

Fédération des communautés  
francophones et acadiennes (FCFA)  
du Canada

*Brief of the Fédération des communautés  
francophones et acadienne (FCFA) du Canada*

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To the Special Committee on Electoral Reform

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Ottawa, October 6, 2016

## Preamble

The Fédération des communautés francophones et acadienne du Canada (FCFA) is very pleased to submit this brief as part of the activities of the Special Committee on Electoral Reform and on behalf of the 2.6 million French-speaking citizens living in a minority situation in nine provinces and three territories who are concerned about maintaining their political voice in the Canadian Parliament.

Established in 1975, the FCFA is the main voice for Canada's francophone and Acadian communities. The FCFA consists of 20 members, 12 provincial and territorial francophone representative associations and 8 national organizations representing various sectors of activity and clientele. It also coordinates the Leaders Forum, an association of 42 organizations involved in the development of French-language minority communities.

Issues associated with democratic reform have always been of special interest to the FCFA. Over the past 15 years, the Federation has been an active participant in the public debate on the method of selecting senators. In a brief entitled *Au-delà de la représentation populaire: préserver les valeurs et principes fondateurs du Sénat du Canada* (beyond representation of the people: preserving the founding principles and values of Canada's Senate) [2008], it emphasized the existence of a founding principle whereby the Senate must exercise a role of representing minorities. The Federation reiterated this principle as a party in the referral to the Appeal Court of Québec concerning the constitutionality of the Senate reform initiative, and in the referral to the Supreme Court of Canada by the Governor in Council concerning Senate reform (2013).

The FCFA's intent in these proceedings was not to oppose Senate reform, but rather to emphasize that it was important that such a reform not weaken the representation of francophone minorities in Canada's Parliament. The same applies to the debate on reform of the voting system and representation in the House of Commons. So, in order not to jeopardize the constitutional right of francophone minorities to have effective representation in the Canadian Parliament, a new voting system must take into account the reality of francophone minorities.

Moreover, any electoral reform that includes measures that reflect the reality of Canada's francophone and Acadian communities could have a beneficial effect in terms of maintaining, if not strengthening, their effective representation in Parliament.

To our knowledge, the FCFA is the only stakeholder to formally address these fundamentally important issues as part of the Committee's work.

## 1. Current representation of Canada's francophone and Acadian communities in the House of Commons

In the 2015 federal election, francophones comprised at least 5% of the population in 29 of the country's 338 constituencies, and in a few of these (particularly Acadie–Bathurst and Glengarry–Prescott–Russell), they were a majority. Although a number of these 29 constituencies are in New Brunswick or in Eastern and Northern Ontario, there are also some in Nova Scotia (West Nova and Cape Breton–Canso), Prince Edward Island (Egmont) and Manitoba (Provencher and Saint Boniface–Saint Vital). Also in 2015, francophone MPs were elected in constituencies where the French-speaking population was less than 5%. This was the case in Edmonton Centre (Alberta), Winnipeg Centre (Manitoba), and Sackville–Preston–Chezzetcook (Nova Scotia).

In total, the House of Commons currently has 15 MPs from outside Quebec whose main language is French, i.e., 4.5% of the total number of seats.<sup>1</sup> This percentage corresponds approximately to the relative weight of francophone minorities in the Canadian population.

## 2. Constitutional basis for the representation of francophone and Acadian communities

Three statutory provisions are of particular interest when one considers the right of francophone minority communities to representation in Parliament.

**Section 3 of the *Canadian Charter of Rights and Freedoms*** guarantees a right of effective representation for all citizens. In other words, any electoral system must allow electors to have a true vote, as fairly as possible, and prevent the votes of some citizens from counting for more than those of others. Beverly McLachlin, the current Chief Justice of the Supreme Court of Canada, also upheld this principle in *Reference re Prov. Electoral Boundaries (Sask.)*: “Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic.”<sup>2</sup>

Accordingly, decisions such as the one to redistribute the federal constituency of Acadie–Bathurst, whereby a region with a large francophone population was transferred to the neighbouring constituency of Miramichi with a mainly anglophone population, directly jeopardizes the capacity of francophone communities to have effective representation. In the case of the redistribution of Acadie–Bathurst, the decision was also overturned by the Federal Court in *Raïche v. Canada (Attorney General)*.

The importance of taking minorities into account to ensure effective representation is also supported by the **constitutional principle of protection of minorities**. This principle, which must serve as a guide in interpreting the constitutional text, was recognized by the Supreme Court of Canada in *Reference re Secession of Quebec*: “Undoubtedly, one of the key considerations motivating the enactment of the Charter and the process of constitutional judicial

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<sup>1</sup> This percentage does not include the Ottawa–Vanier seat left vacant following the death of the Hon. Mauril Bélanger in August.

<sup>2</sup> *Reference re Prov. Electoral Boundaries (Sask.)*, [1991] 2 SCR 158, pages 183–184.

review that it entails, is the protection of minorities.”<sup>3</sup> The Court also stated that “a constitution may seek to ensure that vulnerable minority groups are endowed with the institutions and rights necessary to maintain and promote their identities against the assimilative pressures of the majority.”<sup>4</sup>

Lastly, **Part VII of the *Official Languages Act*** requires federal institutions to take active measures to support the development and vitality of official language minority communities. In recent years, the courts and the Commissioner of Official Languages have stated on several occasions that Part VII included, implicitly, an obligation not to hinder the development of these communities.

Furthermore, Part VII includes the obligation to consult official language minority communities on any measure that may affect them, to take their reality into account, and to analyze the impact of this measure on their vitality. Consequently, the authorities responsible for studying and implementing a new voting system have a responsibility to take francophone minority communities into account during this exercise.

