

décidé de voter pour un parti a le choix entre trois candidats différents de ce parti. La règle empruntée à la Finlande, qui bloque ensemble le vote personnel et la première préférence partisane, est nécessaire pour réserver le choix des élus d'un parti aux électeurs pour qui ce parti est la première préférence. Il est sans doute juste qu'il en soit ainsi, et cela rend impossible certaines manœuvres déloyales entre partis.

En donnant aux électeurs une influence réelle sur le choix des personnes élues, le système électoral proposé ici aura d'heureux effets pour le recrutement du personnel politique. Au lieu d'avoir tendance, comme aujourd'hui, à présenter des hommes qui ont le même type de profil personnel ou professionnel, les partis chercheront à diversifier les candidatures pour attirer des électeurs différents. Il est probable, par exemple, que la plupart des partis voudront présenter au moins une femme parmi leurs trois candidats dans presque toutes les circonscriptions. Et beaucoup d'entre elles seront élues, puisque le principal obstacle à la présence des femmes en politique se trouve aujourd'hui plutôt dans le fonctionnement des partis que dans les préjugés des électeurs.

### Conclusion

Nous avons présentement un système électoral qui est un instrument très pauvre d'expression des préférences des citoyens et de sélection du personnel politique. Il a toujours aggravé artificiellement les conflits régionaux entre nous. Et, depuis que nous sommes en situation de multipartisme, il est devenu une sorte de roulette russe pour le Canada. Les raisons de le réformer sont très sérieuses.

Le mode de scrutin préférentiel modérément proportionnel qui a été présenté ici est constitué de plusieurs éléments qui pourraient être adoptés séparément. On pourrait adopter le vote préférentiel seul, dans le cadre uninominal actuel. Ce serait une réforme très simple, qui ferait disparaître les risques résultant de la conjonction du scrutin majoritaire et du multipartisme.

On pourrait aussi adopter la représentation proportionnelle modérée seule, avec des circonscriptions à trois sièges, mais sans vote préférentiel. Toutes les provinces seraient alors représentées par des élus appartenant à au moins deux partis. On diminuerait ainsi l'incitation au localisme, mais on rendrait un peu moins probables les majorités gouvernementales.

La combinaison de ces deux éléments, circonscriptions à trois sièges et vote préférentiel, selon la formule proposée, aurait les avantages des deux formules précédentes, tout en rendant sans objet la critique principale qui peut être faite à la représentation proportionnelle, celle de favoriser l'instabilité gouvernementale. Avec ce système, on obtiendrait une influence des électeurs sur le choix des élus plus réelle et des gouvernements plus stables qu'avec le scrutin majoritaire uninominal.

**Jean-Pierre Derriennic** est professeur de science politique à l'Université Laval.

by Pierre Lortie

# A MINIMALIST ELECTORAL REFORM AGENDA

*La représentation proportionnelle offrirait sans doute certains avantages, mais ceux-ci ne justifieraient en aucune façon les bouleversements qui suivraient une transformation aussi profonde du système électoral. Les partisans de la réforme oublient souvent de mentionner de nombreux aspects positifs du système actuel. Il reste qu'on peut apporter certaines améliorations à ce dernier et l'auteur esquisse un programme de réformes « minimalistes ».*

It is generally accepted that France, the United Kingdom, Germany, the United States and Canada are genuine democracies. Yet the frameworks that define their electoral processes as well as many of the administrative rules that govern their elections differ considerably.

Similarly, in Canada, there exist wide and substantial differences in electoral rules and practices between provinces and those which apply at the federal level. For instance, election law in Quebec regulates the amount and source of financial contributions to candidates and political parties and the size of campaign expenses. Canada's election law regulates only the latter as it pertains to candidates and political parties, while Alberta has no effective legislative provisions to that effect. In Quebec, the consensus is that these provisions form the cornerstone of a fair electoral regime; whereas in Alberta the view is that such measures are needlessly intrusive if not inimical to a competitive electoral process. Despite those significant differences, no one suggests that some provinces are "more democratic" than others; indeed, the legitimacy of provincial elections is not questioned.

