we soon realize that it is not comprehensive, and does not provide detailed guidance for determining a “best fit” voting system. This is because core values are not task specific – they are often abstract notions. For example, the list does not include factors that Canadians seem to concur upon when they discuss electoral reform, such

⁵ See Citizens Forum on Canada’s Future: Report to the People and the Government of Canada (Keith Spicer, Chair) (Ottawa: Supply and Services Canada, 1991) for the discussion on Canadian identity and values, pages 34- 45.

as the desire for “stable and effective government,” “neutrality,” or “party development.” What core values would these factors fit into? One can see from this example that we will need to be more specific, more tangible, when discussing what ideals Canadians want to see reflected in their voting system. In this paper we have termed these specific ideals “electoral criteria.”

A number of internationally recognized electoral criteria will be introduced and discussed in the next chapter. It is the electoral criteria that are relevant to Canadians, however, that must be primarily considered when discussing and debating the merits of any democratic voting system.

Once relevant electoral criteria are established, basic electoral models will be evaluated to determine whether they support, are neutral or hinder the furthering of each particular criterion.

The purpose of the above systematic approach is to develop a framework for a focused discussion on voting systems. Using the phrase “electoral criteria” establishes that we are engaged in a relatively focused and manageable task. Defining our criteria suggests that we have achieved a concise and orderly framework for arriving at a concrete resolution of a specific question. In this context, Canadians who may hold disparate political and social views might be able to achieve a reasonable measure of agreement on what specifically, if anything, should be done to change our voting system.

It is important to remember that no voting system can fully meet all of a country’s core values, or electoral criteria, simultaneously. Each democracy must decide what is the most just compromise. The scope of this research is to provide a starting point for the discussion of matching electoral criteria and electoral models. We attempt to identify the factors that are important to Canadians, but not the hierarchy of those criteria.

We suggest that Canadians will need to participate in a consultation process to determine which criteria are of utmost importance in deciding upon the most appropriate voting system. In reality, the similarities between many electoral models are great. Often, the differences in voting systems reflect only which criteria were *most* important to the designers. Democracies often choose to construct their own voting system, instead of adopting a tried-and-true system from another jurisdiction, because they have unique factors that must be accounted for in the design

process. Canada will be no different. The system chosen will most likely adopt a basic model already in use in some comparable societies, but contain adaptations suited to Canada's distinctive traditions and expectations.

2 ! Establishing Relevant Electoral Criteria

A discussion of “values” typically produces results that are too vague to usefully guide a public discussion of electoral reform. Many non-partisan organizations and commissions throughout the world have, however, proposed electoral “criteria” that are adapted to the task of evaluating competing proposals for electoral reform. They enable the public to compare and contrast competing models under a consistent framework.

As part of their electoral reform process, New Zealand’s Royal Commission on the Electoral System identified a set of ten criteria to use when evaluating voting systems. It cautioned that “no voting system can fully meet the ideal standards set out by the criteria”⁶ and that not all criteria were of equal weight.

In 1997, The International Institute for Democracy and Electoral Assistance (“IDEA”) published a handbook on electoral reform, which identified eight “criteria for designing an electoral system.”⁷ It reminds reformers that these criteria may pull in different directions.

From our review of proposals made by these and other international bodies, the IDEA list of criteria to consider is exemplary for its general clarity and inclusiveness. We have used this list as a starting point, for determining relevant electoral criteria, and added a number of criteria repeatedly discussed within the academic literature on electoral reform. The IDEA list, which we have reorganized and augmented to reflect electoral criteria cited in Canadian reform proposals, is as follows:

Parliaments should be representative in three dimensions

1. Geographical representation: each area (such as a riding) has members of parliament chosen by local residents and ultimately accountable to that area.

⁶ IDEA, *The International IDEA Handbook of Electoral System Design* (Stockholm: International IDEA, 1997) IDEA is an independent body, based in Sweden, that attempts to provide information and education on how democratic institutions can be developed.

⁷ *Ibid.* at 9-14.

2. Party representation: the parliament should reflect the relative support of various parties.
3. Demographic representation: the parliament should, to some degree, be a “mirror of the nation.” It should include both men and women, the wealthy and poor, and reflect various religious affiliations, linguistic communities and ethnic groups.

In terms of how representative a Parliament is, we suggest considering both *presence* and *clout*. A parliament might be representative of a region in the sense that a certain percentage of the parliamentarians come from that region, but what if none of those representatives belong to the cabinet or the governing party? They might have no real say in policy-making. If so, the region could be said to have presence but no clout.

There should be a level playing field for political competition

4. The system should, as far as possible, function in a neutral manner with respect to all parties and candidates; it should not discriminate against any political group.

The system should be accessible to voters

5. There should be ease of voting - meaning that it is not unreasonably burdensome to register or arrive at a polling place, and the ballot should not be confusing. The ballot should be secret, so choices can be expressed freely.

The system should be meaningful to voters

6. A voter should know that an individual vote makes a difference to the final result. Some systems tend towards having many “wasted votes” – votes that do not have any impact because the “winner takes all” – and second and third place candidates or parties receive no legislative pay-off even if they receive a large share of the vote.

7. Each vote should carry equal weight to every other vote. This principle is often referred to as “one person-one vote” to highlight the fact that each vote is equal in weight.
8. The elected parliament must have real power to legislate.
9. Voters should be able to hold elected members accountable for past governance.

The system should encourage candidates and parties to reach out to a broad segment of the population

10. An electoral system can help to ease tensions in a society by providing rewards for a candidate who can appeal beyond a narrow constituency.

The system should produce stable and effective government

11. The government must be able to efficiently enact legislation and govern. If the government comes from a single party that has a majority in parliament, it is particularly easy to proceed with a legislative agenda.

The system should promote effective parliament opposition

12. The electoral system should help to ensure the presence of a parliamentary opposition that can critically assess legislation and present an alternative to the current government. The electoral system should hinder the development of a winner-take-all attitude, which leaves rulers blind to other views and the needs and desires of opposition voters.

Cost and ease of administration

13. An electoral system should not be unreasonably expensive or difficult to administer.

Ease of transition

14. The government must be able to smoothly oversee the transition from an existing system to any new electoral model. The more foreign the system the more unpalatable change will be. Markedly different systems will not be seen as a viable alternative to the existing system.

The IDEA handbook further reminds us that criteria for design must be applied with sensitivity to the distinctive nature of different societies. Any list of criteria must be amended, interpreted, and applied in light of the distinctive features of Canadian society and politics.⁸

Determining which electoral criteria are important to Canadians

Suppose a poll was taken of Canadian attitudes inquiring: which electoral criteria are most important to you? Would the results hold any merit? Unfortunately, recent polling has shown that an exercise of this nature might be premature. Public opinion, at this point is still largely unformed or changeable, on the issue of what electoral model is preferable.⁹ Canadians overwhelmingly (92 per cent) want a voting system to provide a government with good representation from different regions. Bricker and Redfern infer from this result a general unwillingness to see the country governed by non-national parties.¹⁰ Some polling results may be contradictory: while 71 per cent believe that Canada's voting system should produce "strong majority governments that can get things done," 64 per cent of those polled believe "that Canada's voting system should award seats in Parliament in proportion to the popular vote received by each party, which is of course the definition of PR."¹¹

⁸ *Ibid.* at 14.

⁹ For reflections on recent Ipsos-Reid electoral poll results, see Darrell Bricker and Martin Redfern, "Canadian Perspectives on the Voting System" (2001) 22:6 Policy Options 22. Recent poll results reveal that Canadians are not well informed about their electoral system. Half of the individuals polled believe that MPs must win more than half of the votes cast to be elected, and that governments must win a majority of votes.

¹⁰ *Ibid.* at 23.

¹¹ *Ibid.* at 23.

Similarly, when the Royal Commission on Electoral Reform and Party Financing, the Lortie Commission¹², surveyed Canadians in 1991, about half the respondents said they were “satisfied” with the first-past-the-post system. However, the respondent’s answers depended on *when* in the interview the question was posed. Sometimes respondents were asked a series of detailed questions about the system first, and only then asked the general question “are you satisfied with the current system?” If this procedure was followed, Canadians were more likely to answer, “No, I am not satisfied with the current system.” As the Lortie Commission researchers noted, if Canadians spent even a little time thinking about their voting system, they were more likely to express unhappiness with it. In this respect, the nature and firmness of Canadian’s opinions on voting systems might change greatly once a focused public debate occurs – one in which the strengths and weakness of the current system were explored along with specific alternatives.

Another route, besides poll taking, that might shed more useful light on the electoral criteria that are important to Canadians is to review Canadian laws, judicial decisions, reform proposals and commentaries on our current voting system for references to electoral criteria.¹³

Our laws, and proposals to reform them, address our system in very specific and concrete terms. They do so by means that are relatively concise and easy to access. Laws, judicial pronouncements on our electoral system, and reform proposals indicate not only what values Canadians have, but how Parliament, the Courts, and interested parties balance and apply those values in specific contexts.

¹² The Royal Commission on Electoral Reform and Party Financing was appointed in 1989. In January 1990, the commission placed advertisements in national newspapers inviting Canadians to submit their ideas pertaining to reform of the federal electoral system. Ultimately, the commission received over 900 briefs, from groups, political practitioners, and private citizens. The committee held public hearings across Canada in 27 cities, with a total of 523 groups or individuals appearing to present their views. Royal Commission on Electoral Reform and Party Financing, Final Report: What Canadians Told Us, vol. 4 (Ottawa: Supply and Services Canada, 1991).

¹³ We also reviewed the work of Andre Blais who, in 1991, identified the major values identified in the debate over electoral systems. He notes electoral values include: stability, leadership, accountability, fairness, legitimacy, order, responsiveness, and responsibility. “The Debate over Electoral Systems” (1991) 12 International Pol. Sc. Rev. 239.

It is true that laws are sometimes out of step with public opinion; for example, it is a common concern in Canada that our electoral laws are biased in favour of those who already hold power. This concern must be kept in mind when looking at the course of laws and law reform proposals. But we cannot be unduly cynical either. We may find that certain issues are dealt with in a fairly consistent manner in different times and places in Canada. This pattern may reflect not only the self-interest of the powerful, but also a wide and constant stream of underlying social concurrence.

A wealth of insight also exists in judicial interpretations of electoral matters. Post 1982, Courts have grappled with interpreting electoral issues in the context of the Canadian Charter of Rights and Freedoms.¹⁴ The Canadian values revealed by mining these stated resources might then enable us to have a fresh look at the fourteen electoral criteria we have identified as potentially meaningful to Canadians.

Reflecting on electoral reform proposals, or reform proposals that speak to electoral reform as a secondary issue, will hopefully allow us to map out the direction Canadians are moving in. Are some criteria becoming more prominent? Our task will be to look for patterns in the ideas that Canadians are putting forward to see if the status quo meets the needs of Canadians today, or if a momentum for change is developing.

¹⁴ 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 [hereinafter "Charter"].

3 ! Constitutional Developments

This section examines the Canadian Constitution, constitutional reform proposals, election laws, and court decisions to determine whether there are any consistent patterns. These might in turn tell us something about the principles and practicalities that have guided Canadian lawmakers and the general public over many years.

After reflecting on historical reform proposals, Canadians might decide that past practices reflect outmoded conditions that no longer exist. They might find that some current practices are based on political beliefs that are now controversial or widely rejected. But Canadians might also find some voting system choices continue to make sense today, despite the passage of time and the evolution of our collective political thinking.¹⁵

The development of the Constitution of Canada

The Early Years

Canada's founding statute, the Constitution Act, 1867, is commonly described as a prosaic text. It does not state abstract principles or attempt any inspiring rhetoric. It is an instruction manual for setting up the structures of government.¹⁶ There was actually much wisdom in that approach. It permitted citizens with very different ideologies to reach a consensus on how the political processes of the new federation would operate. It was left to the evolving judgment and imagination of Canadians to make the most of the creative opportunities.

¹⁵ Values embedded in formal laws, documents and proposals are not necessarily identical in all cases to those held by a majority of Canadians. In recent times, proposals that have won the support of the political elite have been shown to lack popular support when they were actually put to a popular plebiscite.

¹⁶ The fathers of Confederation conceded that adopting a legislative union (unitary state) was politically impossible. The compromise was to adopt a federal union, with the hopes that after some experience of living together, Canadians of all regions would choose to merge into unity union (without provincial legislatures) W. Eggleston, *The Road to Nationhood* (Toronto: Oxford University Press, 1946) at 20, citing Parliamentary Debates on Confederation of the British North American Provinces, 3rd Session Parliament of Canada, Quebec, 1865.

One of the few principles expressly mentioned in the Constitution Act, 1867 is that Canada is to have “a constitution similar in principle to that of the United Kingdom.” The latter does not have one core document. The U.K. Constitution is based on an accumulation of laws, judicial decisions and political practices developed over centuries. Some aspects of the U.K. Constitution will be interpreted and applied by the courts. But much of the Constitution consists of “political conventions”; these are traditions that are developed and interpreted by executive officials, rather than by judges. These conventions are observed as a matter of conscience and public expectations – the courts have no authority to step in and order public officials to obey them.¹⁷

Similarly, the Canadian Constitution sketches a legal framework for operating the government, but does not spell out many of the crucial political conventions that are to apply. The framers of Canada’s Constitution expected that the Crown’s sweeping and autocratic powers would be exercised in accordance with evolving political conventions of “responsible government.”¹⁸

Canadian political conventions require that the Crown generally act as advised by the cabinet. The cabinet consists of ministers recommended by the Prime Minister. Cabinet ministers must generally be members of the House of Commons. They must respond to questions about government business from ordinary members of the house. A cabinet can only continue to serve as the government of the day as long as it has majority support in the House of Commons. If ordinary members of Parliament vote non-confidence in a cabinet, by convention, it must resign. A different cabinet might then try to govern, or there might be an election.

¹⁷ Conventions are defined as binding rules of behaviour, accepted as obligatory by those concerned. Some conventions impose obligations and duties while others confer rights and entitlements. Conventions are morally, politically but not legally binding. Geoffrey Marshall, *Constitutional Conventions: the Rules and Forms of Political Accountability* (Oxford: Clarendon Press, 1984). In Canada, the Supreme Court has rejected the idea that constitutional conventions crystallize into laws over time that can be enforced by the courts. See Reference (Re) Amendment of the Constitution of Canada (No. 1, 2, and 3) (1982), 125 D.L.R. (3d) 1 at 22.

¹⁸ The system of “responsible government” is a fundamental feature of the Constitution Canadians have inherited from the United Kingdom. The Crown has a great many powers in strict law. It directs the operation of the executive branch of government, including the armed forces. It alone can summon and dissolve parliaments. The Crown has the sole authority to propose money bills. No bill of any kind can become law without Crown assent. The Crown appoints judges and the most senior advisors to the Crown.

The framers of the 1867 Constitution, based on their experience with the pre-confederation legislatures, expected that the House of Commons would exercise firm control over governments.

It was the heyday of the legislature's power, the time when the lower house actually made and unmade Governments. The Ministry was the servant, not the master of the lower house. Time reflected its changing moods, its fitfulness, and its uncertainty. But federation brought change; henceforth the Prime Minister and his Cabinet were to be the real governors and not the House of Commons. Even the Cabinet was to be overshadowed by the Prime Minister, who by means of enormous patronage put at his disposal by the federation, would bestride the political world like a colossus.¹⁹

The 1867 Constitution did not require that each vote carry equal weight within provinces. With respect to Nova Scotia, for example, it provided that each county (regardless of population) would elect one member, and Halifax two. When Parliament enacted the Representation Act in 1872, John A. McDonald stated that seats were apportioned so that:

The principle of population [all constituencies have the same number of voters] was considered to a very great extent, other considerations were also held to have weight, so that different interests, classes and localities should be fairly represented...²⁰

The 1867 Constitution did not place any other explicit constraints on how elections would be conducted; no rules about the party system, campaign finance, gender equality, or representation for any particular ethnic groups or religions. There was no secret ballot until 1884, no franchise for women until 1918. In earlier elections, voter qualification rules often excluded poorer citizens.²¹

The rules in the Constitution Act, 1867, for electing a House of Commons, did however reflect the following principles:

¹⁹ R.A. Mackay, *Unreformed Senate of Canada* (London: Oxford University Press, 1963) at 46.

²⁰ Parliament Debates, February 15, 1872, to June 15, 1872, pp 926-27, cited by Justice McLachlin in *Dixon v. British Columbia* (1989), 59 DLR (4th) 247 [hereafter *Dixon*].

²¹ As of 1885, the year voting rights were "expanded," to qualify as a voter, one had to be male, at least 21, a British subject by birth or naturalization, and be a property owner. W. H. McConnell, *Commentary on the British North America Act* (Toronto: MacMillan and Co., 1977) at 84. See pages 81 to 86.

