

Brief to the Special Committee of the House of Commons on Electoral Reform

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Electoral Reform

(1) Introduction

(1.1) The Committee has to look at the big picture. Any electoral reform for the House of Commons has to be done in the overall parliamentary context. This brief shows why, how and when electoral reform can be done for Parliament, both the Senate and the House of Commons.

(1.2) The brief tries to find a consensus/compromise that all parties on the committee can support. See how starting at paragraph (6.1).

(1.3) **This proposal advances all the principles that the committee set out for its study. See paragraph (5.1).**

(1.4) It shows logically why there is only one path to electoral reform. See paragraph (3.1).

(2) Principal Recommendations

(2.1) Elections to the House of Commons would be the same except that the voters would choose whether they wanted to fill it out as a FPTP or an OPV ballot.

(2.2) The voters would also have a second ballot for filling vacancies in the House of Commons on a gender equality basis within the parties. There would be no by-elections for considerable cost savings and no delay in filling vacancies. We would have three new women Members of Parliament now with one more later this year.

(2.3) Appointments to the Senate for the rest of this Parliament would be on the basis of PR, much the same as the formation of your committee.

(2.4) Thereafter senators would be "elected" on the basis of PR from among the candidates to fill vacancies in the House of Commons. This would last no longer than two elections.

(2.5) The committee on electoral reform would be reconstituted in a future Parliament to come up with constitutional amendments, and a referendum, to allow for Rep by Pop in the House of Commons and an elected Senate based on PR.

(3) The Big Picture

(3.1) In a federation, provincial (and territorial) representation in Parliament has two aspects. The first and most important matter is each province and territory must have representation in Parliament according to its population.¹ The second is that smaller provinces and territories as well as a province that represents a significant minority within the federation must have enhanced protective representation in Parliament. It is impossible to have protective representation and representation according to population in one chamber.² That means we have to have two chambers.

(3.2) In 2016 any person making our laws must be chosen by election.

¹ It doesn't at the moment. British Columbia, Alberta and Ontario are under-represented by 40 seats in the current Parliament.

² See Senate Reform and House Representation in Vol. 9 No. 3 December 2015 issue of the Journal of Parliamentary and Political Law p. 621-39.

(3.3) Basically there are two ways that society can be represented in Parliament. One is to have an individual represent a geographical area, like a county, a town or a community within a city. The individual would represent all the people in that area whether or not they voted for him or her. The second approach is to have individuals represent a shared value or shared interest in the whole province or territory. It could also be those individuals could represent a minority in a province or territory. In this approach the individuals elected would be representing only those that voted for them. Since it's essential to have two chambers we can have the best of both worlds. One chamber would have single-member constituencies (the House of Commons) and the other chamber PR by a party or a group for the whole province (the Senate).

(3.4) With an independent Senate it has to be clear that confidence rests solely with The House of Commons. At the same time the House must have a carefully crafted financial supremacy over the Senate without affecting any of the Senate's other powers. In other words both chambers must have equal power over legislation and equal power to hold the government to account.

(3.5) If the Senate becomes truly independent (which means is not subservient to the Government or House of Commons) then the law in relation to fixed election dates has to be addressed as well. If there is a conflict between the two chambers an exception should be made from the fixed election date for the people to decide but only after certain steps have taken place.

(4) The Details

(4.1) The House of Commons is to be elected using single-member constituencies with the voter choosing which method to fill out the ballot, either FPTP or OPV. It would be a compulsory vote allowing for abstentions. The counting of the ballots would proceed until a majority of the active votes favour one candidate who would be elected. Legislation would be passed to implement this.

(4.2) Voters will have a second ballot which would not immediately elect members to the House of Commons but would be used to fill vacancies during the life of the Parliament instead of by-elections. To introduce gender equality, the second ballot for a candidate to fill vacancies for the same party must be of the opposite gender from the candidate for immediate election to the House of Commons. Legislation would be passed to implement this.