Electoral reform is a practical endeavour. It cannot be undertaken in a vacuum without due regard for the historical experience of the people concerned, their values and the existence of a wide enough consensus that the rules followed heretofore for the selection of their representatives and government need to be repaired. This imparts a natural conservatism that inhibits any proposal for fundamental reform. Why change something with which we are familiar and that works? And since no system is perfect, the reluctance to change is not totally ill-advised.

### The mirage of a proportional representation system for Canada's House of Commons

The suggestion that Canada should discard its present electoral system to adopt a system of proportional representation for the House of Commons is a case in point. Several countries have adopted the system and, theoretically, it can be shown to reflect more precisely the views and opinions of the electorate and achieve greater proportionality nationally between votes cast for the respective parties and seats won. In the Canadian context, these advantages are not sufficient to justify the disruptions that would invariably follow such a profound transformation of our electoral system. Moreover, our current system possesses many qualities that should not be overlooked since it better addresses legitimate concerns of Canadians.

First, the rate of legislative turnover in the House of Commons (approximately 25 percent per election since 1979 and even higher in more recent elections) indicates that our electoral system is responsive to changes in voters' preferences. In countries with a system of proportional representation, political parties establish the order of the list of candidates. The connection between the elected and the electorate is therefore less intense and direct. What may be gained in experience and longevity is lost in representativeness.

Second, a system of proportional representation would require the establishment of multi-member constituencies that would be at least five times the size of current constituencies. In practical terms, few Canadians would view such a development as progressive.

Canadian history has demonstrated that new political parties will emerge, if and when enough citizens so choose. This is true at both the provincial and federal levels. The federal election of 1993 saw the emergence of "federal" regional parties roughly in tandem with the status of prevailing opinions in those regions. Under a system of proportional representation, the results for these regional parties in the 1993 and 1997 elections would not have been significantly different, which explains why few criticisms were voiced about the size of their parliamentary representation. The Liberals

would not have had a majority in the House of Commons, and it is doubtful whether a serious case can be made that a minority government between 1993 and 1997 would have been a preferable outcome for Canada.

Effective systems of governance are those that reconcile diverging priorities, maintain a healthy equilibrium between conflicting requirements, and assure stability. The system of proportional representation gives ascendancy to ideas as the organizing concept; whereas our electoral system is much more territorially based. With time, the behaviour of the electorate (and of participants and political parties) will evolve to ensure that both dimensions are given sufficient weight. Indeed, there are five recognized parties in the current Parliament and the country is well-represented both ideologically and regionally. There is a fine line between regionalization and balkanisation that we should be careful not to cross.

We must not underestimate the benefits of stability. Institutions perform more than one purpose. Ours is a system of "representative government" which means that it must be representative *and* capable of governing. Our electoral system must further the first dimension without undermining the second. France, for example, has lived with nine different governments and eleven Prime Ministers since 1986, prompting many, including former Prime Minister Édouard Balladur, to lament the deleterious consequences of the lack of stability and to suggest the need to reform the institutions of the Vth

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Republic. This is not intended to infer that our electoral system is perfect. But we need to focus on the reforms that relate directly to the functioning of our electoral process and on those that are likely to give better resonance to our institutions of governance, without undermining the strengths of our own institutions.

### A minimalist reform agenda

Four areas of our electoral system warrant immediate improvements.

1) *Redistribution of seats*: It is noteworthy that agreement on Canadian Confederation was reached largely because the Fathers of Confederation agreed that proportionate representation would form the basis for assigning seats in the House of Commons. In the united legislature of the province of Canada, Upper Canada had the same number of seats as Lower Canada, despite wide differences in population. The British North America Act (now the Constitution Act, 1867) corrected this inequity by assigning 65 seats to Quebec and assigning seats to other provinces according to their population relative to Quebec's population/seat ratio.

Over the years, section 51 of the Constitution Act,

1867 was amended several times to cater to the addition of provinces and the establishment of the territories and to the shifts of population across the country. Although the intentions that influenced the last reform — the Representation Act, 1985 — are not without merit, the end result was to substantially modify the principle of proportionate representation to an extent that is becoming increasingly untenable. First, Canadian constituencies deviate from the national election quotient to a much greater degree than is observed in other jurisdictions. The size of these deviations cannot be justified politically or legally if the situation was to be challenged under the guarantees offered by the Canadian Charter of Rights and Freedoms. Second, it unduly penalizes the faster growing provinces: Ontario, Alberta and BC.