- representation-by-provincial-population: each province was allocated a number of seats in proportion to its share of the overall Canadian population;
- periodic re-allocation: a census was required every ten years, and seats would be reallocated accordingly;
- grandfathering: a province could, however, only lose seats if its share of the Canadian population was reduced by 5 percent or more since the last census.

The combined interaction of these three principles meant that the number of seats might grow from time to time. A province gaining population must acquire some extra seats, but a province loosing population might not lose as many seats as it would on a strict application of representation-by-provincial-population.

Part V of the Constitution Act, 1867, addresses how various aspects of the Constitution can be amended. Section 44 authorizes Parliament exclusively to “make laws amending the Constitution of Canada in relation to the executive government or the Senate and House of Commons.” The consent of the provinces, or a national referendum, is generally not required to change the system used for electing members of Parliament.

Section 40 of the Constitution Act, 1867, defined the number of seats in each province, defined their boundaries, and provided that each riding would elect one member (with the exception of Halifax, which was allotted two).²² Since then, Parliament has altered the electoral map many times. It should be noted that representation by population was debated extensively during the 3rd session, 8th Provincial Parliament of Canada (1865).“The driving force for Confederation

²² The British North America Act, 1867, originally included provisions for electoral districts for the four provinces, under s. 40, and a readjustment of representation clause, s. 51, that was tied predominantly to population totals in each of the four provinces:

51(2) There shall be assigned to each of the other Provinces such a number of Members as will bear the same proportion to the numbers of its Population (ascertained at such a Census) as the Number Sixty-five bears to the Number of the Population of Quebec (so ascertained).

came from Canada West, and the reform party's agitation for representation by population was the vital part of that force.”²³

Constitutional Amendments

Parliament has revised the electoral provisions of the Constitution Act, 1867 on a number of occasions.²⁴ The interactive effect of these constitutional amendments is that:

- the size of the House of Commons increases from time to time, and never reduces;²⁵
- the “grandfathering” and “senatorial floor” rules mean that some provinces – smaller ones and those with relatively diminishing populations – have more elected representatives for less people. When seats are reallocated in accordance with the 2001 Census, an elected Ontario member will represent about 110,000 persons; a Prince Edward Island MP will represent only about a third of that number, and a Saskatchewan member only about two thirds.

²³ *The Confederation Debates in the Province of Canada, 1865*, edited by P. B. Waite (Toronto: McClelland and Stewart Ltd., 1963) at iv.

²⁴ In 1915, Parliament introduced the “Senatorial floor” principle: every province must have at least as many House of Commons seats as it has in the Senate. Prince Edward Island was assigned four Senate seats when it joined, and so has an ongoing right to four House of Commons seats - even though it would only receive one seat on a the basis of representation-by-provincial population. The “grandfathering principle” has been altered, but remains alive. Since 1951, the rule has been that a province cannot lose more than 15 percent of its seats in any reallocation. As of 1985, the re-allocation rules require that Quebec be assigned an extra four seats every reallocation, and the rest of the seats be adjusted in light of Quebec ratio of seats to population.

²⁵ The influence of each ordinary member tends to be diluted as the overall number increases. Also, with large number of members, it can become more difficult for party leaders to exercise strict control. There are only so many prized positions that can be handed out; a member with no realistic prospect of receiving one might be inclined to become quite independent in expressing his or her views. One of the factors that might have led to the increased independence of members of the British House of Commons is its large size.

Landmark Constitutional change

In the late 1970s, as a precursor to repatriation of Canada's constitution and Constitutional change, the government of Canada embarked on a five-year reflection, with the help of Canadians and politicians on what Canada's most important legal document ought to include.

In 1978, Prime Minister, Pierre Elliott Trudeau stated the following regarding his vision of a newly designed Constitution for Canadians:

The renewal of the federation requires first of all that we become aware of the values which we need to share, regardless of the community to which we belong or the regions where we live... our tendency is to emphasize our distinctive characteristics. We are all too prone to reduce culture to language or ethnic origin and consequently, to underestimate the cultural values we share.²⁶

The emphasis was in finding shared values that could be used to shape the Constitutional documents of Canada.²⁷ It should be noted that the government's goal was for the renewed Constitution to contain a "Statement of Aims", which would reflect the shared values of all Canadians.²⁸

The Constitutional package of 1982 leaves the existing system of selecting Parliaments largely intact. It contains a new set of formulas for amending the Constitution. The *Constitution Act, 1982*, also provides that two basic principles cannot be changed by Parliament alone anymore – the new general amending formula must be used. Those two principles are "representation-by-provincial population" and the "Senatorial floor." The support of a province for a Constitutional amendment is determined by a resolution of the assembly, rather than a formal law.²⁹ But that set of formulas was not fully accepted by the provincial government of Quebec.³⁰

²⁶ Pierre Elliott Trudeau, *A Time for Action: Toward the Renewal of the Canadian Federation* (Ottawa: Supply and Services Canada, 1978) at 5.

²⁷ Trudeau further stated: It is up to Canadians to discover the similarities that bind us together and the differences from which spring our diversity and which we can agree to preserve together." *Ibid.* at 7.

²⁸ *Ibid.* at 22.

²⁹ Elected legislators now have a legally entrenched role in addition to their legislative and "ombudsman" duties: they participate in amendments to the Constitution the "supreme law of Canada." But the same

The centerpiece of the 1982 Constitutional package was the Charter of Rights and Freedoms (“Charter”).³¹ The Charter recognizes the following:

- fundamental freedoms, including freedom of expression, religion and conscience;
- democratic rights, including the right to vote;
- mobility rights, which includes the right of Canadians to relocate from one province to another;
- legal rights, which guarantee protections (such as the right to a fair trial) in the context of the administration of the criminal justice system;
- equality rights, which include the right to equality without discrimination, and in particular, without discrimination on the basis of “race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”. The Charter stipulates, “affirmative action programs’ are not barred by the equality guarantee;
- official language rights. English and French are recognized as the languages of government at the federal level. Canadians generally have the right to deal with government in the official language of their choice;
- minority language educational rights. Official language minorities

distortions produced by the first-past-the-post system call into question the fairness and legitimacy of legislatures when they discharge this role. If anything, the distortions are of more concern when constitutional amendment is involved; the Constitution prevails over ordinary laws, and any amendment to the Constitution is likely to endure for generations. Some provinces have now enacted laws requiring that voters be consulted in a plebiscite before the legislative assembly approves any changes to the Constitution. This procedure does in practice ensure that there is genuine majority support in the public before the assembly signals its support.

³⁰In 1996 Parliament passed a law, Bill C-110, promising that the government of Canada would not support amendments concerning federal institutions (like the Senate) based on the 1982 amending formula. Instead, Parliament promised a higher level of consent would be required - including that of all five “regions” of Canada. In the meantime, however, no consensus has been reached with the provinces on a new amending formula to replace the 1982 version.

³¹ Charter, *supra* note 14.

have the right to send their children to schools that operate in that minority language. The minority that has these rights is more narrowly defined in the case of Quebec.

Part II of the Constitution Act, 1982 “recognized and affirmed” the “aboriginal and treaty rights” of the aboriginal peoples of Canada.

Reform Proposals

The Charlottetown Accord

The Charlottetown Accord attempted to craft reforms to political institutions that were guided by a statement of basic values. In the Charlottetown Accord round, Canadian first Ministers put together a package of constitutional reforms that included a statement of fundamental political values and institutional reforms that were intended to reflect them.³²

The basic statement of values was the “Canada Clause,”³³ which recognized that:

2 (1) The Constitution of Canada, including the Canadian Charter of Rights and Freedoms, shall be interpreted in a manner consistent with the fundamental characteristics:

- Canada is a democracy committed to a parliamentary and federal system of government and the rule of law;

³² The principle of the “equality of provinces” was reflected in a proposal to create a Senate in which all provinces would have the same number of seats, which would be six. The method of selecting Senators would be largely left to the individual provinces to decide. A federal policy issued around the beginning of the Charlottetown round suggested that proportional representation might be an approach worth adopting. The provinces were invited to consider whether they would guarantee an equal number of its Senate seats to be held by men and by women. The Charlottetown Accord further provided that a number of Senate seats would be set aside for aboriginal peoples. The precise number was left to be decided in the future. The Charlottetown Accord contemplated a Senate that would have some real influence.

³³ Bryan Schwartz was one of the original proponents and drafters of what later became the Canada clause. See Bryan Schwartz, “Refashioning Meech Lake” (1989) 18 Man. L.J. 19.

- the Aboriginal peoples of Canada, being the first peoples to govern this land, have the right to promote their languages, cultures and traditions and to ensure the integrity of their societies, and their governments constitute one of the three orders of government in Canada;
- Quebec constitutes within Canada a distinct society, which includes a French speaking majority, a unique culture and a civil law tradition;
- Canadians and their governments are committed to the vitality and the development of official language minority communities throughout Canada;
- Canadians and their governments are committed to racial and ethnic equality in a society that includes citizens from many lands who have contributed, and continue to contribute, to the building of a strong Canada that reflects its cultural and racial diversity;
- Canadians are committed to respect for individual and collective human rights and freedoms of all people;
- Canadians are committed to the equality of female and male persons;
- Canadians confirm the principle of the equality of the provinces at the same time recognizing their diverse characteristics.³⁴

When put to a national plebiscite, support and opposition to the Charlottetown Accord was about equally divided.³⁵ But, the “Canada clause” did not appear to be one of the stumbling blocks to approval.

As a statement of recently shared Canadian values, this proposed constitutional reform is particularly insightful, as it addresses some of the unique geographic, linguistic and cultural

³⁴ Charlottetown Accord, 1992, Draft Legal Text (Ottawa: Supply and Services Canada, 1992). The Draft included an addition to the Constitution Act, 1867. This proposed addition, s. 2(1), is referred to as the “Canada Clause.”

³⁵ The text of the referendum question read as follows: Do you agree that the Constitution of Canada should be renewed on the basis of the agreements reached on August 28, 1992? The vote was held on October 26, 1992 and had a voter turnout rate of 72 percent. The vote results were 45.7 percent for renewal and 54.3 percent against. Referendum 92: Official Voting Results, Synopsis, 1992 (Ottawa: Supply and Services Canada, 1992) at 4.

cleavages that have divided Canadians politically since confederation. It signals that one's geographic place may be diminishing in importance to Canadians, as cultural and linguistic identifications rise in importance.

Arguably, Canada's current voting system actually undermines some of the values recognized in the above "Canada clause." The current system "manufactures" majorities in the House of Commons, and leaves opposition parties with very little power and responsibility, marginalizing the voices of any dissent. The "equality of provinces" is not easily served by a system that often leaves entire provinces with few or no seats in the ranks of the governing party or caucus. On one occasion – the election of the Clark minority government in 1989 – the excluded provinces included Quebec. Similarly, democracy is undermined when geographically dispersed segments of Canada's populace find it next to impossible to elect members to Parliament that reflect their cultural, linguistic or ideological perspective.

Senate Reform

Parliamentary electoral reform ultimately must take into consideration the other branch of our parliamentary democracy – the Senate. A review of the values embedded in our constitutional history must take at least a brief look at the rules concerning the Senate.

Under the 1867 Constitution, members of this upper chamber are not elected. They are instead appointed by the cabinet, and to terms of office that were originally for life, but since limited to the age of 75. The founders intended the Senate act as a check on excesses that might emerge from the House of Commons. Specifically:

- the House was based on representation-by-population for provinces. The Senate would provide roughly equal representation for all regions of Canada (Ontario, Quebec and the Maritimes). The less populous provinces would have a protector of sorts;
- the upper chamber was also intended to protect the interests of the property classes against potential depredations by the general population.

An appointee to the Senate is required to have a constitutionally-stipulated amount of real property;

- the upper chamber was intended to act as a check against “hasty” or “ill-considered” legislation emerging from the “popular chamber.” It would, in Sir John A. McDonald’s words, be a chamber for “sober second thought.”

The constitutional desire to protect against “hasty” or “ill considered” legislation is now realized in a different way. The Charter recognized a number of “values” that should not be interfered with by legislation. Judges – who, like Senators, are not elected and are immune from democratic accountability – now are supposed to act as the guardians of those rights.

Senate reform has been a prominent feature of Canadian reform proposals over the past decades.³⁶ Reformers have pointed out that the Senate was originally supposed to provide some counterbalance to the political domination of the House of Commons by provinces (Ontario and Quebec) that have relatively large populations. They maintain that governments have sometimes favoured the interests of the two populous central provinces at the expense of others such as Alberta. Proposals have called for a Senate that is:

- elected (rather than being a patronage appointment by the government);
- effective (have real, but limited powers compared to the House of Commons);
- equal or equitable in the representation of various provinces or

³⁶ In the Charlottetown Accord, federal and provincial First Ministers agreed to propose a constitutional package that would have included a “triple E” Senate. For the price of equal representation for all provinces, the province of Quebec was offered a permanent floor of 25 per cent of the seats in the House of Commons. The Charlottetown Accord further provided that on linguistic and cultural measures, the Senate could only approve a bill if it had the support of a majority of both Anglophone and Francophone Senators. The loss of Quebec influence in the Senate produced criticism in Quebec. The proposed quota of seats for Quebec in the House of Commons, and the “double majority requirement” in the Senate, were sources for complaints elsewhere. The lack of agreement over how to reform the Senate was almost certainly a contributing factor to the failure of the Accord to win support in a national referendum.

regions or aboriginal peoples. (Some have called for equal seats for all provinces, others for at least some extra seats to be allocated to less populated parts of Canada or to aboriginal peoples).

Any quest for Senate reform will face this conundrum: how does one provide more clout for smaller provinces and for aboriginal peoples without diluting the political influence in the central government of the residents of Quebec? According to the amending formula, any answer must be supported by the governments of at least seven provinces that include at least half the population of Canada. In reality, the bar is even higher.

As noted earlier, Parliament enacted Bill C-110 in 1996,³⁷ promising that the federal government will not support a constitutional reform unless an even higher bar is met. The proposal must have the support of five *regions* of Canada, including: British Columbia, the three Prairie Provinces, Ontario, Quebec and Atlantic Canada.³⁸

After consideration of the above impediments, it is highly unlikely that the necessary consensus on Senate reform will occur in the proximate future. Accordingly, any achievable proposals for electoral reform at the federal level should probably focus exclusively on the House of Commons.

Elections Canada

The last seven years have brought multiple changes to the way elections are conducted in Canada.³⁹ Over the last decade, Parliament has passed legislation to improve access to the electoral system for persons with disabilities⁴⁰, allow for mail in ballots,⁴¹ create a permanent

³⁷ Bill C-110; S.C. 1996 c. 1.

³⁸ As Alberta has most of the population in the prairies, it is one of four provinces that can now single handedly veto a proposal. Support in the prairie and Atlantic regions requires at least two provinces with half the population of those regions. Some provinces have laws that public opinion must be sought in a referendum before the legislature enacts any resolutions in favour of a constitutional amendment.

³⁹ Elections Canada is governed by the following Acts of Parliament: Canada Elections Act, Referendum Act, Electoral Boundaries Readjustment Act, Constitution Act, 1867, Constitution Act, 1982.

⁴⁰ Through an amendment to the Canada Elections Act in 1992.

register of qualified electors,⁴² and introduced new controls on election advertising by third parties.⁴³ Canadian election laws have become scrupulous about ensuring fairness among parties in allocating resources such as public subsidies and broadcast airtime. Many of these changes were motivated by the outcome of the Lortie Commission Reports, released in 1991, that highlighted the need to improve both the fairness and accessibility of the voting process.

Court Cases

Canada's judicial history reveals various electoral disputes involving the application of the Charter. For example, section 3 of the Charter guarantees that every Canadian has the "right to vote" in federal and provincial elections. But, does that imply that every constituency ought to have about the same number of voters? Judges have reviewed our laws and practices to decide this question. Courts have identified key sources of information, and identified some crucial developments in our electoral history. They have identified a number of core principles that have endured since confederation, or emerged through time.

The past two decades has witnessed a number of court challenges of intra-provincial electoral boundaries. In 1989, Justice McLachlin (now the Chief Justice of Canada) wrote the seminal decision, *Dixon v. British Columbia* (1989),⁴⁴ a case involving a challenge to provincial election boundaries. In her decision, Justice McLachlin distilled from Canadian history the core principles that ought to guide the Court's interpretation of the "right to vote." The "right to vote" includes the following rights:

- the right not to be denied the franchise on the grounds of race, sex, educational qualification or unjustifiable criteria;
- the right to be presented with a choice of candidates or parties;

⁴¹ *Ibid.* in 1993.

⁴² *Ibid.* in 1996.

⁴³ *Ibid.* in 2000.

⁴⁴ 59 DLR (4th) 247 [hereinafter "Dixon"].

