

**CANADA'S ELECTORAL PROCESS:  
FREQUENTLY ASKED QUESTIONS**

Law and Government Division

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**Contributors:**

**Emma Butt, Erin Prisner, James R. Robertson,  
Michael Rowland, Tim Schobert and Sebastian Spano  
Law and Government Division**

**Michael Dewing and Brian O'Neal  
Political and Social Affairs Division**

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CANADA

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## CANADA'S ELECTORAL PROCESS: FREQUENTLY ASKED QUESTIONS

### PART I – REFORMING THE EXISTING ELECTORAL SYSTEM

#### A. Participation in the Electoral Process

##### 1. How has voter turnout changed in federal elections in recent years?

Voter turnout at the federal level in Canada has declined overall since the 1988 general election, and is a matter of increasing concern for policy-makers. While the participation rate was sometimes low in previous years – rates often fluctuate depending on particular events before or during an election campaign – the *progressive* decline is new and disquieting. The following figures show participation rates in federal elections since 1993:

2004: 60.9%  
2000: 61.2%  
1997: 67.0%  
1993: 69.6%

The 2004 figure is the lowest turnout ever recorded at the federal level. Voter turnout improved, however, to 64.9% in the 23 January 2006 election.

In a 2002 poll commissioned by Elections Canada, reasons offered for neglecting to vote included dissatisfaction with politicians in general, a belief that participation would make no difference, and general lack of interest. It is not clear whether the permanent register of electors (which has replaced door-to-door enumeration) and other changes have contributed to the decline.

## **2. How does the low federal turnout compare with turnout in provincial elections? Internationally?**

Voter participation has also dropped in provincial elections, but not as dramatically nor as consistently as in federal elections.<sup>(1)</sup> Among the world's other affluent, industrialized democracies, the situation is not much better: in most of them, a steady decrease has been witnessed since the 1960s. The United States has experienced the most significant decrease, with current turnout for federal elections at approximately 50%. Significant drops in voter participation have also been seen in Europe, Japan, and Latin America, though marginally less dramatic than those in the United States.

## **3. What can be done to improve voter turnout?**

A host of measures to improve voter participation in Canada have been suggested by a variety of organizations and individuals and by governmental bodies such as the Chief Electoral Officer of Canada and the Law Commission of Canada. Among the suggestions are:

- The implementation of a proportional representation system (see the discussion in Part II, Section A);
- Compulsory/mandatory voting (see the discussion below);
- Lowering the minimum voting age (see the discussion below);
- A return to the practice of door-to-door enumeration (see the discussion below); and
- Sunday voting days (see the discussion below).

## **4. What is mandatory or compulsory voting? Where is it used?**

Mandatory voting, sometimes called compulsory voting, requires citizens to register as voters and to go to their polling station or vote on election day. Those who refuse to do so are usually subject to a fine (unless they have an acceptable explanation, such as illness). Although it is known as “mandatory voting,” citizens are not actually required to vote. They must register and present themselves at their polling station; however, they still have the choice of spoiling their ballot or registering an abstention. In fact, several countries provide a box on the ballot for those who wish to vote “None of the candidates.”

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(1) Centre for Research and Information in Canada, *Voter Participation in Canada: Is Canadian Democracy in Crisis?*, Montréal, October 2001, [http://www.cric.ca/pdf/cahiers/cricpapers\\_nov2001.pdf](http://www.cric.ca/pdf/cahiers/cricpapers_nov2001.pdf).

Mandatory voting legislation exists in a number of countries around the world, including more than 20 democracies, such as Australia, Belgium, Cyprus, Luxembourg and Brazil. Belgium was the first country to introduce mandatory voting legislation, in 1892. Australia has arguably the best-known mandatory voting system (first introduced in 1915 by the State of Queensland, and adopted nationally in 1924). Australian citizens over the age of 18 must be registered to vote and are required to present themselves at their respective polling stations on election day. Those who do not do so are subject to a fine (unless, as mentioned above, they have an acceptable reason). Since Australia's mandatory voting law came into force, voter turnout has nearly doubled and sits at about 95%.

### **5. Has mandatory voting been proposed in Canada?**

On 9 December 2004, Senator Mac Harb introduced Bill S-22, An Act to amend the Canada Elections Act (mandatory voting), in the Senate. The bill would have required all registered voters to vote in all federal elections or be faced with a fine. Voters would still have the option of refusing the ballot, voting for “none of the candidates,” or providing Elections Canada with an acceptable reason for not voting.

Bill S-22 faced strong opposition in the Senate. Critics argued that it was undemocratic to force Canadian citizens to vote. Senator Noel Kinsella and Senator Donald H. Oliver were particularly concerned that forcing an individual to vote interfered with that individual's Charter right under section 3, which includes the right *not* to vote.<sup>(2)</sup> Bill S-22 did not proceed beyond second reading stage in the Senate, and died on the *Order Paper* when the 38<sup>th</sup> Parliament was dissolved in November 2005.

Mandatory voting also seems to be unpopular with the Canadian electorate. As part of a 2003 survey investigating Canadians' attitudes towards electoral reform, Elections Canada asked Canadians whether they supported compulsory voting. The survey found that the majority of Canadian respondents were opposed – often strongly – to mandatory voting legislation.<sup>(3)</sup>

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(2) See Library of Parliament, LEGISINFO, Bill S-22, Debates at 2nd Reading, 9 February 2005 and 8 June 2005, <http://lp-bp/apps/LEGISINFO/LEGISINFO.asp?Lang=E&Chamber=S&StartList=2&EndList=1000&Session=13&Type=0&Scope=I&query=4386&List=stat>.

(3) Elections Canada, *Explaining the Turnout Decline in Canadian Federal Elections: A New Survey of Non-voters*, March 2003, Section 8, <http://www.elections.ca/content.asp?section=loi&document=elect&dir=tur/tud&lang=e&textonly=false>.

## **6. What are some of the arguments for and against mandatory voting legislation?**

Several arguments are consistently put forth by proponents of mandatory voting, including the following:

- There is increased voter turnout;
- The views of the electorate are better represented in Parliament;
- Voting is considered a civic duty similar to jury duty, payment of taxes, etc.;
- Election campaigns can focus more on issues, instead of focusing on getting citizens out to vote on election day;
- Voters are not forced to vote; rather, they are obliged to turn out to vote; and
- If they are required to participate, voters may become more involved in the political process.

Arguments against mandatory voting include the following:

- Forcing a person to vote is undemocratic and interferes with an individual's Charter rights;
- Mandatory voting does not address the issue of educating the electorate to ensure that citizens are making informed choices on political issues;
- Although mandatory voting may increase voter turnout, it may not necessarily increase the representation of the views of the electorate or lead to more informed voting;
- Mandatory voting does not address the question of why citizens are not voting; and
- Enforcing the penalties against those who fail to vote can be expensive.

## **7. What are the implications of lowering the minimum voting age?**

Of all groups of eligible voters, young Canadians have the lowest voter participation levels. According to studies commissioned by Elections Canada, not only are young people participating less in the electoral process than older generations, but their willingness to participate is also in decline. One idea put forth to counter this trend is the lowering of the voting age from 18 to 16. Proponents of this initiative argue that instilling democratic values in young people while they are still in school will encourage the development of life-long voting habits. Opponents believe that 16-year-olds lack the maturity to make an informed political decision and that the novelty aspect of voting at 16 would eventually wear off.

The movement to lower the voting age suffered two substantial blows recently. On 13 May 2004, the Alberta Court of Appeal ruled against two Edmonton teenagers who



argued that their rights under the Charter had been violated by Alberta's *Elections Act*. The Court agreed with the trial judge that a voting age limit was, in principle, a violation, but that it was justified in order to maintain the integrity of the electoral system. On 4 November 2004, a private Member's bill was introduced in the House of Commons by Liberal MP Mark Holland to lower the voting age to 16; it was defeated on 8 June 2005 following second reading debate.

#### **8. Is a permanent voter list an improvement over door-to-door registration?**

In April 1997, door-to-door enumeration – the traditional method of compiling voter lists – was replaced by the National Register of Electors (a permanent voters list). Although the new system is more cost-efficient, some critics suggest that it contributes to the disengagement of citizens from the electoral process. First, difficulties have been encountered with respect to accuracy; given people's increased mobility in modern society, many voters are absent from voter lists at election time due to relocation. In such situations, the onus of registering is placed on the voter, who may not have time to track down the local Elections Canada office. Second, many observers believe that because the door-to-door enumeration process is more personal, it heightens a voter's sense of awareness and civic duty in a way that receiving a notice in the mail cannot. Against these arguments, door-to-door enumeration is costly and time-consuming; the minimum length of an election campaign would have to be extended to accommodate the additional time needed for enumeration. It is also increasingly difficult to find enumerators, and many people may not be home when enumerators call or may be reluctant to answer the door to strangers.

#### **9. How effective would Sunday voting be?**

Changing the traditional Monday election day to Sunday is an idea that has garnered little attention in Canada. In Europe, however, it has been explored more thoroughly in recent years, in both an academic and a practical context. In recent elections to the European Parliament, several member states have experimented with Sunday voting in an effort to bolster routinely low voter participation. Many people who abstained from voting cited work-related obligations as being the primary reason; the implementation of a weekend voting day sought to remedy this problem. Although studies found that Sunday voting facilitated the process for some electors, it effectively created a new class of non-voters who simply did not want to give up their free time on the weekend.

Whether Sunday voting would help increase voter participation in Canada is debatable. In the wake of a barrage of calls for electoral reform from many sides, Sunday voting is conspicuously absent from the Canadian agenda. There are two possible reasons for this:

- Section 133 of the *Canada Elections Act* provides that employees are entitled to three hours of paid leave on election day in order to cast their votes. In addition, Section 128 of the *Canada Elections Act* requires that polls be open for a 12-hour period, which, for most people, allows time to vote before or after a regular work day. These provisions negate, at least in part, the argument that work plays a major role in determining voting patterns.
- In a 2003 survey commissioned by Elections Canada, only 5.8% of non-voters said they did not vote because their attention was turned elsewhere. (Work was not specifically singled out.) The main reasons non-voters provided had to do with attitudes toward politicians and the government. Discontent, meaningless of participation and lack of interest were the factors most often mentioned.