Admittedly, these systemic issues have not yet exploded into political problems. This is precisely the reason why they should be addressed now. Surely, the lessons from the political firestorm sparked in British Columbia with the announcement on November 27, 1996 in the House of Commons of a resolution establishing a constitutional veto formula based on the Victoria Agreement of 1971 should not be lost. In the end, the Government relented and gave a veto power to British Columbia, but the episode only served to further undermine the confidence and respect of British Columbians in their national institutions. The principle of proportionate representation which underpinned the Confederation settlement is as valid today as it was then; moreover, it is fair and well-grounded in the history of Canada. The Royal Commission on Electoral Reform and Party Financing (RCERPF) recommended amendments to section 51 of the Constitution Act, 1867 that addressed these issues while incorporating the better practices that have marked the legislative evolution of this constitutional provision.

The redistribution of Commons seats between the provinces and territories will immediately require a readjustment of electoral boundaries. Here, Canadian legislation and practices have evolved in the right direction: eliminating the incidence of gerrymandering and maintaining considerations such as community of interest and community of identity in addition to population as legitimate criteria in drawing boundaries. There is no doubt, however, that because of shifts in population and ambivalence in the existing law, the current situation is far from ideal. The RCERPF demonstrated clearly that it was possible to draw boundaries that detract from neither voter equality nor community of interest. This can be achieved with deviations in the provincial electoral quotient of 15 percent or less. The existing legislation must be amended to ensure that the weight of one's vote is roughly equal across Canada.

2) *Money and politics*: Money and politics have always formed a dangerous combination, here and abroad. Efficient political campaigns require money, lots of money; when it is given or received by the wrong person, money easily gives rise to scandals with their corrosive effect on the legitimacy of political institutions.

In the wake of the Watergate scandal, both Canada and the US proceeded to regulate the flow of money into political campaigns. The focus of US legislation is on the sources of funds through a complex (and unworkable) regulatory regime aimed at limiting the size of contributions. In contrast, Canada regulates the amounts spent, placing reasonable and easily enforceable limits on campaign expenses of candidates and parties. Two decades later, it is obvious that Canada's approach has been much more successful in fulfilling the objectives of the reform. Moreover, by limiting the need for money, the Canadian approach has significantly curtailed the cost dynamics of campaigns; in contrast to the US where rapidly increasing campaign expenses lead to growing pressures for funding in a never-ending spiral.

The US Congressional hearings on the finances of the 1996 election campaigns and the questions and accusations levelled against the solicitation of money by senior government officials (including the President and Vice President) are but one illustration of the malaise that pervades the US electoral process because of the inability to properly regulate the flows of money into political campaigns. In contrast, Canada has, for many years now, been relatively spared from these corrosive problems.

Concern about the Canadian regime stems from the fact that parts of the legislation needed to ensure the integrity of the whole regime of control of campaign expenses are no longer in force. Principally, because the Commons have attempted to settle scores and the parliamentarians proposing the legislation were not mature enough to adopt a balanced regime respectful of the exigencies of the Charter, these provisions were declared null and void by an Alberta court. It is also noteworthy that successive governments have chosen not to appeal the lower court decision. This indicates that these provisions of the Act were driven by Members of Parliament and suggests that the legislation may not have received the full attention of the Government. This is quite unfortunate. It is also important to note that what the courts struck down was clearly bad legislation devoid of the nuances and balances required for the measures to be demonstrably justified as reasonable in a free and democratic society. The outcome would have been different with a well-balanced legislation.