- the right to a secret ballot;
- the right to have one's vote counted;
- the right to have one's voted count for the same as other valid votes cast in a district;
- the right to sufficient information about public policies to permit an informed decision;
- the right to be represented by a candidate with at least a plurality of votes in a district;
- the right to vote in periodic elections;
- the right to cast one's vote in an electoral system that has not been "gerrymandered" (deliberate engineering so as to favour one party over another); and
- the right to equality of voting power.⁴⁵

In explaining the "right to equality of voting power," Justice McLachlin noted that the claim of our forefathers to representation by population ("rep-by-pop") preceded Confederation and was confirmed by it. She found that rep-by-pop must be the "dominant principle" in drawing up the boundaries of ridings. But she also found that its application could be qualified by "other considerations". There might be some legitimate reasons for making some rural ridings smaller in population than the average. If a sparsely populated riding is too large in geographical size, the member may have trouble in carrying out her "ombudsman" function, which is to deal with "individual problems and complaints of constituents." The Legislature might also want to give some extra clout to rural voters, whose interests might otherwise be overwhelmed.⁴⁶

The validity of electoral boundaries was subsequently considered by the Supreme Court of Canada in Reference Re Provincial Electoral Boundaries (Saskatchewan).⁴⁷ The newly elevated

⁴⁵ *Ibid.*

⁴⁶ Justice McLachlin argued from the historical record that the framers of the 1982 Constitution did not intend to make any major "institutional reforms." She suggested that "democratic rights" parts of the Charter (sections 3,4 and 5) probably said all the Charter had to say about voting systems. She doubted that other sections, such as s. 15 (equality) added anything.

⁴⁷ [1991] 2 S.C.R. 158 [hereinafter "Reference Re Provincial Electoral Boundaries"].

Justice McLachlin wrote the majority opinion. The case again involved a challenge to the drawing of provincial election boundaries. Justice McLachlin echoed her earlier comments in Dixon when she concluded that s. 3 of the Charter does not require strict rep-by-pop for individual constituencies. Instead, the Charter requires that representation be “effective.” “Effective representation” generally requires “relative parity of voting power”; there should be no “undue” departures from the principle that ridings have an equal number of voters. But she emphasized again that Canadian history does not require absolute parity. Boundaries can be drawn to take into account factors such as geography and community interest.⁴⁸

The leading idea that has come out of the Supreme Court’s discourse is that provincial electoral boundaries can be flexibly drawn in order to preserve the community of interest of Canadian citizens. What exactly a community of interest is or is not has not been identified, and likely will be a source of future legal debate. What is tangible is the shift in thinking that is embedded in this reference to “community of interests.” If geographic interests and cultural interests could be charted at opposite ends of a spectrum, the Court in recent decisions has pushed the definition of what constitutes “effective representation” closer to representation that embraces cultural interests, however, geographic interests, through rep-by-pop, still remains the “dominant principle.”

Anomalies and observations

A number of anomalies arise when we compare the basic values embedded in our constitutional history and elections laws generally with some specific features of our current system.

Our laws emphasize rep-by-pop along geographical lines - but not along ideological lines.

The case law generally finds it intolerable – a denial of the Charter right to “effective representation” – if riding A has twice as many votes as in riding B. The implication is that the voters in A have twice as much representation. In practice, Parliament and provincial legislatures often ensure that constituencies do not depart more than 10% from the average.

⁴⁸ Litigation is already underway to test whether the current system is inconsistent with section 15 of the Charter. Those bringing the challenge suggest that it does not produce adequate representation for women and minority groups.

But in practice, our current system permits far more drastic disproportionality in party representation. Although “effective representation” is so fundamentally important to the founding of our country, and to Constitutional changes that have been proposed, only geographic representation is fully protected: the other two elements of representation – party representation and mirroring the electorate – are historically less protected.⁴⁹ Women and Aboriginal peoples have never achieved seats in the House of Commons in proportion to their share of the total Canadian population.

Our laws recognize the valuable role parties play in our electoral system – but parties are not represented based on the percentage of vote they receive.

While our election laws are often scrupulous about ensuring fairness among parties in allocating resources such as public subsidies and broadcast airtime, our system permits – and indeed encourages – drastic inequities in the extent to which votes are translated into seats Parliament.

National cohesion is fundamental to Canada’s founding principles, Constitution, and continued existence – but our current system allows entire provinces to be unrepresented in the governing party in the House of Commons.⁵⁰

Parties that win a big share of the votes in a small number of places will win seats – but parties that win modest share of the vote everywhere can end up with no seats. So the system benefits interest groups that are geographically concentrated. In doing so, it reinforces a political edge that such groups would have in any event; it is easier and cheaper to organize and mobilize people who live close to each other.

Canada is a hard country to hold together, and the federal level of government is crucial to promoting a sense of shared identity. Should the voting system be artificially amplifying the voices of complaint or division?

⁴⁹ Notwithstanding the fact that any party in power has done so under the system then in force, Canadian governments have on a number of occasions agreed to reform our system – expanding the franchise to women, the economically disadvantaged and younger voters. History suggests that reform is possible at times without the courts’ intervention.

⁵⁰ In the 1980 federal election, the Liberal government won a majority. But in the four Western provinces, and two territories, only one Liberal member was elected. About 600,000 voters in Western Canada actually voted Liberal, but most of the votes were “wasted.”

Under our current voting system, a party that appeals to regional grievances may do very well in turning its votes into seats, whereas a party that tries to promote policies that equally benefit all regions might find itself shut out of office. There can indeed be some benefit to having a full airing of regional grievances. Denying a voice in the House of Commons to such concerns exacerbates feelings of resentment and isolation. But it seems intuitively unfair and corrosive of national unity to deny a proportionate share of seats to those within aggrieved regions who are more federalist in their sympathies or aspirations.

The anomalies just identified are highlighted by reviewing the criteria we have identified for considering electoral reform. Many of the fourteen criteria can be seen as flowing naturally from the broad values identified in our constitutional history and election laws. But some aspects of established practice are contrary to fulfilling both identified constitutional values and five of the identified electoral criteria, namely criterion (1) geographic representation, criterion (2) parliament should reflect the support for various parties, criterion (3) Parliament should to some degree mirror the nation, criterion (10) the system should promote the development of inclusive national parties, and criterion (11) the system should promote effective parliament opposition.

Observations

Our review of the Canadian Constitution, reform proposals like the Charlottetown Accord, election laws, and judicial pronouncements has not caused us to add new electoral criteria to the list already articulated. It has, however, served three purposes. First, to reinforce which criteria are most fundamental in Canada's constitutional history, specifically (1) geographic representation, (4) there should be a level playing field for political competition, (5) the system should be accessible to voters. Second, to suggest that through reform proposals and Court decisions, cultural representation is becoming an increasingly important component in the definition of what some Canadians consider to be "effective representation." And third, to highlight some anomalies that exist when we compare the basic values embedded in our constitutional history with some specific features of our current system.

Some academics have gone so far as to suggest the Charter has caused a shift in thinking, which has led to the development of a more "rights-conscious citizenry" that aspires to greater

participation in democracy.⁵¹ We doubt the connection is so simple. To a large extent, the Charter has permitted advocacy groups to achieve their objectives by invoking the authority of un-elected judges, rather than by securing the support of democratically elected representatives. Increasing demands for “citizen participation” may have a wide variety of causes: rises in education levels, increased consciousness of the United States system in which power is less concentrated in a few hands, dissatisfaction with some of the products of elite accommodation (a large national debt; largely unpopular constitutional proposals produced behind closed doors by First Ministers)

Academics have also noted a shift in public thinking, over the past two decades, towards “populism” – a more direct relationship between people and leadership that often involves a rejection of elitist rhetoric.⁵² We suggest the shift towards populism has occurred as a result of citizens feeling sidelined by the political process. Public perception is that power-brokering for legislative reform happens outside the reaches of average Canadians, and changes to laws are a done deal before public input is requested.⁵³

Canadians rising disenchantment, over the last decade, with “elite” governance has likewise been fueled by government’s adoption of the “business model” of governance, in which citizens have become “consumers” of government “product”.⁵⁴ Most Canadians come into substantive

⁵¹ Michael M. Atkinson, “What Kind of Democracy Do Canadians Want?” (1994) 27 Can J. Pol. Sc. 717 at 740. Atkinson suggests that “[t]he community in which one resides has diminished political status relative to other, often ascriptive, characteristics such as one’s sex, race, mother tongue, ethnic background and physical condition” at 742.

⁵² See A. Blais & E. Gidengil, *Making Representative Democracy Work: the Views of Canadians*, volume 17 of the Research Studies, Royal Commission on Electoral Reform and Party Financing (Toronto: Dundurn Press, 1991) at 19-21. Blais and Gidengil have found a strong populist strain in every region of the country that values down-to-earth thinking of ordinary Canadians over the theories of experts and intellectuals

⁵³ For an insightful analysis of the lack of public confidence in government see David Zussman, “Do Citizens Trust Their Governments?” (1997) 40 Canadian Public Administration 234. Also see in general Harold D. Clarke et al., *Absent Mandate: Canadian Electoral Politics in an Era of Restructuring*, 3rd Edition (Toronto: Gage Educational Publishing, 1996).

⁵⁴ For a discussion on the benefits of governments adopting the business model, see generally Don Tapscott, “The Digital Media and the Reinvention of Government” Canadian Public Administration 40 (1997) 328.

contact with governments through service delivery programs, not the electoral process. A government's ability to oversee the service delivery stream is increasingly tied to the public's perception of effective governance.⁵⁵ The result is a dilemma that pits improving efficiency against the need for "real" public consultation. The efficient delivery of service often entails quick non-consultative decision making, which further adds to the public perception that governments are management driven not leadership driven.⁵⁶ Some critics argue this dangerous trend ultimately leads government discourse to be defined by discussions on efficient delivery of services "rather than as a contest over the values and the tradeoffs involved in deciding which services are to be provided in the first place."⁵⁷ In terms of electoral criteria, we suggest the need for competent alternative parties that can put forward alternative viewpoints may be building.

Finally, researchers have speculated that the growth of populism is tied to the development of sophisticated technologies that allow for forms of "teledemocracy." Although there is very little empirical research on this issue, we concur with critics who have argued "push button" democracy can just as easily be used to "eliminate opportunities for meaningful debate under the guise of creating them."⁵⁸ How technology will impact the growing trend towards populism is speculative at this point.

For our purposes, how governments chose to interact with Canadians once they are elected is independent of the voting system used to elect representatives. This phenomenon, however, may suggest that the desire to hold MPs accountable is gaining in importance.

⁵⁵ See generally, "Do Citizens Trust their Governments?" *supra* note 53.

⁵⁶ Katherine A. Graham and Susan D. Phillips note " Governments part of the citizenship bargain has become dominated by a concept of service. There is often a false presumption of consensus, or at least a lack of conflict: as long as service meets the established standards of efficiency and effectiveness, governments can presume that they have done their job well. The idea that government has a more fundamental role to play, for example, as mediator and arbiter of a broader public interest which may involve consideration of collective citizen identities, moves into the background." "Citizen Engagement: Beyond the Customer Revolution" (1997) 40 *Canadian Public Administration* 255 at 264.

⁵⁷ *Ibid.* at 264.

⁵⁸ Darin D. Barney, "Push-button Populism: The Reform Party and the Real World of Teledemocracy" (1996) 21 *Canadian Journal of Communication* 381.

The next question, then, is whether problematic aspects of established practice *could* be fixed by ordinary legislation. If established practice is contained only in an ordinary statute, legislatures might be able to change it easily. If it is a part of the Constitution of Canada that can only be changed with broad support from the federal level of government and most (or even all) of the provinces, then it will be very hard to change.

Constraints on Reform Under the Current Constitution

It appears that there are actually only a very few limitations on the electoral reforms Parliament can independently enact. These constraints include the following:

- the allotment of seats to provinces must be in proportion to their population;
- a province is entitled to some *extra* seats if allotment by population would reduce its House of Commons seats to less than the number of senators it had in 1982. For example, Prince Edward Island has a right to only one seat, based on its population, but it retains four seats in the House of Commons because it had four senators in 1982.
- no change by Parliament alone can amend the Constitution of Canada in relation to the “office of the Queen, the Governor General or the Lieutenant Governor of a Province”;
- Parliament cannot act on its own to change the powers of the Senate or the allocation of seats in the Senate;
- Parliament is bound to work within the Charter provisions. These include section 3 (every Canadian has the right to vote), section 4 (legislative bodies cannot continue for more than five years without fresh elections), and section 5 (there shall be a sitting of Parliament or a provincial legislature at least once every twelve months).⁵⁹

⁵⁹ In at least one case, involving the right of a legislature to make laws in relation to denominational schools, the Supreme Court of Canada has held that a legislature has free reign to operate, and is not constrained by the Charter. This principle might be applied by the Court in relation to laws made by

The kind of elaborate constitutional amendments discussed in both the Meech Lake Accord and Charlottetown Accord are not necessary in order to achieve major reforms to voting systems in Canada. With some limitations, Parliament or provincial legislatures can, by ordinary law, adopt any of the proposals for electoral reform that are commonly debated in Canada.

Reform need not begin or end at the federal level of government. A province is similarly free to revise its system of electing a legislature by a simple act of the legislature. Each province and territory currently uses a legislative system that is similar to that operating at the federal level. A successful experiment in changing the voting system in any of these thirteen jurisdictions might inspire other provinces to attempt their own. Each experiment will provide lessons to be learned and warnings to be heeded. Reforms that prove, on balance, to be satisfactory to provincial or territorial societies, will provide inspiration and reassurance to other parts of Canada.⁶⁰ If one or more provinces devise a voting system that makes its government appear to have more democratic legitimacy than a first-past-the-post federal government, there will be pressure on the federal government to initiate its own reforms.

Over the years, a series of reforms expanded the franchise and established rules for the conduct and financing of election campaigns. Our elections laws have in recent times been guided by the principle that election campaigns should be an equal playing field for competition among parties and their candidates.⁶¹ Public money subsidizes party campaigns. The formula for distributing it is party-neutral; it currently depends on the amount of votes that a candidate receives.

Parliament or a province to amend their constitutions pursuant to sections 40 and 41 of the Constitution Act, 1982.

⁶⁰ There are other governing bodies in Canada that might also be a source of ideas and practical experience. As a result of amalgamations, there are now in Canada a number of cities that have more citizens than some provinces have. They may be large and diverse, and some of them might have deliberative bodies that are in some way comparable to federal and provincial legislatures. Other sites of experimentation might include aboriginal and territorial governments, and political parties.

⁶¹ See Chapter 5 "Political Parties as Primary Political Organizations" and Chapter 6, "Fairness in the Electoral Process," Royal Commission on Electoral Reform and Party Financing: Final Report (Ottawa: Supply and Services Canada, 1991).

4 ! Examining Proposals for Reform: Research Methodology and Findings

When choosing the material to review for this project, we knew full well that it would be impossible to review all published Canadian literature on governance. We defined that we would look no further back than 1979, focusing most specifically on literature from 1990 to the present. Using the keywords “elect* system, “elect* model, ” and “elect*”, we electronically searched for books, journal articles, and magazine articles, by Canadian authors that specifically put forward a position on electoral reform. We also searched manually through periodicals relating to politics, governance, law, political science, as well as government documents.

Where the same author had published a number of works, we tried to utilize the most recent of their published works, unless a previous work held a more complete explanation of their electoral proposal. To give as broad a sample as possible, we included literature that may not have advocated a particular electoral model but nonetheless discussed electoral criteria as relevant to the topic at hand. We did not attempt to distill Canadian literature that has been written on voting systems in general, as we were specifically searching for works that advocated for electoral change of some form, or for the status quo. The salient materials are summarized in **Appendix B**.

We did not attempt to précis the proposals each author put forward. Instead, we looked specifically for each author’s stated intentions – what specifically did they hope to achieve or to avoid, with their proposal. We then matched these intentions with the fourteen electoral criteria we had previously determined as potentially relevant to Canadians. The result is a list of electoral criteria most frequently cited as important, attached as **Appendix C**. Please note, the criteria are not tied to the actual model each author put forward.

We concede upfront that some electoral criteria may be so fundamental that they are taken for granted and not discussed within any of the proposals. Our role as researchers, however, was not to guess but rather to document what electoral criteria Canadians mentioned in their proposals.

Based on frequency of identification in the proposals we canvassed, we determined that:

- it is important that Parliament reflect the diversity of the electorate (“mirror” electorate); and
- Parliament ought to reflect relative party support.

Of less, but relatively equal importance, are:

- development of inclusive national parties (guard against party regionalism);
- stable and effective governments;
- geographical representation;
- minimize wasted votes; and
- government accountable for past governance.

The electoral criteria of secondary importance were:

- ease of transition to a new electoral system;
- promoting an effective opposition; and
- treating all parties equally.

Four criteria were infrequently referred to across the proposals we identified:

- equal weight of each vote;
- ease of voting;
- ease of administration; and
- a Parliament with real power.

