

**Speaking Notes for Presentation to the Assemblée Nationale du Québec, Commission des institutions, Auditions publiques sur le projet de loi no 39, *Loi établissant un nouveau mode de scrutin*.**

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Dear Members of the Commission des Institutions,

I am grateful to the Commission des Institutions for inviting me to speak at today's session. The work being done here, as everyone here should know, could well make an important contribution to improving the functioning of the democratic institutions in this province. More than that, as has happened so often in the past, on the issue of electoral reform Quebec could well prove to be an incubator of significant policy innovation, providing demonstration effects for other jurisdictions in the country. I am honoured to be a part of this process.

In 2003 I had the great pleasure and privilege of working for the Law Commission of Canada (LCC), drafting its report, *Voting Counts: Electoral Reform for Canada*, which was submitted to the Minister of Justice in 2004. This followed an extensive and multifaceted public consultation strategy undertaken by the LCC, in which citizens and experts were asked what values they wanted to see enshrined in our electoral system. Two values appeared to be the most important to voters and experts alike when they were asked to think about their ideal electoral system: first, it should promote *demographic representation* – in other words, the legislative body that emerges after a vote ought to reflect, or mirror the population that elected it. And secondly, the translation of votes to seats ought to be *fair or equitable* in its treatment of the political parties: there should be a rough correspondence, or *proportionality*, between a party's share of the vote and its representation in Parliament.

Taking into account the data from the public consultations, the LCC report's main recommendation, therefore, was to establish a Mixed Member Proportional (MMP) electoral system in Canada, similar to those in use in Germany, Scotland, Wales and other jurisdictions. Such a system, in the thinking of the Commissioners, would offer the "best of both worlds," since it features the election of individual members of Parliament in geographically defined ridings, a hallmark of the British-style system that we have used here in Canada since before Confederation, along with European-style representation of diverse currents of opinion in the electorate through proportional representation from party lists.

As outlined in Bill 39, the electoral system that will replace the existing single-member plurality system, should a majority of the province's voters approve of the change in a future referendum, bears a close resemblance to the model favoured by the LCC. Voters would cast two ballots at election time, one for a candidate in their riding or "division," as is currently the case, and one for a regional party list. The split in seats – divisions vs. regional – would be roughly two-thirds, one-third (64 percent to 36 percent to be precise). The regional list seats would be assigned in a way (based on regional divisors) to compensate for disproportionalities in the constituency results. The 17 regions described in Bill 39 "make sense," intuitively; that is, they correspond to existing administrative divisions in the province and should be familiar to the vast majority of voters. Finally, the regional lists would be "flexible," which echoes another of the LCC's recommendations. That is to say, voters would have the opportunity cast their ballots for the list of candidates drawn up by a party, or for an independent candidate. This kind of flexible list balances two competing, and often contradictory policy objectives: to avoid the perception that the lists will have been cooked up by party elites in backroom deals to reward their friends, on the one hand, while still allowing the parties to undertake affirmative action measures (on behalf of women, minorities and Indigenous peoples) when constructing their lists, on the other. I know from my own personal experience in the aftermath of the release of the LCC report, and even more viscerally during the Ontario referendum campaign on electoral reform in 2007, when I worked with Fair Vote Canada, that a small minority of voters can produce a great deal of noise about party lists in an MMP system, arguing that they are simply a means of rewarding party insiders. This is more the product of anti-party sentiment and voter cynicism than reality, but it does need to be addressed if the architects of a new electoral system wish to avoid having the referendum campaign hijacked by populist rhetoric, as I believe happened in Ontario in 2007. Flexible lists achieve this end. I am also encouraged by the fact that Bill 39 outlines measures to require each political party to report on its efforts to promote gender equality, both in the construction of its lists and in the fielding of candidates in the constituencies. While it is true that these measures are largely exhortatory, and not coercive, they nonetheless represent an important step toward achieving a more representative legislature.

I want to expand very briefly on three aspects of the MMP system outlined in Bill 39. In the first place, although the 17 regions to be used to compensate for distortions in the constituency results make intuitive sense, in that they correspond to existing administrative divisions in the province, they vary substantially in terms of population, with Montreal dwarfing all of the others. For those interested in the proportionality of election results – the closeness of fit between a party's share of the seats in the legislature and its share of the votes – the larger regions are more desirable, since the results tend to be less disproportionate, all things considered equal (*ceteris paribus*). But the huge variance in population across the 17 regions will undoubtedly produce quite a diversity of election results, some much more proportional than the others. Designers of the proposed MMP system might want to think about *either* collapsing some of the regions to make fewer in total, or, alternatively, to split a couple of the larger regions, which might be too large for many voters to think of as "natural."

This leads to a second consideration, perhaps my most significant objection to the MMP system outlined in Bill 39. In order to be eligible to receive compensatory regional list seats, a party must win at least 10 per cent of the *province-wide* list vote. This is the *threshold* for winning compensatory seats under this model and, frankly, it is unreasonably high and bound to create distorted, even perverse results. I understand that the threshold has been established with a view to weeding out extremist parties, which is a recurrent criticism of MMP made in the popular media and by defenders of the status quo – that it provides a legislative foothold to very unsavoury fringe parties that can then hold the majority to ransom, or paralyze parliament with their unreasonable demands. However, if you examine the electoral history of jurisdictions that have established MMP systems with much lower thresholds – Germany, New Zealand, and Scotland, most notably – the spectre of a takeover by radical, fringe, or extremist parties has failed to materialize.

