

TESTIMONY

to the

SELECT COMMITTEE ON THE ELECTION ACT

of the

QUEBEC NATIONAL ASSEMBLY

by

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Mr. Chairman, members of the Select Committee, and members of the Citizens Committee: Thank you for inviting me to present my views today. For those of us in academia who study politics, it is always flattering to think that our ideas might be of use to people charged with making important decisions in the real world of politics. At this hearing, my gratification is tempered by three reasons for humility. First, I am embarrassed to admit that I know little about politics in Quebec beyond what I have been able to learn in the few days since M. Breault confirmed that I would be testifying today. Second, my hasty study has taught me that electoral reform has been debated for decades in Quebec, and the present Draft Bill is the result of extended consideration. As a latecomer to the discussion, I may have little to add that is new; and if my comments point to possible changes, revisions may be difficult to make at this stage. Third, Quebec is fortunate to have in its own universities several of the world's leading experts on electoral systems. I am sure that those individuals, whom I respect greatly, have contributed far more than I can to your deliberations. In particular, I will refer often to the excellent report prepared for Minister Dupuis by Professor Louis Massicotte.¹

I have been invited to testify mainly because of my research on New Zealand, which adopted a compensatory mixed electoral system by referendum in 1993 and has since employed it in four parliamentary elections—1996, 1999, 2002, and 2005. New Zealand offers a relevant example to Quebec in several ways. Before 1993, New Zealand, like Quebec, had a long history of electing its legislators by plurality rule from single member districts. The size of New Zealand's House of Representatives is close to the size proposed for the reformed Quebec National Assembly—120 members in New Zealand (or temporarily since this year's election, 121), compared with 127 in the draft Election Act. With about 4.1 million people, New Zealand is smaller in population than Quebec, but it could be placed in roughly the same demographic category. New Zealand's land area is not nearly as vast as Quebec's, but its islands span about the same distance from north to south as does the territory of Quebec.

The system that New Zealanders call MMP (for mixed-member proportional) is a member of the same compensatory mixed family as the system proposed in the draft Election Act. Both elect legislators from a combination of single-member constituencies and party lists, with seats from the lists allocated among parties in such a way as to achieve an approximation to overall proportionality after allowing for the seats parties win in constituencies. Thus they aspire to "the best of both worlds"—the local territorial representation of first-past-the-post and the overall fairness and other advantages of proportional representation (PR). The two systems are also similar in the percentage of

¹Louis Massicotte, *In Search of A Compensatory Mixed Electoral System for Québec*, Gouvernement du Québec, 2004.

legislators chosen from party lists—43% in New Zealand and 39% in the Quebec proposal.

Despite these basic similarities, there are three notable differences between MMP in New Zealand and the plan in the draft Election Act: (1) New Zealand gives the elector two votes—one for a party list and the other for a constituency representative. Electors in Quebec would cast only one vote for a constituency representative, but that vote would also count in choosing members from party lists. (2) To elect list MPs, parties in New Zealand must cross either of two thresholds—they must win at least 5% of the party votes nationwide, or they must elect at least one constituency MP. The Quebec draft plan imposes no explicit threshold of either sort. (3) New Zealand chooses its list MPs from national lists, with compensation for constituency outcomes across the entire territory. Compensatory allocation under the Quebec draft bill would be only at the level of regions (“districts”) comprised, in most cases, of three constituencies (“divisions”).

Of these differences, the third—territory-wide vs. regional compensatory allocation—is by far the most important, in my view. I shall devote most of my remarks to some consequences of that choice; but first I will offer a couple of comments about the other two differences.

One vote or two? A reason cited for using one vote rather than two is that the simpler system avoids confusing voters.² In Germany and New Zealand, many citizens do not understand that the party vote is more important, in that it determines parties’ overall strength in the legislature. However, in a one-vote system, there is a corresponding source of confusion. Unless they understand that their single vote can also influence the allocation of list seats, some voters may think that it is wasted on a minor-party candidate who has no chance to win the mandate of a division. Minor parties will undoubtedly try to educate their potential supporters, but their arguments may not be sufficiently heard or understood. In New Zealand, the Electoral Commission has successfully devoted substantial educational effort to educating new voters (and re-educating old ones) about the importance of the party vote. I would recommend that the Quebec Electoral Commission be charged with similar responsibility for educating electors about the double significance of their vote if a single-vote method is adopted.

Thresholds. The use of a 5% threshold in New Zealand, as in Germany, is designed to prevent excessive fragmentation of the party system by excluding tiny parties from the legislature. In New Zealand, more often than expected by most observers

²However, I agree with Professor Massicotte that the most compelling reason for one vote is to avoid the kind of manipulation of party labels that has occurred in Italy, which can “destroy the very essence of the compensatory system.” *Ibid.*, p. 125.