We also examined the findings of the Lortie Commission to see if our findings from the literature review were in keeping with the submissions received by the Commission.⁶²

⁶² Royal Commission on Electoral Reform and Party Financing, Final Report: What Canadians Told Us, vol.4, *supra* note 12.

After its analysis of what Canadians said about the electoral system, the Lortie Commission suggested six overriding electoral objectives:

- to secure the democratic rights of voters;
- to enhance access to elected office;
- to promote equality and efficacy of the vote;
- to strengthen political parties as primary political organization
- to promote fairness in the electoral process; and
- to enhance public confidence in the integrity of the electoral process.⁶³

The Lortie Commission received over 900 submissions from individuals, interest groups and political figures. From the briefs to the commission, Fortin identified seven principle factors that threaten the democratic ideal to which Canadians aspire. These factors are:

- the negative feelings shown by the population towards the electoral process;
- the lack of response by the current electoral system to changes occurring in Canadians society;
- the marginalization of large sectors of the population in the democratic process;
- the lack of sensitivity to the needs and the aspirations of Canadians on the part of political parties;
- difficulties arising from the increasing pluralistic nature of Canadian society; and
- problems arising from the lack of attention paid to certain regions of the country or to their population.⁶⁴

⁶³ As cited by Louis Lavoie in "Voter Turnout at Federal General Elections in Canada" (1998-99) 21 Canadian Parliamentary Review 23 at 24. This list mirrors the key principles referred to by Chairman Pierre Lortie's discussion of the Royal Commission's findings "The Principle of Electoral Reform" (1993) 16 Canadian Parliamentary Review 2.

⁶⁴ Pierre Fortin, "Ethical Issues in the Debate on Reform of the Canada Elections Act: An Ethicological Analysis" Political Ethics: A Canadian Perspective, volume 12 of the Research Series, Royal Commission on Electoral Reform and Party Financing (Dundurn Press; Toronto, 1991) at 8.

As commissioned researchers, Blais and Gidengil examined the opinions of Canadians about various aspects of representative democracy for the Royal Commission on Electoral Reform and Party Financing. They found:

- dissatisfaction with the way votes are translated into elected seats has a strong regional dimension. Alberta and Quebec are the least likely to find the current system acceptable;
- while many respondents saw some problem with a lack of elected women and minority MPs, relatively few considered it to be a serious problem. Only 40 percent are willing to force political parties to increase the number of women and minority candidates they put forward.
- women in general are more likely to see lack of women and visible minorities in the House of Commons as a serious problem.⁶⁵

Many groups and individuals submitted recommendations for a broader concept of representation. Individuals wanted to see themselves, as members of ethno-cultural communities, as Aboriginal people, as women – and their special interests – represented within Parliament. Proposals to enhance representation ranged from regulating the candidate nomination process, to adopting some form of proportional representation.⁶⁶

Many participants spoke about the need to ensure better representation for Aboriginal people in Parliament, although a number of interveners emphasized their first priority remains the achievement of Aboriginal self-government. Several favoured the creation of Aboriginal seats that would in effect allow Aboriginal people to influence government policies and legislation from within. “Improving Aboriginal representation was seen generally as complementary, not contradictory, to the goal of self-government.”⁶⁷ The Canadian Ethno-Cultural Council

⁶⁵ A. Blais & E. Gidengil, *Making Representative Democracy Work: the Views of Canadians*, volume 17 of the Research Studies, Royal Commission on Electoral Reform and Party Financing (Toronto: Dundurn Press, 1991) at 79-80.

⁶⁶ Royal Commission on Electoral Reform: Final Report vol. 4, *supra* note 12 at 39.

⁶⁷ *Ibid.* at 46-49.

recommended parties adopt affirmative action policies to increase the number of ethnically diverse candidates in winnable ridings.⁶⁸

Several interveners supported an introduction of proportional representation in Canada. The researchers quoted one individual as follows:

The need for proportional representation is not a quest for power by fringe parties. It is a recognition that a diversity of ideas presented at the highest levels of government is more likely to enhance the capabilities of Canada to meet the challenges the world is presenting to us.⁶⁹

A number of interveners recommended the New Zealand system, with 50 percent of members elected and 50% assigned from lists, to the proportion of support each party received in the election.⁷⁰ The Council of Canadians, along with others, recommended the use of run-off elections, if no candidate won a clear majority of the vote.⁷¹

The Committee for Aboriginal Electoral Reform, including current and former Aboriginal members of Parliament, was committed to breaking down the structural inequalities that have blocked effective participation in Parliament. They proposed in their report that Aboriginal Electoral Districts (AEDs) be set up.⁷² Using this voting system of dedicated seats, upwards of four percent of the House of Commons would be aboriginal people. The rationale for AEDs was to counter the effects of the geographic dispersal of Aboriginal people, and to counter long-standing concerns that the electoral process has not accommodated the Aboriginal community's community of interest and identity.⁷³

⁶⁸ *Ibid.* at 52.

⁶⁹ *Ibid.* at 56.

⁷⁰ *Ibid.* at 57.

⁷¹ *Ibid.* at 57.

⁷² Trevor Knight has recently analyzed the discussion on guaranteed electoral districts. See generally "Electoral Justice for Aboriginal People in Canada" (2001) 46 McGill L.J. 1063.

⁷³ Royal Commission on Electoral Reform: Final Report vol. 4, *supra* note 12 at 237; 247.

We found broad congruence, across the literature we reviewed and the published analyses of the Lortie Commission submissions, on which electoral criteria were frequently mentioned by Canadians.

5! Relevant Proposals for Change

A feature of the challenge that might at first appear overwhelming is this: there is a vast range of options that are compatible in theory with basic notions of democratic fairness.

Reform in a democratic society, however, cannot be determined by theorists who are unconstrained by practical considerations. Any change should have a broad level of active support, and an even broader base of acceptability. Most citizens will not be at all interested in ideas for reforms that are freely creative and innovative. To be understood and acceptable by most Canadians, a proposal for reform must amount to some variation or combination of practices and ideas that are already well known.

A lottery would be one innovative way of choosing a legislature in part or in whole. If everyone had a fair chance to be selected, it would be compatible with our ideas of democratic accountability. If the legislature were large enough, there would be a representative cross-section of society. It would be highly unlikely that supporters of any extreme ideas would wield much clout. Society actually uses lotteries to select decision makers in some contexts such as jury selection. But many people would reject the idea of lotteries in selecting legislatures simply because the idea seems strange or frivolous.⁷⁴

⁷⁴There are other theoretically interesting methods of voting. One is "Condorcet" voting. The ballot shows a list in which each candidate is paired off against every other candidate. The candidate who wins the most two-way races wins. This method is essentially the same as that used to determine the winner of sports tournament that is based on a round-robin system. (In the Condorcet method, as in sports tournament, a candidate could be give 2 wins for a pair-wise "win" and 1 point for a "tie.") Another method that has its constituency is "Approval Voting." Voters are given a list of all candidates, and asked simply whether they "approve" or "disapprove" of each one. The winner is the one with the most approvals. The 1976 Manitoba Law Commission report identifies and rejects a few other exotic options. One of them is "Cumulative Voting". In this method, several members can be elected from a constituency. The voter has multiple votes, but can allocate them as he sees fit. He might give five votes, for example, to one candidate that he especially admires. Under the Borda-Laplace system, the voter ranks candidates in order of preference. A first preference might be worth five points, second place four points, and so on. The winner is the candidate with the most total points. This study assumes, however, that the Canadian public is not going to adopt a voting system to elect its senior governments based on methods that are unfamiliar to most voters and rarely or never used in the Canadian practice or those of reasonably comparable countries.

The theoretical range of possibilities with respect to House of Commons elections is overwhelming. But the pool of plausible candidates for a Canadian voting system can in practice be drastically narrowed by applying two “filters” to the proposals.

If consideration of alternatives is limited to those ideas that have some basis in Canadian practice – past or present – or those of reasonably comparable states, then a small number of systems are worthy of serious considerations. That number can be rendered even smaller by looking at what kind of proposals have been advanced or rejected in Canada’s recent past. There ought to be some recently documented Canadian support for a proposal if it is legitimate, as it is highly unlikely that serious options will not have been commented on in some manner.

Filter #1: consider precedents from Canada or comparable democracies

Many Canadians might say that it is irresponsible to implement ideas that seem good in theory if they have never been tested in actual social practice. Such wariness about the gap between good intentions and good results is entirely reasonable. Notions that seem good in theory can have surprising or counterproductive effects when they are carried out in social practice.

In examining proposals for reform, then, it is reasonable to focus on those that have some basis in Canadian experience, whether current or past. Canadians have had extensive experience with first-past-the post voting for single member constituencies. But at times, legislatures or municipal councils have used other systems, such as multi-member constituencies. In these instances, individuals were elected by the single transferable ballot (STV) method. Other Canadian political processes, such as leadership races, regularly use a system of run-off elections. In these races, the leader is selected through a series of ballots in which the bottom-contender is dropped after each round until some candidate wins a majority.

It may also be prudent to consider other electoral models that have been implemented in reasonably comparable democracies. Canadians have adopted and adapted a variety of ideas from other jurisdictions – such as adding a “bill of rights” into Canada’s formal Constitution (our Charter) and allowing the Courts to enforce it.

The term *comparable* democracies cannot be defined with precision. For the purposes of this study, it means an area that:

- is an independent country (or federal state or province within an independent country);
- has a parliamentary system based on the Anglo-American model;
- is a full democracy in substance as well as name;
- has a population that is reasonably large, ethnically diverse and spread over a large geographic area.

The country on whose system Canada's is based, the United Kingdom, has begun to adopt alternatives to the first-past-the-post voting system. The United Kingdom adopted a proportional representation system to elect United Kingdom representatives to the European Parliament. Also, a hybrid system is used to elect the local legislatures for Scotland and Wales. New Zealand, which for many years used a Canadian-style system, has recently switched to a hybrid system. These systems, and others, potentially represent viable alternatives to our current first-past-the-post voting system. Certainly, there is no lack of alternate systems in use. The task is to employ a reasonable method of condensing these alternatives to a pithy few.

Fortunately, The International Institute for Democracy and Electoral Assistance (IDEA) recently undertook a major review of the world's democratic electoral models. It is an exceptionally lucid and clear guide to the range of options available. While many variations are possible within any basic model, the handbook reveals that there are only a handful of fundamental frameworks that are in current use throughout the democratic world. For this study, we will adopt the International IDEA's findings, as fulfilling our first filtering mandate of considering precedents in comparable democracies.

Filter #2: consider proposals from Canadian literature

The pool of voting system possibilities can be narrowed even further by referring to a second filter: published Canadian literature on voting systems and reform.⁷⁵

One can look at the proposals for voting system reform that are advanced in the writings of law reform commissions, government-commissioned study panels, academic journals and advocacy groups. It is theoretically possible that the entire literature has misperceived what Canadians are looking for in a voting system. But given the breadth and variety of authors, it is unlikely that this has happened. If no substantial body of opinion in the Canadian literature would support a model, it can be disregarded from further study.

The two filters just identified will be applied in the context of an assumption that must be explicated. The overriding assumption is that there will be, at least in the short term, no radical changes in the role of the legislature. The assumption that such radical changes will not occur, at least in the short term, is fairly safe. The more ambitious the reform, the less it is tied to existing practice, the more difficult it will be to sell to politicians and the general public.

It might be politically and constitutionally possible for provinces or the federal level of government to pass laws that would permit the direct election of First Ministers by the voters. Israel recently experimented with this idea, although it has more recently reverted to the more traditional system. The idea of direct election of the First Minister might be debated in Quebec in the coming decade. But this particular study will not explore any such changes, and indeed will assume that they will not happen.

Based on an application of the two filters discussed above, to the recent voting system proposals we have researched, a very limited number of options have actually been advanced by Canadians, as suitable electoral models. This list offers five possibilities:

⁷⁵ We wish to acknowledge our debt to the work done by William P. Irvine, who summarized electoral reform proposals in "A Review and Evaluation of Electoral System Reform Proposals" *Institutional Reforms for Representative Government* (Toronto: University of Toronto Press, 1985) at 71.

- the current system (first-past-the-post);
- PR Light (the current system plus 10-20% extra *top up* seats allocated on the basis of PR);
- the New Zealand model (the PR component would be closer to 50% of the total seats in Parliament);
- the Irish model (multiple members from each riding, some proportional method for selecting them);
- the Australian Lower House model (alternative voting).⁷⁶

Our next task is to define these models and make some suggestions regarding their advantages and disadvantages in light of the fourteen criteria we have identified.

⁷⁶ PR Light and the full New Zealand are forms of what specialists call “MMP” – mixed member proportional systems. “MMP” refers to a system in which some members are elected by first by the post, and others are elected to “top up seats” that compensate for the disproportionality created by the former.

6 ! Finding the Right Fit: Examining the Five Proposed Models

The fundamental difference between electoral models is how each model translates votes into seats. Each of the following models assumes that all seats across all models carry the same voting weight. In other words, each seat won gives the individual MP one vote in the House of Commons. This assumption may work theoretically but in practice there may be functional differences in the way cabinet posts, committee seats and such are assigned, based on what *kind* of seat an individual candidate won.⁷⁷

We also assume that citizens vote strategically to maximize the benefit for the candidates/parties they want in power. How citizens will apply this strategy may differ between models, however, an analysis of voting behaviour is beyond the scope of this paper.⁷⁸

Political polling data suggests that voters typically cast their ballots in support of a management style of a party rather than for any particular individual per se.⁷⁹ This fact may not be comforting to those who see individual candidates as the key “stock” of a party. The latter belief, however, is not borne out by statistical studies. Reformers should be wary of choosing “party list” electoral models on the belief that some “star” names on a list will generally alter the choices made by individual voters.

Similarly, a reflection on the issue of candidate diversity would be appropriate here. Diversity of representation has been identified as a key electoral criterion in both our results and those of the Lortie Commission, and others who have analyzed the over 900 submissions received by the Commission.

⁷⁸ Strategic choices are influenced by: the number of votes that have been allocated, if preferences can be ordered, and how votes are distributed among candidates. Courtney notes that caution must be exercised when trying to project hypothetical results from historical election data. See John C. Courtney, Plurality-Majority Electoral Systems: A Review, paper presented to Elections Canada, April 23, 1999 at 2. We fully concur with his caution.

⁷⁹ Richard Nadeau and Andre Blais note, “It is difficult for the party to improve its image substantially, since the evidence seems to indicate that voters perceptions are mainly affected by the performance of the party forming the government.” “Do Canadians Distinguish Between Parties? Perceptions of Party Competence” (1990) 23 Can. J. Pol. Sc. 317.

It is critical to note that any voting system is capable of promoting diversity, and no one electoral model is a panacea for the lack of diversity that currently exists in the political process.⁸⁰ Some models may make diversity, or lack of it, more visible than others. For example, voting systems that use “party lists” to elect a percentage of MPs usually publish the ranking of their “party lists” as part of their election platform. This allows voters to judge a party either positively or negatively based on the diversity of the “party list” members.

There has been a substantial amount of writing that equates “party list” voting systems with improving the demographic diversity of parliaments.⁸¹ But it is actually not clear that increases in demographic diversity in countries that have been using PR is actually causally linked to the use of party lists.⁸²

Furthermore, increases in diversity can be achieved – if that is the wish of a government or the electorate – under just about any plausible option for an overall voting system. Under the current system, for example, there is nothing that would prevent any political party from self-mandating candidates that meet or exceed any number of targets for diversity. Parliament

⁸⁰ Numerous academics have concluded that changing our electoral system to some form of PR as a way of electing greater numbers of women and minority candidates (affirmative action) is based on unsupportable assumptions. First, there is no guarantee that PR will spontaneously generate more diverse candidates. Second, the stigma of tokenism could reduce the credibility of elected members. See Heather MacIvor, “A Brief Introduction to Electoral Reform” in Henry Milner ed., *Making Every Vote Count: reassessing Canada’s Electoral System* (Peterborough: Broadview Press, 1999) at 33 [hereinafter “Making Every Vote Count”].

⁸¹ Karam provides an insightful analysis of the effect of electoral systems on women’s representation in Azza Karam, *Women in Parliament: Beyond the Numbers* (Sweden: Institute for Democracy and Electoral Assistance, 1998) at 74- 85. She asserts that PR systems help women because the process of “contagion” – where parties adopt policies initiated by other political parties – has a much lower “cost” in PR systems compared to majoritarian systems.

