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Canada's Electoral Process: Frequently Asked Questions

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Canada's Electoral Process: Frequently Asked Questions
(Background Paper)

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1.1.1 HOW HAS VOTER TURNOUT CHANGED IN FEDERAL ELECTIONS IN RECENT YEARS?

Voter turnout at the federal level in Canada has been declining since 1988, although the modest upsurge in turnout for the January 2006 general election was a welcome departure from an 18-year trend. Indeed, the progressive decline witnessed during the four general elections before 2006, as well as the turnout for the 2008 general election – the lowest ever recorded at the federal level – is a matter of concern for policy-makers.[1] The following figures show participation rates in federal elections since 1993:[2]

- 2011: 61.1%
- 2008: 58.8%
- 2006: 64.7%
- 2004: 60.9%
- 2000: 61.2%
- 1997: 67.0%
- 1993: 69.6%

In a 2003 poll commissioned by Elections Canada, reasons offered for neglecting to vote included negative attitudes toward politicians and political institutions, a belief that participation would make no difference, and general lack of interest. It is not clear whether the permanent register of electors (which has replaced door-to-door enumeration) and other changes have contributed to the decline.

1.1.2 HOW DOES THE LOW FEDERAL TURNOUT COMPARE WITH TURNOUT IN PROVINCIAL ELECTIONS AND IN ELECTIONS IN OTHER COUNTRIES?

Voter participation has also dropped in provincial elections, but not as dramatically or as consistently as in federal elections.[3] Among the world's other affluent, industrialized democracies, the situation is not much better: in most of them, a steady decrease has been witnessed since the 1960s. In the United States, which has experienced the most significant decrease, approximately 57.5% of eligible voters participated in the 2008 federal elections. Significant drops in voter participation have also been seen in Europe, Japan and Latin America, although they have been marginally less dramatic than those in the United States.

1.1.3 WHAT CAN BE DONE TO IMPROVE VOTER TURNOUT?

Numerous measures to improve voter participation in Canada have been suggested by a variety of organizations and individuals and by governmental bodies such as the Chief Electoral Officer (CEO) of Canada and the Law Commission of Canada. Among the suggestions are:

- the implementation of a proportional representation system;
- mandatory/compulsory voting;
- lowering the minimum voting age;
- a return to the practice of door-to-door enumeration; and
- Sunday voting days.

These suggestions are described below, except for proportional representation, which is discussed in section 2.1.

1.1.4 WHAT IS MANDATORY OR COMPULSORY VOTING? WHERE IS IT USED?

Mandatory voting, sometimes called compulsory voting, requires citizens to register as voters and to present themselves at their polling station on election day. Those who refuse to do so are usually subject to a fine (unless they have an acceptable explanation, such as illness). Although it is known as "mandatory voting," this practice does not actually require citizens to *vote*. They must register and present themselves at their polling station; however, those who do not wish to vote may still exercise the option of spoiling their ballot or registering an abstention. In fact, several countries provide a box on the ballot for those who wish to mark their vote for "None of the candidates."

Mandatory voting legislation exists in a number of countries, including more than 30 democracies, such as Australia, Belgium, Cyprus, Luxembourg and Brazil. In 1892 Belgium became the first country to introduce mandatory voting legislation. Australia has arguably the best-known mandatory voting system (first introduced in 1915 by the State of Queensland and adopted nationally in 1924). Australian citizens over the age of 18 must be registered to vote and are required to present themselves at their respective polling stations on election day. Those who do not do so are subject to a fine (unless, as mentioned above, they have an acceptable reason). Since Australia's mandatory voting law came into force, voter turnout has nearly doubled to about 95%.

1.1.5 HAS MANDATORY VOTING BEEN PROPOSED IN CANADA?

In December 2004, Senator Mac Harb introduced Bill S-22, An Act to amend the Canada Elections Act (mandatory voting), in the Senate. The bill would have required all registered voters to vote in all federal elections or be subject to a fine. Voters would still have the option of refusing the ballot, voting for "none of the candidates," or providing Elections Canada with an acceptable reason for not voting.

Bill S-22 faced strong opposition in the Senate. Critics argued that it was undemocratic to force Canadian citizens to vote. Senator Noël A. Kinsella and Senator Donald H. Oliver were particularly concerned that mandatory voting would interfere with an individual's Charter right under section 3, which includes the right *not* to vote.[4] Bill S-22 did not proceed beyond second reading in the Senate, and died on the *Order Paper* when the 38th Parliament was dissolved in November 2005.

Mandatory voting also seems to be unpopular with the Canadian electorate. As part of a 2003 survey investigating Canadians' attitudes toward electoral reform, Elections Canada asked Canadians whether they supported compulsory voting. The survey found that the majority of Canadian respondents were opposed – often strongly – to mandatory voting legislation.[5]

1.1.6 WHAT ARE SOME OF THE ARGUMENTS FOR AND AGAINST MANDATORY VOTING LEGISLATION?

Several arguments are consistently put forth by proponents of mandatory voting, including the following:

- There is increased voter turnout.
- The views of the electorate are better represented in Parliament.
- Voting is considered a civic duty similar to jury duty, payment of taxes, etc.
- Election campaigns can focus more on issues, instead of focusing on getting citizens out to vote on election day.
- Voters are not forced to vote; rather, they are obliged to turn out to vote.
- If they are required to participate, voters may become more involved in the political process.

Arguments against mandatory voting include the following:

- Forcing a person to vote is undemocratic and interferes with an individual's Charter rights.
- Mandatory voting does not address the issue of educating the electorate to ensure that citizens are making informed choices on political issues.
- Although mandatory voting may increase voter turnout, it may not necessarily increase the representation of the views of the electorate or lead to more informed voting.
- Mandatory voting does not address the question of why citizens are not voting.
- Enforcing the penalties against those who fail to vote can be expensive.

1.1.7 WHAT ARE THE IMPLICATIONS OF LOWERING THE MINIMUM VOTING AGE?

Of all groups of eligible voters, young Canadians have the lowest voter participation levels. According to studies commissioned by Elections Canada, not only are young people participating less in the electoral process than older generations, but their willingness to participate is also in decline. One idea put forth to counter this trend is the lowering of the voting age from 18 to 16. Proponents of this initiative argue that instilling democratic values in young people while they are still in school will encourage the development of lifelong voting habits. Opponents believe that 16-year-olds lack the maturity to make an informed political decision and that the novelty of being eligible to vote would eventually wear off.