#### **10. How adequately are women, Aboriginal peoples, and minorities represented in Parliament?**

Women, minority groups, and Aboriginal peoples continue to be under-represented in Parliament, a fact that raises concern about the current electoral system in Canada and, as some argue, indicates the need for electoral reform. Although women represent half the Canadian population, they occupy only 20% of the seats in the House of Commons.<sup>(4)</sup> Similarly, while minority groups and Aboriginal peoples constitute 11% and 3.5% of the population, respectively, they are also under-represented in the House of Commons.<sup>(5)</sup>

While increasing the representation of women, minority groups and Aboriginal peoples in Parliament is considered a priority by some, their representation has shown little improvement in recent federal elections.<sup>(6)</sup> It has been pointed out that despite efforts to nominate candidates from these groups, increased representation in the House of Commons can result only if these candidates are nominated in winnable constituencies.

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(4) For additional information on women and Parliament, see: Julie Cool, *Women in Parliament*, PRB 05-62E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 20 February 2006.

(5) Law Commission of Canada, *Voting Counts: Electoral Reform for Canada*, Ottawa, 2004, p. 62.

(6) John Gray, *Once more, few women, fewer minorities*, CBC.ca Reality Check Team, 3 January 2006, [http://www.cbc.ca/canadavotes/realitycheck/women\\_minorities.html](http://www.cbc.ca/canadavotes/realitycheck/women_minorities.html).

In the 23 January 2006 federal election, only 25% of the 999 candidates nominated by the Liberals, Conservatives, New Democrats and Bloc Québécois were women.<sup>(7)</sup> For visible minorities, the numbers were even lower; of the 308 NDP and 75 Bloc Québécois candidates, only 21 and 9 candidates, respectively, were visible minorities (the Liberals and Conservatives have not made data available on the number of their minority candidates).<sup>(8)</sup> These figures are lower than in the previous election. Table 1 shows the number of women elected to the House of Commons in Canada's 2004 and 2006 general elections.

**Table 1: Representation of Women in the House of Commons<sup>(9)</sup>**

| Party                        | 2004 Election           |                                     |                                   | 2006 Election           |                                     |                                   | Change between 2004 and 2006 |
|------------------------------|-------------------------|-------------------------------------|-----------------------------------|-------------------------|-------------------------------------|-----------------------------------|------------------------------|
|                              | Number of women elected | Total number of seats held by party | Percentage of seats held by women | Number of women elected | Total number of seats held by party | Percentage of seats held by women |                              |
| Bloc Québécois               | 14                      | 54                                  | 26%                               | 17                      | 51                                  | 33%                               | +7%                          |
| Conservative Party of Canada | 12                      | 99                                  | 12%                               | 14                      | 124                                 | 11%                               | -2%                          |
| Liberal Party of Canada      | 34                      | 135                                 | 25%                               | 21                      | 103                                 | 20%                               | -5%                          |
| New Democratic Party         | 5                       | 19                                  | 26%                               | 12                      | 29                                  | 41%                               | +15%                         |
| Total                        | 65                      | 308                                 | 21.1%                             | 64                      | 308                                 | 20.8%                             | -0.3%                        |

(7) *Ibid.*

(8) *Ibid.*

(9) Parliament of Canada, "Women in the House of Commons," <http://www.parl.gc.ca/information/about/people/house/WomenHofCidx.asp?Language=E&Hist=N>; Parliament of Canada, "Women - Party Standings in the House of Commons," <http://www.parl.gc.ca/information/about/people/house/StandingsHofCwm.asp?lang=E>; Equal Voice 2006 Election Analysis: Women Elected to Parliament, <http://www.equalvoice.ca/womenelected.pdf>.

With respect to Aboriginal groups, access to and participation in the electoral process is of significant concern. While voter participation in the 2004 federal election by the Canadian population as a whole was 60.9%, Aboriginal voter participation was considerably lower, at approximately 40%.<sup>(10)</sup> It has been suggested that Aboriginal groups often consider non-Aboriginal elections as a threat to their rights, autonomy and self-government goals, thus contributing to the lower level of participation.<sup>(11)</sup> Many Aboriginal Canadians feel alienated from the political process. Others have argued that in order to reduce their sense of exclusion from the federal electoral system, efforts must be made to integrate the Aboriginal worldview into the Canadian political process,<sup>(12)</sup> or other special efforts must be made to involve them and address their issues.

## **B. Political Financing and Campaign Regulation**

In recent years, a number of significant changes to the *Canada Elections Act* have affected the financing and regulation of election campaigns, nomination contests and leadership campaigns. Some of these changes took effect with the major overhaul of the *Canada Elections Act* brought about by Bill C-2, which received Royal Assent in May 2000.<sup>(13)</sup> The most significant changes, however, came about with Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (political financing), which took effect on 1 January 2004.<sup>(14)</sup>

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(10) Based on an Elections Canada public opinion survey conducted following the 2004 federal election, *The Hill Times*, 19 December 2005, p. 5.

(11) Daniel Guérin, "Aboriginal Participation in Canadian Federal Elections: Trends and Implications," *Electoral Insight*, November 2003, Elections Canada On-Line: [http://www.elections.ca/eca/eim/article\\_search/article.asp?id=22&lang=e&frmPageSize=&textonly=false](http://www.elections.ca/eca/eim/article_search/article.asp?id=22&lang=e&frmPageSize=&textonly=false).

(12) Anna Hunter, "Exploring the Issues of Aboriginal Representation in Federal Elections," *Electoral Insight*, November 2003, Elections Canada On-Line: [http://www.elections.ca/eca/eim/article\\_search/article.asp?id=25&lang=e&frmPageSize=&textonly=false](http://www.elections.ca/eca/eim/article_search/article.asp?id=25&lang=e&frmPageSize=&textonly=false).

(13) J. R. Robertson, *Bill C-2: The Canada Elections Act*, LS-343E, Parliamentary Research and Information Service, Library of Parliament, Ottawa, 9 March 2000.

(14) J. R. Robertson, *Bill C-24: An Act to amend the Canada Elections Act and the Income Tax Act (Political Financing)*, LS-448E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 11 June 2003.

## **1. Who can make a political contribution?**

With some exceptions, only individuals (Canadian citizens and permanent residents) may make financial contributions to registered parties, candidates, constituency associations, and leadership and nomination contestants.

Unions and corporations are no longer permitted to make political contributions to registered political parties and leadership contestants. They may make modest contributions to candidates, constituency associations and nomination contestants.

## **2. What are the limits on financial contributions?**

Individuals who are Canadian citizens or permanent residents may contribute:

- a maximum of \$5,000 in a calendar year to a particular registered political party and its constituency associations, candidates and nomination contestants, collectively;
- a maximum of \$5,000 in a particular election to a candidate who is not a candidate of a registered political party; and
- a maximum of \$5,000 to leadership contestants in a particular leadership contest.

Election candidates and nomination contestants of a registered party, as well as party leadership candidates, may contribute an additional \$5,000 of their own funds to their own campaigns or nomination contests. The \$5,000 limit also applies to contributions by candidates who are not candidates of a registered political party to their own campaigns.

Unions and corporations are permitted to contribute small amounts as follows:

- a maximum of \$1,000 in any calendar year to a particular registered constituency association, candidates and nomination contestants, collectively; and
- a maximum of \$1,000 to election candidates who are not candidates for a registered political party.

Unions and corporations, however, may not contribute to political parties or leadership campaigns. Unions that do not hold bargaining rights for employees in Canada and corporations not carrying on business in Canada, Crown corporations, and corporations receiving more than 50% of their funding from the Government of Canada are not permitted to make any contributions even at the reduced level.

The contribution limits prescribed above in the *Canada Elections Act* are adjusted annually to take account of inflation.

### **3. What constitutes a contribution?**

Contributions include most donations of money, goods and services. Party membership fees are not considered contributions. A candidate's or nomination contestant's own funds used in an election or nomination contest are considered to be contributions.

### **4. What are the spending limits imposed on participants in the political process?**

Limits on spending by *political parties* during an election are determined by multiplying \$0.70 by the number of names on the registered list of electors for constituencies in which the party has endorsed a candidate.

Limits on spending by a *candidate* in an election are: \$2.07 for each of the first 15,000 electors in the constituency; \$1.04 for each of the next 10,000 electors; and \$0.52 for each of the remaining electors. This amount is increased if the number of electors per square kilometre of a constituency is less than 10.

Limits on spending by *nomination contestants* are 20% of the spending limit established for electoral candidates, not including some personal expenses such as travel and living expenses.

No limits are imposed on spending by *leadership candidates*. Candidates are required, however, to disclose the amounts and sources of contributions to Elections Canada. Candidates are also required to register with Elections Canada in order to accept contributions or incur expenses.

### **5. To what extent are political parties and candidates financed publicly?**

Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (political financing), which came into force on 1 January 2004, increased and extended the level of public financing of political parties and candidates.

*Political parties* are entitled to an annual allowance of \$1.75 per vote received by the party in the previous election, provided that candidates endorsed by the party received at least 2% of valid votes cast nationally in that election or 5% of valid votes cast in the constituencies in which the party endorsed a candidate. The \$1.75 allowance per vote is adjusted annually for inflation.

Parties are also entitled to reimbursement of 50% of their electoral expenses, provided that candidates endorsed by the party received at least 2% of valid votes cast nationally or 5% of valid votes cast in constituencies in which the party endorsed candidates.

*Individual candidates* are entitled to partial reimbursement of electoral expenses. The candidate is issued a payment as a first instalment immediately after the return of the election writ if he or she received 10% or more of the valid votes cast. A final payment is issued to the candidate after his or her official agent files the candidate's electoral campaign return and the required supporting documents. The amount of the final instalment will be 60% of the candidate's paid election and personal expenses, less the first instalment already paid, or 60% of the maximum election expenses allowed under the *Canada Elections Act*, less the initial instalment.

Amendments to the *Income Tax Act* now provide increased incentives for individuals to contribute to political parties and candidates. These amendments double the amount of an individual's contribution that is eligible for the 75% tax credit, from \$200 to \$400. The other tax brackets of the tax credit were increased accordingly, resulting in a maximum tax credit of \$650 for donations of \$1,275 or more.

## **6. What are the limits on third-party election advertising?**

A third party is defined as an individual, or a group, that is neither a candidate nor a political party. Third parties play an increasingly significant role in election campaigns by supporting or opposing, through advertising or other expenditures, individual candidates or parties.

Third parties may not incur more than \$150,000 in total election advertising expenses. Of that amount, no more than \$3,000 may be spent on supporting or opposing the election of one or more candidates in an individual constituency. With respect to a party leader, the \$3,000 spending limit applies only to his or her candidacy in a particular constituency. These amounts are adjusted for inflation.