⁸² Some commentators have suggested that under “favourable conditions”, PR systems pose fewer barriers to achieving demographically representative outcomes than do single member systems. Lisa Young has noted “favourable conditions” include (a) political parties committed to achieving representative outcomes; (b) candidate nomination or selection procedures that institutionalize the party’s commitment to achieving representative outcomes; (c) general social and intellectual conditions that encourage women’s active participation in electoral politics; and (d) absence of informal barriers to women’s participation in party politics. Young notes that some countries employing PR systems were highly unrepresentative until women in these countries demanded that political parties include them on their lists. Lisa Young, *Electoral Systems and Representative Legislatures: Consideration of Alternative Electoral Systems*, paper (Canadian Advisory Council on the Status of Women, 1994) at 6.

could, if it wished, outright legislate that political parties must put forward target percentages of any distinct group in order foster diversity. In light of the considerations just presented, we have not been persuaded to correlate the use of “party lists” with improved representative diversity.

A number of academics, and the Lortie Commission, have stated their support for Aboriginal Electoral Districts (“AEDs”), as a solution for the under representation of Aboriginal voices in Parliament. While this suggestion has much merit, it can be accomplished within the current system or within any of the other systems proposed. As such, we believe this issue can and should be debated on its own merits, and then incorporated into whatever fundamental system is chosen.

Voter turnout as a variable is often cited as evidence that society has disengaged with the Canadian voting system. There are conflicting studies, however, on this issue – it is not clear that there is a correlation between voting systems and voter turnout rates.⁸³ Instead of risking an erroneous correlation, we have decided to side step the issue of improving voter turnout completely.⁸⁴

When we apply the two filters identified earlier – democratically practiced and proposed by Canadians – to the range of electoral options, only five basic models remain for consideration. For a more detailed look at why these particular models were chosen as representative, refer to **Appendix B**, which lists the Canadian models proposed, by author. We have also included, as **Appendix A**, a more exhaustive listing of various democratic electoral options in use,

⁸³ See generally Henry Milner, “Electoral Systems, Integrated Institutions and Turnout in Local and National Elections: Canada in Comparative Perspective” (1997) 30 Can. J. Pol. Sc. 89. Milner suggests that turnout is affected by both the type of system used and the level of local, regional and national party integration.

⁸⁴ Lawrence Leduc believes the dissatisfaction of Canadians with our political system is rising. He cites modern day low voter turnouts (67 percent in 1997) and recent polls that show declining voter connectivity with elected officials. See “New Challenges Demand New Thinking About Our Antiquated Electoral System,” in Henry Milner ed., *Making Every Vote Count*, *supra* note 80 at 64. Neil Nevitte, in *The Decline of Deference: Canadian Value Change in Cross-National Perspective* (Peterborough: Broadview Press, 1996) argues that democracy is in a state of transition. Statistically, Canadians have become “more interested in politics and more willing than ever before to pursue their goals through unconventional forms of political action” (at 104).

worldwide. These electoral options are taken from the ACE website, a comprehensive resource for election administration and election alternatives launched by the United Nations in 1998.⁸⁵

Applying the criteria to the candidates

The current system (first-past-the-post, single member constituencies)

Advantages

Supporters of the current system argue that it tends to produce majority governments, and therefore stable and effective governance (**criterion 11**).⁸⁶ These majorities can exercise energetic and innovative leadership throughout their mandate and can proceed with a coherent agenda. They can take bold, and at times unpopular individual measures, as part of a medium or long-range program to promote the public good.

With one party in power, supporters argue, it is easy for voters to know who is accountable for public policy, and to vote to remove them from office if performance is considered inadequate (**criterion 9**). The current system, it is further argued, produces a strong and clear link between each member of the House of Commons and a specific geographic constituency (**criterion 1**). A citizen knows exactly whom to contact to address an issue of personal or local concern. If a variety of parties are needed to form a government or pass legislation, it may not be clear to the voters who should be blamed for wrongheaded policies.⁸⁷ The FPTP system allows voters to ignore the party system altogether and vote for independent candidates, although this feature of

⁸⁵ See generally online < <http://www.aceproject.org> >.

⁸⁶ "In the 36 Canadian general elections since 1867, all but eight have brought one party to power with a majority of the Commons seats" John C. Courtney, Plurality-Majority Electoral Systems: A Review, paper presented to Elections Canada, April 23, 1999 at 5.

⁸⁷ It should be noted that the ties between voters and MPs are influenced in numerous ways. Heather MacIvor notes the move towards party discipline has severely weakened the ties between elected officials and their constituents. See "A Brief Introduction to Electoral Reform" in Henry Milner ed., *Making Every Vote Count*, *supra* note 80 at 29.

FPTP is rarely utilized at a national level it is a common occurrence in municipal politics **(criterion 4)**.⁸⁸

Under current House of Commons rules and practices, the cabinet dominates the governing party, and the Prime Minister dominates the cabinet. Some supporters of the current system argue that there is actually some democratic benefit to concentrating power in a few hands. Citizens who seek support for their agenda need to only lobby a small number of power holders. If the House of Commons were more democratic in its operation, citizens might have to approach and lobby dozens of different offices. Interest groups with a lot of money or connections might more easily overwhelm lobby groups with scarce resources. Historically, others argue, coalitions have been built within Canadian parties rather than between parties, reflecting an incentive contained in the FPTP system to minimize *intra-party* linguistic and regional conflicts⁸⁹ **(criterion 10)**.

The system is simple for both voters and those administering it **(criterion 13)**. The ballot is uncomplicated, and the winners and losers of each seat can be easily calculated. Maintaining the current system obviously imposes no transition concerns **(criterion 14)**.

Limitations

The actual clout – power and influence – of a local member varies drastically. If there is a majority government, the position adopted by an opposition backbencher may count for very little. The current system tends to produce “manufactured” majorities; parties who control the House of Commons even though a substantial majority of the popular vote actually favour opposition parties **(criterion 2)**. Often the governing party has few members, or none at all, from entire provinces or regions of the country **(criterion 1)**. Also, the current system tends to

⁸⁸ Some commentators have suggested that PR systems lack flexibility for independent candidates. We suggest this is an over simplification. Nuance, such as accommodating for independent candidates, can be built into most electoral designs.

⁸⁹ Courtney states, “It can not be assumed that the same incentives for parties to broker social cleavages would be present in other electoral systems. It is conceivable that under a different electoral system parties and leaders would actually pursue *less* accommodative strategies and policies in an attempt to maximize their support from different, possible less transnational, coalitions of regional and social interests.” John C. Courtney, Plurality-Majority Electoral Systems, *supra* note 78.

contribute to the concentration of power in a few hands, by producing “manufactured” majority governments.

The corrosive effect on national unity is compounded by the fact that first-past-the-post can create an artificial incentive for a party to focus on regional concerns or grievances, rather than adopting a platform designed to have nation-wide appeal (**critterion 10**). A party that wins a high percentage of votes in a particular region can end up with far more seats than one whose support is evenly spread across Canada. More generally, the current system tends to be an “uneven playing field”, in the sense that parties tend to be rewarded more if their support is concentrated in various areas, rather than evenly distributed (**critterion 4**).

Electoral history, including recent results, proves that “first-past-the-post” consistently produces drastic inequities in party representation. In the most recent federal election, for example, it took four times as many votes to elect a Progressive Conservative as a Liberal (**critterion 2**).

The system does not necessarily encourage the development of effective oppositions. A party can often win an outright majority by establishing and maintaining a core vote of about 40 percent, almost reducing to zero the need to accommodate any other party (**critterion 12**).

In societies where there is strong prejudice by the majority against a particular ethnic or religious minority, the first-past-the-post system may make it difficult or impossible to elect anyone from that minority. This is particularly so if the minority has no geographical areas in which it forms a large part of the population. We doubt any desire for more “demographic” representation of women or ethnic minorities would in itself constitute a strong reason for abandoning the current system. It should be noted though that our current system offers no incentives to parties to more effectively mirror the electorate through the candidates they put forward (**critterion 3**).

Under the current system, most votes are “wasted.” A candidate with most votes wins the only seat in the riding, even if most voters favoured other candidates (**critterion 6**). This phenomenon may lead voters to cast a strategic ballot rather than a vote for their party of choice. Studies

have shown among those faced with a strategic choice, nearly 30 percent will vote strategically.⁹⁰

To the extent that voters have to vote strategically so as to not “waste” their vote, in a particular riding, this system does lend itself to ease of voting (**criterion 5**).

The Australian Lower House model (alternative voting) ⁹¹

Voters would rank candidates in order of preference. If no candidate has a majority after the first round, the bottom candidate would be dropped, and her second choice votes would be distributed among the remaining candidates. This process would be repeated until a majority winner emerges.

Advantages

Taken alone, AV would be the most modest change to the voting system for the House of Commons. The form of the ballot would change, but there would continue to be a one-to-one relationship between ridings and members of Parliament. Each party would continue to run only one candidate per geographic riding (**criterion 1**). Like FPTP, clear lines for candidate accountability would still exist (**criterion 9**).

AV encourages parties to try to reach beyond their core constituency and appeal to other party’s voters (**criterion 12**). Proponents of this model contend that it helps to encourage informal coalitions and cooperation among parties.

AV might be seen as addressing, to some extent, the problem of “wasted votes” – the second preferences of a low-ranking party have a good chance of being taken into account. This option ensures the winning candidate has the support of a majority of the voters, although this is a

⁹⁰ Andre Blais and Richard Nadeau “Measuring Strategic Voting: A two Step Procedure” (1996) 15 Electoral Studies 39 at 49.

⁹¹ Voters rank candidates in their riding in order of preference. After each round of vote counting, the lowest ranked candidate is eliminated, and his or her second preference is added to the results of the first count. The process continues until some candidate has over 50 per cent of the votes.

“manufactured majority”. It allows for a more full expression of each voter's actual ranked preferences (**criterion 6**).

The system certainly eliminates a polarizing candidate; one who has a solid base of support, but who is regarded as highly objectionable by the rest of the electorate. Under the current system in Canada, a candidate can win a riding with 40 percent of the vote even though he is the *last* choice of 60 percent of the candidates.

Limitations

Leaving aside the case of very similar parties, AV does not reduce disproportionality between popular vote and seats in Parliament (**criterion 2**) “No alternative election vote of which we have record has given a result that is even an approximately accurate reflection of the votes cast.”⁹² The usual tendency, as with first-past-the-post, is to over represent the largest party and under represent smaller parties. First place winners after the first ballot are likely to be eventual the winner after the votes for bottom-ranking parties are redistributed.

The eventual first place winner, moreover, is likely to be pushed over the 50 percent line by the redistributed votes of the bottom ranked candidate. Leading parties may be encouraged to pander to the supporters of small parties, even if their views tend to be foolish or repressive. The second choice votes of the rest of the parties remain “wasted.” There is nothing inherent in this system that assists in the development of inclusive national parties (**criterion 10**).

Winston Churchill stated that AV is:

...the worst of all possible plans...the stupidest, the least scientific and the most unreal. The decision...is to be determined by the most worthless votes given to the most worthless candidates.⁹³

⁹² Law Commission Of Manitoba Report, 1971, at 37.

⁹³ *Ibid.*

Some individuals have supported AV as a means of overcoming the issue of “vote splitting” between very similar parties. Even if two parties actually share an underlying voter base, the fact is that AV does not begin by counting the second choices of middle-of-the-pack candidates. It begins – and often ends – by counting the second preference of last placed candidates.

Some might say that even if “vote splitting” were not addressed, this system would be fair. The candidate with an *eventual* 50% plus one support wins the riding. But if this voting pattern were to occur across Canada, nothing but Liberals might be elected. Even though other parties are collectively the first choice of most voters, it is possible that none of them would obtain any seats.⁹⁴

AV is rarely used in countries that are comparable to Canada, and has very little support in the Canadian literature. We believe that this lack of widespread use reflects its underlying lack of intrinsic merit.

It should be noted, in 1998, fewer women were elected to the Australian Lower House than would have been under a FPTP system. Courtney notes “more women who led with a plurality on the first ballot (and who, with FPTP, would have been elected) were defeated after the preferences had been distributed...”⁹⁵ There is nothing inherent in the AV system that supports diversity of representation (**critterion 3**) or relative party support (**critterion 2**). A party that consistently wins 20% of the votes across Canada could still end up with no seats in the House of Commons.

AV is a more difficult system for voters to understand, as it creates the need for strategic voting, and alliance building, on a riding-by-riding basis (**critterion 5**).

⁹⁴ This is because statistically Liberals are either voters’ first or second party choice, if given an opportunity to rank parties. Richard Johnston, “A conservative Case for Electoral Reform” (2001) 22 Policy Options 7.

⁹⁵ Plurality-Majority Electoral Systems, *supra* note 78 at 10.

PR Light (the current system plus 10-20% extra *top up* seats allocated on the basis of PR).⁹⁶

Advantages

PR Light has been proposed by the Pepin-Robarts commission⁹⁷ in 1979, and by various academic commentators, including the authors of this study. Supporters of this model argue that it would substantially increase party proportionality (**criterion 2**). Seats held by various parties would much more closely reflect their actual level of popular support in various regions and throughout the country. A level playing field would exist between parties as electing representatives would cease to just be a function of how geographically concentrated your voters are (**criterion 4**).

It would also permit national parties to win more members in regions where they get a respectable share of popular vote, but end up with few seats (**criterion 1**). National unity would be advanced (**criterion 10**), as the leading parties would tend to elect members throughout the

⁹⁶ Voters would continue to elect most MPS on local member of the House of Commons on the usual basis. But a modest number of *top up* seats – say 20% of the total – would be added to the legislature. A party that won a large share of popular votes, but very few regular seats, would win some of these PR seats. An over-represented party might not be allocated any. These PR seat members might be selected from lists produced by the political parties.

⁹⁷ Pepin-Robarts commissioned report to Parliament, titled The Task Force on Canadian Unity: A Future Together, January 1979, in its specific recommendations for Electoral Reform and the House of Commons, stated at page 131:

68. In order to establish a better balance between the number of votes and the number of seats obtained in each political party in different regions and provinces, the current mode of election to the House of Commons should be modified by introducing an element of proportionality to complement the present simple-majority single-member constituency system
69. I- The number of members in the House of Commons should be increased by about 60
II- These members should be selected from provincial lists of candidates prepared by the provincial parties in advance of a general election, with the seats being distributed between parties on the basis of percentage of popular votes.

The Task force on Canadian Unity was created on 5 July 1977 with a broad mandate to obtain views of Canadians and to put forward initiative in support of unity. Task Force on Canadian Unity: A Future Together (Ottawa: Supply and Services Canada, 1979) at 3.

country. Canada would not continue to have situations where a governing party could have few or no caucus members from huge provinces (like Quebec or British Columbia) or entire regions (like Western Canada). Major parties would have an incentive to address concerns of Canadians throughout the country, rather than focusing their appeal on areas where their support is most concentrated.⁹⁸

PR Light would make the development of a reasonably sized opposition more likely. Canada would no longer have situations where the leading opposition party wins over a million votes in Ontario, but elects not a single member (**criterion 12**).

Advocates of PR Light believe that it preserves many of the best features of the current system. Every riding elects one local member (**criterion 1**). The “Light” number of extra seats means that the current legislature does not have to be bloated in order to achieve a reasonable measure of party-proportionality (**criterion 13**). The small proportion of PR seats means that a leading party will often achieve a strong plurality, and sometimes a majority, in the House of Commons. Those who favour majority governments will achieve some assurance that they remain a real possibility (**criterion 11**).

In an academic article, we analyzed federal and provincial elections over the past few decades. We asked what the results would have been if voters had supported parties in the same numbers that they actually did, but PR Light had been in place. Majority governments would have still occurred on many occasions, although only about half as frequently.⁹⁹

Some advocates of PR (be it Light or full New Zealand) argue it may ensure more diverse candidates are elected to Parliament. They theorize parties might use the opportunity to “list” members of groups that are traditionally under-represented, partly because they may suffer

⁹⁸ John C. Courtney notes in contrast that at certain periods, Canadian “national” parties owed their ability to form a government to their “disproportionately high support in one or two regions.” At other times, parties have “survived” in a region or two before re-emerging as a national force. See “Electoral Reform and Canada’s Parties,” in Henry Milner ed., *Making Every Vote Count*, *supra* note 80 at 94.

⁹⁹ We must caution that voting parties might have been somewhat different if PR had been in place. Perhaps more voters would have cast ballots for smaller parties. The current system tends to result in these votes being “wasted.”

more barriers to election. Parties whose “lists” are under inclusive may be seen as narrow-minded by voters, and punished accordingly. The use of “party lists” might also result in the introduction into a parliament of individuals whose personal talents or experience would enrich the debate, but who are not able or willing to win a local riding election.¹⁰⁰

As stated previously, we do not believe that the demographic argument is itself among the strong reasons for switching to PR Light or the full New Zealand system, as diversity of representation can and should be accommodated for through any of the proposed systems.

To the extent that PR distributes real power to many parties, more of them will have to soberly take responsibility for whether a measure passes or not – and be judged by the public accordingly (**criterion 9**).