Understanding the constitutional and quasi-constitutional underpinnings, in the case of the *Official Languages Act*, of the right of francophone minority communities to equitable political representation is essential in order to fully foresee the impact of various electoral reform models on those communities.

Given that there are a variety of possible voting systems and that the government has thus far not indicated its preference for a particular system, we are submitting our analysis of the impact of two systems in the following sections.

### **3. Impact of a proportional representation system on francophone minority communities**

There are several options for proportional representation systems. In a “pure” proportional system, constituencies established on a territorial basis disappear to make way for a selection of representatives based on the percentage of the vote obtained by each party. In a mixed system, the number of constituencies established on a territorial basis may be smaller, and the size of these constituencies would be bigger. In a permutation of this hybrid system, the voters would vote for a party, and the seats would be allocated in proportion to the results obtained. In another variation, the voters would vote twice: the first time for a candidate running in their constituency, and the second time to determine the distribution of seats at the provincial or federal level.

In both cases, there would be a major impact on the effective representation of francophone minority communities. Whereas francophones make up a significant percentage of the population in a number of current constituencies, this relative weight would be eliminated in a system where there would be fewer but larger constituencies. For example, francophones make up more than 30% of the population in two of the eight constituencies of the Greater Ottawa area (Orléans and Ottawa–Vanier). If these eight constituencies were merged, francophones

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<sup>3</sup> *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para. 81.

<sup>4</sup> *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para. 74.

would not make up more than 16% of the population of this new constituency. If electoral reform resulted in a redistribution that allocated two constituencies to New Brunswick, one in the north and centre and the other in the south, francophones, who comprise the majority in the constituencies of Madawaska–Restigouche and Acadie–Bathurst, would make up no more than 42% of the population.<sup>5</sup> The weight of the francophone population would therefore be considerably reduced.

In a system where seats are allocated proportionally based on the results of the popular vote, and using candidate lists drawn up by the parties, there would be a high risk that francophone representation would depend on the cooperation of various political parties. Nothing would oblige the parties to include francophone candidates on these lists.

In the absence of measures that reflect the reality of francophone minority communities, a proportional representation system would substantially reduce the ability of these communities to have effective representation in the House of Commons.

#### **4. Impact of an alternative vote system on francophone minority communities**

In the case of an alternative vote system, assuming that the number of constituencies remains relatively the same and they are still territory-based, there would be little impact on the effective representation of francophone minority communities. In fact, in an alternative vote system, instead of choosing a candidate, voters would rank the candidates in order of preference. When the ballots are counted, the candidate receiving the fewest votes would be eliminated, and the votes of the voters who voted for that candidate would go to their second choice. This process would be repeated until a candidate obtained 50% of the votes.

This system would have little impact on the effective representation of communities insofar as the size of the constituencies remains the same. A system where voters select candidates in order of preference could also allow them to clearly express their opposition to candidates whose positions run counter to the interests of francophone communities.

#### **5. Other issues under study**

The FCFA has some suggestions with respect to electoral reform issues; however, they are not directly related to the adoption of a new voting system.

*On measures to encourage voting:* Citizen participation is an important principle for the FCFA. During each election campaign, it feels a strong obligation to mobilize francophones to go to the polling stations. As is the case with the rest of the Canadian population, we are concerned about low voter turnout, in by-elections as well, and the government needs to find a solution to this problem.

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<sup>5</sup> It is assumed in this hypothesis that the five constituencies of Acadie–Bathurst, Madawaska–Restigouche, Miramichi–Grand Lake, Tobique–Mactaquac and Fredericton would be merged.

The Fédération de la jeunesse canadienne-française (FJCF), an FCFA member organization, has recently submitted a brief to the Committee in which it recommends that section 3 of the *Canada Elections Act* be amended to set the minimum age to qualify as an elector at 16. The FJCF argues that other countries, such as Argentina, Austria, Brazil, Ecuador and Nicaragua, already recognize the right to vote for persons aged 16 or older, and that such a measure might instill in young Canadians a long-term commitment to active citizen participation. The FCFA fully supports the FJCF's recommendation.

Like the FJCF, the FCFA feels that the government should work with its provincial and territorial partners to implement measures to develop civic education for secondary school students.

*On the issue of electronic voting:* From the FCFA's point of view, any measure that might help voters exercise their right to vote more easily is worthwhile from the outset. That said, the government should take the following issues into account in the electronic voting study:

- The impact on citizens living in rural and remote regions, as is the case for many francophones living in our communities;
- Connectivity available in rural and remote regions;
- Concerns regarding security and protection of the integrity of our electoral system.

## **Conclusion and recommendations**

Most of Canada's francophone and Acadian communities are minorities within municipalities, regions, provinces and territories. They are nonetheless a fundamental component of the identity of our country and living proof of Canada's linguistic duality. Above all, like all Canadian citizens, francophones are entitled to effective representation in the federal Parliament. Their minority status and specific realities require the implementation of measures to give them equitable access to effective representation.

It is in this spirit that the FCFA makes the following recommendations to the Committee:

- That the government ensure that the selected voting system make it possible, at a minimum, to maintain and, ideally, increase the capacity for effective representation of Canada's francophone and Acadian communities in the House of Commons;
- That the government hold consultations on its preferred proposals for electoral reform, including specific consultations with francophone minority communities; and
- That any proposal for electoral reform undergo an analysis of the impact on minority groups, including francophone and Acadian communities.

The FCFA would like to thank the Committee for this opportunity to explain the unique perspective of francophone minority communities during the consultations on electoral reform.