The regulation of third-party election advertising has attracted considerable debate. Proponents of regulation argue that since spending by political parties and candidates, and now nomination contestants and leadership candidates, is carefully regulated, other groups and individuals should be subject to some regulation in order to ensure a level playing field. Opponents of regulation and spending limits argue that restrictions on third-party spending constitute an infringement on basic Charter rights such as freedom of expression. This debate featured prominently in litigation that reached the Supreme Court of Canada in *Harper v.*

*Canada (Attorney General)*.<sup>(15)</sup> In *Harper*, a majority of the court, in upholding the third-party spending limits in the *Canada Elections Act*, adopted an “egalitarian” model of electoral fairness, which recognizes that those with greater financial resources can effectively control the electoral process and shut out those lacking economic power. The egalitarian model was upheld in contrast to the libertarian model, which favours as few restrictions as possible.

Attempts to regulate the activities of third parties during election periods have continued. Bill C-79, An Act to amend the *Canada Elections Act* (third party advertising), introduced in the House on 23 November 2005, was one such effort. The bill, however, died on the *Order Paper* with the dissolution of Parliament on 29 November 2005. The bill sought, generally, to limit a third party’s ability to use, for election advertising purposes, contributions received during a period commencing six months before the issuing of an election writ and ending on polling day (“the designated period”). The bill essentially attempted to link the maximum amount a third party could spend for election advertising to the contributions received by the third party from individuals and entities. Another important feature of the bill was its attempt to place limits on contributions to third parties for the purpose of election advertising, though not for other purposes, and only if the contributions were received during the designated period.

The bill proposed that a maximum of \$5,000 from the contributions of an individual could be spent by the third party on election advertising if the contribution was received from the individual within the above-mentioned designated period. A \$1,000 spending limit would have been imposed in respect of contributions received from persons other than an individual during the same period.

The bill would also have imposed a limit of \$150,000 on the amount an individual or an organization could contribute to a third party during the designated period for the purpose of election advertising in a general election. A contribution limit of \$3,000 was proposed if the individual or entity intended his or her contribution, made in the corresponding period, to be used for election advertising to oppose or support the election of candidates in a given electoral district in a general election. The \$3,000 contribution limit was also proposed for election advertising in a by-election.

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(15) [2004] 1 S.C.R. 827.



Finally, the bill would have required third parties to disclose the names and addresses of individuals who contributed more than \$5,000 during the designated period described above, and the amount that the third party paid out of, or incurred as expenses from, that contribution for election advertising. Similar disclosure requirements were proposed for contributions of \$1,000 or more from other persons or entities.

### **7. What are the rules concerning donor disclosure?**

Under section 424.1(1) of the *Canada Elections Act*, parties entitled to an allowance under section 435.01(1) must provide a quarterly financial transactions return to the Chief Electoral Officer setting out the total amount of contributions received, and the names of contributors contributing more than \$200 to the party. Candidates must provide a similar financial return within four months after polling day (section 451(2), (4)). Candidates for leadership contests are required to file regular reports on the amounts and sources of donations (section 435.31) in the period leading up to the contest. Six months following the leadership contest, candidates must submit further information on additional contributions received and expenses incurred (section 435.3(6)). Despite these requirements there continue to be concerns that the rules are inadequate.

Critics maintain that disclosing a candidate's donors four months after an election defeats one of the underlying purposes of the rules: to provide the public with timely disclosure and to be fully informed of who is supporting a political party or candidate so that the voter can make informed voting decisions. The Government of Ontario has recently passed the *Election Statute Law Amendment Act, 2005* which, among other things, requires more timely disclosure of donor information. Candidates must report any contribution over \$100 within 10 days of receipt to the Chief Electoral Officer. The Chief Electoral Officer then must ensure that the report is provided to the public on a Web site within 10 days of the report being received.

### **8. How are the political financing rules enforced?**

The *Canada Elections Act* prescribes a long list of offences relating to breaches of political financing rules. These offences include circumventing, or conspiring to circumvent, the restrictions on political donations; failing to report a contribution or an expense; and spending in excess of the prescribed limits.

There is a limitation period on the time within which a prosecution for an offence may be initiated: 18 months from the date on which the offence came to light, with an absolute limit of seven years from the occurrence of the offence.

### **9. How are leadership campaigns regulated?**

New rules for the conduct of leadership campaigns have been in force since 1 January 2004 (see Part 18, Division 3.1, of the *Canada Elections Act*). Prior to this date, campaigns were unregulated.

Once a leadership campaign is called by a registered party, the party must notify Elections Canada. Candidates are deemed to be candidates once they accept a contribution or incur a campaign expense, and they must register with Elections Canada. In the weeks leading up to the leadership convention, candidates are required to file periodic reports on the amounts and sources of contributions. Six months following the leadership convention, candidates must submit further information on additional contributions received and expenses incurred to the Chief Electoral Officer.

Candidates must appoint an auditor at the time of registration. They must also submit an audited report if they spend or receive more than \$5,000. Each candidate must also appoint a campaign agent and a financial agent. The financial returns of all candidates are published.

### **10. How are nomination campaigns regulated?**

Prior to Bill C-24, nomination contests were unregulated. As of 1 January 2004, nomination contests are subject to special rules provided for in the *Canada Elections Act* (Part 18, Division 5). Within 30 days of the date on which the nomination contest is to be held, a constituency association must report the holding of the contest to Elections Canada. A nomination contestant is deemed to be a contestant upon acceptance of a contribution or the incurring of an expense. Nomination contestants must appoint a financial agent to accept contributions and incur expenses. Contestants must report contributions and expenses to Elections Canada if those contributions and expenses exceed \$1,000. An auditor must be appointed if the contestant spends or receives contributions in excess of \$10,000.

The reporting obligations arise after the completion of the nomination contest (unlike leadership campaigns, in which the candidates must provide reports during the campaign). Nomination contestants must file a financial return, if applicable, within four months after the completion of the nomination contest. If the nomination contest occurs during an election period, the return may be filed within four months after election day.

### **11. What are the recent political financing reforms proposed by political parties?**

A number of political parties proposed electoral reforms in their 2006 election campaign platforms, some of which address political financing. The Conservative Party of Canada has proposed, among other things:

- limiting individual contributions to political parties or candidates to \$1,000;
- a prohibition on contributions to political parties, riding associations and candidates by corporations, unions and other organizations; and
- a prohibition on cash donations to political parties or candidates exceeding \$20.

The Party has also proposed extending to 10 years the limitation period within which violations of offences under the Act may be prosecuted.

The New Democratic Party proposed strict, but unspecified, spending limits on party leadership contests. The Green Party proposed an individual limit of \$1,000 on financial contributions, and an outright ban on union and corporate contributions.

## **C. The Functioning and Administration of Elections**

### **1. How are returning officers selected?**

Returning officers are responsible for the administration of an election in their constituencies. They are required to be entirely impartial in performing their duties: the *Canada Elections Act* (section 24(6)) prohibits returning officers from participating in any partisan political activities while in office. Under section 24(1) of that Act, however, the Governor in Council (the Cabinet) is responsible for the appointment and removal of all returning officers. This process has been questioned by both the Chief Electoral Officer (CEO) and the opposition parties. The CEO has, in numerous reports, referred to the process as anachronistic and

recommended that this power be removed from Cabinet and transferred to the CEO. The opposition parties have supported the CEO's recommendations. Several allegations of political bias have been made against returning officers in recent years, and the opposition parties charge that such an important function of the democratic process should not be a patronage appointment.

To that end, Michel Guimond, MP, of the Bloc Québécois introduced a private Member's bill (Bill C-312) in the House of Commons on 7 December 2004. The bill proposed that returning officers be appointed by the CEO, following a competition. In order to depoliticize the process, the competition proposed in the bill was to be open to all members of the public, and would resemble the procedure in place for hiring in the public service. It was based on the procedure used in Quebec, although other provinces have different models. Bill C-312 was studied and amended by a committee following second reading, but died on the *Order Paper* with the dissolution of Parliament on 29 November 2005. Similar legislation will have to be introduced in the 39<sup>th</sup> Parliament if steps are to be taken to reform the appointment process for returning officers.

## **2. How are electoral boundaries determined?**

The *Constitution Act, 1867* and the *Electoral Boundaries Readjustment Act* require that representation in the House of Commons be readjusted after each decennial (10-year) census to reflect population changes and movements within Canada. These readjustments to electoral boundaries are carried out by independent commissions in each province. Each of the 10 commissions is chaired by a judge appointed by the Chief Justice of that province, or by a person resident in that province and appointed by the Chief Justice of Canada. In addition, the Speaker of the House of Commons appoints two members who are residents of that province.

Each commission prepares proposals, which are published in the *Canada Gazette* and local media. Public hearings are then held to obtain public input. Following the hearings, the commission determines what changes, if any, should be made to electoral boundaries, and prepares a report. The report is submitted to the Chief Electoral Officer (CEO), who presents it to the Speaker of the House of Commons for tabling. MPs have 30 days to review the reports and file objections with the designated committee of the House of Commons. That committee has 30 sitting days to review any objections for each commission. The objections as well as the minutes of the committee's discussions and any evidence heard by the committee are sent to the CEO, who in turn forwards them to the appropriate commission.

The commissions may consider any objections received from the House of Commons, but ultimately they make the final decision on electoral boundary readjustments independent of the CEO or Parliament, after conducting further public hearings. Final reports of the commissions are sent by the CEO to the Speaker of the House of Commons and a draft representation order is prepared. The representation order: specifies the number of members of the House of Commons to be elected for each province; divides each province into electoral districts (i.e., constituencies); describes the boundaries of each district; and specifies the name of each district and its population.

The 2003 representation order resulted in the allocation of 7 seats to Newfoundland and Labrador, 4 to Prince Edward Island, 11 to Nova Scotia, 10 to New Brunswick, 75 to Quebec, 106 to Ontario, 14 to Manitoba, 14 to Saskatchewan, 28 to Alberta, 36 to British Columbia, and 1 seat to each of Yukon, the Northwest Territories and Nunavut. The total number of seats in the House of Commons increased to 308 from 301 as a result of the readjustment. The new boundaries took effect with the dissolution of the 37<sup>th</sup> Parliament on 23 May 2004.

### **3. How well has Canada's system of representation by population kept up with population shifts?**

Concerns have been raised that Canada's system of representation by population has not kept pace with shifts in population. Three provinces in particular – Alberta, British Columbia, and Ontario – have fewer seats in the House of Commons than their percentage of the total population would supposedly warrant. Over the past four decades, these gaps have grown.<sup>(16)</sup> This is clearly demonstrated in Table 2. In 2004, Alberta had a difference of 0.9 percentage points between population and number of seats, compared with 0.1 in 1966. British Columbia had a difference of 1.4 percentage points, compared with 0.7 in 1966. Ontario had a difference of 4.4 percentage points, compared with 1.5 in 1966.