(myself included), this barrier has been circumvented by the back-door route to list seats provided by the second threshold, the winning of a single electorate seat. On four occasions, parties well below the 5% level have shared in the distribution of list seats because their leaders won an electorate. Although the possibility that independents will win constituencies is an inherent (and sometimes desirable) feature of mixed systems, in New Zealand one-MP parties have been encouraged to persist by the hope of gaining (or regaining) additional list seats. As a result, the number of parties in Parliament over the four MMP elections has been 6, 7, 7, and 8, respectively, while the number exceeding 5% of the party vote has been only 5, 5, 6, and 4. I therefore consider the constituency back door to eligibility for list seats as an unfortunate aspect of MMP in New Zealand, because it has encouraged tiny parties and fostered excessive fragmentation.

In the Quebec plan, there is potential for a similar proliferation of tiny parties. Unlike the New Zealand two-vote system, which gives minor parties less incentive to compete for electorate seats, small parties in Quebec will be forced to offer candidates in all divisions of every district in which they have any hope of winning a list seat. The resulting fragmentation of the single vote may enable a party that is minor by province-wide standards to win a division with a relatively small fraction of the vote. In addition, for parties that do not win a division seat, a one-sixth share of the district-wide vote will normally suffice to win a list seat.³ Although this is a high implicit threshold by usual PR standards, because it applies in each of 24 to 27 districts and there is no explicit province-wide threshold, tiny but locally concentrated parties could win seats with as little as 0.6% of the total Quebec vote each. Conversely, parties with shares of the total vote many times larger will receive no seats if their support is so evenly spread across Quebec that they fail to reach the implicit threshold in any district.

Territory-wide vs. district compensatory lists. In addition to the drawback just mentioned, there are numerous other and, in my view, more serious deficiencies in a system that allocates compensatory seats within relatively small districts. In Professor Massicotte's discussion of this issue,⁴ the choice of district allocation is justified by the desire of Quebec citizens to link every MNA to an identifiable territory and the fear that residents of outlying regions would lose out in bargaining over province-wide list seats. These are certainly legitimate concerns that, as an outsider, I have no ability to assess. (I would, however, invoke compelling counter-arguments that Professor Massicotte himself

³Depending on the number of competitors and the distribution of their votes, a smaller percentage might also be sufficient. However, the proposed plan's use of the Scottish method of assigning list seats could sometimes create a higher threshold for minor parties when a major party captures a disproportionate share of seats through district victories.

⁴*Ibid.*, pp. 124-25.

makes elsewhere in his report, when he points out that parties that fail to offer geographically representative lists may be punished at the polls, and that candidates from major parties have strong incentives to stand for both list and constituency seats.) However, the value that he opposes to those concerns—"priority to mathematical exactness"—in my opinion seriously understates what it is at stake in this choice. Like Professor Massicotte, I am not a "doctrinaire proportionalist." Any territory-wide system that imposes a 5% threshold, as MMP in New Zealand does, already sacrifices exact proportionality for the sake of goals that are judged more important, such as preventing an excessively fragmented party system and the proliferation of very small parties.

The problem is that, in sacrificing proportionality for the sake of even more territorial representation than a mixed system already provides, the district system jeopardizes a value that is far more central to democracy than mathematical fairness to small parties—that is, majority rule itself. I will discuss four ways in which district-based compensatory lists can undermine majority rule—by manufacturing majorities, permitting asymmetry between the major parties, electing wrong winners, and giving disproportionate power to a third party.

§ *Manufactured majorities.* Although I noted earlier that tiny parties may win some seats under the proposed plan, its dominant tendency is a strong advantage for the largest parties. Indeed, at every decision point, the plan makes a choice that helps big parties at the expense of medium-sized and small parties—by establishing districts with smaller magnitude than most PR systems, by using the Scottish method for assigning compensatory seats, by selecting the D'Hondt formula, and by opting for one vote rather than two. The result will sometimes be the same sort of manufactured majority that first-past-the-post typically creates in Canada and Britain—a pluralitarian rather than majoritarian outcome, in which one party turns considerably less than half the popular vote into a majority of seats and thus a monopoly of legislative power. For example, in Professor Massicotte's simulation of the 2003 election under a plan similar to that in the draft bill, the QPL is able to turn 46% of the vote into 53% of National Assembly seats.⁵ In contrast, with a territory-wide compensatory system and 5% threshold, manufactured majorities are possible but far less likely. In New Zealand since the implementation of MMP, no single party has ever enjoyed a manufactured majority.

§ *Asymmetry between the major parties.* In New Zealand as in Quebec, a principal impetus for electoral reform came from the bias of the first-past-the-post system toward one of the major parties at the expense of the other. As Professor

⁵*Ibid.*, p. 99. See also pp. 106-7, on the majority bonus of the strongest party.

