

***Proportional Representation for BC:
A Necessary Reform—and Long Overdue***

Brief to the BC Government's Consultations on Electoral Reform
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27 February 2018

Introduction

The government is to be congratulated for making electoral reform a priority of its first year in office. Growing numbers of citizens are reaching the conclusion that our single-member plurality (SMP) system is fatally flawed and needs to be replaced by a voting system based on proportional representation (PR). In that respect, popular opinion increasingly mirrors the conclusions long since reached by leading political scientists in Canada, by numerous public commissions, and by two citizens' assemblies that have inquired into the question of electoral reform over the past two decades.

I welcome this opportunity to offer my suggestions about various aspects of the process by which the goal of electoral reform will be pursued in the months ahead.

The Ballot Question

I am not convinced that a referendum is a necessary precondition to the implementation of a new electoral system. The Legislature has the authority and even the duty to make necessary changes to the province's electoral laws; indeed it has used that authority on numerous occasions over the years.¹ At the same time, any electoral system must respect the democratic rights of citizens under the Canadian Charter of Rights and Freedoms. In that connection, a strong argument can be made that the SMP system denies the democratic rights of Canadians. I return to this point later.

Since the government has resolved to hold a referendum, I make the following suggestions. First, the ballot should include a short preamble explaining the purpose of the referendum, the structure of the ballot, and the consequences of different outcomes. It should explain that the options for electoral reform on offer were chosen with the following values in mind: proportional election results, local representation, and effective voter choice. It should also make clear that the adoption of a new electoral system would maintain the existing number of MLAs, which stands at 87 as of the last redistribution.

The ballot should consist of two questions. The first question would ask voters if they wish to replace the existing SMP system with an electoral system based on proportional representation. Such wording would increase the likelihood of a yes vote by not forcing supporters of PR to conflate their desire for proportional representation with their support for a particular version of it. An affirmative vote (50% + 1 of valid ballots cast) would give the government a clear mandate to replace SMP with a system of proportional representation. (As an aside, I applaud the government's decision to establish a simple

¹ The BC Legislature changed the electoral system twice in the 1950s when it introduced and later scrapped the Alternative Vote system. In 1990 it passed legislation to abolish dual member ridings. Likewise, the legislatures of several other provinces have passed laws at various times to reform their electoral system. See generally Dennis Pilon, "Democracy, BC-Style," in Michael Howlett, Dennis Pilon, and Tracy Summerville (ed.), *British Columbia Politics and Government*. Toronto: Emond Montgomery, 2010.

majority threshold for the referendum in place of the spurious super-majority erected by the former government for the 2005 and 2009 referenda.)

The second question should offer voters a choice between leading forms of proportional representation. That choice should be limited to the two models that have attracted the most support among British Columbians in recent years: Mixed Member Proportional (MMP) and the Single Transferable Vote (STV). List PR based on regional lists should not be included. List PR has not been widely embraced by Canadian scholars or public commissions and is too easily susceptible to being falsely equated by PR opponents with national (or province-wide) party list systems, which are clearly unsuitable for geographically large countries or provinces. Besides, providing a choice of three or more electoral systems would likely sow confusion in the minds of voters and, for that reason, cause many of them to support the status quo by default. Likewise, the government should avoid putting novel and untried forms of PR on the ballot. To offer voters a choice of *sui generis* systems would be to offer them a choice between the SMP Devil they know and a PR Devil that no one knows, not even psephologists!

Choice of Electoral Systems: MMP and STV

MMP and STV are the most appropriate reform options to put on the ballot because they have long been used in western countries having political cultures and parliamentary systems similar to Canada's. MMP is used in Germany, New Zealand, and the UK (in elections for the Scottish Parliament and the Welsh Assembly). STV is used in the Irish Republic and in elections for the Australian Senate. The solid track record of these electoral systems should reassure the public and help proponents of electoral reform to rebut the more fanciful claims already being made by some PR opponents (e.g., that PR is too complicated for voters to understand, that it creates chronically unstable governments, and that it gives extremist parties undue leverage over public policy).

It is important that voters have a clear idea of the choices they are being offered in the referendum. In that respect, I part company with those who urge that a bare bones description of alternative PR systems be provided on the ballot, with important details to be worked out after the referendum by a committee of experts, informed by a process of public consultations. Such an approach is bound to invite attacks by opponents of reform on the grounds that voters may end up with a system that differs in important respects from the one for which they thought they had voted—the proverbial pig in a poke. There is also the practical consideration that following the referendum there will be little time in which to design key, potentially contentious features of a new electoral system while also leaving sufficient time for an independent boundaries commission to draw up a new electoral map before the next provincial election in 2021.

MMP

For these reasons, I endorse, with minor modifications, the MMP proposal made by Professor Norman Ruff, shortly before his untimely death last year. Under Prof. Ruff's

scheme, the constituency component of MMP would be based on the 42 federal ridings already in force in BC. Those single-member constituencies would be combined with seven multi-member regions that would return a further 45 MLAs from open party lists.² As in other MMP systems, voters would cast two ballots: one to elect their local constituency MLA, using the SMP system, and the second to indicate their preferred party. Using an open list ballot, the voter's choice of candidate would signify his or her choice of party for the purpose of determining overall party standings in the Legislature. In addition, there would be a province-wide threshold of 5% of the vote that parties would have to reach in order to receive a proportional share of party list seats. Such a scheme would have the virtue of making use of riding boundaries with which British Columbians are already familiar. It would also reduce the workload of the electoral boundaries commission by confining its job to that of determining the boundaries of the multi-member regional districts. The 5% threshold would exclude fringe parties from gaining access to party list seats while still allowing popular individual candidates, including independents, to be elected.