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(16) It should be noted that some of these gaps are an inevitable product of the so-called “senatorial clause” in section 51A of the *Constitution Act, 1867*, which requires that a province may not have fewer seats in the House of Commons than its allotment of Senate seats. This would account for the disproportionate share of seats, in relation to population, for provinces such as Prince Edward Island, Newfoundland and Labrador, and Saskatchewan, as well as the growing gap between population and representation for those provinces.

**Table 2: Percentages of Population and House of Commons Seats, by Province and Territory, 1966-2004**

| Year                      | 1966            |            | 1976            |            | 1996            |            | 2004            |            |
|---------------------------|-----------------|------------|-----------------|------------|-----------------|------------|-----------------|------------|
| Province or Territory     | % of population | % of seats | % of population | % of seats | % of population | % of seats | % of population | % of seats |
| Alberta                   | 7.3%            | 7.2%       | 8.0%            | 7.4%       | 9.3%            | 8.6%       | 10.0%           | 9.1%       |
| British Columbia          | 9.4%            | 8.7%       | 10.7%           | 9.9%       | 12.9%           | 11.3%      | 13.1%           | 11.7%      |
| Manitoba                  | 4.8%            | 4.9%       | 4.4%            | 5.0%       | 3.9%            | 4.7%       | 3.7%            | 4.5%       |
| New Brunswick             | 3.1%            | 3.8%       | 2.9%            | 3.5%       | 2.6%            | 3.3%       | 2.4%            | 3.2%       |
| Newfoundland and Labrador | 2.5%            | 2.7%       | 2.4%            | 2.5%       | 1.9%            | 2.3%       | 1.6%            | 2.3%       |
| Northwest Territories     | 0.1%            | 0.4%       | 0.2%            | 0.7%       | 0.2%            | 0.7%       | 0.1%            | 0.3%       |
| Nova Scotia               | 3.8%            | 4.2%       | 3.6%            | 3.9%       | 3.2%            | 3.7%       | 2.9%            | 3.6%       |
| Nunavut                   |                 |            |                 |            |                 |            | 0.1%            | 0.3%       |
| Ontario                   | 34.8%           | 33.3%      | 35.9%           | 33.7%      | 37.3%           | 34.2%      | 38.8%           | 34.4%      |
| Prince Edward Island      | 0.5%            | 1.5%       | 0.5%            | 1.4%       | 0.5%            | 1.3%       | 0.4%            | 1.3%       |
| Quebec                    | 28.9%           | 28.0%      | 27.1%           | 26.6%      | 24.7%           | 24.9%      | 23.6%           | 24.4%      |
| Saskatchewan              | 4.8%            | 4.9%       | 4.0%            | 5.0%       | 3.4%            | 4.7%       | 3.1%            | 4.5%       |
| Yukon                     | 0.1%            | 0.4%       | 0.1%            | 0.4%       | 0.1%            | 0.3%       | 0.1%            | 0.3%       |

Sources: Statistics Canada, *Historical Statistics of Canada*, 1983, and *Canadian Statistics*; and Library of Parliament, PARLINFO database.

#### **4. What identification is required to register and vote in a Canadian general election?**

Currently, every Canadian citizen who is at least 18 years of age on election day may register and vote in a federal election. Individuals who are eligible to vote can register with Elections Canada prior to and on the day of a federal election by providing the necessary identification. Shortly before a federal election, Elections Canada will mail a voter identification card, including the name and address of each voter, to everyone on the voters list. If a voter is already registered and on the voters list, the only identification required by the voter to be presented at the polling station on election day is his or her voter identification card. A voter can also register at the polling station by presenting the proper identification, which includes either a document with the voter's name, current address and signature (such as a driver's licence), or two documents: one with the voter's name and signature, the other with the voter's name and current address (such as a telephone bill). Photo identification is not required.

The fact that Canadians can vote in a federal election without being required to present photo identification confirming their identity has led to concerns by some about the potential for multiple voting and voter fraud. Others, however, such as Mr. Jean-Pierre Kingsley, Chief Electoral Officer of Canada, argue that voter fraud and/or multiple voting is not common, and that

the existing checks and balances in the system are sufficient for dealing with incidents of this sort.<sup>(17)</sup> As stated by Mr. Kingsley before the Standing Committee on Procedure and House Affairs, in answering questions about his *Report on the 38<sup>th</sup> General Election*:

The Canadian system has been that we trust you unless we have reason not to trust you. We have manifested this in the way we've run elections... We trust Canadians, but if at any moment in time they tip over and start cheating, somebody will prosecute them for that in the regular courts of law of this land. That is the deterrent to the trust system... That's my point of view, and it's based on my experience and my level of satisfaction with how Canadians are showing up at the polls.<sup>(18)</sup>

## **5. What are the reforms recently recommended by the Chief Electoral Officer?**

In his report on the 38<sup>th</sup> General Election, tabled in the House of Commons on 29 September 2005, the Chief Electoral Officer (CEO) made a series of recommendations to amend the *Canada Elections Act*.<sup>(19)</sup> Some of those recommendations are highlighted below.

### **a. Integration of the Office of the Chief Electoral Officer and Returning Officers**

The CEO has made a number of recommendations to facilitate the integration of the independent offices of returning officers with the Office of the CEO. These recommendations would involve amending the Act to enable the CEO to select and appoint returning officers using a merit-based process. Returning officers would be appointed for 10-year terms that could be terminated earlier in case of death, resignation, or removal from office for reasons such as mental or physical incapacity, knowingly engaging in political activity, and failure to competently discharge a duty. Another recommendation was that returning officers be legally made employees of Elections Canada and therefore be subject to fundamental legislation relating to the functioning of government, including the *Financial Administration Act* and the *Privacy Act*.

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(17) House of Commons Standing Committee on Procedure and House Affairs, *Evidence*, Mr. Jean-Pierre Kingsley, Meeting No. 5, 26 October 2004, *Report – 38<sup>th</sup> General Election*:  
[http://www.parl.gc.ca/committee/CommitteeHome.aspx?Lang=1&PARLSES=381&JNT=0&SELID=e22\\_1&STAC=974998&SourceId=127295](http://www.parl.gc.ca/committee/CommitteeHome.aspx?Lang=1&PARLSES=381&JNT=0&SELID=e22_1&STAC=974998&SourceId=127295).

(18) *Ibid.*

(19) Elections Canada, *Completing the Cycle of Electoral Reforms: Recommendations from the Chief Electoral Officer on the 38<sup>th</sup> General Election*, Ottawa, 29 September 2005.

## **b. Confirmation Procedures**

Currently, the *Canada Elections Act* requires that candidates be confirmed by a returning officer, but this can be done only during an election. Persons wishing to be candidates must also take all the required steps in the nomination process by the end of the 21<sup>st</sup> day preceding the polling day. These steps include: obtaining the required signatures of electors; filing the nomination papers with the returning officer; and securing the confirmation of the papers by the returning officer. Furthermore, a potential candidate's nomination papers cannot be filed with the returning officer until after the issuance of a Notice of Election, which can take place up to four days after the issuance of the election writ.

The current procedures can have some drawbacks. There may be delays in confirming candidates' status. In addition, retroactive liability may be imposed on candidates who may have inadvertently failed to follow the rules set out in the Act, such as appointing an official agent and an official auditor, opening a bank account, and issuing receipts for contributions. These requirements are generally triggered upon the receipt of a contribution or the incurring of an election expense.

The report also notes that if the registration process were simplified and streamlined, it could be done through the Office of the CEO rather than through returning officers in individual constituencies.

## **c. Extension of Limitation Period for Prosecution of Offences**

Allegations made at the Commission of Inquiry into the Sponsorship Program and Advertising Activities concerning breaches of the financial reporting obligations under the *Canada Elections Act* were the impetus for the CEO's recommendation that the limitation period for commencing a prosecution under the Act be extended from the current 7 years to 10 years. The CEO maintains in his report that the current limitation prevents the pursuit of allegations of the kind made during the Commission, which date from before the limitation period.

## **d. Broadcasting**

Chapter 3 of the CEO's report contains a series of recommendations aimed at ensuring some measure of fairness in the apportionment of paid and free-time political broadcasting. These include the following:

- All registered political parties should be entitled to purchase a maximum of 100 minutes of time from each broadcaster at the lowest unit rate;



- Each broadcaster should place a cap of 300 minutes on all political advertising. Where requests from all parties exceed 300 minutes for one station, the broadcaster should pro-rate the requested time;
- All registered parties should have the right to purchase additional time at the lowest unit rate, if available;
- A party's ability to purchase time would be subject to its election expense limits; and
- Each broadcaster (as opposed to network) that accepts advertising would be required to apportion 60 minutes of free time in prime time equally among registered parties.

#### **e. Enhanced Examination and Inquiry Powers for the Chief Electoral Officer**

The *Canada Elections Act* grants the CEO only limited verification powers over candidate and nomination contestant returns, and no effective review powers over the returns of registered parties, registered constituency associations, leadership contestants or third parties. The CEO seeks statutory authority to conduct audits and reviews of the returns of all political entities that are subject to the Act. The powers sought are extensive and include:

- Power to examine any document that relates, or should relate, to information that is, or should be, in the records of the political entity or its election return;
- Power to compel a political entity to provide any document or additional information;
- Power to enter premises and compel the occupant to provide required information or answer questions. Entry into a dwelling should be done only on consent or by *ex parte* warrant issued by a judge; and
- Power to compel any person who is not a political entity subject to the Act to provide any information or document, with prior judicial authorization.

#### **f. Reports of Volunteer Labour**

Allegations were made at the Commission of Inquiry into the Sponsorship Program and Advertising Activities that a registered party benefited from the work of full-time volunteers who were on the payroll of an outside organization while the volunteer work was being provided to the party. This work constitutes a contribution to the party made by the organization employing the individuals. The CEO recommends amending the Act to require any registered political party that receives an annual allowance under section 435.01 of the *Canada Elections Act* to submit a statement of volunteer labour provided to the party as part of its annual financial report to Elections Canada. Parties receiving an annual allowance are those parties that received at least 2% of the national vote or 5% of the vote in the constituencies in which they ran candidates in the most recent general election.

## PART II – CHANGING THE ELECTORAL SYSTEM

### A. House of Commons Electoral Reform

#### 1. What is proportional representation?

The aim of proportional representation (PR) is to ensure that political parties are allocated a share of the seats in a legislature that approximates, or is proportional to, each party's share of the popular vote. For example, if party A receives 25% of the popular vote, a PR electoral system would give that party 25% of the seats in the legislature. Under Canada's current "first-past-the-post" (FPTP) system, on the other hand, a party's share of the national vote is not necessarily reflected in its share of parliamentary seats. Table 3 shows the discrepancy between the percentage of the popular vote and the percentage of parliamentary seats in Canada's 2004 general election.