When the Royal Commission on Electoral Reform and Party Financing, chaired by Pierre Lortie, published its final report in 1991, it recommended that the voting age be set at 18 years of age. It also said that Parliament should revisit the issue periodically.

Parliament revisited the issue of lowering the voting age in June 1998, when the House of Commons Standing Committee on Procedure and House Affairs presented a report on the *Canada Elections Act*. Most members of the committee agreed that the minimum voting age should remain at 18.

In Quebec in March 2003, the Comité directeur sur la réforme des institutions démocratiques, chaired by Claude Béland, presented its report on citizen participation in Quebec's democratic institutions. On the question of lowering the voting age, the Béland Commission said the positions on the issue were not clear enough and that the impact of lowering the voting age should be studied further. In the meantime, it recommended that the voting age be kept at 18 years.

When the Chief Electoral Officer of Canada, Jean-Pierre Kingsley, appeared before the House of Commons Standing Committee on Procedure and House Affairs in March 2004, he commented that the idea of lowering the voting age to 16 merited consideration.

Subsequently, the movement to lower the voting age suffered two substantial blows. In May 2004, the Alberta Court of Appeal ruled against two Edmonton teenagers who argued that their rights under the Charter had been violated by Alberta's *Elections Act*.[6] The Court agreed with the trial judge that a voting age limit was, in principle, a violation, but that it was justified in order to maintain the integrity of the electoral system. In November 2004, a private member's bill was introduced in the House of Commons by Liberal MP Mark Holland to lower the voting age to 16 (Bill C-261); it was defeated in June 2005 after second reading debate.

1.1.8 IS A PERMANENT LIST OF ELECTORS AN IMPROVEMENT OVER DOOR-TO-DOOR REGISTRATION?

In April 1997, door-to-door enumeration – the traditional method of compiling lists of electors – was replaced by the National Register of Electors (a permanent list). Although the new system is more cost-efficient, some critics suggest that it contributes to citizens' disengagement from the electoral process. First, difficulties have been encountered with respect to accuracy; given people's increased mobility in modern society, many voters are absent from lists of electors at election time as a result of relocation. In such situations, the onus to register is placed on the voter, who may not have time to track down the local Elections Canada office. Second, many observers believe that because the door-to-door enumeration process is more personal, it heightens a voter's sense of awareness and civic duty in a way that receiving a notice in the mail cannot. Against these arguments, door-to-door enumeration is costly and time-consuming, and the minimum length of an election campaign would have to be extended to accommodate the additional time needed for enumeration. It is also increasingly difficult to find enumerators, and many people may not be home when enumerators call or may be reluctant to answer the door to strangers.

In October 2006, the Conservative government introduced Bill C-31, An Act to amend the Canada Elections Act and the Public Service Employment Act, in the House of Commons. Responding to recommendations made through consultations with the Chief Electoral Officer, the bill included measures to: enable the sharing of lists of electors between the CEO and his or her provincial counterparts; allow electors to register in person on polling day; and increase the security and clarity of the election process. Bill C-31 was given Royal Assent in June 2007.

1.1.9 HOW EFFECTIVE WOULD SUNDAY VOTING BE?

Changing the traditional Monday election day to Sunday is an idea that has garnered little attention in Canada. In Europe, however, it has been explored more thoroughly in recent years, in both an academic and a practical context. In recent elections to the European Parliament, several member states have experimented with Sunday voting in an effort to bolster routinely low voter participation. Many people who abstained from voting cited work-related obligations as the primary reason; the implementation of a weekend voting day sought to remedy this problem. Although studies found that Sunday voting facilitated the process for some electors, it effectively created a new class of non-voters who simply did not want to give up their free time on the weekend.

Whether Sunday voting would help increase voter participation in Canada is debatable. In the wake of a barrage of calls for electoral reform from many sides,

Sunday voting has been, until recently, conspicuously absent from the Canadian agenda. There are two possible reasons for this:

- Section 132 of the *Canada Elections Act* provides that employees are entitled to three hours of paid leave on election day in order to cast their votes. In addition, section 128 of the *Canada Elections Act* requires that polls be open for a 12-hour period, which, for most people, allows time to vote before or after a regular work day. These provisions negate, at least in part, the argument that work plays a major role in determining voting patterns.
- In a 2003 survey commissioned by Elections Canada, only 5.8% of non-voters said that the reason they did not vote was that their attention was turned elsewhere. (Work was not specifically singled out.) The main reasons non-voters provided had to do with attitudes toward politicians and the government. Discontent, perceived meaninglessness of participation and lack of interest were the factors most often mentioned.

In the 2nd Session of the 39th Parliament, the government introduced Bill C-16, An Act to amend the Canada Elections Act (expanded voting opportunities and to make a consequential amendment to the Referendum Act).[7] With the dissolution of the 39th Parliament on 7 September 2008, Bill C-16 died on the *Order Paper*. It had reached the committee stage, where the House of Commons Standing Committee on Procedure and House Affairs heard from a number of witnesses, including the Chief Electoral Officer and representatives of religious organizations.

The aim of the bill was to increase the number of advance polling days from three to five and to increase the number of polling stations that are open on the last day of advance polling. Significantly, it sought to do this by designating the last two Sundays before polling day as advance polling days, and by designating regular polling stations as advance polls. The effect of the bill would have been to introduce Sunday voting indirectly. The bill came under criticism from some religious organizations on the ground that Sunday advance polls would intrude on a day of religious observance. There was also a concern that some places of worship that normally host polling stations might not be available for this purpose on Sundays. Elections Canada notes that 12.3% of polling day polls and 18.8% of advance polls were located in church facilities in the 2006 federal election.[8]

The bill was reintroduced by the government in the 2nd Session of the 40th Parliament as Bill C-40. On 30 December 2009, Parliament was prorogued and the bill died on the *Order Paper*. It was reintroduced by the government in the 3rd Session of the 40th Parliament as Bill C-18, and it too died on the *Order Paper* when Parliament was dissolved on 26 March 2011.