(4.3) For the rest of this Parliament PR would be implemented for the Senate. Party leaders would nominate their choices for senators to the Independent Advisory Board for Senate Appointments based on the Droop quotas per province or territory that their party obtained in the October 2015 election.³ The board would consider them pursuant to the established criteria, providing a list for the Prime minister. Vacancies would be filled one at a time within a province/territory according to the lowest percentage of representation of that province/territory in the Senate for the caucus concerned with equal percentages being decided by going to the party with the higher/highest popular vote. Independent senators would be assigned, for the purposes of the Droop quota, to the caucus of the party appointed by the Prime Minister. If any party leader did not wish to nominate their choices for senators, the Board would continue with the current process for that particular vacancy.⁴

(4.4) Five things of note regarding appointments being made to the Senate matching the popular vote in the preceding election. First, this is precisely the commitment made and followed through by Prime Minister Cameron of the UK for appointments to the House of Lords. Secondly, it is akin to the method that was used for the first selection of senators in 1867.⁵ Thirdly, the pre-Confederation Prime Minister of Canada, Sir Étienne-Paschal Taché, stated in the

³ See Appendix I for the Droop Quotas and "Elected" Party Standings based on the last election.

⁴ See Appendix II for a list of the projected vacancies (retirements) in the Senate and how they would be filled. The leader of the party according to the lowest representation/highest popular vote would nominate their candidates.

⁵ Quebec Resolution 14 reads as follows: The first selection of the Members of the [Senate] shall be made...from the [pre-Confederation Senates] of the various Provinces...so that all political parties may as nearly as possible be fairly represented.

Confederation Debates that future prime ministers would take their inspiration from the same method of selection used for the first senators. Fourthly, the Committee should realize that the independence of the Senate did not mean that it had to be filled by independents, but rather that it should be independent of the Executive and the House of Commons. And finally Prime Minister Taché also spoke in the Confederation Debates about doing away with partisanship respecting the Senate. He was explaining that appointments would be made according to the relative strengths of the parties as opposed to just making appointments of one party. That was his meaning for the word partisanship. An "opinion of the House" resolution with a recorded vote would implement this by showing an all party consensus. All party leaders would make their nominations accordingly.

(4.5) The next step is to introduce a PR based electoral process for the Senate for the next two elections. An open list system is best. One can easily piggy back onto the elections for filling vacancies in the House of Commons a process that would result in Senate "elections". All the candidates for filling vacancies would make up the list for appointment to the Senate. They would be ranked according to their percentage of support in each constituency. It would be the voters that effectively choose where an individual candidate would be found on each party list. The Droop quota would be calculated using the FPTP ballot and the number 1 choice of the OPV ballot from the ballots for the vacancies in the House of Commons. It would be expected that any Individual elected to fill a vacancy in the House of Commons would accept to fill a vacancy in the Senate for the life of a parliament and then resign.

(4.6) In case there is a concern regarding the constitutionality of proceeding this way, some historical facts should be noted. There have been 925 senators summoned up to 2016. About 8% were summoned because they were pre-Confederation senators. A majority of them were elected as senators. Of the remaining ones over one third (1/3) were Members of the House of Commons. 65% of those were Members at the time of their appointment. 17% of them were summoned right at the start of their term, with a surprising 7% that never sat in the House of Commons after their election. There should be no concern or any impediment to appointing senators that have been elected to the House of Commons. An "opinion of the House" resolution would be passed as above. The Prime Minister would appoint senators from the ranked party lists according to the Droop Quota.

(4.7) Financial primacy for the House of Commons concerning supply, ways and means and borrowing authority has to be dealt with. The normal process for supply through Appropriation Acts would continue, but the use of special warrants would be allowed during a session subject to a negative resolution of Parliament.⁶ The warrants would only be able to be used where a payment is urgently required for the public good.

(4.8) A limited ways and means procedure should be provided for by statute. Tax bills or other imposts would proceed in the normal fashion through Parliament. If, however, a specific ways and means motion is tabled in Parliament and the sole purpose is to vary the rate of a tax or other impost, then after a delay of six months the Cabinet would be authorized, by order, to vary that rate of taxation, subject to a negative resolution of Parliament. A negative resolution procedure is needed for borrowing. All of these need legislation.

(4.9) After a trial run of two elections, this committee would be reconstituted to consider and propose constitutional amendments that would deal with the fundamental matters mentioned above. This would need to be approved by a referendum.

