

The Forum Presents:

Democratic Reform in Canada

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Overview

- In the last election, the Liberal Party of Canada committed to substantial democratic reforms
- Many of these reforms were confirmed in the Government's Throne Speech
- Democracy law scholars support many of these reforms
- There does not seem to be any legal impediments to implementing these reforms
- To ensure legitimacy, the government should have an inclusive process when deciding which reforms to implement (including opposition parties and the general public)

Canadians' trust in governmental institutions has substantially decreased over the last decade.¹ Among other things, Canadians are dissatisfied with both government accountability and representation.

Two broad topics are canvassed within this memorandum, including: 1) electoral reform, and 2) parliamentary reform. Finally, Prime Minister Justin Trudeau committed to substantial democratic reform in the last election.² For this reason, what matters now is that the government follows through with these commitments in an inclusive process.³

Analysis

Electoral Reform: The ability for Canadians to participate freely in elections is a cornerstone of our democratic society.⁴ The Liberal Party of Canada proposed a series of electoral reforms. It committed to, among other things, ending Canada's "first-past-the-post" electoral system, strengthening Elections Canada's independence and powers, and making it easier for Canadian to vote.⁵ Election law scholars seem to support these initiatives.⁶ Further, passing or repealing legislation can accomplish all of these proposals. For example, the government could restore the powers previously held by Elections Canada and make it easier for Canadians to vote by repealing sections of the *Fair Elections*

¹ Samara, "Who's the Boss?: Canadians' Views of Their Democracy", Samara Democracy Report #4, December 2012, online: www.samaracanada.com/research/political-leadership/who-s-the-boss- [Samara].

²The Liberal Party of Canada, "A New Plan for the Middle Class", Election Platform, 2015, online: <https://www.liberal.ca/realchange/> [Real Change].

³ Dodek, Adam, "Democratic reforms tend to die in the PMO. Will Trudeau's be different?", iPolitics, December 7, 2015, online: ipolitics.ca/2015/12/07/democratic-reforms-tend-to-die-in-the-pmo-will-trudeaus-be-different/

⁴ *Canada Act 1982*, s 3.

⁵ *Real Change*, supra note 2 at 8.

⁶ Pal, Michael, "The government is making it harder for Canadians to vote" Ottawa Citizen, January 12, 2015, online: ottawacitizen.com/news/politics/michael-pal-the-government-is-making-it-harder-for-canadians-to-vote [Pal]; Melissa Williams et al. "An open letter on the Fair Elections Act", Globe and Mail, April 23, 2014, online: www.theglobeandmail.com/globe-debate/an-open-letter-from-academics-on-bill-c-23/article18114166/?page=all; Alison Loat, "Samara's Statement on the Fair Elections Act", Samara Blog, March 27, 2014, online: www.samaracanada.com/samarablog/blog-post/samara-main-blog/2014/03/27/samara-s-statement-on-the-fair-elections-act.

Act;⁷ and it could implement an alternative electoral system by amending the *Canada Elections Act*.⁸ A key commitment made by the government was to reform the “first-past-the-post” electoral system (refer to Appendix A for benefits and drawbacks). Unlike the other proposals, there are a variety of alternatives to the “first-past-the-post” electoral system, including ranked ballots, proportional representation, and mixed member proportional representation.⁹ There are both positive and negative aspects to each electoral system;¹⁰ and for that reason, each system should be considered in more detail by an all-party parliamentary committee.¹¹

Key Recommendations:

1. Decrease impediments to voting by repealing sections of the *Fair Elections Act* (e.g. voter identification requirements, Voter Information Cards, outreach program, etc.)¹²
 - Many of the impediments to voting disproportionately impact certain groups of Canadians.¹³
2. Repeal the *Citizen Voting Act*.
 - The *Citizen Voting Act* prohibits Canadian citizens from voting if they have lived outside of Canada for more than five consecutive years. The Ontario Court of Appeal found this prohibition constitutional.¹⁴ However, some have argued that this prohibition was politically motivated and unfairly denies Canadians the right to vote.¹⁵

⁷ *Fair Elections Act* SC 2014, c 12.

⁸ *Canada Elections Act* SC 2000, c 9.

⁹ Blais, André, ed. *To Keep or To Change First Past The Post?: The Politics of Electoral Reform: The Politics of Electoral Reform*. OUP Oxford, 2008; Courtney, John, Plurality-Majority Electoral Systems: A Review, Advisory Committee of Registered Political Parties Elections Canada, April 23, 1999, online: www.elections.ca/content.aspx?section=res&dir=rec/fra/sys/courtney&document=index&lang=e.