Finally, there remain questions as to whether voter turnout is in fact influenced by Sunday voting and an increased number of advance polling days. It has been noted that Quebec has had Sunday voting since 1979. In 1976, before Sunday voting was instituted, voter turnout was 85.27%. In 1981, voter turnout was 82.49%. Voter turnout in the 2008 Quebec election was 71.23%.[9]

The authors of a 2007 report commissioned by Elections Canada found that it was difficult to discern, on the basis of their review of a number of important studies conducted over the past 10 years, any significant effect of extended advance voting on voter turnout.[10]

1.1.10 How well are women, Aboriginal people and minority groups represented in Parliament?

Women, minority groups, and Aboriginal people continue to be under-represented in Parliament, a fact that raises concern about the current electoral system in Canada and, as some argue, indicates the need for electoral reform. Although women represent half the Canadian population, in the last Parliament they occupied only 20% of the seats in the House of Commons and less than 15% in the Senate.[11] In the current Parliament, they occupy 25% of the seats in the House of Commons and 36% in the Senate. Similarly, while Aboriginal people and other minority groups constitute 16.2% and 3.8% of the population respectively, they are also under-represented in the House of Commons.[12]

Although increasing the representation of women, minority groups and Aboriginal people in Parliament is considered a priority by some, the representation of these groups has shown little improvement in recent federal elections.[13] It has been pointed out that, despite efforts to nominate candidates from these groups, increased representation in the House of Commons can result only if these candidates are nominated in winnable constituencies.

In the 2 May 2011 federal election, only 25% (407) of the 1,587 candidates were women, and only 25% (76) of the winning candidates were women.[14] Equal Voice reported that, for each political party, the following percentages of candidates were women:

- New Democratic Party: 40.6%
- Green Party: 32.2%
- Bloc Québécois: 32.0%
- Liberal Party: 29.9%
- Conservative Party: 21.8%[15]

For visible minorities, the numbers were even lower. In the 2006 general election, the following number (and percentages) of candidates were members of visible minorities:

- Liberal Party: 34 (11.0%)
- Conservative Party: 25 (8.1%)
- Bloc Québécois: 8 (7.8%)
- New Democratic Party: 24 (7.8%)[16]

Table 1 shows the number of women elected to the House of Commons in Canada's 2006, 2008 and 2011 general elections.

Table 1 – Representation of Women in the House of Commons

Party	2006 Election		
	Number of Women Elected	Total Number of Seats Held by Party	Percentage of Seats Held by Women
Bloc Québécois	17	51	33%
Conservative Party of Canada	14	124	11%
Liberal Party of Canada	21	103	20%
New Democratic Party	12	29	41%
Green Party of Canada	0	0	0%
Total	**64**	**308**	**20.8%**

Party	2008 Election			
	Number of Women Elected	Total Number of Seats Held by Party	Percentage of Seats Held by Women	Change Between 2006 and 2008
Bloc Québécois	15	49	30.6%	-2.4%
Conservative Party of Canada	23	143	16.1%	+5.1%
Liberal Party of Canada	19	77	24.7%	+4.7%
New Democratic Party	12	37	32.4%	-8.6%
Green Party of Canada	0	0	0%	
Total	**69**	**306 (+ 2 independents)**	**22.4%**	**+1.6%**

Party	2011 Election			
	Number of Women Elected	Total Number of Seats Held by Party	Percentage of Seats Held by Women	Change Between 2006 and 2011
Bloc Québécois	1	4	25.0%	-8.0%
Conservative Party of Canada	28	166	16.9%	+5.9%
Liberal Party of Canada	6	34	17.6%	-2.4%
New Democratic Party	40	103	38.8%	-2.2%
Green Party of Canada	1	1	100.0%	+100.0%
Total	**76**	**308**	**24.7%**	**+3.9%**

Sources: Julie Cool, *Women in Parliament*, Publication no. 2011-56-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 10 May 2011; Parliament of Canada, "Women – Federal Political Representation"; Parliament of Canada, "Women – Party Standings in the House of Commons."

With respect to Aboriginal groups, access to and participation in the electoral process is of significant concern. Although voter participation in the 2008 federal election by the Canadian population as a whole was 58.8%, Aboriginal voter participation was considerably lower, at approximately 54%.[17] It has been suggested that Aboriginal groups often consider non-Aboriginal elections as a threat to their rights, autonomy and self-government goals, and that this contributes to their lower level of participation.[18] Many Aboriginal Canadians feel alienated from the political process. Others have argued that in order to reduce Aboriginal people's sense of exclusion from the federal electoral system, efforts must be made to integrate the Aboriginal

world view into the Canadian political process,[19] or other special efforts must be made to involve them and address their issues. After the 2011 general election, seven seats were held by Aboriginal Canadians in the House of Commons and six in the Senate.

1.2 POLITICAL FINANCING AND CAMPAIGN REGULATION

In recent years, a number of significant changes to the *Canada Elections Act* have affected the financing and regulation of election campaigns, nomination contests and leadership campaigns. Some of these changes took effect with the major overhaul of the *Canada Elections Act* brought about by Bill C-2, which received Royal Assent in May 2000.[20] The most significant changes, however, came about with Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (political financing), which took effect in January 2004.[21] Some three years later, the *Federal Accountability Act* (Bill C-2, An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability) received Royal Assent in December 2006 and introduced further refinements to the political financing regime under the *Canada Elections Act*.[22]

1.2.1 WHO CAN MAKE A POLITICAL CONTRIBUTION?

Only individuals (Canadian citizens and permanent residents) may make financial contributions to registered parties, candidates, constituency associations, and leadership and nomination contestants.

Effective June 2007, unions and corporations are no longer permitted to make political contributions. Before passage of the *Federal Accountability Act* (FAA), unions could make modest contributions of $1,000 collectively to candidates endorsed by a party, nomination contestants and electoral district associations, and $1,000 to independent candidates.

1.2.2 WHAT ARE THE LIMITS ON FINANCIAL CONTRIBUTIONS?

The *Federal Accountability Act* reduced the maximum amounts that individuals may contribute to the various entities that make up a political organization, and it modified the way in which those amounts may be allocated among those entities.[23] The Act now permits individuals to make the following contributions:

- $1,000 in total in any calendar year to a registered party;
- $1,000 in total in any calendar year to the electoral district associations (EDAs), nomination contestants and candidates of a registered party;
- $1,000 to leadership contestants; and
- $1,000 to an independent candidate in an election.

The FAA reduced to $1,000 the amount that candidates, nomination contestants and leadership contestants may contribute from their own funds to their own election campaigns or nomination or leadership contests. That amount is deemed not to be a contribution. Previously these individuals could contribute $5,000 of their own funds.

For the sake of clarity, the FAA amended the *Canada Elections Act* to the effect that fees paid by participants at conventions held by political parties are contributions to the political party and, therefore, subject to the contribution limits.

The contribution limits prescribed above in the *Canada Elections Act* are adjusted annually to take account of inflation. As a result, the maximums noted above have risen to $1,100.