There is no doubt that Canadian elections may be held within the existing regime without giving rise to

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major problems. The 1997 campaign is a case in point. However, it should be obvious that a regime whereby candidates and parties are subjected to expense limits while all other citizens and organizations are exempted from these restrictions is inherently unstable. Sooner or later, a candidate will be subjected to a deliberate and massive effort by third parties to prevent his or her election. Candidates or parties will identify ways by which significant "unregulated" funds can be channelled in support of one's position or against opponents. And given the nature of political competition, this is most likely to happen when the divisions within the country over a policy direction are heightened, that is, when the impact on the legitimacy of the elected government will be most severe. At that time, the damage will have been done; it is much preferable to prevent such a situation from occurring by adopting an adequate regime.

3) *Transparency and accountability*: One of the major tenets of the regulation of campaign finance, here and abroad, is that the "light of day" will do wonders to eliminate inappropriate activities. Moreover, since the great majority of "transactions" are legitimate, there is nothing to lose in subjecting them to public scrutiny and much to gain because it avoids the public scepticism and distrust associated with hidden and closed activities. Transparency has much merit: it improves public confidence and enhances legitimacy; it costs nothing and has no negative impact on the conduct of campaigns; it facilitates the avoidance of potentially embarrassing or criminal actions and reduces temptations!

Although the federal election law contains many measures to ensure transparency, these were designed more than two decades ago and do not conform to the exigencies and capabilities of today. For instance, timely disclosure is an unknown concept. Research and experience with political parties leave no doubt that the fairness and workings of our electoral process would benefit if the activities of local party associations, particularly in the selection and nomination of candidates were also conducted under the "light of day" and bound by rules similar to those that govern our elections.

Transparency and accountability inspire public confidence. These can only be achieved through full disclosure of contributions to candidates and political parties and their expenditures. Disclosure must be broad, timely, provide sufficient information and produce it in a format that facilitates public access and media coverage. And these principles must apply to the financial affairs of candidates, nomination and party leadership contestants, Members of Parliament, parties and their constituency association. The existing legislation is seriously deficient in all these aspects. The recommendations of the RCERPF constitute a good basis for a comprehensive reform of this critical and essential dimension of modern electoral legislation.

4) *Improving the efficiency of the voting process*: It is reasonable to await the report of the Chief Electoral Officer on the 1997 federal election prior to embarking on a reform of the administrative machinery. Many

changes were introduced in the wake of the RCERPF report, some in line with the recommendations, others not. The experience of the last election should allow for a practical assessment of the adequacy of these changes and identify further room for improvement. For instance, why are advance polling days held during week days when the experience at the provincial level shows that voters prefer weekends and that participation increases if voters are allowed to vote at that time?

Given the size of our country, the diversity of situations and rapidly evolving technologies, it is reasonable to expect regular reviews of the efficiency of the administrative processes and machinery with the concomitant legislative changes, when required. These changes may not be fundamental in nature (although some raise profound issues such as the right to vote by prisoners, *etc.*); but they affect voters directly. To that extent, they should constitute a priority.

### Conclusion

In November 1991, the Royal Commission on Electoral Reform and Party Financing submitted a comprehensive set of recommendations which addressed all facets of our electoral system. Based on exhaustive research they aimed at achieving six basic objectives of the electoral process: securing the democratic rights of voters; enhancing access to elected office; promoting the equality and efficacy of the vote; strengthening political parties as primary political organizations; promoting fairness in the electoral process; and, enhancing public confidence in the integrity of the electoral process. Several recommendations have been implemented but the exercise was characterized by a concentration on the administrative measures and the avoidance of matters that pertain to the fundamental values that should guide electoral reform. The opportunity still exists to address electoral reform in a manner that would enhance the legitimacy of the Canadian House of Commons and our institutions of governance. On the whole, the recommendations contained in the Commission's Report remain valid today; indeed, many provinces have borrowed extensively from it to amend their legislation.

It would be much preferable to address the issues in a manner that resonates with the values of Canadians instead of having one section after another challenged and struck down in court because it does not conform to the Charter. Our fundamental laws should be carefully thought out, deliberate and the outcome of comprehensive efforts. They should not be the results of happenstance. Failing to follow the comprehensive approach recommended by the Commission, Parliament should at the very least pursue a minimal reform centred around the four elements discussed above.

**Pierre Lortie** is President, Bombardier Regional Aircraft Division. He was Chairman of the Royal Commission on Electoral Reform and Party Financing.