

ELECTORAL REFORM AND THE CANADIAN SENATE

PREPARED FOR



**Animal Protection
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Ultimately where there's a ballot box,
“ the same pressures prevail. Politicians are concerned ”
about getting re-elected and to the extent that their
performance in office relates to how well they're
going to do at election time—human nature being
what it is—politicians will have one eye on
the legislative agenda and one eye
on the ballot box.

Hon. Tom McMillan
Minister of the Environment
1985-1988¹

Canada's use of the First-Past-the-Post (FPtP) electoral system² has resulted in much harm—often grave harm—to all Canadians at some time, and it continues to cause harm to this day. It's a morally untenable political state of affairs as there are no technical or economic barriers to fixing it, only self-serving political ones. Thankfully, it's a state of affairs that Canadians' *independent* Senators have, over the last two years, become uniquely positioned to help set right,³ to the benefit of us all, including future generations.

Canada's Senators would be serving Canadians well—and the institution of the Senate itself—if they took up the issue of electoral reform and passed a bill that replaces the current FPtP electoral system with a Proportional Representation (PR) system.

The necessity for adopting a PR system is clear. PR, generally, produces better public policy than FPtP.⁴ This is crucial. Canadians need better public policy to address effectively and expeditiously a range of vexing issues from climate change to the advancement of Indigenous peoples.

The purpose of this paper is to encourage one, two, or more “Honourable Senators” to take up the electoral reform issue, introduce an electoral reform bill that includes a PR electoral system, and serve Canadians with an integrity in regards to electoral reform that their elected colleagues in ‘the other place’⁵ have been unwilling to do for the last century.

Constitutionally, the Senate of Canada has the same competency as the House of Commons to debate and pass legislation pertaining to electoral reform as it does not require passing a money bill,⁶ the only power the Senate does not enjoy.

[Paul G. Thomas, a past member of the Elections Canada Advisory Board, wrote,](#)

...all electoral systems create incentives for political parties and candidates. Those incentives determine whether their appeals to voters are broad and inclusive, or narrow and limited to particular regions or segments of society.⁷

FPtP produces perverse political incentives that often discourage sound public policy based on best-evidence and best practices. It rewards public policy that encourages populist but usually ineffective “solutions,” regional and demographic discord, racial and religious strife, and trafficking in hyper-personal attacks and misinformation. The reason for this is that, under FPtP, elections are often won not by the quality of a party's policies or candidates, but rather by just a few percentage point vote shifts in a few ‘swing’ electoral districts. These minor shifts in the vote can result in 100% shifts in which party forms the government-of-the-day.⁸ These frequent 100% shifts in power often result in highly disruptive and harmful policy lurches, as incoming parties frequently tend to purge the policies—even excellent policies—of their predecessors⁹ whom they regard as mortal political enemies.

When deciding public policy, as McMillan noted, “politicians ... have one eye on the legislative agenda and one eye on the ballot box,” particularly the ballot boxes in ‘swing’ electoral districts and the legislation that sways those few voters.

Referencing research done by Arend Lijphart,¹⁰ Alex Himelfarb, former clerk of the Privy Council and chair of the Canadian Centre for Policy Alternatives Advisory Board, speaks to this,

...countries with proportional systems are more responsive to the median voter. In our current [FPtP] system, parties may ignore great swaths of voters in regions where they have no or little chance of electoral success, focusing rather on their base voters and a few swing ridings where the outcome of the election will be determined. So-called micro-targeting becomes standard practice and the interests of the many too easily get lost in the shuffle.

That’s less the case in more proportional systems, where just about every vote makes a difference and no voters, ridings or regions can be taken for granted or safely ignored.¹¹

PR electoral systems of the kind that have been repeatedly recommended for Canada¹² are not immune to the deceitful and devious strategies and tactics that many politicians now choose to use when seeking elected office. But, such disappointing and harmful strategies and tactics have much less influence over election outcomes when PR is used. Under PR, small percentage shifts in voters’ intentions do not have the same highly exaggerated effect on final outcomes as they do under FPtP.

