

# ERRE Submission

## Thoughts on Basic Fairness and a Referendum

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There are two aspects of the electoral reform I would like to focus on: the question of fair treatment of all voters and the prospect of having a referendum on voting reform.

### Morality and Legality

Voting systems aggregate the citizens' votes to determine the makeup of the legislature. The legislature deliberates and determines the laws of the country. Basic fairness would dictate that each citizen's input counts equally. No more and no less than their fellow citizens. It is hard to see if this is true at the level of an individual vote, but it becomes obvious when we consider groups of citizens. Each grouping of citizens should determine a portion of the legislature relative to their size. That is, 10% of the voters should determine 10% of the legislature, 20% of the voters should determine 20% of the legislature, and so on. If a group of 10% of the voters only determines 5% of the legislature, then that group is having its input unfairly diminished and another having their input unfairly amplified.

On the basis of this criteria, there are two fundamental classes of voting systems. Those that are designed to treat (in so far as possible) all citizens equally and those that are not designed to do this. None of us would want to be part of a diminished-input lesser-citizen group. From a morality perspective, we should then eschew the latter class (which includes majoritarian systems such as first-past-the-post and alternative-vote) and select one from the former class (which includes a large selection of proportional representation systems). Basic human decency demands this reciprocity of us.

The Constitution of Canada guarantees fundamental political and civil rights to all Canadians irrespective of the opinion of the majority. One of these fundamental rights is voting (one that is not even subject to the notwithstanding clause). What is the right to vote though? Is it the right to mark a piece of paper? To have that mark tallied in some arbitrary fashion? Or is it the right to play an equal, effective, and meaningful role, alongside all the other citizens, in determining the legislature?

The Supreme Court has not ruled on what limits this fundamental right may impose on what constitutes an acceptable voting system. It has ruled on a variety of other implications though, and, in doing so, it has taken the very broad view that the right is the right to "effective representation". For example, in writing for the majority in *Reference Re Provincial Electoral Boundaries (Sask)*, Justice McLachlin wrote that while it was not a guarantee of "equality of voting power", the "relative parity of voting power is a prime condition of effective representation" and beyond grounds of "practical impossibility or the provision of more effective representation" the "dilution of one citizen's vote as compared with another's should not be countenanced".

With this in mind, I would argue that not only do Canadian citizens have a moral right to a voting system that does a fair and equitable job in translating their votes into the makeup of the legislature, but they very well may also have a charter right too. A referendum should therefore limit itself to a choice between such systems.

## **Issues of Practicality**

The prospect of a referendum also raises a very practical issue. Is a referendum a good way to choose a voting system for Canada?

One of the fundamental issues with a referendum is educating the population. Without knowledge, it is impossible to come to a sound decision based on weighing the relevant merits of the options. The outcome will simply degrade to a popularity contest based on such vagaries as the wording of the question and the whims of the day. This is a very serious issue. Polling before the referendums in British Columbia and Ontario revealed the majority of the population ranked themselves as knowing little to nothing about the proposed systems with many not even knowing a referendum was occurring. As has already been presented to the committee, further polling has revealed only 1 in 5 Canadians are aware of the current electoral reform process and only 1 in 32 are following it closely.

Ontario had a voting referendum in 2007. Talking to individuals on the street in Ontario reveals only a vanishingly small percentage of people have a good working knowledge of voting systems, and very few show the interest or fortitude required to become knowledgeable. As the committee can appreciate, coming to understand the ins and outs of electoral systems takes a lot of time and effort. People have lives to live, with limited time and effort, and it is for this reason that I do not believe any reasonable amount of money or effort will be sufficient to educate the population.

If a referendum is deemed absolutely necessary, one very practical solution to this problem is to adopt a “try before you buy” policy. Have the committee recommend an alternative based on their extensive and informed deliberations. Implement this alternative for a couple of elections. Only then hold a referendum to decide on whether to keep it or not. This will ensure citizens necessarily have some minimal working knowledge of their choices.

Another option would be to choose a representative group that then spends the time required to become knowledgeable on the matter and makes a decision. This could be a citizens’ assembly. It could even be the committee itself seeing as it was struck in a manner representative to the overall population.

## **Further Comments**

As the committee is seeking general input, I will comment further on my preferred choice of voting system. For the reasons laid out above, first and foremost, it is a proportional voting system. I am not concerned with the prospect of a minority government. I believe it will be good for the ruling party to not have absolute power and for the opposing parties to have to take responsibility and make hard decisions with regard to having to support legislature as well. Without the constant allure of a first-past-

the-post majority, I do not believe minority government will equal endless elections as we currently have experienced. I also believe we will see more stability in terms of less policy swing between governments (specifically with regard to undoing what the previous government did).

My preferred proportional voting system is the single transferable vote (STV) using Meek's method with district sizes of at least three and preferably five. The reason STV is my preferred system is that it was designed very specifically to ensure that every vote counts and every vote counts equally. Multiple representatives are elected from each region to give a range of voices, and all representatives are elected with, as close as possible, the same number of votes behind them. This gives proportionality at the representative level which further extends the more standard notion of party proportionality. I understand there may be some issues with respect to large size required for urban districts (although they would retain the same number of representatives per square kilometer) and feel that Fair Vote Canada's urban-rule proposal (a combination of STV and mixed member proportional) may be a good compromise.