Moreover, as noted by the ACE Project (the Administration and Cost of Elections Project, associated with Stockholm’s International IDEA, the Institute for Democracy and Electoral Assistance):

... legal thresholds range from 0.67 per cent in the Netherlands to 10 per cent in Turkey. Parties which gain less than this percentage of the vote are excluded from the count. A striking example of this was the 2002 Turkish election, in which so many parties failed to clear the 10 per cent threshold that 46 per cent of all votes were wasted. In all these cases, the existence of a formal threshold tends to increase the overall level of disproportionality, because votes for those parties which would otherwise have gained representation are wasted. In Poland in 1993, even with a comparatively low threshold of 5 per cent for parties and 8 per cent for coalitions, over 34 per cent of the votes were cast for parties and coalitions which did not surmount it.<sup>1</sup>

A threshold of 10 per cent is not only an unnecessary response to a non-existent problem – since it is not the electoral system that produces extremism in a society *ex nihilo*, it is pre-existing divisions within society itself – it threatens to undermine one of the most important rationales for adding an element of proportionality to the single-member plurality electoral system, namely to lessen the number of wasted votes at election time and, concomitantly, to reduce the need for strategic voting. A province-wide threshold of 5 per cent of regional list votes would undoubtedly suffice to weed out extremist or fringe parties. I would also recommend that there be what the ACE Project describes as a “back door” to obtain representation on the regional lists: any party that wins at least one division (constituency) ought to be eligible as well for the compensatory regional list seats, as is the case currently in New Zealand.

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<sup>1</sup> ACE Project. The Electoral Knowledge Network. N.d. “Electoral Systems.” <http://aceproject.org/ace-en/topics/es/esd/esd02/esd02e/esd02e03>

The final aspect of the proposed reform in Bill 39 that warrants attention is the most important, from my perspective, and that is the issue of disproportionality. As outlined in the Bill, with its 17 regional lists and a high threshold (hopefully 5 per cent as opposed to 10 per cent), there is likely to be considerable disproportionality in the final results. As noted again by the ACE Project (see n. 1), “The systems which achieve the greatest degree of proportionality will use very large districts, because such districts are able to ensure that even very small parties are represented in the legislature. In smaller districts, the effective threshold is higher.” I should point out that I believe quite strongly that proportionality has, for some groups and individuals invested in the debate over electoral reform – this would be true of Fair Vote Canada, in my own *personal opinion* – become almost an end in and of itself. *À la recherche de la formule parfaite* seems to have become the guiding principle of some activists, and the proposals for alternative systems to SMP have correspondingly become more exotic, even rococo, with additional features built in to them – like two different kinds of compensatory list representatives – in order to produce greater proportionality.

Let me stress that my comments here stem from personal experience: it is not the search for pure proportionality that will motivate ordinary voters to support an alternative to first-past-the-post. In a very insightful article, W.A. Johnston, Harvey Krahn and Trevor Harrison make the important point that electoral reform proposals seem to many voters to be too “formal and abstract”; for most ordinary citizens, “concerns over the health of democracy are much more immediately rooted in a widespread general distrust in government as being too powerful and secretive than in concerns about the inadequacy of political institutions.”<sup>2</sup> Electoral reform advocates must therefore tone down their fascination with seeking out the platonic ideal of proportionality through increasingly sophisticated computer simulations. This tendency reinforces the conviction among large numbers of so-called “ordinary voters” that electoral reform is what York University political scientist Dennis Pilon once labeled a “geek issue.”

If implemented, the electoral system proposed in Bill 39, with a lower threshold and perhaps more evenly populated regional lists, could help address the democratic deficit in two concrete ways. First, by facilitating the entry of some of the smaller parties, like the Greens, into the National Assembly, the reform would improve the quality of public debate and deliberation. Second, as even many of the fiercest defenders of first-past-the-post acknowledge, the existing system does not do a very good job of electing a diverse legislature. Women, minorities, and Indigenous communities are all under-represented in all of the legislative bodies across the country – some more than others. The system outlined in Bill 39, in conjunction with the proposed measures to track party performance in pursuing gender parity in their lists of candidates, both for compensatory seats and ordinary constituencies, could go some way toward rectifying this problem.

I know that many observers are disappointed with the provision to hold a referendum on electoral reform in conjunction with the provincial election scheduled for October 2022. I

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<sup>2</sup> “Democracy, Political Institutions, and Trust: The Limits of Current Electoral Reform Proposals,” *Canadian Journal of Sociology* 31.2 (Spring 2006), 175, 178.

certainly share the concern that debate over the proposed alternative to SMP will be overwhelmed by the usual partisan imperatives of an election. And yet, this referendum represents an enormous opportunity, not just for the voters of Quebec but for electoral reformers outside of the province as well. There are two years to go before the referendum and election will be held. The legislation calls for the creation of a Yes committee, and there are highly competent individuals in the province, some of them members of the *Mouvement pour une démocratie nouvelle* (MDN) who might fill the role of chair of the Yes campaign. And perhaps most important of all, Quebec's citizens have experience with important referendum campaigns, in a way that Ontario's voters in 2007 did not. This should matter. I can say with complete honesty that electoral reformers in the rest of Canada are following current developments in Quebec with rapt attention. If the province's voters endorse the proposed alternative to SMP – and I am not as pessimistic about this prospect as some – then they could well demonstrate to the rest of the country that so-called ordinary citizens can actually play a role in shaping institutions and altering them to improve the quality of democracy. I sincerely believe that once in place, the new electoral system will lead neither to the dystopian nightmare that some of its critics have claimed it would, nor to the consensual paradise that some of its more ardent advocates invoke. And that is a good thing.