(5) Advancement of Principles

(5.1) There's no question that allowing voters to choose how to fill out their ballot for the House of Commons (FPTP or OPV) combined with a 2PP count will increase the legitimacy of the candidates election. And there's no question that PR for the Senate would strengthen the link between voter intention and the "election" of representatives. Compulsory voting would also increase legitimacy combined with the option for abstention. PR and OPV also inherently increase engagement, civility and collaboration and offer opportunities for inclusion of underrepresented groups. There would

⁶ See subsection 39(1) of the Interpretation Act for a method of implementation of the negative resolution procedure.

be no change to the ballot, nothing complex about it. PR systems often have huge ballots and complex counts. This one is simple, giving reliable and verifiable results.

(5.2) The key to this proposal is it advances both single-member constituencies (local representation) and PR (voter intention) at the same time.

(6) Compromise and consensus

(6.1) This proposal will only work if the parties compromise and support a consensus. This is absolutely essential for matters that cannot be implemented by legislation in the short term. A resolution of the House like the Nickle Resolution respecting Canadian Titles only works if those who thereafter make the decisions are willing to follow the resolution. Hopefully, Mr. Reid and Mr. Kenney would be able to support the proposals envisaged in this brief. They supported an excellent government bill introduced in 2007 for Senate "elections". That bill envisaged a preferential ballot for filling one vacancy and proportionality (PR) using the Droop Quota for a number of vacancies without a referendum.⁷ Hopefully they would be willing to agree with this proposal to try to implement PR for the Senate without the need for a referendum while trying it out. Also maybe allowing a voter to fill out their ballot as a FPTP ballot (an "X" in the usual spot) would be sufficient to overcome whether it was radical reform.

(6.2) Another main stumbling block is how to deal with term limits in the Senate. Although not absolutely necessary, the more sitting senators can be encouraged to resign from the Senate at the end of each Parliament the sooner the PR can match the Droop Quota calculations following each election. By far the best chance to reach that objective is consensus among the parties to commit their candidates to serve for only one Parliament and then seek re-election. It is particularly essential for the parties within their caucuses to support this. Perhaps Prime Minister Harper's discussion with each of his nominees (before their appointment) regarding Senate reform may encourage some of them to resign at the end of this Parliament or maybe some senators will run for election.

(6.3) The Government would have to change their tack regarding Senate reform. Although technically none of these proposals would go against their party platform, there would be a perception that that was not the case. There was a misapprehension as to what independence of the Senate and partisanship meant in relation to the Senate. Understanding that difference would allow for a change of approach regarding the Senate and at the same time allow for a first step in making it optional for the voter to choose OPV for the House.

(6.4) The New Democrats and Greens would probably be not getting their first choice for the kind of PR that they would wish, but they would get two elections to try it out and could work from there to implement something more permanent in the future.

(6.5) And finally the Bloc Québécois would probably be assured of recognized party status under these proposals. The Droop Quota calculation based on the election in October 2015 would have given them 5 senators and recognized party status for the current Parliament.

⁷ See Bill C-20, An Act to provide for consultations with electors on their preferences for appointments to the Senate from the second session of the 39th Parliament and the evidence of Mr. Reid while studying the bill in the legislative committee on April 9, 2008 at 17:00.