1.2.3 WHAT CONSTITUTES A CONTRIBUTION?

A contribution is defined as a "monetary" or "non-monetary" contribution and so includes most donations of money, goods and services. Party membership fees are not considered contributions.

1.2.4 WHAT ARE THE SPENDING LIMITS IMPOSED ON PARTICIPANTS IN THE POLITICAL PROCESS?

There are generally no restrictions on the amount that a political party or an electoral district association (EDA) can spend during a non-election period; the body of rules in the *Canada Elections Act* applies to spending during an election period. An expense is deemed to have been incurred during an election period if the product of the expense was used during an election.

Limits on spending by *political parties* during an election are determined by multiplying $0.70 by the number of names on the registered list of electors for constituencies in which the party has endorsed a candidate.

Limits on spending by a *candidate* in an election are: $2.07 for each of the first 15,000 electors in the constituency; $1.04 for each of the next 10,000 electors; and $0.52 for each of the remaining electors. This amount is increased if the number of electors per square kilometre of a constituency is less than 10.

Limits on spending by *nomination contestants* are 20% of the spending limit established for electoral candidates, not including some personal expenses such as travel and living expenses.

The *Canada Elections Act* prescribes no general spending limit for EDA*s*, except for advertising during an election period. An EDA is prohibited from incurring expenses for election advertising during an election.

No limits are imposed on spending by *leadership candidates*. Candidates are required, however, to disclose the amounts and sources of contributions to Elections Canada. Candidates are also required to register with Elections Canada in order to accept contributions or incur expenses.

Parliament has been called upon periodically to impose limits on leadership campaign spending. In his 2001 report to Parliament, *Modernizing the Electoral Process*, the Chief Electoral Officer maintained that leadership contests are not private matters of a political party.[24] Because they are an integral part of the democratic process, he argued, Parliament has an interest in regulating such contests and imposing campaign spending limits.

The Chief Electoral Officer (CEO) renewed his recommendation to impose spending limits on leadership contests in his 2007 mini-report to Parliament on political financing.[25] The report argues that limits would help to ensure a level playing field for leadership candidates.

1.2.5 To what extent are political parties and candidates financed publicly?

Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (political financing), which came into force in January 2004, increased and extended the level of public financing of political parties and candidates.

1.2.5.1 Annual Allowance to Political Parties

Until recently, *political parties* were entitled to an annual allowance of $1.75 per vote received by the party in the previous election, provided that candidates endorsed by the party received, collectively, at least 2% of valid votes cast nationally in that election or 5% of valid votes cast in the constituencies in which the party endorsed a candidate. The allowance has been paid in quarterly instalments, and until 1 April 2012 it was adjusted for inflation.

The threshold provisions of the *Canada Elections Act*, which govern the granting of annual allowances to political parties (section 435.01), were the subject of a 2006 court challenge by a number of smaller parties, including the Green Party of Canada, the Canadian Action Party, the Marijuana Party, and others.[26] The challenge, brought in the Superior Court of Justice for Ontario, was based largely on section 3 (voting rights), section 2(*b*) (freedom of expression), section 2(*d*) (freedom of association) and section 15 (equality rights) of the *Canadian Charter of Rights and Freedoms* and the Supreme Court of Canada's judgment in *Figueroa* v. *Canada*.[27]

The parties succeeded in their application, but on appeal the Court of Appeal for Ontario reversed the lower court's ruling, holding that, although the thresholds violate section 3 of the Charter, they are reasonable and justifiable limits in accordance with section 1 of the Charter.[28]

As a result of amendments to the *Canada Elections Act* brought about with the coming into force of Bill C-13, An Act to implement certain provisions of the 2011 budget as updated on 6 June 2011 and other measures, the quarterly allowance will be reduced and eventually eliminated by 1 April 2015. The first stage in the reduction occurred effective 1 April 2012, when the inflation adjustment ceased to be applied and the quarterly amount paid to eligible political parties was $0.3825 per vote received in the 2011 general election. The quarterly amount will be reduced

to $0.255 per vote effective 1 April 2013, and then to $0.1275 per vote effective 1 April 2014. The allowance will cease after the fourth instalment of 2014 is paid on 1 January 2015.

1.2.5.2 Reimbursement of Electoral Expenses

Parties are also entitled to reimbursement of 50% of their electoral expenses, provided that candidates endorsed by the party received, collectively, at least 2% of valid votes cast nationally or 5% of valid votes cast in constituencies in which the party endorsed candidates.

Individual candidates are entitled to partial reimbursement of electoral expenses. The candidate is issued a payment as a first instalment immediately after the return of the election writ if he or she received 10% or more of the valid votes cast. A final payment is issued to the candidate after his or her official agent files the candidate's electoral campaign return and the required supporting documents. The amount of the final instalment will be 60% of the candidate's paid election and personal expenses, less the first instalment already paid, or 60% of the maximum election expenses allowed under the *Canada Elections Act*, less the initial instalment.

1.2.5.3 Tax credits for Individual Contributions

Tax credits under the *Income Tax Act* provide incentives for individuals to make monetary contributions to registered political parties, registered electoral district associations, and candidates. Tax credits are not available for contributions to leadership candidates and nomination contestants or to unregistered parties and unregistered electoral district associations (EDAs). The amount of the tax credit is scaled to the contribution amount as follows: 75% of the first $400; 50% of the next $350; and 33.3% of an amount over $750.

1.2.6 What are the limits on third-party election advertising?

A third party is defined as an individual or a group that is neither a candidate nor a political party. Third parties play an increasingly significant role in election campaigns by supporting or opposing, through advertising or other expenditures, individual candidates or parties. A third party is required to register with Elections Canada if it spends $500 or more in election advertising.

Third parties may not incur more than $150,000 in total election advertising expenses. Of that amount, no more than $3,000 may be spent on supporting or opposing the election of one or more candidates in an individual constituency. With respect to a party leader, the $3,000 spending limit applies only to his or her candidacy in a particular constituency. These amounts are adjusted for inflation.

The regulation of third-party election advertising has attracted considerable debate. Proponents of regulation argue that since spending by political parties and candidates, and now nomination contestants and leadership candidates, is carefully regulated, other groups and individuals should be subject to some regulation in order to ensure a level playing field. Opponents of regulation and spending limits argue

that restrictions on third-party spending constitute an infringement on basic Charter rights such as freedom of expression. This debate featured prominently in litigation that reached the Supreme Court of Canada in *Harper* v. *Canada (Attorney General)*.[29] In *Harper*, a majority of the court, in upholding the third-party spending limits in the *Canada Elections Act*, adopted an "egalitarian" model of electoral fairness, which recognizes that those with greater financial resources can effectively control the electoral process and shut out those lacking economic power. The egalitarian model was upheld in contrast to the libertarian model, which favours having as few restrictions as possible.