**Table 3**  
**Percentage of Popular Vote, Number and Percentage of Seats,**  
**2004 General Election**

| Political Party              | Percentage of Popular Vote | Number of Seats | Percentage of Seats |
|------------------------------|----------------------------|-----------------|---------------------|
| Liberal Party of Canada      | 36.7%                      | 135             | 43.8%               |
| Conservative Party of Canada | 29.6%                      | 99              | 32.1%               |
| Bloc Québécois               | 12.4%                      | 54              | 17.5%               |
| New Democratic Party         | 15.7%                      | 19              | 6.2%                |
| Green Party                  | 4.3%                       | 0               | 0%                  |
| Other                        | 1.2%                       | 1               | 0.3%                |
| Total                        |                            | 308             |                     |

Source: Library of Parliament, PARLINFO.

As indicated above, Canada currently has an FPTP system, as do the United Kingdom, India and the United States of America. On election day, a voter is simply required to select one candidate on the ballot and place an "X" next to that candidate's name. The candidate receiving the highest number of votes in each constituency is elected, regardless of whether he or she receives a majority of the vote. In Canada and the United Kingdom, the party with the most candidates elected forms the government; the other parties form the Opposition.

## 2. What types of proportional representation systems exist?

Various PR systems are in use around the world: single non-transferable vote, single transferable vote, List-PR, mixed member majoritarian, and mixed member proportional. The major features of each type are reviewed below.<sup>(20)</sup> For more information on the systems that have been proposed for Canada, see Michael Dewing and Megan Furi, *Proportional Representation*.<sup>(21)</sup>

*Single Non-Transferable Vote:* The single non-transferable vote system was formerly used in Japan, and is still used in Jordan, Taiwan and Vanuatu. On election day, voters are given only one vote and the candidates with the highest number of votes will be awarded a seat in the legislature. Therefore, in a constituency where there are 5 seats available and 15 possible candidates, the top 5 candidates will all be elected.

*Single Transferable Vote:* The most complicated of all electoral systems, the single transferable vote system is used in Australia to elect its Senate, as well as in Ireland and Malta. On election day, voters rank the candidates on the ballot. They may rank as many or as few candidates as they wish. Once all the votes are counted, a vote quota is established; candidates must meet the quota in order to be elected. In the first count, candidates who receive the necessary number of first-preference votes to satisfy the quota are elected. Any remaining votes for these candidates (that is, first-preference votes in excess of the quota) will be redistributed to the second choices on those ballots. Once these votes are redistributed, if there are still seats available after the second count, the candidate with the fewest first-preference votes is dropped and the second preferences on those ballots will be redistributed. This process continues until enough candidates achieve the quota to fill all available seats.

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(20) Sources include: Ace Project, Electoral Systems Index, <http://www.aceproject.org/main/english/es/index.htm> (accessed 15 November 2005); Heather MacIvor, *Proportional and Semi-Proportional Electoral Systems: Their Potential Effects on Canadian Politics*, paper presented to the Advisory Committee of Registered Political Parties, Ottawa, 23 April 1999, [http://www.elections.ca/loi/sys/macivor\\_e.pdf](http://www.elections.ca/loi/sys/macivor_e.pdf); John C. Courtney, *Plurality-Majority Electoral Systems: A Review*, paper presented to the Advisory Committee of Registered Political Parties, Ottawa, 23 April 1999, [http://www.elections.ca/loi/sys/courtney\\_e.pdf](http://www.elections.ca/loi/sys/courtney_e.pdf); Law Commission of Canada (2004).

(21) Michael Dewing and Megan Furi, *Proportional Representation*, TIPS-120E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, July 2004, <http://lpintrabp.parl.gc.ca/apps/tips/tips-cont-e.asp?Heading=16&TIP=106>.

*List-PR:* The List-PR (proportional representation) electoral system is used widely in many European democracies. Prior to election day, each party draws up a list of candidates to run in each constituency. The parties place their preferred candidates at the top of the list and their least preferred candidates at the bottom. On election day, voters vote for a party, not a specific candidate. Once all the votes are counted, each party is awarded seats in proportion to its share of the national vote. The winning candidates are chosen according to their placement on the party list. Thus, if a party is awarded two seats, then the first two candidates on the party list obtain seats. This electoral system is very flexible and has been uniquely adapted to every country where it is used.

*Mixed Member Majoritarian:* The mixed member majoritarian (MMM) system, also known as parallel voting, is used in Japan, South Korea, Russia, and many other countries. In this system, voters have two votes on election day. One vote is for a constituency candidate who will be elected through a plurality majority system (usually FPTP). The second vote is for a party, which presents a pre-set list of candidates, similar to what is used in the List-PR system. An important feature of the MMM system is that the two votes are fully independent of each other. The party seats will not compensate for any disproportionate result in the constituency elections, which the mixed member proportional system, discussed below, seeks to do.

*Mixed Member Proportional:* The mixed member proportional (MMP) system is used in Germany, New Zealand, Italy and Mexico, and for elections to the Scottish and Welsh Parliaments. As in the MMM system, voters select a constituency candidate who will be elected through an FPTP process; they also place a second vote for a party list, where candidates will be elected through a List-PR process. However, this system differs from the MMM system in that the List-PR seats attempt to compensate for any disproportional results in the FPTP constituency seats. Additional seats are awarded through the List mechanism where the number of constituency seats won by a party fails to reflect overall voter support. There are variations among the various MMP systems in how this allocation is made.

Several non-PR electoral systems exist in addition to FPTP, but none are currently being considered for possible use in Canadian federal elections. These other non-PR systems include the alternative vote system, the two-round system, and the block vote system.

*Alternative Vote:* The alternative vote system, also referred to as preferential voting, is used to elect members of the Australian House of Representatives. On election day, voters are presented with a list of candidates which they must rank in their order of preference. To be elected, a candidate must receive a clear majority of the votes (50% plus one vote). If no candidate receives that majority on the first count, then the candidate with the fewest votes will be dropped and the second preferences on those ballots will be redistributed. This process will continue until one candidate receives the necessary majority and is awarded a seat in the House.

*Two-Round:* The two-round system, also referred to as the run-off system, is used to elect the legislatures of many countries, including France. This system has not one, but two, election days, generally held within two weeks of each other. Elections are conducted in the same manner as in the FPTP system, where voters select one candidate on a ballot. If a candidate receives a majority of the vote in the first round, he or she is declared the winner and will be awarded a seat in the legislature. Where there is no majority winner in the first round, a second election will be held with only the top two candidates from the first election results. The candidate with the highest number of votes in the second round will be elected.

*Block Vote:* The block vote system is used in several countries, including Bermuda, Thailand, and the Palestinian Authority. On election day, voters are able to cast as many votes as there are candidates on the ballot. The counting of the votes is simple: if 10 seats are available in the constituency, then the 10 candidates with the most votes will each be awarded a seat in the legislature. In essence, it is the FPTP system applied across multi-member constituencies.

Table 4, below, compares important features of the various PR and non-PR systems and names some countries using them.

**Table 4: Comparison of Electoral Systems**

| Electoral System                           | Examples   | Advantages   | Disadvantages   | Canadian Context   |
|--|--|--|---|--|
| <i>Proportional Representation Systems</i> |  |  |   |  |
| <b>Single Non-Transferable Vote</b>        | Jordan, Vanuatu  | <ul style="list-style-type: none"> <li>• Easy to use and understand</li> <li>• Fairly proportional</li> <li>• Greater potential of minority representation in Parliament</li> </ul>  | <ul style="list-style-type: none"> <li>• Cannot guarantee a proportional result</li> <li>• Parties tend to have a narrow focus</li> </ul>   | <ul style="list-style-type: none"> <li>• Simple</li> <li>• Possible proportional</li> <li>• Possible diverse representation</li> </ul>   |
| <b>Single Transferable Vote</b>            | Ireland, Malta   | <ul style="list-style-type: none"> <li>• Proportional results</li> <li>• Geographic link to MP</li> <li>• Voters can influence coalitions</li> <li>• Vote for a candidate not a party</li> <li>• Possible for independent candidates to be elected</li> </ul>  | <ul style="list-style-type: none"> <li>• Complicated and sophisticated</li> <li>• Counting results is time-consuming (can take up to two weeks)</li> <li>• Members of the same party will compete against each other</li> </ul>   | <ul style="list-style-type: none"> <li>• Proportional</li> <li>• Link to MP</li> <li>• Effective government</li> </ul>   |
| <b>List-PR</b>                             | Austria, Belgium, Denmark, Finland, Netherlands, Norway, South Africa, Sweden, Switzerland | <ul style="list-style-type: none"> <li>• Proportional results</li> <li>• Very few wasted votes</li> <li>• May permit greater representation of smaller parties, women and minorities</li> <li>• Limits regionalism</li> <li>• Creates effective governments</li> <li>• Encourages power-sharing within Parliament</li> </ul> | <ul style="list-style-type: none"> <li>• Difficult to use and understand</li> <li>• No geographic link to MP</li> <li>• Little choice over the candidate who will represent you</li> <li>• Tends to create coalition governments</li> <li>• Fragments the party system</li> <li>• Provides representation to extremist parties</li> <li>• Difficult to remove a party from power</li> </ul> | <ul style="list-style-type: none"> <li>• Proportional</li> <li>• No wasted votes</li> <li>• Possible diverse representation</li> <li>• Accountable</li> <li>• Broad-based parties</li> </ul> |
| <b>Mixed Member Majoritarian</b>           | Japan, South Korea, Russia, Cameroon   | <ul style="list-style-type: none"> <li>• Fairly proportional</li> <li>• Geographic link to MP</li> <li>• Voter has greater choice – one district and one national</li> <li>• Smaller parties may gain representation in the national vote</li> </ul>   | <ul style="list-style-type: none"> <li>• Difficult to use and understand</li> <li>• Creates two classes of MPs (district versus national)</li> </ul>  | <ul style="list-style-type: none"> <li>• Proportional</li> <li>• Link to MP</li> <li>• Possible diverse representation</li> </ul>  |
| <b>Mixed Member Proportional</b>           | Germany, Italy, Mexico, New Zealand, Scotland, Wales                                       | <ul style="list-style-type: none"> <li>• Proportional results</li> <li>• Geographic link to MP</li> <li>• Greater representation of smaller parties, women and minorities in Parliament</li> <li>• Limits regionalism</li> </ul>   | <ul style="list-style-type: none"> <li>• Difficult to use and understand</li> <li>• Creates two classes of MPs</li> </ul>   | <ul style="list-style-type: none"> <li>• Proportional</li> <li>• Link to MP</li> <li>• Diverse representation</li> </ul>   |