¹⁰ Pal, Michael, "here's more to electoral reform than undoing the damage Harper did", iPolitics, December 7, 2015, online: ipolitics.ca/2015/12/07/theres-more-to-electoral-reform-than-undoing-the-damage-harper-did/.

¹¹ Note: a fulsome review can be found at: Courtney, John, Plurality-Majority Electoral Systems: A Review, Advisory Committee of Registered Political Parties Elections Canada, April 23, 1999, online: www.elections.ca/content.aspx?section=res&dir=rec/fra/sys/courtney&document=index&lang=e; Farrell, David M. "Comparing electoral systems." *Electoral Studies* 2.16 (1997): 267; Pilet, Jean-Benoit, and Damien Bol. "Party preferences and electoral reform: How time in government affects the likelihood of supporting electoral change." *West European Politics* 34.3 (2011): 568-586; Rahat, Gideon, and Reuven Y. Hazan. "The barriers to electoral system reform: A synthesis of alternative approaches." *West European Politics* 34.3 (2011): 478-494; Rahat, Gideon. "The politics of electoral reform: The state of research." *Journal of Elections, Public Opinion & Parties* 21.4 (2011): 523-543.

¹² The Canadian Civil Liberty Association, "Taking About Vouching and Voter Rights", May 19, 2015, online: <https://ccla.org/talking-about-vouching-and-voter-rights/>.

¹³ Dawood, Yasim, et al. "Five changes Poilievre missed on Fair Elections Act", *Globe and Mail*, April 28, 2014, online: <http://www.theglobeandmail.com/globe-debate/five-changes-poilievre-missed-on-fair-elections-act/article18298608/> [Dawood]; Pal, Michael, "here's more to electoral reform than undoing the damage Harper did", iPolitics, December 7, 2015, online: ipolitics.ca/2015/12/07/theres-more-to-electoral-reform-than-undoing-the-damage-harper-did/.

¹⁴ *Frank v Canada (Attorney General)*, 2015 ONCA 536.

¹⁵ The Canadian Civil Liberties Association, "Understanding Bill 50 The Citizen Voting Act", May 13, 2015, online: <https://ccla.org/understanding-bill-50-the-citizen-voting-act/>; Pal, *supra* note 5.

3. Increase the powers and independence of Elections Canada.
 - To ensure that elections are properly administered, the powers and independence of Elections Canada should be restored. As noted above, this can be done by repealing and amending sections of the *Fair Elections Act*. Specifically, Elections Canada should be permitted to compel witnesses to testify in its investigations.¹⁶
4. Create a special, all-party parliamentary committee to study alternatives to the current first-past-the-post electoral system.
 - An all-party parliamentary committee will decrease actual or perceived conflicts of interest.
 - The Leader of the Official Opposition has called for a referendum on any changes to the electoral system.¹⁷ While Canadians seem to support electoral reform, history suggests they reject it when asked in the form of a referendum (e.g. British Columbia, Ontario, and PEI). For this reason, an alternative process should be considered.

Parliamentary Reform: Some have argued that parliament is “broken”.¹⁸ That is, parliament, as an institution, is not effectively representing their concerns.¹⁹ The Liberal Party proposed a series of parliamentary reforms. It committed to, among other things, increasing “free votes,” reforming the Senate, and enhancing the powers of Parliamentary officers.²⁰ Many of these reforms are important and supported. All of these proposals face few legal impediments (for many commitments, legislation is not needed; the Prime Minister’s office would just need to decrease its influence).²¹ However, there are reasons to be concerned about the implementation of these commitments. For example, the Liberal Caucus decided to postpone its vote on the *Reform Act*,²² which is both a symbolic and practical legislative tool to increase members of parliament power and influence. Also, the Government’s proposed changes to the Senate appointment process have already been rejected by British Columbia.²³

¹⁶ Dawood, supra note 13.

¹⁷ Harris, Kathleen, “Rona Ambrose demands Liberals hold referendum on electoral reform”, CBC News, December 9, 2015, online: www.cbc.ca/news/politics/electoral-reform-liberal-referendum-1.3357673.

¹⁸ Asselin, Robert, “An Agenda for Democratic Reform in Canada”, Canada 2020, Policy Paper, online: canada2020.ca/wp-content/uploads/2014/10/2014_Canada2020_DemReform_PaperSeries_EN_Issue-03_FINAL.pdf.