Attempts to regulate the activities of third parties during election periods have continued. One such effort, Bill C-79, An Act to amend the Canada Elections Act (third party advertising), introduced in the House in November 2005, died on the *Order Paper* a few days later with the dissolution of Parliament. This bill sought, generally, to limit a third party's ability to use, for election advertising purposes, contributions received during a period commencing six months before the issuing of an election writ and ending on polling day ("the designated period"). The bill essentially attempted to link the maximum amount a third party could spend for election advertising to the contributions received by the third party from individuals and entities. Another important feature of the bill was its attempt to place limits on contributions to third parties for the purpose of election advertising, although not for other purposes, and only if the contributions were received during the designated period.

1.2.7 WHAT ARE THE RULES CONCERNING DONOR DISCLOSURE?

Under section 424.1(1) of the *Canada Elections Act*, parties entitled to an allowance under section 435.01(1) must provide a quarterly financial transactions return to the Chief Electoral Officer setting out the total amount of contributions received, and the names of contributors contributing more than $200 to the party. Candidates must provide a similar financial return within four months after polling day (section 451(2), (4)). Candidates for leadership contests are required to file regular reports on the amounts and sources of donations (section 435.31) in the period leading up to the contest. Six months after the leadership contest, candidates must submit further information on additional contributions received and expenses incurred (section 435.3(6)). Despite these requirements there continue to be concerns that the rules are inadequate.

Critics maintain that disclosing the identity of a candidate's donors four months after an election defeats one of the underlying purposes of the rules: to provide the public with timely disclosure and full information about who is supporting a political party or candidate so that the voter can make informed voting decisions. For example, the Government of Ontario's *Election Statute Law Amendment Act, 2005* requires, among other things, more timely disclosure of donor information. Candidates must report any contribution over $100 within 10 days of receipt to the Chief Electoral Officer. The CEO then must ensure that the report is provided to the public on a website within 10 days of the report being received.

1.2.8 How are the political financing rules enforced?

The *Canada Elections Act* prescribes a long list of offences relating to breaches of political financing rules. These offences include: circumventing, or conspiring to circumvent, the restrictions on political donations; failing to report a contribution or an expense; and spending in excess of the prescribed limits.

For many years, the limitation period on the time within which a prosecution for an offence may be initiated was 18 months from the date on which the offence came to light, with an absolute limit of seven years from the occurrence of the offence.

The FAA extended those limitation periods. Section 514 of the *Canada Elections Act* now provides that a prosecution under the Act must be initiated within five years from the day on which the Commissioner of Canada Elections becomes aware of the facts giving rise to the prosecution, with an absolute limit of 10 years from the date the offence was committed.

The FAA also resulted in the division of responsibility for investigation and prosecution of offences between the Commissioner of Canada Elections and the newly created Director of Public Prosecutions (DPP). The DPP is now responsible for initiating and conducting prosecutions of offences under the Act on behalf of the Crown. The Commissioner of Canada Elections continues to investigate possible offences under the Act, on the recommendation of the Chief Electoral Officer, and can refer the matter to the DPP, who will decide whether to initiate a prosecution.

1.2.9 How are leadership campaigns regulated?

New rules for the conduct of leadership campaigns have been in force since January 2004 (see Part 18, Division 3.1, of the *Canada Elections Act*). The rules impose reporting obligations but no spending limits.

Once a leadership campaign is called by a registered party, the party must notify Elections Canada. Candidates are deemed to be candidates once they accept a contribution or incur a campaign expense, and they must register with Elections Canada. In the weeks leading up to the leadership convention, candidates are required to file periodic reports on the amounts and sources of contributions. Six months following the leadership convention, candidates must submit further information on additional contributions received and expenses incurred to the Chief Electoral Officer.

Candidates must appoint an auditor at the time of registration. They must also submit an audited report if they spend or receive more than $5,000. Each candidate must also appoint a campaign agent and a financial agent. The financial returns of all candidates are published.

1.2.10 How are nomination campaigns regulated?

Before Bill C-24, An Act to amend the Canada Elections Act and the Income Tax Act (political financing), came into force in January 2004, nomination contests were unregulated. As of that date, nomination contests became subject to special rules provided for in the *Canada Elections Act* (Part 18, Division 5). Within 30 days of the date on which the nomination contest is to be held, a constituency association must report the holding of the contest to Elections Canada. A nomination contestant is deemed to be a contestant upon acceptance of a contribution or the incurring of an expense. Nomination contestants must appoint a financial agent to accept contributions and incur expenses. Contestants must report contributions and expenses to Elections Canada if those contributions and expenses exceed $1,000. An auditor must be appointed if the contestant spends or receives contributions in excess of $10,000.

The reporting obligations arise after the completion of the nomination contest (unlike leadership campaigns, in which the candidates must provide reports during the campaign). Nomination contestants must file a financial return, if applicable, within four months after the completion of the nomination contest. If the nomination contest occurs during an election period, the return may be filed within four months after election day.

1.2.11 How are loans treated?

Loans are seen as an increasingly important source of campaign financing, particularly in light of the reduced contribution limits and the ban on corporate and union contributions resulting from the *Federal Accountability Act*. Loans to parties, candidates, riding associations, nomination contestants and leadership contestants are permitted under the *Canada Elections Act*.

Loans are referred to in the Act as "unpaid claims." The reference is found in various provisions of the Act. Unpaid claims must be repaid within four months after polling day in the case of candidates and nomination contestants, six months after the due date of the claim in the case of registered associations and political parties, and within 18 months of a leadership contest in the case of leadership contestants. These periods may effectively be extended by the Chief Electoral Officer if, upon the filing of a financial return, a repayment schedule for the loan is provided. Alternatively, a political entity or the agent may apply to a judge who is competent to conduct a recount for a similar authorization.

The Act requires that claims against a political entity that remain unpaid are deemed to be campaign contributions 18 months after polling day in the case of candidates and nomination contestants, 18 months after the end of the fiscal period in the case of political parties and registered associations, and 18 months after the selection date (or after polling day in some circumstances) in the case of leadership contestants. The Act, however, exempts unpaid claims from the deeming provision if the claim:

- is the subject of a binding agreement to pay;

- is the subject of a legal proceeding to secure payment;
- is subject to a dispute as to the amount to be repaid; or
- has been written off by the creditor as uncollectible in accordance with the creditor's usual accounting practices.