PR Light would be an easy system to both install and remove¹⁰¹ (**criterion 14**). Its introduction would not be a severe threat to the careers of existing members. They could continue to run in their usual ridings. The addition of some extra PR seats would provide some additional opportunities for political careers without greatly expanding the size and cost of the legislative assembly.

Limitations

Any system that produces party-proportionality is more likely than the status quo to produce a House of Commons in which no party has a majority. PR Light would result in the election of some majority governments, but not as frequently as the current system. Those favouring the

¹⁰⁰ John C. Courtney sees that identity politics may impact negatively on the accommodation model of Canadian political parties, as a different “set of strategic options” will be in play and parties “may choose to fashion their respective support bases from a narrow range of social, linguistic, racial or regionally-concentrated supporters” “Is Talk of Electoral Reform Just Whistling in the Wind?” (2001) Policy Options 6 at 18.

¹⁰¹ If PR Light has unexpected consequences that are adverse, it should not be that hard to remove. Only a small minority of politicians would have a career interest in keeping it; most would continue to have to contest local ridings. Under our own proposal for PR Light, no member at all would have a long-run option of serving as a “PR” member. PR light would tend to result in more minority governments, and if the system was working poorly on the whole, opposition parties could unit in forcing its abandonment or revision

current system often are most concerned about the instability that can result from having a government without long-term security in the legislature (**criterion 11**).

To some extent, this concern may be based on a false extrapolation from past Canadian experiences. Minority governments in Canada have often been short-lived. But that is partly because the first-past-the-post system encourages parties to believe they can actually win a majority if an early election is held – far less than 50 percent of the vote is needed to do so. But if proportional representation were routinely used in Canada, parties would not be so optimistic. They would accept that elections, including early rematches, might not result in a majority. The parties will therefore seek ways to make Parliament work effectively for four or five years, rather than manoeuvring for an early election.

The experience with countries that use PR suggests that stable government can often be achieved despite the absence of any majority party. Often, several parties will combine to form a coalition government. It can legitimately claim to have a majority that reflects the first preference of most voters. Another option that can be used – and in fact has been deployed in Canada – is that the minority government may bargain with another party to secure its long-term support, as long as certain key policies are pursued.

Yet another possibility is that the minority government will rule by itself, and rely on support from different parties depending on which program is being advanced. If this occurs, all parties may have a chance at various times to become creative and constructive partners with the governing party in shaping legislation. Federal and provincial governments have been governed from time to time on this basis without any obvious ill effect.¹⁰²

Skeptics of PR systems are concerned that in coalition or supported-minority situations, a fairly small party may wield disproportionate influence on public policy. It will sell its support at a steep price. But there is some evidence to suggest that the public will punish the leading party at the polls if voters see it as being pushed around unduly by a small partner.

¹⁰² The Pearson government, for example, produced many notable initiatives including the Official Languages Act.

Skeptics are also concerned that the lines of accountability will be unclear in situations where there is a minority government (**criterion 9**). Again, there is evidence that parties tend to make their distinctive positions clear, so accountability can be fostered. To the extent that PR distributes real power to many parties, more of them will have to soberly take responsibility for whether a measure passes or not – and be judged by the public accordingly. PR results in more parties that have a real voice in policy, voters will have a better basis on which to judge them. Under the current system, opposition parties can comfortably criticize initiatives and vote against them in the safe knowledge that the majority will enact them anyway.

To the extent that some party list members may be beyond the reach of voters to “vote out” of office, there is some lack of accountability within this model (**criterion 9**).

Some mechanism would have to be found to fill the PR seats. If they are filled according to party lists, then some members enter Parliament without having directly exposed themselves to the choice of a local riding. At the same time, party leaders acquire more patronage power. This lack of accountability can be mitigated by the design of party list systems that only allow candidates to serve a limited number of terms in office as a party list member. If PR members cannot be re-installed by Party leaders, they are less likely to become the leader’s obsequious servants.

The New Zealand model (the PR component would be closer to 50% of the total seats in Parliament)¹⁰³

Advantages

While PR Light would likely result in majority governments from time to time, the New Zealand model would virtually guarantee no single party would have a majority in Parliament. Supporters argue that the near-certainty of power sharing avoids the risks that accompany any monopoly of power. The need to secure the ongoing support of at least one other party would make it unlikely that the leading party would become arrogant or corrupt.

Some supporters of the New Zealand model believe that the large share of PR seats would also help to ensure better representation for women and members of various ethnic minorities. They argue parties would draw up lists of candidates that have broad appeal because voters would be able to see the slate of candidates and their positioning on party lists. We have included this as an advantage on the premise that a *large* visible list may prompt the debate about inclusiveness (**criterion 3**).

There would be even fewer “manufactured” majorities than under PR Light. Minority governments would become the rule, rather than an exception. And the need for at least some parties to cooperate would be practically guaranteed – party development would be fostered under this model (**criterion 12**).¹⁰⁴

¹⁰³ About half the seats elected by traditional means, half the seats are PR compensation seats. Parliaments sometimes adopt a percentage of PR seats that is between 20 and 50 per cent. The Welsh Parliament consists of 33 percent *add on* members, and the Scottish Parliament has 43 per cent. Both should be probably be classified as examples of the New Zealand model. The allotment of PR seats is large enough to make those seats a central part of the system, rather than a supplement. Most pointedly, it is large enough to ensure that majority governments will almost never emerge.

¹⁰⁴ Increasing the number of parties does not necessarily correlate with increases in party identification by voters. It has been suggested by Elisabeth Gidengil that “Canada lacks the institutional arrangements – party primaries, multiple ballots – that encourage US voters to develop a sense of party identification that is distinct from their vote for a particular candidate” “A quarter Century of Canadian National Election Studies” (1992) 25 Can. J. Pol. Sc. 219 at 231. We suggests it is too speculative to determine in what manner party cleavages may or may not develop in the future, under a Canadian PR system. Secondly, the growing importance of electioneering technologies, such as polling data, has been cited as a long-term cause of party decay. Therefore, party development may not give rise to more active citizen

The full New Zealand system would intensify some benefits of PR Light. There would be an even higher measure of proportionality between popular party vote and seats won (**criterion 2**). There would be even more assurance that every region of the country would have members within the ranks of the governing party or parties (**criterion 1**).

Half the seats being elected from party lists would assist the development of inclusive national parties (**criterion 10**). A level playing field would exist between parties as electing representatives would cease to just be a function of how regionally concentrated your voters are (**criterion 4**). Finally, this system is particularly easy for voters to use, as it minimizes any need to vote strategically (**criterion 5**), and it creates a minimum of wasted votes (**criteria 6**).

Limitations

The one-riding/one member system would no longer be the predominant feature of the system (**criterion 1**). The legislature would include about as many “PR” members as riding members. Many members would not have the informative experience of having to deal on a routine basis with complaints and concerns from a specific riding. An alternative possibility is that PR members would adopt a role that overlaps, duplicates and to some extent competes with that of a local MP. Voters might be confused and frustrated by the claims of competing politicians to speak for their local concerns.

The full New Zealand system would make minority governments the rule, rather than exception. Even a very strong plurality of voters could not install a majority government. For some critics of PR, the prospect is for endless instability (**criterion 11**).

If the size of the House of Commons were kept about the same as it is now, the size and population of ridings would, on average, double. Politicians might find it difficult to campaign in such large ridings, and to serve them effectively once elected. The transition from the status quo to the full New Zealand system would be disruptive for sitting members. If they wish to continue

participation in the political process itself. See Ian Ward “ ‘Media Intrusion’ and the Changing Nature of the Established Parties in Australian and Canada” (1993) 26 Can. J. Pol. Sc. 477.

in politics as riding members, they would likely have to run against the member who is currently serving a neighbouring riding. Many politicians would feel that their careers are threatened, and be inclined to resist the change.

If the House of Commons were instead expanded to provide for a massive number of PR seats, the result would be very costly. The salaries and logistics of hundreds of additional members would be substantial (**criterion 13**).

If the PR members are chosen from party lists, there is a huge increase in the authority of party leaders at the expense of local voters, especially if the party lists are “closed” (**criterion 9**). Some voting systems use open party lists to counter this disadvantage, however, open list voting can be highly confusing and intra-party bickering can be the result.

Once the full New Zealand system was installed, it might be very difficult to abandon if it proved unsatisfactory (**criterion 14**). Half the members of the legislature would be elected by this system, and they would tend to be reluctant to see it changed.

The Irish model (the single-transferable ballot) ¹⁰⁵

As this model is the most complex, we will distill its main features. All members would be elected from geographical constituencies. But there would be three or more members from each constituency. Every constituency would have a chance to be represented by members from several different parties. A greater diversity of opinion in each riding, as well as across the country, would be represented in the legislature.

It is extremely unlikely that Canadians are going to go through the disruption and risk of changing the current system if doing so does not remedy the problem of party disproportionality in any way. No author in the Canadian literature has supported multi-member constituencies

¹⁰⁵ Ridings have a number of members, not just one. Voters rank candidates in order of preference. Successive rounds of counting ensue. The system aims to minimize the number of “wasted” votes. Also, if a candidate is at the bottom of the heap, the second preferences of her supporters are distributed to the remaining candidates. If a candidate has more than enough votes to win a seat, the system counts the second preferences of her “surplus” voters.

unless a counting system is used that promotes, at least to some extent, better proportionality than the current system.

In Ireland, members are chosen according to the *single transferable ballot* (STV). Voters rank candidates in order of preference. A series of counts then take place to determine who is elected.¹⁰⁶

Critics contend that strength of the Irish model is one of its weaknesses. It is difficult to explain how the system actually produces elected members. Critics also say that it fosters competition, rather than cooperation, between members of the same party. They further suggest that multi-member constituencies will tend to be large in size and population, making it more difficult for members to campaign and keep in touch with constituents.

Advantages

Supporters of the Irish model argue that it is the most sophisticated of voting systems.¹⁰⁷ It permits choice among parties *and* among individual candidates within parties. It is unique among voting systems in the amount of choice it gives to voters. If the number of candidates in each constituency is kept small, there remains a link between members of the legislature and specific geographical areas (**critterion 1**). The Irish system is a favourite among theoreticians. It tends to produce results that closely reflect actual support for parties (**critterion 2**), but this is highly dependant on the number of members elected per district. The “wasted vote”

¹⁰⁶ The system is complicated, so perhaps it is best to introduce the concept with an analogy suggested in one of the popular guides to STV. Suppose a class of children must elect three of its members to sit on the school's council. Children are asked to stand behind the candidate they would prefer. We ask whether any candidate has the support of more than a third of the class. If so, that candidate is elected. Now we look at the least-popular candidate. He is eliminated from further consideration. The children supporting him are asked to indicate their second choice by lining up behind one of the remaining candidates. We ask again whether any candidate has more than a third of the votes, and if so, that candidate is elected. Now we look at the candidates who have been elected already. They will probably have some *extra* children lined up behind them - more than are needed to make up a third of the class. We ask the *extra* supporters to indicate their second preference by lining up behind another candidate. Any candidates who now acquire more than a third of the votes are now elected. We keep repeating this process until all three positions are filled. When this model is applied in a real-world situation, it tends to produce proportional results across the various parties.

¹⁰⁷ *IDEA Handbook of Electoral System Design*, *supra* note 6, at 83.

phenomenon is drastically reduced, and in an equitable manner (**criterion 6**). The second choice of the supporter of a popular candidate is about as likely to count as the second choice of the supporter of a fringe candidate.

A citizen is likely to have at least one who shares his party affiliation and ideology, among multiple constituency representatives (**criterion 3**). The citizen may find it easier to discuss issues with that member, and feel more optimistic that the citizen's views will be expressed in the legislative assembly.

Applied to the Canadian context, the Irish system would almost entirely preclude situations in which highly populous provinces, such as BC or Alberta, elect no members to the governing party (**criterion 1**).

Limitations

To work effectively, the Irish system requires multi-member constituencies. It requires constituencies with at least five members for the Irish system to produce reasonably proportionate results. A party that consistently polls 10-15% of the vote across Canada might win no seats if ridings contain only three members (**criterion 2**).

Even if it could be shown that the Irish system would work with as few as three members for each riding, there would be major problems in a country as large and sparsely populated as Canada. If Canada maintained roughly the same number of members in the House of Commons, the size of constituencies would on average triple. In some rural areas, ridings would become enormous.

Within each riding, there would not be clear lines of accountability (**criterion 9**). A number of members would represent each constituency. Some of these members might be from the same party. They would, to some extent, compete with each other during elections. The result might be fractiousness within parties and public confusion about what the party stands for as a whole (**criterion 10**).

The Irish system is complicated. It is not easy to explain its precise operation in simple terms that almost everyone can understand (**criteria 5**).

Our own view is that the Irish system has some substantial advantages, and has proved its worth in some places, such as Ireland itself. We doubt, however, that it is well suited to the distinctive traditions and circumstances of Canada. The one-to-one link between a single member of the House of Commons and the voter is a well-entrenched part of our political history that continues to have wide support and some real merit. Given the huge expense and often thinly spread population of Canada, the Irish system would result in constituencies that would be too large – geographically or demographically – to be satisfactory for both elected members and their constituents.

Key Canadian Electoral Criteria

Both the New Zealand and the PR Light models meet four out of the seven key Canadian electoral criteria we identified in our review of electoral reform proposals. Significantly, these two models meet the top two criteria, at least partially:

- Parliament ought to reflect the diversity of the electorate (criterion 3);
- Parliament ought to reflect relative party support (criterion 2);
- Canada's voting system ought to limit party regionalism, hold government accountable for past governance, lead to stable and effective governments, minimize wasted votes, and continue geographical representation (criteria 10, 9,11,6,1).

The current system meets three out of the seven key electoral criteria, however, it does not meet either of the top two criteria. The Australian model (AV) meets four of the top seven, but, similarly, it does not meet either of the top two criteria. The Irish model meets three key criteria, including the top two criteria, at least partially.

The electoral criteria of secondary importance were:

- promote effective opposition (criterion 12);
- ease of transition to a new electoral system (criterion 14); and
- treating all parties equally (criterion 4).

Only PR Light met all three of these criteria. Appendix D offers further detail on how the five voting system options compare – whether they tend to support or inhibit the expression of each of the fourteen electoral criteria.

7! Conclusion

The study of voting systems is a matter of international concern. Canadians considering the issue can learn from the debate and practices in other countries. Non-partisan commissions and organizations have proposed a variety of criteria to guide the debate.¹⁰⁸ We believe that the list of factors proposed by the IDEA – with some minor refinements – can provide a set of criteria that can continue to guide and focus the debate in Canada.

The current system has much strength. Many factors stand in the way of change of Canada's voting system, but no system can withstand the test of time unless it has considerable support and real intrinsic merit. Over time, departures from the current system – such as the occasional use of block voting or use AV – have tended to disappear from the federal or provincial scene.

The current system, however, is severely defective when judged by at least three criteria that Canadians have identified as key electoral criteria. One is that, in principle, there should be a reasonable correspondence between voter support for a party and the number of seats it actually wins. The current system often produces drastic inequities in this regard. Another is that a system should encourage parties to find creative solutions that bring people together. The current system tends instead to be destructive of national unity. It encourages some parties to focus their efforts on a few regions of core support, and to play upon regional grievances. A third is that the system should produce a parliament that is geographically representative. The current system often leaves some provinces or regions without any elected members in the governing party.

The current system does tend to produce “stable and effective” government, in that sense that it artificially produces majority governments. But the argument of stability might be given more weight than is merited. The current system fosters instability in another sense; a small shift in voter support can mean that one manufactured majority government is replaced by another of a drastic different ideology, without society undergoing any major shift in opinion. We also would

¹⁰⁸ We hope the analysis shows that an organized and focused debate is possible. There is considerable precedent in other countries to suggest that study groups and commissions can be useful in framing the alternatives for popular consultations and referendums (New Zealand; England, with devolution).

suggest that if PR were a routine feature of the system, parties would learn how to make Parliament stable and effective for four or five years even without a majority government.

There are only a few plausible candidates to replace the current system. Canadians are only likely to accept a system that has been tried and tested within Canada, or by a comparable society.¹⁰⁹ Canadians are also unlikely to agree widely with a system that has not been considered worthy by any of the commentators or government commissions that have looked at voting systems in the past decades.

The Irish system (Single Transferable Ballot) has much theoretical strength. We doubt, however, that it is well suited to Canadian conditions. To produce proportionality in Canada, there would likely have to be ridings that are represented by about five members. These might be too large, in area or population, to be wieldy. There might also be fractiousness and confusion as candidates from the same party compete for local election. The clear link between one riding and one member would also be lost.