The perverse political and electoral incentives FPtP creates mean many serious issues that affect Canadians’ lives become very difficult, sometimes impossible, to address effectively. As Himelfarb notes,

...no electoral system is perfect, nor does electoral reform provide some magic bullet that will fix all that ails us. But a more proportional system offers important advantages for tackling the challenges before us.¹³

An illustrative list of such “challenges” includes:

- adapting to and ameliorating climate change,
- protecting the environment, including wildlife,
- reducing animal cruelty,
- progressing toward an environmentally sustainable economy,

- closing the widening wealth gap and reducing its adverse effect on the distribution of political influence,
- alleviating poverty,
- increasing participation of women and minorities in political life,
- reducing regional disparities,
- advancing Indigenous peoples' aspirations and claims,
- introducing better public health policies, particularly in the areas of drug policy and physician-assisted death,
- increasing citizens' participation in political affairs and elections,
- supporting students,
- improving the representation of citizens by legislators,
- modernizing justice and penal systems with best practices.

Most of these issues and others will continue to adversely—and unnecessarily—affect millions of Canadians and resist solutions as long as Members of Parliament (MPs) are elected using FPTP.

Electoral reform is not a trivial issue, as some try to persuade us to believe.¹⁴ Most Canadians, it is true, may not appreciate how Canada's electoral system adversely affects their lives and well-being. This is solely due to most people having little, if any, understanding of electoral systems and how they affect their elected representatives' choices ostensibly made on their behalf.

Canada's MPs may choose to ignore serious policy issues due to public ignorance and disinterest, and their political self-interest. But, public ignorance and disinterest ought not dissuade Senators from considering important policies and issues, particularly one like Canada's current electoral system which has such a detrimental effect on developing the sound public policy that Canadians need and are owed by MPs and Senators.



The century-long history of efforts to modernize Canada's electoral system¹⁵ has taught us that *elected* legislators have such debilitating personal conflicts of interest when it comes to electoral reform that they—with a few notable exceptions—are unable to put the interests of Canadian citizens above their own, i.e. getting elected.

Over the same century, we've also learned that when Canadians who have no electoral conflict of interest consider electoral reforms—whether ordinary people participating in citizens assemblies or academics and professionals engaged in commissions

and inquiries—they tend, after in-depth study and analyses, to recommend replacing FPTP with a PR electoral system. Alas, all their well-considered recommendations, to the detriment of us all, have come to naught, being scuttled or sabotaged by *elected* legislators in every instance.

Today, Canada's *unelected* Senators are the only legislators in Canada whose deliberations are not compromised by personal, electoral conflicts of interest. It's for this reason that the Senate—the highest legislature to which Canadians can appeal and seek political redress—should consider taking up the issue of electoral reform and introduce a bill that replaces First-Past-the-Post with a Proportional Representation electoral system. Such a bill would reflect the 'best evidence' and 'best practices' as identified by all of the inquiries into electoral reform in Canada since 1923 and it would honour the Liberals' 2015 election promise:

We are committed to ensuring that 2015 will be the last federal election conducted under the first-past-the-post voting system.¹⁶



On February 1, 2017, Prime Minister Trudeau repeated what elected legislators have been doing for the last century. After months of study and cross-Canada consultations, the Prime Minister and the Liberal Party betrayed their oft-repeated (over 1,800 times) electoral reform promise. It was an effective campaign promise. It helped convince, perhaps, millions of Canadians to vote 'Liberal' in 2015, and it helped give the Liberals a majority government with just 39.5%¹⁸ of the vote. Trudeau wrote in the mandate letter to his new Minister of Democratic Institutions, the Hon. Karina Gould,

There has been tremendous work by the House of Commons Special Committee on Electoral Reform (ERRE), outreach by Members of Parliament by all parties, and engagement of 360,000 individuals in Canada through mydemocracy.ca. A clear preference for a new electoral system, let alone a consensus, has not emerged. Furthermore, without a clear preference or a clear question, a referendum would not be in Canada's interest. *Changing the electoral system will not be in your mandate.*¹⁹

Prime Minister's Trudeau's claim that "a clear preference for a new electoral system, let alone a consensus, has not emerged" is a falsehood. Either the Prime Minister was misinformed or he was misleading people. In fact, as reported by Fair Vote Canada,

...in the end, 88% of the experts the ERRE heard (invited and vetted by all parties) and 87% the public who testified were for PR. The ERRE

online survey found strong support for both the principle of PR and specific proportional systems.²⁰

In 2015, almost 63% of voters supported political parties that campaigned explicitly on electoral reform. Nonetheless, Trudeau and the Liberal Party caucus unilaterally chose to reject voters' express wishes and to betray the trust they placed in Trudeau's electoral reform promise.

Every reason the Prime Minister has proffered for betraying Canadians lacks merit. All were contrary to the overwhelming evidence provided by the private citizens, stakeholders, and experts who appeared before the ERRE and at hundreds of Members' of Parliament town hall meetings. Trudeau was, and remains, unable to support his betrayal with any evidence, facts, or research. Indeed, he explicitly chose not to do so putting his personal preferences ahead of expert opinion, best evidence, and best practices.