The financial reporting provisions of the Act are also relevant in the treatment of loans. In the case of a candidate and a nomination contestant, a financial agent must provide a financial statement to the CEO within four months after an election. In the case of a leadership contestant, the financial return must be provided within six months after a leadership contest. Political parties and constituency associations must provide their returns within six months and five months, respectively, after the end of the fiscal period for those entities. These periods may be extended by the CEO. A further report is required where there are unpaid claims and the CEO has granted an authorization approving a repayment schedule for unpaid claims. The Act contains similar provisions for the other political entities.

There have been several attempts to introduce legislation to regulate loans more tightly. The most recent is Bill C-21, An Act to amend the Canada Elections Act (accountability with respect to political loans), introduced in the House of Commons during the 1st Session of the 41st Parliament on 2 November 2011.[30]

The bill proposes a number of changes to the *Canada Elections Act* affecting loans and loan guarantees, including:

- a ban on loans and loan guarantees by unions and corporations, except banks as defined in the *Bank Act*;
- a limit of $1,100 on the amount that an individual may loan or guarantee, combined with any contribution;
- more stringent rules for the treatment of unpaid loans;
- limits on the amount that financial institutions and political entities may loan; and
- a requirement that financial institutions provide loans at market rates.

1.2.12 TO WHAT EXTENT CAN MONEY, GOODS AND SERVICES BE TRANSFERRED AMONG POLITICAL ENTITIES THAT MAKE UP A POLITICAL ORGANIZATION?

The Act permits the various entities that make up a political organization to transfer funds among one another with few restrictions. With a few exceptions, these transfers are not considered contributions and are thus not subject to the contribution limits set out in the Act. Subject to several restrictions noted below, the following transfers of funds are permitted:

- from a party to an electoral district association, a candidate (unless the funds come from a trust) or a leadership contestant;
- from a registered electoral district association (EDA) to a party, another registered EDA or a candidate (unless the funds come from a trust);

- from a candidate to a party, a registered EDA, or him or herself in his or her capacity as a nomination contestant;
- from a leadership contestant to a party or a registered EDA; and
- from a nomination contestant to a party, the registered EDA that held the nomination contest, or the candidate endorsed by the party in that nomination contest.

Some important restrictions, however, are imposed by the Act. Funds from a trust may not be transferred by a party or a registered EDA to a candidate endorsed by that party. If a party or an EDA provides funds, goods or services to nomination contestants or leadership contestants, these must be provided equally to all contestants, unless the funds come from a directed contribution in which the contributor has expressed a wish that the money go to a particular leadership contestant. The amount of the directed funds is deemed a contribution on the part of that contributor.

In the case of goods and services, transfers are permitted and are not treated as contributions in the following situations:

- from a party to an EDA, a candidate, a nomination contestant or a leadership contestant (subject to restrictions noted below);
- from a registered EDA to another registered EDA, a candidate, a nomination contestant or a leadership contestant (subject to restrictions noted below); and
- from a candidate to a party, a registered EDA or him or herself in the capacity of nomination contestant.

As with transfers of funds, goods and services may not be transferred by a party or an EDA to nomination contestants and leadership contestants unless the goods and services are made equally available to all contestants.

1.2.13 How are other gifts or advantages treated?

The *Federal Accountability Act* introduced new rules for the receipt of gifts or advantages by a candidate. These are now expressly prohibited under the Act in such cases where they would appear to a reasonable person to have been given for the purpose of influencing the candidate in his or her duties as a member of Parliament should the candidate be elected. Candidates must provide a statement to the Chief Electoral Officer of all gifts or advantages that have a value of more than $500 to the candidate and that were received during a prescribed period beginning at the time he or she becomes a candidate and ending on the day he or she becomes a member of Parliament, or on polling day if he or she is not elected. It is an offence for a candidate to accept a prohibited gift or advantage or to fail to provide the required statement within the required period of time (four months after polling day). If the offence is committed knowingly, the Act prescribes more severe punishment than if the failure or omission is inadvertent.

1.3 THE FUNCTIONING AND ADMINISTRATION OF ELECTIONS

1.3.1 HOW ARE RETURNING OFFICERS SELECTED?

Returning officers are responsible for the administration of an election in the electoral districts to which they are assigned. They are required to be entirely impartial in performing their duties: the *Canada Elections Act* (section 24(6)) prohibits returning officers from participating in any partisan political activities while in office. As a result of the *Federal Accountability Act* (FAA), the Chief Electoral Officer (CEO) is now responsible for the appointment and removal of all returning officers. He or she is also charged with the responsibility to establish a merit-based process for their appointment and to set qualifications for their appointment. Before passage of the FAA, returning officers were appointed or removed by order in council. The appointment process that the CEO establishes must be an external process as defined in section 2(1) of the *Public Service Employment Act*. The appointment is for a 10-year term that can end sooner in cases of death, resignation, ceasing to reside in the electoral district to which the returning officer is assigned, or removal from office for reasons prescribed in the Act. These reasons include:

- mental or physical incapacity to satisfactorily perform his or her duties;
- failure to competently discharge a duty under the Act or failure to follow an instruction of the CEO;
- failure to complete the revisions to the boundaries of polling divisions; and
- engaging in partisan conduct, including making a financial contribution under the Act and holding a position in a political party or a constituency association.

A returning officer may be reappointed for a further 10-year term after the CEO consults with the leader of every recognized political party in the House of Commons.

1.3.2 HOW ARE ELECTORAL BOUNDARIES DETERMINED?

The *Constitution Act, 1867* and the *Electoral Boundaries Readjustment Act* require that representation in the House of Commons be readjusted after each decennial (10-year) census to reflect population changes and movements within Canada. These readjustments to electoral boundaries are carried out by independent commissions in each province. Each of the 10 commissions is chaired by a judge appointed by the Chief Justice of that province, or by a person resident in that province and appointed by the Chief Justice of Canada. In addition, the Speaker of the House of Commons appoints two members who are residents of that province.

Each commission prepares proposals, which are published in the *Canada Gazette* and local media. Public hearings are then held to obtain public input. Following the hearings, the commission determines what changes, if any, should be made to electoral boundaries, and prepares a report. The report is submitted to the Chief Electoral Officer, who presents it to the Speaker of the House of Commons for tabling. Members of Parliament have 30 days to review the reports and file objections with the designated committee of the House of Commons. That committee has 30 sitting days to review any objections for each commission. The objections as well as the minutes of the committee's discussions and any evidence heard by the committee are sent to the CEO, who in turn forwards them to the appropriate commission.