Massicotte's simulation shows, a method like that proposed in the draft Election Act would sharply reduce the tendency of the existing system to favor the PQ, but some bias would remain. If the two big parties received equal percentages of the Quebec vote, the average difference between the seat share of the PQ and the QLP would fall from 16.1% to 2.3%.⁶ This is a great improvement, but why accept any bias at all when territory-wide compensation guarantees perfectly symmetric treatment of the major parties?

§ *Wrong winners.* To me and, I suspect, most people, disproportionality is most troubling when it affects major parties in such a way that one party wins power even though it receives fewer votes than another party. The possibility for such "wrong-winner" outcomes is inherent in any district-based system for aggregating votes, as Americans were reminded by the 2000 presidential election, when the Electoral College produced a victory for George W. Bush even though Al Gore received half a million more popular votes. Quebec experienced a similar reversal in 1998. Under the draft electoral law, the flaws of asymmetry and manufactured majorities can combine in a close election to make a wrong winner a distinct possibility, as Professor Massicotte's simulations using the 1998 vote show.⁷ In contrast, a territory-wide compensatory system would virtually guarantee that wrong-winner outcomes will never occur.

§ *Excessive power of a third party.* Although the proposed plan inflicts numerous disadvantages on minor parties, so that most would be excluded unless they picked up a seat or two due to locally concentrated support, a large third party would do better than under the existing system. As Professor Massicotte's simulations show, under a district-based plan similar to the one in the draft bill, the ADQ would have won 5 seats in 1998 and 16 seats in 2003, compared with the 1 seat and 4 seats it actually received under first-past-the-post.⁸ In a mixed system that has two large parties and one significant third party, it may frequently happen that the third party holds the balance of power. Such a party may wield, or be perceived as wielding, influence disproportionate to its legislative size or popular support. In fact, the most widely accepted measure of voting power, the Banzhaf index, assigns equal power to three parties, any two of which can form a majority coalition, even if one is much smaller than the other two.

⁶*Ibid.*, pp. 111-17.

⁷*Ibid.*, p. 109. It is noteworthy, however, that the D'Hondt seat-allocation technique seems less conducive to reversals than the alternative St. Lag e and largest-remainder methods. Nevertheless, D'Hondt does not eliminate the possibility of a wrong winner.

⁸*Ibid.*, pp. 97-9.

In New Zealand, such a configuration occurred after the first MMP election in 1996. The third-ranking New Zealand First party, with 17 MPs (14% of the total), vigorously exploited its bargaining position before reaching a coalition agreement with the National party. This spectacle and the resulting government were highly unpopular with the voters. Consequently, the MMP system fell into disrepute until a healthier pattern was established in later elections, when New Zealand's system of nationwide compensatory list seats enabled several new minor parties to emerge and sometimes cross the 5% threshold. Among them are a Green party and a centrist party with significant religious support (United Future). After the 1999, 2002, and 2005 elections, the largest major party, Labour, established minority governments that were able to form legislative majorities with the aid of any of several minor parties. As a result, no minor party has wielded excessive power, and Labour has avoided succumbing to the more extreme demands of any one among them by turning to alternative partners on different bills.

A similar pattern often occurs in Scandinavia. I believe that a system in which minority governments form ad hoc, one-issue-at-a-time majorities by partnering with any of several minor parties tends to produce policies that satisfy a majority of voters on each issue, rather than cater to intense minorities. Because Quebec's proposed reform sets up severe obstacles to the emergence of moderate-sized minor parties, especially those whose support would be dispersed, it would not be conducive to the emergence of this desirable pattern of majority rule. Instead, the governments that form will too often result from any of three less majoritarian processes—pluralitarian manufactured majorities, wrong-winner majorities, or coalitions in which a third party wields disproportionate power.⁹

I hope that my criticisms of the draft bill will not be misinterpreted. The proposed reform is a substantial improvement over Quebec's existing first-past-the-post system. Among other advantages, it will avoid geographic party monopolies, produce less exaggerated swings in major parties' seat shares, offer somewhat more proportional representation to the largest minor party and (possibly) to locally concentrated small parties, and reduce the bias of the present system in favor of one major party. If the

⁹There are two other possible checks on a king-making third party that gets too greedy. The major parties can exclude it by forming a coalition of their own, as the German SPD and CDU/CSU did in 1965-69 (and again this year, for different reasons); or voters can punish the third party in the next election. The New Zealand First party declined from 17 seats in 1996 to just 5 in 1999, when its party vote fell below the 5% threshold, and it held on to 4 list seats only because its leader eked out a narrow win in his electorate.

choice is only between the draft bill and the status quo, I would certainly recommend the draft bill. But the opportunity to choose a new electoral system is a rare event in political life. Now that such a moment may be at hand in Quebec, it seems to me regrettable not to choose a reform more conducive to majority rule if such an option is available. I therefore respectfully suggest that you give serious consideration to a mixed electoral system with province-wide compensatory allocation, applying a 5% threshold as in New Zealand, but without that country's back door to list eligibility through a constituency victory.

Thank you for your attention. I am happy to try to answer any questions.