In light of the international criteria for evaluation of voting systems, Alternative Voting does not seem to offer much, if any, net improvement over the current system. Very few commentators have offered it as constituting a valid reform itself. Some have proposed that AV be a feature of some new hybrid system. AV cannot be excluded from consideration according to the filters we have used, as it does have support from at least some commentators, and it is used in a few societies comparable to Canada (including the election of the lower house in Australia). Our own view, however, is that AV will not win many supporters in an informed debate over electoral reform. We tend to share Winston Churchill's sense that it is the least sensible of any of the remotely plausible options for reform.

Some commentators have favoured what we call the full New Zealand form of PR. Under the New Zealand model, a full half of the seats would be compensation seats. We believe that the

¹⁰⁹ Dennis Pilon notes that Vancouver, Winnipeg adopted PR, while Alberta adopted AV in the decade after World War I, predominantly through the efforts of farmers and organized labour. The drive for voting reform peaked with 18 municipalities adopting PR, however "by 1930 only two remained faithful – Calgary and Winnipeg." While some governments have been pressured into adopting new electoral models, the pull of FPTP's majority-creating tendencies remains attractive to party members. See "The History of Voting System Reform in Canada," in Henry Milner ed., *Making Every Vote Count*, *supra* note 80 at 120.

full New Zealand model would depart excessively from some of the best parts of the current system. That includes the importance of the member who represents a single riding, and is accountable to that one set of local voters. The result would also be to almost eliminate the prospects for a majority government to emerge in Canada. This may be more extreme a change than necessary to achieve a more representative Parliament.

PR Light would largely preserve some of the best features of the current system. In particular, it would keep as a centerpiece ridings that are represented by a single member. It would greatly improve the House of Commons in the dimensions most neglected by the current system – including ensuring equitable representation for the various parties based on their actual popular support, and more representation for all regions in the leading parties. It would encourage parties to make an effort to find support throughout Canada, rather than focusing their energies in the areas where they are most likely to achieve a plurality.

PR Light would likely reduce by about half, and perhaps somewhat more, the number of majority governments that are elected. Some will welcome this as a step towards producing a less arrogant and more genuinely majority-supported government. Others will be concerned about the prospect for political instability. By applying the electoral criteria, we note that PR Light has the fewest disadvantages, and meets key criteria identified as most important to Canadians.

We have attempted to provide some aid to any forthcoming public debate on voting system reform in the following ways:

- by formulating a set of broadly acceptable and reasonably comprehensive criteria for assessing options;
- by identifying a relatively small set of options that are genuinely plausible in light of the Canadian literature and the models that have actually been tested in Canada or in societies reasonably comparable to Canada; and
- by providing some initial observations on the merits of the viable options in light of the criteria identified.

The application of the criteria confirms, in our view, the growing perception in Canada that there are some serious anomalies and deficiencies in the current system. We believe that some alternatives are available – particularly “PR Light” – that would preserve many of the strengths of the current system but better meet both the stated criteria and the broad Canadian values that underlie them.

Regardless of whether readers end up agreeing with our own preferred model, we hope that the research and evaluative framework in this paper will be a useful contribution to informing and organizing the public debate on electoral reform that lies ahead.

Appendix A

The ACE Project's Ten Basic Models for an Election System

For the purposes of this paper, the systems are placed in somewhat different groupings. [Asterisks indicate models are explored in detail in this paper]

A. Single member constituencies, first-past-the-post winners.

*1. *The current Canadian system* is an example of this system. Its strengths and weaknesses are explored in more detail in the main body of this paper.

B. Single member constituencies that use second and lower choices to determine the ultimate winner.

*2. *Alternative voting*: there is a single round, but the voter indicates second and lower preferences. After each round of counting, the bottom vote getter is eliminated until there is a "majority" winner. This option has been used to elect lower-house members in Australia. Some Canadian authorities have proposed its use as part of a larger system in which some seats (whether in the same legislative chamber, or in a second chamber) are elected by proportional representation methods. *The main body of this paper will explore this option in more detail.*

3. *Second-round voting*: there is an initial round, and the top two candidates advance for a second round. The system eliminates a candidate who fares well in the first round, but is unacceptable to a majority of voters. The time between rounds gives parties or candidates to communicate and make deals or pronouncements that may influence how voters cast their ballots in the second round. This system is not used for parliamentary elections in any country in the United Kingdom tradition. Parties, however, frequently use multiple-round elections to select leaders. The system is not recommended by anyone in the Canadian literature for use in federal or provincial elections. A major drawback is the expense involved in conducting several rounds. A further drawback is that it does not remedy the problem of party disproportionality.

C. Systems in which a number of members are elected from the same constituency.

*4. *The Irish system* (single transferable ballot). Under this system, a number of members run in each constituency. The voter ranks candidates in order of preference. The counting takes into account second and lower-place choices for voters in a way that tends to produce party-

proportional outcomes. The system is used in Ireland, and a number of federal units in Australia (Tasmanian House of Assembly, Australian Capital Territory Region) in for its Senate. *It has its advocates for adoption in Canada, and is discussed more fully in the main body of this paper.*

5. *Block voting.* There are N members in each constituency. Each voter can choose up to N candidates. The top vote getters win. Block voting is sometimes used in local elections in Canada - say for school boards or municipal councillors.

Block voting was used for a few United Kingdom constituencies until 1945. It does not tend to produce party proportionality. In Canada if 40% of the voters in a three-member constituency cast their votes for three candidates of the same party, it would be likely that all three will be elected. In Mauritius in 1982 and 1995, a party that won about 65% of the vote won every single seat. As the IDEA guide states, “when voters cast all their votes for the candidates of a single party, which is often the case, the system tends to exaggerate all the disadvantage of FPTP.” A few places that are in the United Kingdom / United States tradition have used the system, including Bermuda and the US Virgin Islands. But such places are not reasonably comparable to Canada, which vastly exceeds them in size, population and diversity, and which is a fully independent country. No one in the Canadian literature has recommended the adopted of block voting for a multimember constituency.

6. *Party block voting.* There are multi-member constituencies, but the voter must choose a single block of candidates from one party or another. The system is often accompanied by a requirement that a party include a mix from a variety of ethnic groups. A few countries in the British tradition, including Singapore, use some variation of the system, but no country that is comparable to Canada. The system does not overcome the lack of proportionality in any FPTP system, and is not recommended by anyone in the Canadian literature.

7. *Single non-transferable ballot.* There are multi-member constituencies, but voters can only vote for one candidate. This system can help to elect candidates from relatively small parties or ethnic groups. If five seats are available in a constituency that is 80% Ying and 20% Yang, the Yang voters can still elect one member of the legislature. The system has a variety of drawbacks. It encourages candidates from the same party to compete against each other. Parties and voters have to concern themselves with complex strategic issues; a fairly popular party that runs “too many” candidates may find that its popular support is split evenly among them, and no single candidate wins election. The system does not necessarily produce proportionate results. A party with, say, 10% of the vote across the country might still not win any seats. According to the 1997 IDEA guide, the system used to be in use in the lower house in Japan, and was in use in Jordan and Vanuatu. Jordan is not a full democracy, and Vanuatu has a small population, so

few Canadians would regard them as good test models for Canadian study. The system does not seem to have any advocates in the Canadian literature.

8. *Limited vote*: This is similar to the single non-transferable ballot, except that the voter has several votes, rather than just one. "Limited" refers to the fact that there are still more seats to be filled than the voter has votes. For example, there might be five seats available, but the voter would have only three votes. According to the ACE guide,

"In practice this system is only used in Gibraltar, for lower house elections, in Spain for the upper house of the Spanish Cortes, and in local government elections, primarily in the United States. The LV most often gives voters one fewer vote than there are seats to be filled, as is the case in Spain, and as was the case in the United Kingdom between 1867 and 1885. "

The system has some of the strengths and weakness of the single non-transferable ballot. It has found no advocates in the Canadian literature.

D. Proportional systems based on nation-wide or region-wide lists.

9. *Proportional representation based on nation-wide party lists*: this system is used in many countries, but very few in the UK tradition. Israel is one of the few UK-based systems to have adopted it, although it has experimented recently with another system. The United Kingdom does use it on a regional basis to elect its members to the European Parliament. No one in the Canadian literature has recommended this system, probably because the link between a specific constituency and a candidate is such an essential part of the UK-Canadian tradition.

E. Hybrid systems

*10. *Mixed Member Proportional (MMP)*: this system has some members elected in the usual first-past-the-post one in a single member constituency, but others are "compensation seats" chosen in accordance with overall support for a party in a region or across the country. "Compensation seats" means that the allocation of PR seats is calculated in a way that offsets the extent to which a party is underrepresented in the legislature on the basis of the first-past-the-post results. The system is designed to maintain a strong constituent-member link, but also provide for better proportionality between party results and representation in the legislature. It has been adopted in New Zealand, Scotland and Wales, and recommended by the Atkins commission for use in the United Kingdom.

Two kinds of MMP are considered in the main body of this paper: **the 20% solution* (proportional seats are a subsidiary party of the system) and the * *50% solution* (*the New*

Zealand model, in which there are enough proportional seats to make the election of a majority government very unlikely). *Both the 20% and 50% solutions are discussed in more detail in the main body of this paper.*

11. Parallel system: there is a mix of first-past-the-post seats and PR seats. But the PR seats are determined independently of the first-past-the-posts. They are not allocated in a way that offsets any party disproportionality produced by the first-past-the-post results. The parallel system was used in Japan for many years before being abandoned, and is used in Russia. It does not appear to be in use in any countries that are reasonably comparable to Canada in their governmental traditions. It has not been specifically recommended by anyone in the Canadian literature.

Note: many other models are possible in theory, but are not mentioned in either the IDEA guide or the ACE website.

Appendix B Electoral System Proposals

Author	Electoral Model	Source	Achieve	Avoid	Identified Criteria
Henry Milner	M.M.P. (New Zealand)	"The Case for Proportional Representation" <i>Making Every Vote Count</i> (Peterborough: Broadview Press, 1999)		<ul style="list-style-type: none"> Parties having nothing to gain by cooperating. Majority governments FPTP – encourages opposition parties to gain political capital by denouncing, distorting, exaggerating policies of government. 	10, 12
Kent Weaver	10% Top-up seats (based on national percentage of votes/party)	"MMP is Too Much of Some Good Things" <i>Making Every Vote Count, ibid.</i>	<ul style="list-style-type: none"> Extra party seats - by provinces by population Increase fairness of votes/seat within individual regions Decrease party incentive to make "regional" appeals Modestly decrease majority governments Politically palatable solution 	<ul style="list-style-type: none"> Punishing smaller parties with diffuse support Regional under-representation of governing party Under-representation of women, aboriginal people, and minorities Growing regional grievances Regional exclusions from power Concentration of governing party from one region 	2, 3, 4, 10, 11, 14
Nick	STV with	"Proportional	<ul style="list-style-type: none"> Participatory 	<ul style="list-style-type: none"> Wasted votes 	

Loenen	multi-member districts (he classifies as a form of PR)	Representation is a Must”(1995) Canadian Parliamentary Review vol. 18, No. 4	<p>democracy</p> <ul style="list-style-type: none"> • Proportional party representation • Representation of society’s politically significant interests and diversities • Respect for our vast geography and history • Full choices for voters 	<ul style="list-style-type: none"> • Adversarial, confrontational politics 	1, 2, 3, 6
John C. Courtney	FPTP	“Electoral Reform and Canada’s Parties” <i>Making Every Vote Count, ibid.</i>	<ul style="list-style-type: none"> • Allowing parties to launch a challenge at government from regional strongholds 	<ul style="list-style-type: none"> • Affecting national unity – behaviour is unique to political systems in place, political systems are not interchangeable across nations, same incentives may not exist to construct national coalitions 	11, 10
Richard Katz	FPTP	“Electoral Reform is Not as Simple as it Looks” <i>Making Every Vote Count, ibid.</i>		<ul style="list-style-type: none"> • Incorrectly identifying source of regionalism- fact 2/3 of all votes come from Ontario/Quebec • Potential negative impact of reforms • Assuming disproportional electoral outcomes 	11

				result from FPTP	
Donley Studlar	PR	“Will Canada Seriously Consider Electoral System Reform? Women and Aboriginals Should” <i>Making Every Vote Count, ibid.</i>	<ul style="list-style-type: none"> • Increase opportunity for women and minorities to get elected through normal operation of system 	<ul style="list-style-type: none"> • FPTP – obstacle to greater legislative representation of women • FPTP – imposition of “elite” political culture’s desired electoral system 	2, 3
Therese Arseneau	PR	“Electing Representative Legislatures: Lessons from New Zealand” <i>Making Every Vote Count, ibid.</i>	<ul style="list-style-type: none"> • Increase number of women and aboriginal MPs elected • Achieve a more representative (mirror) and legitimate parliament 		2, 3
Jean-Pierre Derriennic	STV (100 3-member constituencies)	“Un Systeme Electoral Adapte aux Besoins du Canada” (Nov 1997) Policy Options	<ul style="list-style-type: none"> • Chance for smaller parties to build seats • Award moderate parties with seats • Increased quality of public debate 	<ul style="list-style-type: none"> • Strategic voting 	4, 2, 6
Vincent Lemieux	STV	“Le Vote Unique Transferable” (Nov 1997) Policy Options	<ul style="list-style-type: none"> • More equitable treatment of parties and regions • More proportional party results • Continuity with current system • System must 		1, 2, 14, 4

			adapt to provinces with less population		
Tom Kent	PR (with multi-member districts)	“How to Renew Canadian Democracy” <i>Making Every Vote Count, ibid.</i>	<ul style="list-style-type: none"> • Fairer political structure • Local reps – necessary • Support for parties • Parties return to democratic role shaping public policy • Less ties to corporations and unions by changing party financing rules 	<ul style="list-style-type: none"> • FPTP – parties not seen to be important contributors to the development of policy 	1, 2, 4, 12
Lisa Young	PR (using a party list system)	“Electoral Systems and Representative Legislatures: Consideration of Alternative Electoral Systems” Canadian Advisory Council on the Status of Women, July, 1994	<ul style="list-style-type: none"> • Mirrors the demographic composition of Canada in terms of gender, race, and other politically relevant characteristics • Political parties commitment to diverse representation • Removing barriers to representative outcomes 		2, 3
Fair Vote Canada	Reform of current	An overview of the Issues and the Citizens’	<ul style="list-style-type: none"> • A citizen-centered 	<ul style="list-style-type: none"> • Wasted voted • Low voter turnout 	2, 6

	system	Campaign for Voting System Reform, paper: August 2001	<p>approach to governance</p> <ul style="list-style-type: none"> • Party representation in proportion to votes cast 	<ul style="list-style-type: none"> • Strategic voting so vote is not “wasted” 	
William Irvine	MMP (Compensatory system)	<i>Does Canada Need a New Electoral System?</i>	<ul style="list-style-type: none"> • Comprehensive top-up scheme adding 166 provincial members to House of Commons – names chosen by party members • Key is to elect a sufficient number of provincial reps. To offset FPTP distortions 		1, 2
Tom Flanagan	AV	“The Alternative Vote: An Electoral System for Canada” <i>Making Every Vote Count, ibid</i>	<ul style="list-style-type: none"> • Positive impact on larger political system • Fostering cooperation and coalition between parties • Relatively simple transition • Has Canadian roots • Can easily be combined with STV (urban 	<ul style="list-style-type: none"> • Running multi-member districts over vast areas • FPTP – contributes to regionalism, fragmentation of political culture, encourages war of attrition 	12, 14, 10

			<ul style="list-style-type: none"> centers) • Modest proposal – “sellable” • Fosters electoral coalitions – parties exchange preferences • 		
Pepin-Robarts Commission	PR (20% Top-up)	Canada. Report to the Government of Canada: The Task Force on Canadian Unity, a future together, observations and recommendations, 1979	<ul style="list-style-type: none"> • System should support federal unity • Key goal is to make parliamentary caucuses as representative as possible of electoral base • Surplus votes in one province used to elect members in other provinces • 60 extra seats allocated in proportion to national % of vote • 	<ul style="list-style-type: none"> • Concentration of party membership in regional blocks – signals disintegration • Parties being shut out of regions 	1, 2, 3, 10
Spicer Commission		Canada. Citizens Forum on Canada’s Future: Report to the People and the Government of Canada (Ottawa: Supply and Services Canada, 1991) (Keith Spicer,	<ul style="list-style-type: none"> • Changes to the political process should be premised on the need to enhance responsiveness to grass roots 		9

		Chair)	<ul style="list-style-type: none"> demands Ties among Canadians should be fostered at level of citizens Support for political leaders based on what they deliver (source page 735 in Aikinson) 		
NDP Proposal	PR (Top-up)	As cited in William P. Irvine "A Review and Evaluation of Electoral System Reform Proposals" <i>Institutional Reforms for Representative Government</i> (Toronto: University of Toronto Press, 1985) at 78	<ul style="list-style-type: none"> Introduce an element of proportionality into House of Commons elections, and abolish Senate 20 seats for each of five regions, allocated to parties based on parties % of regional vote. 		1, 2
Canada West Foundation Proposal (Elton & Gibbins, 1980)	PR (Top-up)	As cited in "A Review and Evaluation of Electoral System Reform Proposals" at 78	<ul style="list-style-type: none"> Representation by pop. for all provinces 75 new "provincial representatives" Voter choice – one MP ballot, one party ballot 		2, 6