The commissions may consider any objections received from the House of Commons, but ultimately they make the final decision on electoral boundary readjustments independent of the CEO or Parliament, after conducting further public hearings. Final reports of the commissions are sent by the CEO to the Speaker of the House of Commons, after which a draft representation order is prepared. The representation order: specifies the number of members of the House of Commons to be elected for each province; divides each province into electoral districts (i.e., constituencies); describes the boundaries of each district; and specifies the name of each district and its population.

The 2003 representation order resulted in the allocation of 7 seats to Newfoundland and Labrador, 4 to Prince Edward Island, 11 to Nova Scotia, 10 to New Brunswick, 75 to Quebec, 106 to Ontario, 14 to Manitoba, 14 to Saskatchewan, 28 to Alberta, 36 to British Columbia, and 1 seat to each of Yukon, the Northwest Territories and Nunavut. The total number of seats in the House of Commons increased to 308 from 301 as a result of the readjustment. The new boundaries took effect with the dissolution of the 37th Parliament in May 2004.

Following the completion of the decennial census in 2011 and with the enactment of Bill C-20, An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act, Canada's federal electoral boundaries will once again change and additional seats will be allocated to British Columbia (6), Alberta (6), Ontario (15), and Quebec (3).

1.3.3 How well has Canada's system of representation by population kept up with population shifts?

Concerns have been raised that Canada's system of representation by population has not kept pace with shifts in population. Three provinces in particular – Alberta, British Columbia, and Ontario – have fewer seats in the House of Commons than their percentage of the total population would supposedly warrant. Over the past four decades, these gaps have grown,[31] as demonstrated in Table 2. In 2012, Alberta had a difference of 2.0 percentage points between population and number of seats, compared with 0.1 in 1966. British Columbia had a difference of 1.6 percentage points, compared with 0.7 in 1966. Ontario had a difference of 4.3 percentage points, compared with 1.5 in 1966.

This issue has been addressed by Bill C-20, An Act to amend the Constitution Act, 1867, the Electoral Boundaries Readjustment Act and the Canada Elections Act. The bill was introduced in the House of Commons on 27 October 2011 and received Royal Assent on 16 December 2011.[32] It prescribes a formula to readjust seats in the House of Commons after each decennial census, while also apportioning any newly created seats to the province or provinces that experienced population growth from one decennial census to the next. Under the new formula, the "electoral divisor" has effectively been lowered, resulting in an increase in the number of members of the House of Commons for the provinces that have experienced population growth. The readjustment conducted under this new formula will see the total number of seats in the House increase from 308 to 338 at the time of the next general election.[33]

Table 2 – Percentages of Population and House of Commons Seats, by Province and Territory, 1966–2012

Year	1966		1976		1996		2012	
Province or Territory	% of Population	% of Seats	% of Population	% of Seats	% of Population	% of Seats	% of Population	% of Seats
Alberta	7.3%	7.2%	8.0%	7.4%	9.3%	8.6%	11.1%	9.1%
British Columbia	9.4%	8.7%	10.7%	9.9%	12.9%	11.3%	13.3%	11.7%
Manitoba	4.8%	4.9%	4.4%	5.0%	3.9%	4.7%	3.6%	4.5%
New Brunswick	3.1%	3.8%	2.9%	3.5%	2.6%	3.3%	2.2%	3.2%
Newfoundland and Labrador	2.5%	2.7%	2.4%	2.5%	1.9%	2.3%	1.4%	2.3%
Northwest Territories	0.1%	0.4%	0.2%	0.7%	0.2%	0.7%	0.1%	0.3%
Nova Scotia	3.8%	4.2%	3.6%	3.9%	3.2%	3.7%	2.7%	3.6%
Nunavut							0.1%	0.3%
Ontario	34.8%	33.3%	35.9%	33.7%	37.3%	34.2%	38.7%	34.4%
Prince Edward Island	0.5%	1.5%	0.5%	1.4%	0.5%	1.3%	0.4%	1.3%
Quebec	28.9%	28.0%	27.1%	26.6%	24.7%	24.9%	23.1%	24.4%
Saskatchewan	4.8%	4.9%	4.0%	5.0%	3.4%	4.7%	3.1%	4.5%
Yukon	0.1%	0.4%	0.1%	0.4%	0.1%	0.3%	0.1%	0.3%

Sources: Statistics Canada, *Historical Statistics of Canada*, 1983, and *Canadian Statistics*; and Library of Parliament, ParlInfo database.

1.3.4 WHAT IDENTIFICATION IS REQUIRED TO REGISTER AND VOTE IN A CANADIAN GENERAL ELECTION?

Bill C-31, An Act to amend the Canada Elections Act and the Public Service Employment Act (as enacted by S.C. 2007, c. 21), introduced amendments to the Act that require prospective voters to provide one piece of identification, issued by any level of government, containing a photograph and the name and address of the elector. Alternatively, the voter may present two pieces of identification, each of which establishes his or her name, and one of which establishes his or her address, if those pieces of identification have been authorized by the Chief Electoral Officer, who is required to publish, each year and within three days of the issue of an election writ, a list of the types of identification that are adequate alternatives to government-issued photo identification.

A further alternative is provided to voters who lack any suitable identification. A voter may take a prescribed oath provided that he or she is vouched for by another person whose name is on the list of electors in the same polling division as the voter and who has the required identification prescribed by the Act. The individual who vouches for the voter must do so by taking an oath.

Bill C-31 also introduced special procedures for voting day registration that mirror the requirements for identification at the polls.

