# Submission to ERRE, the House of Commons Special Committee on Electoral Reform

by

John Filliter,
Private Citizen

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The following are my views alone. They generally should be regarded as arguments and opinions rather than assertions of fact.

To review a bit of legal context, political theory and the history of Canada's electoral system:

Sections 40 and 41 of the ***Constitution Act, 1867*** both begin "**until the Parliament of Canada otherwise provides**". Section 40 deals with division of the original provinces joining Confederation into Electoral Districts. In the past, there were some multi-member ridings, for example. Section 41 continued existing election laws in the four provinces, including qualifications and disqualifications of candidates and voters, and proceedings at elections. The suffrage has been extended to include women, for instance. So it appears that Parliament (i.e., the Governor General, the Senate and the House of Commons under Section 17 of the Act) has the authority to reform proceedings at elections, etc. This is likely to be subject to court challenges, of course.

One provision which might prove problematic is Section 52, which states that Parliament may increase the number of MPs as long as this does not disturb the proportionate representation of provinces prescribed by the Act.

Section 1 of the *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

Section 3 of the Charter describes the first of our Democratic Rights to be the right of every citizen of Canada to vote in an election of members of the House of Commons … . Section 15(1) of the Charter provides that every individual is equal before and under the law and has the right to the equal protection and *equal benefit of the law without discrimination … .* (My italics)

Equal benefit of the right to vote implies that the votes of all Canadians should carry equal weight, subject to Section 51A guaranteeing all provinces at least as many MPs as they have Senators.

One glaring problem that can be seen in the 2015 election results is the share of seats that was generated by the number of votes cast for parties, namely:

| Party | Votes | % of Votes | Seats | % of Seats |
|-------|-------|-----------|-------|-----------|
| **Liberals** | **6,930,136** | 39.466% | 184 | 54.43% |
| **Conservatives** | **5,600,496** | 31.894% | 99 | 29.28% |
| **New Democrats** | **3,461,262** | 19.711% | 44 | 13.01% |
| **Bloc Quebecois** | **818,652** | 4.662% | 10 | 2.95% |
| **Green Party** | **605,864** | 3.450% | 1 | .29% |

First Past the Post (**FPTP**) clearly did not translate votes into seats accurately; rather it produced a False Majority.

When Canada inherited FPTP from Great Britain in 1867, it worked reasonably well because there were only two significant parties at the time. **Before 1921**, there were 13 Majorities, 11 True and 2 False. (A "true" majority means one where the victorious party won over 50% of the votes.)

In 1896, Wilfrid Laurier's Liberals won a majority of 118 seats with only 45.1% of the popular vote compared with Charles Tupper's Conservatives and Liberal/Conservatives who took 46.3%. Tupper won 416,640 votes to Laurier's 405,506! This was our first federal election "stolen by the system".

**Since 1921**, Canada has had a **Multi-Party System** featuring at least three substantial parties contesting each election. During that 95-year period, we have elected 18 Majorities (4 True, 14 False) and 11 Minorities, and 4 more elections were stolen by the system (1926, 1957, 1962 and 1979). The only True Majorities since 1921 have been in 1940, 1949, 1958 and 1984.

FPTP has produced some other **serious distortions** of the votes of Canadians. Consider 1993, for example, when Jean Chretien won 177 seats with 41.32% of the vote. The Bloc Quebecois formed the Official Opposition with 54 seats, but only 13.50% of the vote. The Reform Party came third with 52 seats based on 18.72% of the vote. The NDP won 9 seats with 6.87% and the PCs were last with only 2 seats but 15.99% of the popular vote!

The 1993 results demonstrate the danger of regional divisions that can be caused by FPTP, not to mention the undermining of national unity. It is not healthy for democracy to have parties shut out of provincial or regional seats because of FPTP.

Democracy is defined as "a system of government by the whole population, usually through elected representatives". The first Canadian colony to be granted Representative Government was Nova Scotia in 1758, though in reality the 'family compact' continued to govern for another 90 years. In 1848 Nova Scotia became the first province to be granted Responsible Government.

What is the role of an electoral system? It should translate the votes cast across the country into seats that reflect the proportion of votes each party received, not distort the election results to produce a majority government. If the people vote for a minority government, that is what the system should give them. The current system is a broken one that has been antiquated for 95 years. It needs to be replaced. Now. FPTP often does not truly represent how the people voted. This is neither democratic nor fair.

Is there any way of correcting this problem?

There are basically two types of electoral systems - Majoritarian and Proportional Representation (**PR**) ones – plus combinations of the two.

Majoritarian Systems are winner-take-all systems designed to come up with a winner by fabricating a majority, if possible; they do not support majority rule per se, rather assist a party to attain a majority by such gimmicks as having seats solely determined at the local level, dropping candidates off the ballot and redistributing their votes, holding run-off elections, etc.