| Electoral System                               | Examples  | Advantages   | Disadvantages  | Canadian Context   |
|--|---|--|--|--|
| <i>Non-Proportional Representation Systems</i> |   |  |  |  |
| <b>First-Past-the-Post</b>                     | Canada, United Kingdom, United States of America, India     | <ul style="list-style-type: none"> <li>• Easy to use and understand</li> <li>• Constituencies are a reasonable size</li> <li>• Produces stable majority governments</li> <li>• Geographic link between constituents and MPs</li> <li>• Strong opposition in Parliament</li> <li>• Encourages broad-based parties</li> <li>• Vote for a candidate not a party</li> <li>• Possible for independent candidates to be elected</li> </ul> | <ul style="list-style-type: none"> <li>• Disproportionate results from popular vote</li> <li>• Exaggerates regionalism</li> <li>• Under-representation of smaller parties, women and minorities in Parliament</li> <li>• Promotes adversarial politics</li> <li>• Wasted votes</li> <li>• Possible to manipulate electoral boundaries</li> <li>• Difficult to remove a party from power</li> </ul> | <ul style="list-style-type: none"> <li>• Simple</li> <li>• Link to MP</li> <li>• Stable government</li> <li>• Inexpensive</li> <li>• Familiar</li> </ul> |
| <b>Alternative Vote</b>                        | Australia   | <ul style="list-style-type: none"> <li>• Easy to use and understand</li> <li>• Geographic link to MP</li> <li>• Encourages broad-based parties</li> </ul>  | <ul style="list-style-type: none"> <li>• Disproportionate results</li> <li>• Wasted votes</li> </ul>   | <ul style="list-style-type: none"> <li>• Simple</li> <li>• Link to MP</li> <li>• Possible diverse representation</li> </ul>                              |
| <b>Two-Round</b>                               | France, Egypt, Togo, Chad, Gabon, Mali, Mauritania          | <ul style="list-style-type: none"> <li>• Voters have a chance to change their mind</li> <li>• Actual winner will have 50%</li> <li>• Geographic link to MP</li> <li>• All votes are meaningful</li> <li>• Encourages broad-based parties</li> </ul>  | <ul style="list-style-type: none"> <li>• Disproportionate results</li> <li>• Unpredictable results</li> <li>• The most expensive electoral system</li> <li>• Places a larger burden on voters</li> <li>• Voter turnout may decrease between first and second round</li> </ul>  | <ul style="list-style-type: none"> <li>• Simple</li> <li>• Link to MP</li> <li>• No wasted votes</li> <li>• Possible diverse representation</li> </ul>   |
| <b>Block Vote</b>                              | Bermuda, Fiji, Thailand, Palestinian Authority, Philippines | <ul style="list-style-type: none"> <li>• Easy to use and understand</li> <li>• Constituencies are a reasonable size</li> <li>• Vote for a candidate not a party</li> <li>• Geographic link to MP</li> </ul>  | <ul style="list-style-type: none"> <li>• Disproportionate results</li> <li>• Exaggerates regionalism</li> <li>• Under-representation of smaller parties, women and minorities in Parliament</li> <li>• Wasted votes</li> </ul>   | <ul style="list-style-type: none"> <li>• Simple</li> <li>• Link to MP</li> <li>• Inexpensive</li> </ul>  |

**3. How would the results of the June 2004 election have differed if Canada had had proportional representation?**

Following the 2004 general election, the Law Commission of Canada calculated the number of seats that would have been allocated to each party under its proposal for a mixed member proportional system. Table 5 compares those numbers to the actual number of seats that were awarded under the present FPTP system.

**Table 5**  
**Comparison of the Number and Percentage of Seats Awarded per Party Under Canada's Actual Electoral System and a Possible Mixed Member Proportional System, for the 2004 General Election**

| Political Party              | Actual Seats | Percentage of Seats | Seats Under MMP | Percentage of Seats Under MMP |
|------------------------------|--------------|---------------------|-----------------|-------------------------------|
| Liberal Party of Canada      | 135          | 43.8%               | 119             | 38.3%                         |
| Conservative Party of Canada | 99           | 32.1%               | 96              | 30.9%                         |
| Bloc Québécois               | 54           | 17.5%               | 38              | 12.2%                         |
| New Democratic Party         | 19           | 6.2%                | 48              | 15.4%                         |
| Green Party                  | 0            | 0%                  | 9               | 2.9%                          |
| Independent                  | 1            | 0.4%                | 1               | 0.3%                          |
| Total                        | 308          |                     | 311             |                               |

Source: Law Commission of Canada, "An Illustration Of The Seat Allocation in the House of Commons Under The Current And Proposed Electoral Systems," [http://www.lcc.gc.ca/research\\_project/gr/er/report/er\\_HofC\\_illustration-en.asp](http://www.lcc.gc.ca/research_project/gr/er/report/er_HofC_illustration-en.asp).

**4. Could electoral reform improve the representation of women, Aboriginal peoples and minority groups in Parliament?**

In its 2004 report on electoral reform, the Law Commission noted that Canada's first-past-the-post (FPTP) electoral system was established when the country's population was more homogeneous and much less mobile than today's society.<sup>(22)</sup> As discussed above, the FPTP system results in the under-representation of women, Aboriginal peoples and minority groups. Consequently, "[d]iverse representation represents one of the most important aspects of the electoral reform debate in Canada."<sup>(23)</sup>

(22) Law Commission of Canada (2004), p. 33.

(23) *Ibid.*, p. 37.



Some argue that electoral reform will improve the representation of groups currently under-represented in Parliament. Women's groups in particular have argued that a proportional representation (PR) system would be preferable to the current system in terms of attaining more representative results.<sup>(24)</sup>

An example of a PR system that could be emulated in Canada in order to increase the representation of women and Aboriginal peoples in Parliament is New Zealand's mixed member proportional (MMP) system. Designed to use compensatory seats lists, New Zealand's MMP system has resulted in an increase in female and Maori legislators.<sup>(25)</sup>

The Scottish Parliament also uses an MMP system. Although some improvement in the number of women represented in Parliament was noted following the 1999 election, no minorities were represented in the 1999 Scottish Parliament. One possible reason put forth for the lack of minority representation was that none of the parties placed minority candidates in winnable constituencies.

It is important to note, however, that while a PR system may improve the representation of women, Aboriginal peoples and minorities in Parliament, the adoption of such a system would not, in itself, be enough. Policies, strategies and political party commitment are also needed to ensure the effective representation of under-represented groups in Parliament and in Cabinet.<sup>(26)</sup>

## **5. What are some current and recent electoral reform initiatives at the federal and provincial levels?**

At both the federal and the provincial levels of government, a broad range of electoral reform measures have been considered and, in some cases, implemented. Federally, fundamental reforms have been recommended by the Law Commission of Canada; in addition, a House of Commons committee has prepared a report recommending a process for examining options for electoral reform. Several provinces are currently studying the issue, including reform of the voting system and fixed election dates.

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(24) For additional information on women and Parliament, see Cool (2006).

(25) It should be noted that pursuant to New Zealand's *Electoral Act, 1993*, a formula is set out in order to determine the number and boundaries of Maori seats in Parliament. There is also a constitutional requirement for a minimum number of Maori seats. New Zealand, nonetheless, has seen an increase in Maori representation over and above the legislated and constitutionally mandated minimum.

(26) For examples of recommendations on this matter, see Law Commission of Canada (2004), Recommendations 6-12, p. 176.

### **a. Reform Proposals at the Federal Level**

On 31 March 2004, the Justice Minister tabled the Law Commission of Canada report *Voting Counts: Electoral Reform for Canada*, which recommends the adoption of a mixed member proportional system. The report also makes recommendations on how to increase diversity in the House of Commons by ensuring better representation of women, minorities and Aboriginal peoples.

One significant reform that has already taken place at the federal level affects the registration of political parties. Largely as a result of the Supreme Court of Canada judgment in *Figuroa v. Canada*,<sup>(27)</sup> in 2004 the government introduced Bill C-3, An Act to amend the Canada Elections Act and the Income Tax Act. Among other major reforms, this bill included, for the first time, a definition of a political party (an organization one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election). It also lowered the candidate threshold that enables an organization to qualify as a political party and benefit from public funding and favourable tax treatment of political contributions; previously set at 50, that threshold was reduced to 1. This development is significant because it opens up the electoral system to small parties that had previously been excluded from the benefits of registration. The bill received Royal Assent on 14 May 2004 (S.C. 2004, c. 24) and came into force on 15 May 2004.

In the 5 October 2004 Speech from the Throne, the government pledged “to examine the need and options for reform of our democratic institutions including electoral reform.” On 25 November, the Standing Committee on Procedure and House Affairs was given an Order of Reference “to recommend a process that engages citizens and parliamentarians in an examination of our electoral system with a review of all options.”

The Committee tabled its report on Electoral Reform (Report 43)<sup>(28)</sup> on 16 June 2005. It recommended that the government launch a “two-track” approach involving a special committee of the House of Commons and a citizens’ consultation group. It further recommended that the process begin in October 2005 and be completed by the end of February 2006.

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(27) [2003] 1 S.C.R. 912. The Supreme Court ruled in June 2003 that the 50-candidate threshold for party registration violated section 3 of the *Canadian Charter of Rights and Freedoms*.

(28) Standing Committee on Procedure and House Affairs, Report 43, 7 June 2005, [http://www.parl.gc.ca/committee/CommitteeList.aspx?Lang=1&PARLSES=381&JNT=0&SELID=e22\\_4&COM=8988&STAC=1091702](http://www.parl.gc.ca/committee/CommitteeList.aspx?Lang=1&PARLSES=381&JNT=0&SELID=e22_4&COM=8988&STAC=1091702).

In its response, tabled on 7 October 2005, the government agreed with the Committee's substantive recommendations but not with the timetable, saying that more time would be required to set up and run a national citizen consultation process and to conduct committee hearings.<sup>(29)</sup> Ultimately, Parliament was dissolved before the consultation process could begin or a special committee could be set up.

### **b. British Columbia Referendum on Proportional Representation**

In April 2003, British Columbia created a Citizens' Assembly on Electoral Reform, an independent, non-partisan assembly of citizens, with the mandate of examining the provincial electoral system and making recommendations on reform. The Assembly included 160 eligible voters: 80 women and 80 men, chosen from each of British Columbia's 79 constituencies, and two Aboriginal representatives. In December 2004, the Citizens' Assembly recommended the single transferable vote (STV) system as the best choice for the province, and on 17 May 2005 the STV proposal was put to the voters of British Columbia as a referendum question in the provincial election. In order for the referendum to pass, it needed to be approved by 60% of all voters, and by a simple majority of voters in 60% of the 79 constituencies.