Other details to be addressed before the referendum include the procedure for filling vacant seats between general elections and the question of whether candidates should be allowed to have their names on both the constituency and party list ballots. On the first point, I would recommend that by-elections be held to fill vacancies for both the constituency and party list seats. On the second point, candidates should be allowed to run for both kinds of seats, assuming an open list system is used on the second ballot. The denial of voter choice raised by critics of MMP only arises when a closed list system is used.

STV

The STV option should be based on the model devised by members of the BC Citizens' Assembly on Electoral Reform and elaborated by the Electoral Boundaries Commission in its report of 2008. That model, which was put to voters in the 2009 referendum, should be adjusted to take account of the 2-seat enlargement of the size of the Legislature that has occurred since that time. Other essential details would remain the same, including the provision that vacancies between elections be filled through by-elections using a preferential ballot.

I don't favour STV because of the unreasonable expectations it imposes on voters to familiarize themselves with a potentially large number of candidates. It is not surprising, therefore, that most Australian voters chose to vote "above the line" for their party of choice and its official ranking of candidate preferences in Senate elections held between 1983 and 2016. Nevertheless STV enjoys widespread support among many British Columbians, largely owing to the work of the BC Citizens' Assembly, and it is a known quantity among many others. For these reasons it should be included on the ballot.

² Norman J. Ruff, "Comment: B.C. faces big challenges in electoral reform." *Times Colonist*, 15 August 2017. Note that Prof. Ruff called for 42 party list MLAs, which would result in a reduction of three in the total number of MLAs.

Regulating the Referendum Campaign

Spending Limits

It is crucial that legal limits be placed on the sums of money that may be spent during the referendum campaign. Such limits are needed to ensure that no one side is in a position to dominate the debate. Public funding should also be provided to the two umbrella committees as was done for the 2009 referendum. With regard to further details, I endorse the recommendations made by Make Every Voter Count in its written brief.

Public Education

I strongly recommend that the government establish and adequately fund a non-partisan public information office to provide factual information about the SMP system about the PR systems that will be on the ballot. In order to make an informed choice, citizens must have access to reliable information rather than having to assess on their own the dubious and misleading claims that are sometimes made by proponent or opponent groups in the heat of a referendum campaign. The experience of Britain's recent Brexit referendum should serve as a cautionary tale.

There is a wealth of reputable pedagogic material on which the staff of a public information office could draw, including the educational materials that were prepared for members of the BC Citizens' Assembly on Electoral Reform. Such materials could be updated as required and disseminated to the public through a variety of media, including TV and radio, webcasts, and province-wide mail-outs. Although there would be little time in which to prepare such materials once the ballot question has been decided, at least it would not be necessary to reinvent the wheel!

Aftermath of the Referendum

An Affirmative Vote for PR

If voters approve proportional representation and endorse a particular PR model it will be necessary for the government to fill in a host of details, even if that model's chief features have already been identified and made known to the public. The process by which those details are decided should be as open and transparent as possible in the circumstances. At the same time, or shortly thereafter, the government will need to appoint an independent boundaries commission to draw up an electoral map to recommend to the Legislature.

A Vote to Retain SMP

In the event electors choose to retain the current SMP system, the government should take immediate steps to commence a new redistribution with a view to rectifying the

egregious population disparities that now exist under the existing riding boundaries.³ In particular, the government should introduce legislation to repeal the Electoral Boundaries Amendment Act, 2014 which designates three regions of the province in which riding populations may fall below the allowable 25% range without the need to demonstrate “very special circumstances.” The Act also provides that the number of ridings in those regions may not be reduced from the current number. This legislation institutionalizes malapportionment and in doing so undermines the principle of representation by population. In order to address the wide population disparities that have arisen, and to uphold the principle of representation by population, a new Electoral Boundaries Commission should be created to recommend a redistribution that would minimize population disparities.

Constitutional Challenge to SMP

Regardless of the outcome of the referendum, the government should give serious consideration to launching a reference case to test the constitutionality of the SMP system used in provincial and federal elections in BC. A strong argument can be made that the SMP system denies the democratic and equality rights of Canadians under the Charter of Rights and Freedoms by providing grossly unequal political representation to citizens based on their political preferences and their place of residence.⁴ I would recommend that such a reference be made to the BC Supreme Court, rather than the Court of Appeal, so as to enable evidence to be presented to the court about the effect of SMP on the democratic rights of Canadians, including their right to effective representation.

Conclusion

In undertaking to give the people of British Columbia the opportunity to replace SMP with proportional representation, the NDP government and its allies in the Green Party are honouring the promise they made to the electorate in the 2017 provincial election. In so doing the two parties are going some way to restoring public confidence in the integrity of democratic government in Canada following the federal Liberal government’s cynical decision to renege on its 2015 election promise to replace SMP.

Given the history of Canadian federalism, it is entirely possible that should BC voters approve proportional representation, its introduction in this province would have a powerful demonstration effect and provide a tonic to the movement for electoral reform across the country.

³ For details see the BC Electoral Boundaries Commission, *Final Report*, September 2015.

⁴ A constitutional challenge to the SMP system was launched in 2017 by Fair Voting BC and Springtide, an educational charity based in Nova Scotia.

<http://www.charterchallenge.ca/launchrelease>