			<ul style="list-style-type: none"> • Top-up seats allocated based on % results from second ballot 		
Professor Dobell (1981)	MMP (Compensatory system)	As cited in "A Review and Evaluation of Electoral System Reform Proposals" at 86	<ul style="list-style-type: none"> • Add one additional member for every million people • Minor change only in number of minority governments produced • More rep. elected from governing party in weak geographic areas 		2, 10, 11
Professor Courtney (1980)	FPTP (double size of House of Commons)	As cited in "A Review and Evaluation of Electoral System Reform Proposals" at 88	<ul style="list-style-type: none"> • Halving the size of constituencies • Break the forces of party discipline • A wider range of views present in the House 		1
Smiley Proposal (1978)	FPTP (with another 100 seats added)	As cited in "A Review and Evaluation of Electoral System Reform Proposals" at 91	<ul style="list-style-type: none"> • Seats added in proportion to the pop. of each province • Seats assigned to the strongest non-elected candidates within each province • Support party 		1, 2, 12

			<ul style="list-style-type: none"> development in each province Moderate tendency to weaken governing parties – some minority governments created under proposal 		
Bryan Schwartz	PR (20% Top-up)	“Proportional Representation for Canada?”(2001) 28 Man. L.J. (No. 2) 133	<ul style="list-style-type: none"> Decrease wasted votes Fair/ legitimate parliament, that reflects voters’ party choices Minor change in majority status Ease of transition 	<ul style="list-style-type: none"> FPTP – highly disproportionate electoral results that fuels voters’ distrust in the system 	2, 6, 11, 14
Richard Johnson	PR	“A Conservative Case for Electoral Reform” (2001) Policy Options, Vol. 22, No. 6	<ul style="list-style-type: none"> Engage voters in process – current lack of political competition Break liberal stranglehold on governance 	<ul style="list-style-type: none"> FPTP – does not deliver on its promises: a consolidated opposition, ability to hold gov’t accountable (must be a viable alternative). Regionalism of parties AV – creates even larger majority governments if a party is either first or second choice of most voters. 	2, 9, 10, 12
Judy	PR	“PR Can Help Solve	<ul style="list-style-type: none"> PR – encourages 	<ul style="list-style-type: none"> FPTP – voter 	

Rebick		Canada's Democracy Deficit" (2001) Policy Options, Vol. 22, No. 6	<p>voters to choose preferred party</p> <ul style="list-style-type: none"> • Better rep. of women in parliament 	<p>participation rate declining, less people relate to political parties, young people taking to streets (no other way to influence gov't), power to govern in hands of bureaucrats, parliament mired in accusations/counter accusations</p> <ul style="list-style-type: none"> • Abdication of responsibility to govern • Negative voting 	2, 3, 6, 11
John Courtney	FPTP	"Is Talk of Electoral reform Just Whistling in the Wind?"(2001) Policy Options, Vol. 22, No. 6	<ul style="list-style-type: none"> • Stability – because principle social cleavages (i.e. linguistic) are not distributed evenly, there is no inducement to replace FPTP with a PR system 	<ul style="list-style-type: none"> • Change – too much at stake: electoral system is only part of governance system, public not strongly motivated to change, elites don't see need to change, no agreement on alternative • Manufacturing urgency – irregular nature of electoral debate suggests Canadians do NOT share a distrust of plurality 	11
Louis Massicotte	MMP	"Alternative Voting or MMP: What Can we Expect? " (2001) Policy	<ul style="list-style-type: none"> • Rep. of women and minorities – not addressed by 	<ul style="list-style-type: none"> • FPTP – harmful to cohesion of federation 	3, 10, 14

		Options, Vol. 22, No. 6	AV	<ul style="list-style-type: none"> • Deep regional variations in party support • Lack of viable options • Full PR – few people advocate severe break with our electoral customs 	
Carolyn Bennett	PR (Top-up)	“Three Lenses for Judging Electoral Reform” (2001) Policy Options, Vol. 22, No. 6	<ul style="list-style-type: none"> • Government that works • Population confident in system 	<ul style="list-style-type: none"> • Diminished effectiveness of legislative branch – negatively impacted by enhanced judicial and executive branches, media “celebrity” culture, non-gov’t organizations that have written off gov’t 	2, 11
Peter Mackay	AV	“The Progressive Conservative Party’s perspective” (2001) Policy Options, Vol. 22, No. 6	<ul style="list-style-type: none"> • Connection of MP with region • Fiscal Accountability • Parliament with real power (more free votes) 		1, 8, 9
J.A.A. Lovink	Majoritarian (on constituency basis)	“In Canada, Proportional Representation Should be a Hard Sell” (Dec 2001) Policy Options	<ul style="list-style-type: none"> • Governments ability to make decisions • Accountability • Geographic representation 	<ul style="list-style-type: none"> • PR – Domino effect of political system changes (threat to effective governance) • Large # of political parties 	1, 8, 9, 11
Christopher Kam	FPTP	“PR A Political Shibboleth?” (Nov 1997) Policy Options	<ul style="list-style-type: none"> • Accountability • Strategic voting • Effective 	<ul style="list-style-type: none"> • Exacerbating existing regionalism 	9, 6, 11, 10

			governance		
Nelson Wiseman	FPTP	“Skeptical Reflections on Proportional Representation” (Nov 1997) Policy Options	<ul style="list-style-type: none"> • Geographic representation • Accountable MPs 	<ul style="list-style-type: none"> • Coalition governments • Assuming PR would improve regional representation in government 	1, 9
Lorne Nystrom	MMP (50/50)	“We Need a New Democracy in this Country” (2001) Policy Options, Vol. 22, No. 6	<ul style="list-style-type: none"> • True preference voting • Decrease executive power of government • More free votes 	<ul style="list-style-type: none"> • Underestimating intelligence of electorate to make right decisions if given options • FPTP – aggravates regionalism 	6, 10
Ronald Fitz		“The 1990s Federal Electoral Boundaries Readjustments and the Charter” (1998), 61 Sask. L. Rev. 467	<ul style="list-style-type: none"> • Charter right to vote is right to effective rep. • Attention to minority “community of interest” – difficult as only 14 of 295 constituencies have an ethnic pop. over 20% of the constituency pop. (Other than British/French or Aboriginal people) 	<ul style="list-style-type: none"> • Constitutional challenges, if there is an over-emphasis, or under-emphasis on voter-parity • Seconding guessing electoral commissions – because of the complexity of weighing the myriad of factors, court will grant deference to commissions decisions 	3
Trevor Knight	Guaranteed electoral	“Electoral Justice for Aboriginal Peoples in	<ul style="list-style-type: none"> • Adequate representation of 	<ul style="list-style-type: none"> • Under-representation – leads to inequality 	3, 14

	districts for Aboriginal People	Canada" (2001) 46 McGill L.J. 1063	<p>Aboriginal people in parliament</p> <ul style="list-style-type: none"> • Parliament should better reflect Aboriginal values and goals • Affirmative action needed to help historically disadvantaged groups participate fully in political process 	<p>of political influence</p> <ul style="list-style-type: none"> • PR – unlikely to implement, consider other more palatable options • Individualism – Canadian culture is not one of uncompromised individualism 	
Trevor Knight	PR	"Unconstitutional Democracy? A Charter Challenge to Canada's Electoral System" (1999) 57(1) U.T. Fac.L.Rev. 1	<ul style="list-style-type: none"> • Support other values, especially rep. of diversity – limit application of "voter parity" • PR – Incentive for parties to make broad appeals, moderate divisive elements and emphasize unifying ones • Fundamental role of parties to bring Canadians together 	<ul style="list-style-type: none"> • SMP – does not provide voter parity and limits rep. of non-geographic factors • FPTP – stunts development of national parties, manufactures majorities, leads to weak and ineffective oppositions, perpetuates regional differences • Representation that does not mirror different characteristics – can lead to continued marginalization • Undercutting legitimacy of national government – 	2, 3, 10, 12

				provincial politicians become primary defenders of regional interests	
David Johnson		“Canadian Electoral Boundaries and the Courts: Practices, Principles and Problems (Case comment)” (1994) 39 McGill L.J. 224	<ul style="list-style-type: none"> • One person- one vote – integral to democracy in Canada 	<ul style="list-style-type: none"> • Constitutional weight on non-geographic factors (community of interest, minority rep. etc.) is questionable – terms cannot be defined; which minorities should the courts protect? 	7
Duff Spafford		“Effective Representation: Reference Re Provincial Electoral Boundaries” (1992), 56 Sask. L. Rev. 197	<ul style="list-style-type: none"> • Representation belongs to groups not just to individuals – implied in Sask. Reference decision 		3
Michael Aikinson		“What Kind of Democracy Do Canadians Want?” (1994) 27 C.J.P.S. (No. 4) 747	<ul style="list-style-type: none"> • New Charter perspective on Democracy – crystallized idea that gov’t exists for the people – a set of rights can resist gov’t. intrusion • Political equality – raised to an unprecedented level • Non-geographic political identity – 	<ul style="list-style-type: none"> • Current low regard for political institutions 	3

			post Charter, can now legitimately detach from place		
Don Tapscott		“The Digital Media and the Reinvention of Government” (1997) 40 Can. Public Admin. (No. 2) 328	<ul style="list-style-type: none"> • Control, accountability, visibility of macro-level government initiatives • Design new processes for citizen participation: electronic hearings, brainstorming, straw votes, virtual interest groups • Design government to fit business model – “customer first” philosophy 	<ul style="list-style-type: none"> • Government increasingly appears out of date 	9
Katherine Graham & Susan Phillips		“Citizen Engagement Beyond the Customer Revolution” (1997) 40 Can. Public Admin. (No. 2) 255	<ul style="list-style-type: none"> • Reorient government to “citizen-focused” model • Collective action – federal gov’t funded a wide-range of citizen groups (1940-1980) that assisted 	<ul style="list-style-type: none"> • Distrust in politicians and political institutions • Limited access to political representation or public services • Growing democratic deficit – gap between influence expectations and 	3, 9

			<p>disadvantaged segments achieve equality</p> <ul style="list-style-type: none"> Public trust in party system – current system allows for very limited citizen participation, executive federalism: still elite, white, male 	<p>practices</p> <ul style="list-style-type: none"> “Marketization” of state – stop current focus on efficient delivery of services. Focus on debating values and policies Viewing citizens as “customers” 	
David Zussman		<p>“Do Citizens Trust their Government?” (1997) 40 Can. Public Adm. (No. 2) 234</p>	<ul style="list-style-type: none"> Citizen participation in political life – they are participating more than ever (choosing different avenues/styles of participation) Confidence in governing bodies – critical Increase citizen interest in politics (currently growing) 	<ul style="list-style-type: none"> Decline in confidence in gov’t – at an all time low throughout developed world 	9
A. Blais		<p>“The Debate Over Electoral Systems” (1991) 12 Int. Pol. Sc. R. (No. 3) 239</p>	<ul style="list-style-type: none"> Values involved when discussing electoral systems: stability, leadership, accountability, fairness, legitimacy, order, 		9, 11

			responsiveness, responsibility		
Chris Bradshaw		“First Past the Post Has Got to Go” (2001) Policy Options, Vol. 22, No. 6	<ul style="list-style-type: none"> • True preference voting • A viable marketplace of political options 	<ul style="list-style-type: none"> • FPTP – poor at reflecting political will of citizens; parties, leads to strategic voting and strategic politicking. • Giving cabinet posts to less capable MPS – to foster a national “look” to government 	6, 12
Manon Tremblay		“Women and Political Participation in Canada” (2001) Electoral Insight, Vol 3, No. 1	<ul style="list-style-type: none"> • Democratic institutions that harmonize rather than exclude differences • PR – does not guarantee increase in number of women candidates, but makes it more likely 		2, 3
Jerome Black		“Immigrants and Ethnoracial Minorities in Canada: A Review of Their Participation in Federal Electoral Politics” (2001) Electoral Insight, Vol. 3, No. 1	<ul style="list-style-type: none"> • Some PR “dimension” in electoral system • More “balanced” party lists • Imposing term limits on incumbents 	<ul style="list-style-type: none"> • Incorrect generalizations – political passivity of minorities 	2, 3

			<ul style="list-style-type: none"> • Implement incentives for parties to become more proactive in recruiting minority candidates 		
Jon H. Pamett		“Youth in the Electoral Process” (2001) Electoral Insight, Vol. 3, No. 1	<ul style="list-style-type: none"> • Improvement to youth voting rates – reduce voting age, teach more participative civics, make government institutions more participative 		3
Shirley Dysart		“Barriers to women’s participation in Parliament” (1994) Canadian Parliamentary Review, Vol. 17, No. 3	<ul style="list-style-type: none"> • Political parties taking responsibility to promote equality of men's/women's voices in the legislatures • Full participation of women in practice 	<ul style="list-style-type: none"> • FPTP – poses hurdles to women’s entry 	3
Lisa Young		“Electoral Systems and Representative Legislatures” (1998) Canadian Parliamentary Review, Vol. 21, No. 3	<ul style="list-style-type: none"> • More representative legislative bodies: on symbolic level affirms Canada’s inclusiveness and 	<ul style="list-style-type: none"> • FPTP 	3

			egalitarian nature, increases legitimacy of gov't in the eyes of "groups", leads to different kinds of legislation being passes (more sensitive to interests of women and minority groups)		
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Appendix C

Canadian Electoral Criteria

Electoral Criteria	Frequency Mentioned
Parliament should be representative in three dimensions: 1. Geographic	11
2. Reflect relative party support	23
3. "Mirror" electorate	19
There should be a level playing field for political competition 4. Parties treated equally	4
The system should be accessible to voters 5. Ease of voting	
The system must be accessible and meaningful to voters, which encompasses: 6. Minimum "wasted votes"*	9
7. Equal weight of each vote	1
8. A Parliament with real power	2
9. Accountable for past governance	10

<p>The system should encourage candidates and parties to reach out to a broad segment of the population.</p> <p>10. Assist development of inclusive national parties</p>	11
<p>The system should produce stable and effective governments.</p> <p>11. Effective governance**</p>	11
<p>The system should promote effective opposition.</p> <p>12. Effective opposition</p>	6
<p>Any changes to the system should be administratively manageable.</p> <p>13. Ease of administration</p>	
<p>The government must be able to smoothly transition from an existing system to any new electoral model</p> <p>14. Ease of transition</p>	6

Notes:

* The criterion minimizing “wasted votes” includes the concept of maximizing “authentic votes.” A vote is semi- wasted if a voter voluntarily sensors her choice based on a perception that if she doesn’t her vote will not “count.”

** The criterion “effective opposition” includes both the development of opposition parties, and the opportunity for those parties to participate in governance through coalitions and strategic alliances

Appendix D How Proposed Models Reflect Electoral Criteria

	First Past the Post	The Australian Lower House model (alternative voting)	PR Light (the current system plus 10-20% extra <i>top up</i> seats allocated on the basis of PR)	The New Zealand model (the PR component would be closer to 50% of the total seats in Parliament)	The Irish model (the single-transferable ballot)
Parliament should be representative in three dimensions:					
1. Geographic	Yes	Yes	Yes	Mixed results	Yes
2. Reflect relative party support	No	No	Yes	Yes	Mixed results
3. "Mirror" electorate	No	No	Mixed results	Yes	Yes
There should be a level playing field for political competition					
4. Parties treated equally	Mixed results	Mixed result	Yes	Yes	Yes
The system should be accessible to voters					
5. Ease of voting	No	No	Yes	Yes	Mixed results
The system must be accessible and					

meaningful to voters, which encompasses:					
6. Minimum “wasted votes”*	No	Yes	Yes	Yes	Yes
7. Equal weight of each vote	No	No	Mixed results	Mixed results	No
8. A Parliament with real power	Mixed results	Mixed results	Mixed results	Mixed results	Mixed results
9. Accountable for past governance	Yes	Yes	Mixed results	No	No
The system should encourage candidates and parties to reach out to a broad segment of the population.					
10. Assist development of inclusive national parties	Mixed results	No	Yes	Yes	No
The system should produce stable and effective governments.					
11. Effective governance**	Yes	Yes	Mixed results	Mixed results	Mixed results
The system should promote effective					

opposition.					
12. Effective opposition	No	Yes	Yes	Yes	Mixed results
Any changes to the system should be administratively manageable.					
13. Ease of administration	Yes	Yes	Yes	No	No
The government must be able to smoothly transition from an existing system to any new electoral model					
14. Ease of transition	Does not apply	Yes	Yes	No	No