Appendix I

Droop Quotas and « Elected » Party Standings in the Senate base on the General Election of October 2015														
<i>Political affiliation</i>	N.L.	P.E.I.	N.S.	N.B.	Que.	Ont.	Man.	Sask.	Alta.	B.C.	Y.T.	N.W.T.	Nun.	Total
	Bloc Québécois	0	0	0	0	821 144	0	0	0	0	0	0	0	
Conservative	26 469	16 900	93 697	112 070	709 164	2 293 393	224 527	267 937	1 150 101	708 010	4 928	3 481	2 956	5 613 633
Green	2 772	5 281	17 630	20 551	95 395	185 992	18 944	11 527	48 742	194 847	533	537	182	602 933
Liberal	165 418	51 002	324 816	227 764	1 515 673	2 929 393	268 280	131 681	473 416	829 816	10 887	9 172	5 619	6 942 937
New Democrat	54 120	14 006	85 468	81 105	1 075 366	1 085 916	81 960	138 574	224 800	615 156	3 943	5 783	3 171	3 469 368
Totals	256 504	87 484	523 628	441 786	4 241 487	6 541 572	600 503	551 895	1 930 641	2 364 776	20 291	18 973	11 928	17 591 468
<i>Droop Quotas</i>	36 644	17 498	47 604	40 163	169 660	261 664	85 787	78 843	275 807	337 826	10 147	9 488	5 965	
Bloc Québécois	0,000	0,000	0,000	0,000	4,840	0,000	0,000	0,000	0,000	0,000	0,000	0,000	0,000	
Conservative	0,722	0,966	1,968	2,790	4,180	8,765	2,617	3,398	4,170	2,096	0,486	0,367	0,496	
Green	0,076	0,302	0,370	0,512	0,562	0,711	0,221	0,146	0,177	0,577	0,053	0,057	0,031	
Liberal	4,514	2,915	6,823	5,671	8,934	11,195	3,127	1,670	1,716	2,456	1,073	0,967	0,942	
New Democrat	1,477	0,800	1,795	2,019	6,338	4,150	0,955	1,758	0,815	1,821	0,389	0,610	0,532	
<i>Party Standings</i>														
Bloc Québécois	0	0	0	0	5	0	0	0	0	0	0	0	0	5
Conservative	1	1	2	3	4	9	2	3	4	2	0	0	0	31
Green	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Liberal	4	3	7	5	9	11	3	1	1	2	1	1	1	49
New Democrat	1	0	1	2	6	4	1	2	1	2	0	0	0	20
Totals	6	4	10	10	24	24	6	6	6	6	1	1	1	105

Appendix II

	Date of Vacancy	Standings by PM appointing/caucus					Standings by Droop Quota (2015 election)					Percentage of seats held/seats won				Nominees submitted by party leader				
		BQ	C	Lib	NDP	Tot	BQ	C	Lib	NDP		BQ	C	Lib	NDP	BQ	C	Lib	NDP	
Ontario	06/01/2017	0	10	13	0	23	0	9	11	4	24	100%	110%	117%	0%				1	
Nova Scotia	14/01/2017	0	4	5	0	9	0	2	7	1	10	100%	200%	71%	0%				1	
Nova Scotia	22/01/2017	0	4	4	1	9	0	2	7	1	10	100%	200%	56%	100%			1		
Ontario	10/08/2017	0	9	13	1	23	0	9	11	4	24	100%	100%	117%	25%				1	
Newfoundland & Labrador	04/09/2017	0	4	1	0	5	0	1	4	1	6	100%	400%	25%	0%				1	
Prince Edward Island	08/09/2017	0	1	2	0	3	0	1	3	0	4	100%	100%	66%	100%	*		1		
Nova Scotia	06/11/2017	0	3	5	1	9	0	2	7	1	10	100%	150%	71%	100%			1		
Saskatchewan	02/04/2018	0	4	1	0	5	0	3	1	2	6	100%	133%	100%	0%				1	
British Columbia	11/05/2018	0	2	3	0	5	0	2	2	2	6	100%	100%	150%	0%				1	
Ontario	12/08/2018	0	9	12	2	23	0	9	11	4	24	100%	100%	108%	50%				1	
Alberta	21/08/2018	0	2	3	0	5	0	4	1	1	6	100%	50%	300%	0%				1	
Ontario	29/09/2018	0	9	11	3	23	0	9	11	4	24	100%	100%	100%	75%	*			1	
Northwest Territories	21/11/2018	0	0	0	0	0	0	0	1	0	1	100%	100%	0%	100%	*		1		
Ontario	10/12/2018	0	9	10	4	23	0	9	11	4	24	100%	100%	90%	100%	*		1		
Quebec	22/04/2019	0	10	13	0	23	5	4	9	6	24	0%	250%	144%	0%				1	
Quebec	29/06/2019	0	10	12	1	23	5	4	9	6	24	0%	250%	132%	16%	1				
Saskatchewan	14/08/2019	0	3	1	1	5	0	3	1	2	6	100%	100%	100%	50%	*			1	
Quebec	25/08/2019	1	9	12	1	23	5	4	9	6	24	20%	225%	132%	16%				1	
																Totals	1	0	5	12

*Only 4 provinces/territories would have their correct Droop Quota numbers