¹⁹ Samara, supra note 1.

²⁰ *Real Change*, supra note 2 at 8.

²¹ Dodek, Adam, “Trudeau’s to-do list? Huge, democratic reform at all levels”, Globe and Mail, October 20, 2015, online: www.theglobeandmail.com/globe-debate/trudeaus-to-do-list-huge-democratic-reform-at-all-levels/article26883437/; Mendes, Errol, “The glass half full: The throne speech and Senate reform”, iPolitics, December 6, 2015, online: ipolitics.ca/2015/12/06/the-glass-half-full-the-throne-speech-and-senate-reform/.

²² *Reform Act* SC 2015, c 37.

²³ The Canadian Press, “Christy Clark says Trudeau legitimizing unaccountable Senate, B.C. under-representation”, CBC News, December 6, 2015, online: www.cbc.ca/news/politics/clark-trudeau-senate-reform-1.3353128

Key Recommendations:

1. Increase the powers and independence of parliamentary officers
 - Parliamentary officers play a central role in ensuring parliament and the government are held to account. The powers and independence of parliamentary officers should be restored and improved.²⁴
2. Empower backbench MPs by allowing free votes
 - A key concern for the public is that their local MP is not effectively representing them.²⁵ Allowing more free votes may help decrease this concern.²⁶
3. End the practice of omnibus legislation
 - The use of omnibus legislation decreases the legitimacy of the parliamentary system. MPs are unable to meaningfully debate omnibus legislation due to the fact that there are simply too many legislative changes to review in the allotted timeframe.²⁷
4. Meaningfully involve all political parties in parliamentary reforms
 - Meaningfully involving all opposition parties in parliamentary reforms will decrease actual or perceived conflicts of interest.

²⁴ Dyer, Evan, "What the PBO report means for the Trudeau government's spending plans", CBC News, November 10, 2015, online: www.cbc.ca/news/politics/parliamentary-budget-officer-trudeau-plans-1.3312757.

²⁵ Samara, *supra* note 1.

²⁶ Harris, Kathleen, "Throne speech promises new tone, tax cut and turning point for First Nations", December 4, 2015, online: www.cbc.ca/news/politics/throne-speech-liberal-trudeau-1.3350618.

²⁷ Globe Editorial, "Another budget, another contemptuous Tory omnibus bill", The Globe and Mail, May 12, 2015, online: www.theglobeandmail.com/globe-debate/editorials/another-budget-another-contemptuous-tory-omnibus-bill/article24404300/.

Appendix A:

Review of First-Past-the-Post Election System ²⁸	
STRENGTHS	WEAKNESSES
<ul style="list-style-type: none"> • First-past-the-post is the most familiar of all electoral systems to the voters of Canada. • First-past-the-post is the easiest electoral system for the voter to use and to understand. • Vote counting is simple and speedy under first-past-the-post. • Canada's First-past-the-post system has tended to produce single-party majority governments. • First-past-the-post in Canada has favoured broadly-based, accommodative, centrist parties. • Narrowly ideological, possibly even extremist, parties have not fared well under first-past-the-post in Canada. • Voters in a first-past-the-post constituency are afforded the opportunity of ignoring the candidates running on a party label and voting for an independent candidate. • A government's responsibility and accountability to the voters at election time is directly established under first-past-the-post. 	<ul style="list-style-type: none"> • The principal and most telling criticism levelled against first-past-the-post is its demonstrated tendency to convert the popular vote into parliamentary seats in a seemingly arbitrary and often unfair manner • A party forming a majority government has rarely been elected with the support of a majority of the popular vote. • A party forming a government may have received a smaller share of the popular vote but nonetheless have won more seats than its principal competing party. • A party winning at least as much if not more of the popular vote than another party may well end up with fewer seats in the Commons. • Electors who supported an unsuccessful candidate in a first-past-the-post constituency may sense after the election that because they backed a loser they are somehow "unrepresented." • The picture painted of a party's support by the number and location of seats it has won is often a misleading and inaccurate portrayal of the actual level of electoral support that it received. • The first-past-the-post's tendency to produce single-party majority governments may be seen by some to be an advantage. To others that is a drawback of the system.

²⁸ Courtney, John, Plurality-Majority Electoral Systems: A Review, Advisory Committee of Registered Political Parties Elections Canada, April 23, 1999, online: www.elections.ca/content.aspx?section=res&dir=rec/fra/sys/courtney&document=index&lang=e. Note: the weaknesses and strengths were taken directly from this article.