With the electoral reform betrayal, Trudeau and the Liberals also betrayed their promise of evidence-based policy. They chose instead that which they explicitly said they would not do: base policy on short-term, self-serving, political expediency.

MP Nathan Cullen was especially blunt.

"This is one of the most cynical displays of self-serving politics this government has yet to engage in," Cullen said, accusing the Liberals of "seeking any excuse, however weak, however absent, to justify that lie to Canadians."²¹

In Canada, since 1923, independent, apolitical commissions, inquiries, panels of eminent persons, and citizens assemblies have studied and reported on electoral reform. All rejected FPtP. Those that recommended an electoral system, recommended PR, either Mixed Member Proportional (MMP) or Single Transferable Vote (STV). Elected legislators stymied all these efforts, putting their personal electoral interests ahead of the interests of citizens.

This tragic history of legislative failure and betrayal makes a convincing argument: *elected* Members of Parliament cannot be trusted to base electoral policy on evidence, facts, and best practices because they have a debilitating conflict of interest. It is, therefore, arguably morally beholden upon Canada's *unelected* Senators to represent the best interests of Canadians on the issue of improving and modernizing Canada's electoral system, because MPs for self-serving partisan reasons refuse to do so.

A Senator or Senators who might choose to help Canadians by taking up the cause of electoral reform would not be alone in their efforts. They can expect broad support from the many civil organizations advocating for PR. They include Fair Vote Canada, Council of Canadians, Greenpeace, LeadNow, the Public Service Alliance of Canada, most trade

unions, most registered parties without MPs in the House of Commons, and notable MPs advocating for PR including Elizabeth May and Nathan Cullen.

It is too late for the 2019 federal election to be conducted under a PR system. The 2019 federal election will be conducted under the voter-excluding, highly distorting, and easily subverted FPTP electoral system. However, there is ample time for some Honourable Senators to introduce and begin debating an electoral reform bill that honours the promises made by most of the political parties in 2015, the express wishes of Canadian voters, and the majority-opinion of witnesses heard by the ERRE. Such a bill could make electoral reform a top-of-mind voting issue in the 2019 federal election.

To become law, of course, the House of Commons would also have to pass its own version of a Senate bill. The likelihood of that is dependent on the outcome of the October 2019 federal election. If the next government is a majority government—Liberal or Conservative—a Senate electoral reform bill will likely be sabotaged by the *elected* legislators as has happened routinely over the last century. However, if Canada’s voters elect a minority government in 2019—which is comfortably within the range of possibilities according to recent polls—it becomes very likely that the Senate’s electoral reform initiative could become the law of the land to the benefit of all Canadians.



In conclusion, in an article in *Policy Options*, Paul G. Thomas suggested:

In order to regain the respect and confidence of Canadians, the “new Senate” will have to play a positive and visible role in the development of public policy and in holding governments accountable over many years.²²

Taking up the electoral reform issue is a means to help the Senate “regain the respect and confidence of Canadians” and to “play a positive and visible role in the development of public policy.” Electoral reform would accomplish this better, arguably, than most other current issues.

A few months after Thomas made his suggestion about the Senate, Senator Peter Harder, the Government Representative in the Senate, published, also in *Policy Options*, an article entitled *On cannabis Bill Senate must defer to Canadians’ democratic will*. Harder argued that Senators when deliberating government bills must honour the Salisbury Convention²³ which is, in the Canadian context,

...senators do not defeat Bills implementing promises made in campaigns won by the government party.²⁴

Harder's appeal to the Salisbury Convention entails this corollary:

Senators should act, when they can, to fulfill “promises made in campaigns won by the government party” that have been betrayed for purely self-serving political reasons.

Like Members of Parliament, Senators' first duty is to Canadian citizens. That is what Canadians are led to believe, and what they rightly expect. When elected representatives fail citizens, citizens have recourse to the courts, on some issues, and ultimately to the Supreme Court of Canada (SCC): a highly regarded, politically and electorally disinterested institution. Similar to the SCC, the Senate of Canada can if it chooses also be a “highly regarded, politically and electorally disinterested institution” to which Canadians can appeal for redress on issues that are outside of the competence of the SCC. Electoral reform is just such an issue. Dealing fairly and effectively with electoral reform—as only the *new* Senate can—would serve Canadians and the Senate well.

Stephen Best
Co-founder, Chief Agent
Animal Protection Party of Canada

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