In the referendum, the STV proposal received 57% support – short of the required 60% majority – and was therefore not approved. However, as a result of the considerable support across the province for the proposed STV system, the Government of British Columbia has indicated that another referendum on STV will be scheduled at the same time as the municipal elections in November 2008.

### **c. Reform Proposals in Prince Edward Island**

In December 2003, the Prince Edward Island Electoral Reform Commissioner recommended that the province adopt a mixed member proportional (MMP) system. The Commissioner also, however, recommended further study of the issue, including more public consultation and public education, and he directed that any changes to the province's electoral system must be made by referendum. In December 2004 the Legislative Assembly established the Commission on Prince Edward Island's Electoral Future, with the task of developing a clear

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(29) Government of Canada, "Government Response to the Forty-Third Report of the Standing Committee on Procedure and House Affairs," 7 October 2005, <http://www.parl.gc.ca/committee/CommitteePublication.aspx?COM=8988&Lang=1&SourceId=130349>.

plebiscite question and recommending a date for holding the plebiscite. In May 2005, the Commission released its proposal for an MMP system for the province. The plebiscite was held on 28 November 2005, with a threshold for voter approval set at 60%. The proposal for electoral reform was rejected by 64% of the voters.

#### **d. Reform Proposals in Ontario**

The Democratic Renewal Secretariat of Ontario was created in October 2003, to review the provincial electoral system. The *Election Amendment Act, 2005* received Royal Assent on 13 June 2005, allowing for the selection of a Citizens' Assembly on Electoral Reform to examine the current electoral system and recommend possible changes.

On 27 March 2006, Ontario's Minister Responsible for Democratic Renewal announced the formation of an Ontario Citizens' Assembly on Electoral Reform.<sup>(30)</sup> The Assembly will be made up of 103 members, representing each of Ontario's constituencies, randomly selected by Elections Ontario from the Permanent Register of Electors for Ontario. Of the 103 members, 52 will be female, 51 will be male, and at least one member will be Aboriginal. Operating independently of government, the Assembly "will assess Ontario's current electoral system and others, and recommend whether Ontario should keep the current system or adopt a new one. If the Assembly recommends a change, the government will hold a referendum on that alternative within its current mandate."<sup>(31)</sup>

George Thomson, former provincial court judge and deputy minister in the Ontario and federal governments, has been appointed Chair of the Assembly.<sup>(32)</sup> The selection of Assembly members will begin in April 2006, and meetings are scheduled to begin in September 2006. A report outlining the Assembly's recommendation is due to be submitted on or before 15 May 2007.

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(30) Democratic Renewal Secretariat, Government of Ontario, News Release, "McGuinty Government Moves Forward on Historic Electoral Reform Initiative," 27 March 2006, [http://www.democraticrenewal.gov.on.ca/english/news/20060323\\_nr.asp](http://www.democraticrenewal.gov.on.ca/english/news/20060323_nr.asp).

(31) *Ibid.*; see also the Web site of the Citizens' Assembly on Electoral Reform: <http://www.citizensassembly.gov.on.ca/index.html>.

(32) *Ibid.*

#### **e. Reform Proposals in Quebec**

In December 2004, the Quebec government introduced a draft bill in the National Assembly that, among other reforms, proposed a new mixed electoral system that would combine elements of the existing first-past-the-post-system and a new proportional representation approach. In June 2005, the National Assembly passed a motion to appoint a parliamentary committee to study and make recommendations on the draft bill, as well as undertake extensive public consultations on the changes recommended in the draft bill. The public consultation process was expected to begin in January 2006.

#### **f. Reform Proposals in New Brunswick**

In December 2003, the Commission on Legislative Democracy was established and, among other things, was instructed to propose an appropriate proportional representation model for New Brunswick. To accomplish this task, the Commission held public hearings and community roundtables, received on-line submissions and questionnaires, and conducted independent research and analysis. In January 2005, the Commission's final report recommended a regional mixed member proportional system and advised that a binding referendum be held no later than the 2007 provincial election.

#### **g. Fixed Election Dates**

Currently, only British Columbia and Ontario have legislated fixed election dates. In British Columbia, the *Constitution (Fixed Election Dates) Amendment Act, 2001* amended the *Constitution Act* to require a general election on the second Tuesday of May in the fourth calendar year following the most recent general election.<sup>(33)</sup> The next election was held on 17 May 2005, and subsequent elections will be held on the second Tuesday of May every four years. It should be noted that the Lieutenant Governor still has the power to dissolve the Legislative Assembly before that date, should the need arise.

On 13 December 2005, Ontario became the second province to pass legislation fixing provincial election dates. Under the *Election Statute Law Amendment Act, 2005*, the next provincial election is set for 4 October 2007, with subsequent elections to be held on the first Thursday of

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(33) Legislative Assembly of British Columbia, Legislative Library, *Electoral History of British Columbia: Supplement 1987-2001*, 2002, [http://www.elections.bc.ca/elections/electoral\\_history/elec histvol2.pdf](http://www.elections.bc.ca/elections/electoral_history/elec histvol2.pdf).

October every four years. The Lieutenant Governor retains the power to dissolve the legislature at any point, should the government lose confidence in the Legislative Assembly.<sup>(34)</sup>

A number of other provinces, including Quebec and New Brunswick, are considering the idea of fixed election dates. The Commission on Legislative Democracy in New Brunswick recommended in January 2005 that the province adopt fixed election dates, beginning on 15 October 2007 and continuing on the third Monday in October every four years after that. The powers of the Lieutenant Governor, including the power to dissolve the Legislative Assembly, would be unaffected.

On 1 April 2004, during the 3<sup>rd</sup> Session of the 37<sup>th</sup> Parliament, Conservative Party leader Stephen Harper introduced a private Member's bill (C-512) that would have provided for fixed election dates for the House of Commons. On 27 April 2004, the House debated a supply day motion on fixed dates for general elections. Further consideration of Bill C-512 was cut short by the dissolution of Parliament on 23 May 2004.

## **B. Senate Electoral Reform**

(The following material is based on Brian O'Neal and Sonia Ménard, *Senate Reform*.)<sup>(35)</sup>

### **1. What steps would need to be taken if a decision is made to reform the Senate?**

Major changes to the Senate would require an amendment to the Canadian Constitution.<sup>(36)</sup> Any reform affecting the powers of the Senate, the method of selecting senators, the number of senators to which a province is entitled, or the residency requirement of senators can be made only under the general amending formula contained in section 38. This formula calls for the consent of the Senate and House of Commons and the legislative assemblies of at least two-thirds of the provinces (7 provinces) with at least 50% of Canada's population (the "7/50" formula).

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(34) See James R. Robertson and Megan Furi, *Electoral Reform Initiatives in Canadian Provinces*, PRB 04-17E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 13 October 2005.

(35) Brian O'Neal and Sonia Ménard, *Senate Reform*, TIPS-79E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, October 2004.

(36) Mollie Dunsmuir, *Constitutional Amending Formula*, TIPS-19E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, November 2000.

2. What proposals have been made for electoral reform of the Senate?

**Table 6: Proposals for an Elected Senate**

|   | <b>Electoral System</b>  | <b>Constituencies</b>  | <b>Timing of Election</b>  | <b>Term</b>   |
|---|--|--|--|---|
| <b>Canada West Foundation (1981)</b>  | Single transferable vote   | Province-wide constituencies   | Coincide with House of Commons elections                             | Not specified   |
| <b>Special Joint Committee (Molgat-Cosgrove) (1984)</b>                     | First-past-the-post  | Within province  | Fixed dates every three years  | Nine years (non-renewable): one-third elected every three years                 |
| <b>Macdonald Royal Commission (1985)</b>                                    | Proportional representation  | Not specified  | Not specified  | Not specified   |
| <b>Alberta Special Committee (1985)</b>                                     | First-past-the-post  | Province-wide constituencies   | Coincide with provincial elections                                   | Equal to the life of two legislatures, half renewed at each provincial election |
| <b>Government of Canada Proposals (1991)</b>                                | Not specified  | Not specified  | Coincide with House of Commons elections                             | Not specified   |
| <b>Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie) (1992)</b> | Proportional representation  | Constituencies no larger than needed by proportional representation. Multi-member constituencies electing at least four senators | Fixed, not to coincide with House of Commons or provincial elections | Six years, non-staggered  |
| <b>Charlottetown Accord Proposals (1992)</b>                                | Not specified. By people or by provincial and territorial legislatures | Not specified  | Coincide with House of Commons elections                             | Not specified   |

Source: F. Leslie Seidle, "Senate Reform and the Constitutional Agenda: Conundrum or Solution?" in Janet Aizenstat, ed., *Canadian Constitutionalism: 1791-1991*, Canadian Study of Parliament Group, Ottawa, 1992, p. 116; Jack Stilborn, *Senate Reform Proposals in Comparative Perspective*, BP-316E, Parliamentary and Information Research Service, Library of Parliament, Ottawa, November 1992.

3. How would seats be distributed under these proposals?

**Table 7**  
**Proposed Seat Distribution for a Reformed Senate**

|                                    | Canada West Foundation (1981)* | Special Joint Committee (Molgat-Cosgrove) (1984) | Macdonald Royal Commission (1985) | Alberta Special Committee (1985) | Government of Canada Proposals (1991) | Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie) (1992)** | Charlottetown Accord Proposals (1992) |
|------------------------------------|--------------------------------|--|-----------------------------------|----------------------------------|---------------------------------------|--|---------------------------------------|
| <b>Ontario</b>                     | 6-10                           | 24   | 24                                | 6                                | Not specified                         | 30 / 20  | 6                                     |
| <b>Quebec</b>                      | 6-10                           | 24   | 24                                | 6                                |                                       | 30 / 20  | 6                                     |
| <b>British Columbia</b>            | 6-10                           | 12   | 12                                | 6                                |                                       | 18 / 12  | 6                                     |
| <b>Alberta</b>                     | 6-10                           | 12   | 12                                | 6                                |                                       | 18 / 12  | 6                                     |
| <b>Saskatchewan</b>                | 6-10                           | 12   | 12                                | 6                                |                                       | 12 / 8   | 6                                     |
| <b>Manitoba</b>                    | 6-10                           | 12   | 12                                | 6                                |                                       | 12 / 8   | 6                                     |
| <b>Nova Scotia</b>                 | 6-10                           | 12   | 12                                | 6                                |                                       | 10 / 8   | 6                                     |
| <b>New Brunswick</b>               | 6-10                           | 12   | 12                                | 6                                |                                       | 10 / 8   | 6                                     |
| <b>Newfoundland &amp; Labrador</b> | 6-10                           | 12   | 12                                | 6                                |                                       | 7 / 6  | 6                                     |
| <b>Prince Edward Island</b>        | 6-10                           | 6  | 6                                 | 6                                |                                       | 4 / 4  | 6                                     |
| <b>Northwest Territories</b>       | 1-2                            | 4  | 4                                 | 2                                |                                       | 2 / 2  | 1                                     |
| <b>Yukon</b>                       | 1-2                            | 2  | 2                                 | 2                                |                                       | 1 / 1  | 1                                     |
| <b>TOTAL</b>                       | 62-104                         | 144  | 144                               | 64                               |                                       | 154 / 109  | 62                                    |

\* Proposal sets out ranges.