PR systems are designed to allocate seats to the parties based on their share of the votes cast in a general election.

Canada must adopt some form of PR if we are to enjoy real democracy in the one elected arm of Parliament.

There are many forms of PR systems in use around the world – a majority of democratic countries and over 80% of OECD countries use some form of PR, including Germany, Sweden, Scotland, Ireland, Australia and New Zealand, most European and Latin American countries. Canada is one of only three major developed democracies that don't use it.

This Committee is best qualified to choose the form and features of PR that would be most appropriate for Canada, which faces some unique geographical and demographic challenges.

My preferences include a Mixed Member Proportional system with:

(a) provinces divided into Regional seat groupings comprised of up to 12 or so existing seats; a province with 12 or fewer seats would comprise one Region;

(b) these seats being divided into Local MPs and Regional MPs almost equally;

(c) electors voting for a Local MP, party and/or up to the maximum number of Regional MPs to be elected;

(d) voting by Open List ballots under which electors could split their Regional MP votes among candidates from different parties if they wish, or simply vote for an entire "party ticket";

(e) parties being awarded Regional MPs based on their share of the provincial popular vote, to the extent of under-representation in seats won by Local MPs;

(f) a party's candidate(s) who received the highest number of votes but weren't elected as Local MPs becoming its Regional MP(s);

(g) if after provincial PR was calculated, there remained some national dis-proportionate representation, parties still under-represented in seats would be awarded Nationally Guaranteed Seats provided that they garnered at least 4% of the valid votes cast nationally and they contested at least 95% of the ridings.

(h) Under-represented parties that qualify should be entitled to 3.38 seats for every full percentage point of the national vote that they win, minus any partial seat and any Elected MPs. They would have to select their MPs for Nationally Guaranteed Seats in a manner that would maintain proportional representation of provinces.

(i) candidates would continue to be elected by a plurality: plurality winners are as legitimate as those who might pass them as preferred second or third choice candidates.

(j) If the Committee or the House takes the view that Local MPs should be elected by a majority rather than a plurality, ranked or preferential ballots should be used. (Run-off systems take too long and cost too much.) However, rather than counting only second choice ballots of the lowest candidate, all ballots should be considered when second (third, fourth) choices are counted. Why should second choices of only voters who supported the least popular candidate be counted? Every ballot should be treated equally. Moreover, when second and succeeding choices are counted, they should be weighted by dividing by the number of the round. (Second choice ballots by 2, third by 3, and so on.) The original number for a majority should be maintained. (The same logic would apply if Single Transferable Vote were adopted: all second choice votes of a candidate who attains the quota should be counted, not just the votes remaining when the quota is achieved.)

(k) The ballot should give voters an option to vote for "None of the above candidates", especially if mandatory voting is adopted. Voting is supposed to be secret and in our last provincial election, some voters were asked whether they intended to spoil their ballots when the voting machines indicated that they hadn't voted for anybody.

To address the **Guiding Principles** that the House of Commons has identified for consideration:

PR would restore the **Effectiveness and Legitimacy** of voting because the system respects and reflects how electors actually voted. It would reduce the

distortions between the percentage of popular vote a party receives and its share of the seats. The electoral result would closely mirror voter intention and should bolster public confidence in the system.

PR would promote greater **Engagement and Participation** in the democratic process because electors would see that their votes had a much greater chance of being effectual in electing MPs or party. Under-represented groups would be encouraged to participate in the process if they believed this would give them some influence. This would probably reduce some of the apathy, cynicism and alienation that results from a system which distorts how citizens voted. Studies have shown that PR tends to increase voter turn-out by 7 to 8%, improve civility and collaboration among opposing politicians, and reduce regional divisions.

**Accessibility and Inclusiveness** of all eligible voters: under PR a greater diversity of views and minority groups are usually represented. There should be simultaneous initiatives to make voting easier for electors who face accessibility challenges of any kind, including physical, visual, intellectual and regulatory ones. Elections Canada should work with ethnic groups across the country to produce videos explaining how to vote in every language and dialect, and these should be available online. Civics courses and kits should be provided by the government. Documentation requirements to establish identity and residence should be relaxed and optional Canadian Voting Cards considered. The more citizens participate, the stronger our democracy is.

**Online and Electronic Voting** may make voting easier and more accessible but I have serious reservations about them. This may be because of my ignorance of modern technology but I wouldn't entrust elections to it. I have concerns that foreign hackers could alter the outcome of our elections and we might not even realize it. If foreign hackers can get into the databases of some of our largest government departments, how can the security of our elections be guaranteed? Within the last two months Australia's online voting plan was derailed by a DDOS attack. A computer programmer testified before a U.S. Congressional Committee that he had coded computers to rig elections. There are also issues about establishing the identity of who cast a vote online, or whether undue influence was exercised over a voter, or a vote was "sold".