\*\* Proposal sets out two possible distributions.

Source: Stilborn (1992).



#### 4. What powers would the Senate have under these proposals?

**Table 8: Proposed Powers for an Elected Senate**

|                                    | <b>Canada West Foundation (1981)</b>   | <b>Special Joint Committee (Molgat-Cosgrove) (1984)</b>               | <b>Macdonald Royal Commission (1985)</b>                         | <b>Alberta Special Committee (1985)</b>  | <b>Government of Canada Proposals (1991)</b>   | <b>Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie) (1992)</b>   | <b>Charlottetown Accord Proposals (1992)</b>   |
|------------------------------------|--|---|--|--|--|---|--|
| <b>Money bills</b>                 | Reject or reduce (subject to House override), but not increase or initiate         | Supply bills subject to no delay                                      | Not specified  | House of Commons could override Senate on money or taxation bills by simple majority | No role in relation to appropriation bills and measures to raise funds, including borrowing authorities            | 30 days to deal with supply bills, House of Commons simple majority override on bills defeated or amended by Senate | Could force House of Commons to repass supply bills within 30 calendar days. Veto on bills that result in fundamental tax policy changes directly related to natural resources |
| <b>Ordinary legislation</b>        | Powers similar to those of the House, but House could override by special majority | Suspensive veto of 120 sitting days                                   | Six-month suspensive veto  | House of Commons could override Senate by "vote greater in percentage terms"         | Senate approval required   | Senate approval required, House of Commons override. Nature of override not specified                               | Defeat or amendment of ordinary legislation would lead to joint sitting with House. Simple majority would decide outcome   |
| <b>Linguistic/cultural matters</b> |  | Double majority for "legislation of linguistic significance"          | Double majority for "matters of special linguistic significance" | Double majority for "all changes affecting the French and English languages"         | "Double majority special voting rule" for "matters of language and culture"  | Double majority on "measures affecting the language or culture of French-speaking communities"                      | Double majority (all senators and all francophone senators) for bills "materially affecting the French language and culture"   |
| <b>Ratific appointments</b>        | Ratify or reject appointments to national boards, tribunals or agencies            | Appointments to federal agencies with important regional implications | None specified   | None specified   | Governor of Bank of Canada; heads of national cultural institutions, regulatory boards and agencies                | Governor of Bank of Canada; heads of national cultural institutions, regulatory boards and agencies                 | Able to block all key appointments, including heads of key regulatory agencies and cultural institutions   |
| <b>Other</b>                       | Power to ratify or veto constitutional amendments                                  | None specified  | None specified   | Ratify non-military treaties   | Six-month suspensive veto over "matters of national importance, such as national defence and international issues" |   |  |

Source: Seidle (1992), p. 116; Stilborn (1992).

## 5. What about abolishing the Senate?

Some have argued that the Senate should be abolished rather than reformed. This, however, could be accomplished only through major amendments to the Constitution. Although there is some discussion regarding whether the general amending formula (7/50) or the formula requiring unanimous consent would be required, it is most probable that unanimity would be necessary in order to effect such a major change.

## 6. What positions have federal political parties taken regarding Senate reform?

Some political parties have adopted formal positions on democratic reform and have put forward proposals to change the structure of the Senate.

*Bloc Québécois:* During the 2005-2006 election campaign, leader Gilles Duceppe said Senate reform would not be possible because the necessary constitutional changes would require the unanimous consent of the provinces.<sup>(37)</sup>

*Conservative Party of Canada:* In a policy statement released on 8 September 2004, the Conservative Party indicated that it would “support the election of senators” were it to form the government, and that it “believes in an equal Senate to address the uneven distribution of Canada’s population and provide a balance to safeguard regional interests.”

In its campaign platform for the 23 January 2006 election, the Party announced two reform proposals. It would:

- begin reform of the Senate by creating a national process for choosing elected senators from each province and territory; and
- propose further reforms to make the Senate an effective, independent, and democratically elected body that equitably represents all regions.<sup>(38)</sup>

The first proposal would involve a limited reform in the method of selection. The second would require more extensive reforms requiring a constitutional amendment.

It is unclear how an interim selection process would function. It is also unclear whether the process would be conducted federally or provincially. Prime Minister Harper, in

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(37) Mark Kennedy, “Martin supports elected Senate, but changes won’t come soon, PM says,” *Ottawa Citizen*, 14 December 2005, p. A3.

(38) Conservative Party of Canada, *Stand up for Canada: Conservative Party of Canada Federal Election Platform 2006*, 13 January 2006, p. 44.

some public statements made during the recent electoral campaign, spoke of a federally conducted process.<sup>(39)</sup> He is also reported to have said that he would let the provinces hold elections and that he would appoint the choices made by voters.<sup>(40)</sup>

If a federal process is chosen, new legislation would be required to govern the conduct of the elections for senators; the *Canada Elections Act* deals only with elections to the House of Commons at present. Elections could also be conducted by the provinces and territories. Alberta has been holding such elections in conjunction with municipal elections since the late 1980s, although only in one case (Stan Waters) was the winning candidate appointed to the Senate. British Columbia had similar legislation in the early 1990s, but it lapsed. Not all provinces are as interested in the election of senators, and some provinces might adopt different systems than first-past-the-post for such elections. Quebec has traditionally maintained that its senatorial candidates should be selected by the National Assembly.<sup>(41)</sup> The overall result could be a system in which senatorial nominees are selected in differing ways, which might accommodate the diversity of the country but could have profound impacts on the operation of the Senate and raise questions about the equality of regions and provinces.

There has been limited discussion on whether the particular kind of reform being contemplated by the new government, in the initial phase, can be achieved by Parliament acting alone and without a constitutional amendment. Some argue that any permanent change to the selection of senators would require a constitutional amendment.<sup>(42)</sup> Others have suggested that the Prime Minister could agree to accept a different method of selecting senators for recommendation to the Governor General, effectively waiving any right conferred upon him by constitutional convention.<sup>(43)</sup>

In the 1980 *Senate Reference* case, however, the Supreme Court of Canada held that the fundamental character of the Senate – *including* the method of appointment – cannot be

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(39) Conservative Party of Canada, News Release, “Harper to initiate reforms to elect senators and set fixed election dates,” 14 December 2005.

(40) CBC Television (*The National*), Interview with Susan Bonner, 14 December 2005.

(41) It has been reported that Quebec is opposed to the Conservative Party’s proposal. See S. Larocque, “Quebec not interested in elected Senate, prefers to make recommendations,” Canadian Press, 30 January 2006.

(42) Senator the Honourable Serge Joyal, P.C., O.C., *Legal, Constitutional and Political Imperatives to Senate Reform*, Unpublished paper, February 2000, p. 14.

(43) G. Gibson, *Challenges in Senate Reform: Conflicts of Interest, Unintended Consequences, New Possibilities*, Fraser Institute, Vancouver, 2004, p. 14.

altered by a unilateral action of Parliament.<sup>(44)</sup> Whether the approach proposed by the Conservative Party of Canada constitutes altering the “fundamental character” of the Senate is uncertain.

*Liberal Party of Canada:* The Liberal Party of Canada has focused its parliamentary reform efforts on the House of Commons and has no specific proposal for Senate reform. During the 2005-2006 election campaign, Prime Minister Paul Martin said he agreed with the concept of an elected Senate, but that it could not be done until the provinces were prepared to deal with broader Senate reform.<sup>(45)</sup>

*New Democratic Party:* The NDP has traditionally favoured abolition of the Senate.

## **7. What methods do other major western democracies use for selecting senators?**

This section reviews the methods of selecting senators in the 15 major western democracies with bicameral legislatures (Australia, Austria, Belgium, Canada, France, Germany, Ireland, Italy, Japan, Mexico, the Netherlands, Spain, Switzerland, the United Kingdom, and the United States of America).

### **a. Election and Appointment**

As shown in Table 9, direct election (at least in part) is used to select senators in a majority of the 15 countries (9, or 60%). In four countries (Austria, France, Germany, and the Netherlands), senators are selected indirectly, while in two (Canada and the United Kingdom), senators are appointed. Two countries (Belgium and Ireland) have a mix of directly elected and appointed senators, while one (Spain) has a mix of directly and indirectly elected senators.

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(44) *Reference re Legislative Authority of Parliament to Alter or Replace the Senate*, [1980] 1 S.C.R. 54.

(45) Kennedy (2005).

**Table 9**  
**Method of Selection in Senates of the Major Western Democracies**

| Country        | Method of Selection             | Voting Method                          |
|----------------|---------------------------------|--|
| Australia      | Directly elected                | Proportional                           |
| Austria        | Indirectly elected              | Proportional                           |
| Belgium        | Directly elected and appointed  | Proportional                           |
| Canada         | Appointed                       |  |
| France         | Indirectly elected              | Proportional and majority              |
| Germany        | Indirectly elected              | Members of Länder (state) governments  |
| Ireland        | Directly elected and appointed  | Proportional                           |
| Italy          | Directly elected                | Proportional and simple majority       |
| Japan          | Directly elected                | Proportional and simple majority       |
| Mexico         | Directly elected                | Proportional and majority list         |
| Netherlands    | Indirectly elected              | Proportional                           |
| Spain          | Directly and indirectly elected | Simple majority                        |
| Switzerland    | Directly elected                | Simple majority                        |
| United Kingdom | Appointed                       |  |
| USA            | Directly elected                | Simple majority and absolute majority* |

\* Two states – Georgia and Louisiana – require absolute majorities to be elected.

Source: Inter-Parliamentary Union, PARLINE Database.

### **b. Voting Methods**

Of the nine major western democracies in which at least some senators are directly elected, six countries (38%) use proportional voting methods, either entirely or partially. Only three major western democracies (Spain, Switzerland, and the United States) use simple majority systems for the most part.

Of the major western democracies in which senators are indirectly elected (Austria, France, Germany, and the Netherlands), three use proportional methods to choose senators, while in Germany, members of the Bundesrat are chosen from members of the Länder (state) governments.