Most importantly, just as justice must be seen to be done, so too ballots need to be seen by scrutineers of the parties to verify that they aren't spoiled, fake, awarded to the wrong candidates, or counted incorrectly. In short, these proposed innovations are at best premature.

With regard to **Mandatory Voting**: forcing citizens to vote against their will is a bad idea. Some may object for religious reasons; some may not feel informed enough on the issues or candidates; some may face serious accessibility, time, literacy or financial challenges. Those who do vote under duress may just vote for the first candidate(s) on the list, which could skewer results.

**Lowering the Voting Age** to 16 might lead to higher voting by a younger cohort in the future, especially if accompanied by classroom civics training on how to vote and discussion of issues. However, lowering the voting age in the past did not lead to a spike in voter turn-out.

With regard to **avoiding undue complexity** in the voting process, while PR presents voters with more choices, I don't think it involves "undue complexity". Choosing a party in addition to a Local MP candidate is hardly a daunting task; in fact, many if not most MPs are probably already elected on the basis of their party affiliation. Choosing among candidates from other parts of a Region would present more difficulty because voters would be more familiar with closer candidates; for those not comfortable with investigating candidates from distant communities, there should be the option to simply vote the "party ticket". If citizens of over 90 countries have learned to use PR, I am confident that Canadians can do so too.

With regard to **Safeguarding the Integrity** of the voting process, PR would ensure that the will of the people, as reflected by their votes, is respected. If online or electronic voting were implemented in conjunction with PR, however, the integrity of the voting process might not be secure.

PR would preserve the **Accountability of Local Representation** similarly to under FPTP: if a Local MP does not serve up to voters' expectations, he or she can be defeated at the next election. Moreover, if a party's Regional MPs do not perform well, the party too may pay the price at the ensuing election.

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Regional MPs provide a choice of representatives for voters too, which would provide Local MPs with some "competition" which might improve their performance. It is true that Local MPs would be expected to serve an area double their old riding, which would probably result in more communication by technological means, but this would not likely lessen accountability. Local MPs would also have about twice the number of constituents to serve; however there would be Regional MPs to share the workload. Some Regional MPs might develop expertise in dealing with particular problems and referrals from Local MPs could be made to those specializing in a field of service.

## <u>Summary of Recommendations</u>

I recommend replacing FPTP with a Mixed Member PR system featuring:
(a) Regional seat groupings comprised of up to 12 or so existing seats;
(b) these seats being divided equally between Local MPs and Regional MPs;
(c) electors voting for a Local MP, party and/or up to the maximum number of Regional MPs to be elected;
(d) voting by Open List ballots under which electors could split their Regional MP votes among candidates from different parties if they wish, or simply vote for an entire "party ticket";
(e) awarding parties Regional MPs based on their share of the provincial popular vote, if under-represented in seats won by their Local MPs;
(f) a party's candidates who received the highest number of votes but weren't elected as Local MPs becoming its Regional MPs;
(g) if after provincial PR was calculated, there remained some national disproportionate representation, parties still under-represented in seats being awarded Nationally Guaranteed Seats provided that they garnered at least 4% of the valid votes cast nationally and they contested at least 95% of the national ridings;
(h) under-represented parties that qualify being entitled to 3.38 seats for each full percentage point of the national vote that they win, minus any partial seat and any Elected MPs. Also, they would have to select their MPs for Nationally Guaranteed Seats in a manner that would maintain proportional representation of provinces;
(i) candidates continuing to be elected by a plurality;

(j) If the Committee or the House takes the view that Local MPs should be elected by a majority rather than a plurality, ranked or preferential ballots should be used. However, rather than counting only second choice ballots of a lowest candidate, all ballots should be considered when second (third, fourth) choices are counted. Moreover, when second and succeeding choices are counted, they should be weighted by dividing by the number of the round.  (Second choice ballots by 2, third by 3, and so on.)  The same number for a majority should be maintained in subsequent rounds.
(k) Ballots should provide a "None of the above candidates" option.

Elections Canada should produce videos on how to vote in every language and dialect and make them available online.

The federal government should provide civics courses and kits for citizens.

Elections Canada should relax the documentation requirements to prove identity and residency, and possibly issue optional Voter ID Cards.

Lowering the voting age to 16 might get cohorts of younger voters engaged in voting in the future but probably wouldn't create any spike in voter turn-out.

## **Conclusion**

To butcher a famous quote from JFK, "Ask not what electoral reform can do for your party; ask instead what electoral reform can do for your country."

We Canadians have a glorious opportunity to move our electoral system from the 19th century into the 21st and to achieve a far more democratic, egalitarian, equitable, sensible and honest one.  Let's make the most possible votes count, and give electors what they voted for.

Respectfully submitted,

John Filliter