The bill's identification requirements were criticized on the grounds that they might disenfranchise over one million rural voters whose identification documents do not contain a civic address. To avert this potential problem, the government introduced Bill C-18, An Act to amend the Canada Elections Act (verification of residence) (as

enacted by S.C. 2007, c. 37). A voter will be permitted to vote if the address that appears on the identification document(s) being presented at a voting station is consistent with the information related to that individual that appears on the list of electors. The voter's residence is by this means deemed to have been proven.[34]

The new requirements for identification at the polls are a direct response to concerns expressed by the House of Commons Standing Committee on Procedure and House Affairs during its study of proposed reforms to the *Canada Elections Act*.[35] In the course of its deliberations the Committee was struck by the absence of any requirement for an elector to confirm his or her identity when voting. As long as the person's name was on the list of electors, he or she was entitled to vote. Identification was required only when an election official, or the candidate, or his or her representative at a polling station, had reason to doubt the identity or right of an individual to vote. If challenged, a voter could present "satisfactory proof of identity and residence." The Act, however, did not prescribe what constituted satisfactory "proof." Further, if the prospective voter lacked satisfactory proof when challenged, he or she would still be permitted to vote upon taking a prescribed oath. The Committee considered this lack of proper identification to be a significant deficiency in the voting process and one that could encourage fraudulent voting practices.[36]

The new requirements for identification introduced by Bill C-31 were challenged by three electors following the October 2008 general election. They claimed that the new identification requirements were inconsistent with electoral rights as guaranteed by section 3 of the Charter in that they impeded the exercise of the right to vote for electors who did not have documentary proof of their identification and residence. The Supreme Court of British Columbia, while it found the impugned provisions in violation of the electoral rights guaranteed by the Charter, concluded that they constituted a reasonable limit of the right to vote in a free and democratic society. Their objectives, to protect the integrity of the vote and maintain confidence in the electoral process, were sufficiently important and rational to justify such an infringement. The decision of the Supreme Court of British Columbia[37] was appealed, but no decision has been rendered by the Court of Appeal of British Columbia.[38]

In the fall of 2007, Bill C-6, An Act to amend the Canada Elections Act (visual identification of voters) was introduced in the House of Commons. The bill proposed that, in addition to providing the identification documents prescribed by Bill C-31, a voter be required to uncover his or her face when voting or when registering to vote at a polling station, unless it would be harmful to the voter's health.[39] The voter, alternatively, could be vouched for by another voter on oath, who would have to present his or her identification with an uncovered face. Bill C-6 was still at the House of Commons committee stage when the 39th Parliament was dissolved in September 2008, and it has not been reintroduced to date.

The interpretation of the voter identification provisions in the *Canada Elections Act* was recently considered by an Ontario court in a challenge to the results of the 2011 general election in the electoral district of Etobicoke Centre. That election was decided by a margin of 26 votes. The runner-up in the election brought a challenge under Part 20 of the Act, which governs contested elections, alleging irregularities affecting the results of the election.[40] At issue in the challenge was whether votes

cast by persons without proper identification, or votes cast by persons who had not been properly vouched for by other eligible voters, should be set aside by a court on a challenge. Also at issue was whether the absence of a registration certificate, or an inadequately completed registration certificate, should cause a vote to be set aside. Registration certificates are required under the Act when a voter who is not on the official list of electors for the polling division seeks to be added to the list and cast a ballot. The voter must present the proper identification and must certify, by signing a registration certificate, that he or she is qualified to vote (that is, he or she is a Canadian citizen and is at least 18 years of age).

The court held that not all errors in vouching and in the completing of a registration certificate should be treated as irregularities and effectively result in a voter being disenfranchised. On the other hand, the identification and registration requirements are important safeguards that preserve the integrity of the electoral process. They ensure that only persons who are qualified to vote can exercise the right. Proper procedures for registering persons not on a list of electors should also be seen as a safeguard against voter fraud, such as voting twice (a person could conceivably be registered on a list of electors in one polling division or riding where he or she may vote, and then present himself or herself in another polling division or riding to register to vote and cast another ballot). The court nullified the results of the election, having found that 79 ballots were improperly cast, exceeding the margin of victory of 26 votes.[41] The Supreme Court of Canada heard an appeal of that decision on 10 July 2012, but reserved judgment.

1.3.5 TO WHAT EXTENT IS THE REPORTING OF ELECTION RESULTS RESTRICTED OR REGULATED?

Section 329 of the *Canada Elections Act* makes it an offence to release election results from one electoral district to the public in another electoral district before the polls have closed in the latter district. The provision is intended to ensure that electors will not be influenced by results from other parts of Canada and that all electors will have access to the same information when they vote. During the 2000 federal election, B.C. resident Paul Bryan transmitted election results from Atlantic Canada on the Internet before the polls closed in British Columbia. As a result he was charged with violating section 329 of the Act. Mr. Bryan appealed his conviction, bringing a challenge to section 329 on the basis that it violated section 2(*b*) of the Charter, which guarantees freedom of expression.

The Supreme Court of Canada rendered its decision on the appeal in 2007.[42] It held that although section 329 of the *Canada Elections Act* infringed section 2(*b*) of the Charter, it was a reasonable limitation justifiable in a free and democratic society. The Court, basing itself on *Harper* v. *Canada (Attorney General)*, established that the maintenance of public confidence in the electoral system was a pressing and substantial objective.

The Court held that logic and reason, combined with some social science evidence, established a rational connection between section 329 and the objective of maintaining public confidence in the electoral system.[43] It further determined that there was sufficient evidence that the policy choice of Parliament is a rational and justifiable solution to the problem of information imbalance and, thus, that the legislation met the minimal impairment test.[44] Finally, the Court stated that the salutary effects of section 329 of the *Canada Elections Act* outweigh the deleterious effects.[45]

1.3.6 WHAT REFORMS HAVE BEEN RECOMMENDED BY THE CHIEF ELECTORAL OFFICER?

Section 535 of the *Canada Elections Act* requires that the Chief Electoral Officer, after every general election, make a report to the Speaker of the House of Commons recommending any amendments to the Act that he or she considers desirable to improve the administration of elections. Recommendations to amend the Act are considered by the House of Commons Standing Committee on Procedure and House Affairs. Often these recommendations, along with the committee's views, result in legislative changes.[46]

The CEO's most recent report was on the 40th general election. Some of the more significant recommendations include legislative amendments:[47]

- permitting voters to register to vote through the Internet;
- enabling the CEO to hire additional election officers at polling sites;
- imposing financial penalties on candidates who exceed the spending limits;
- granting the CEO the authority to require political parties to file documentary evidence to support the various financial returns they must file with Elections Canada; and
- reforming the way campaign loans are regulated.

In the report following the 38th general election, tabled in the House of Commons in September 2005, the CEO made a series of recommendations to amend the *Canada Elections Act*, including amendments:[48]

- for the more equitable distribution of free and paid prime time broadcasting allocated to political parties during an election;
- to extend the limitation period for the prosecution of offences;
- to improve voter registration and facilitate the updating of the National Register of Electors; and
- to enable voters absent from the country for five or more consecutive years to vote.

2 CHANGING THE ELECTORAL SYSTEM

2.1 HOUSE OF COMMONS ELECTORAL REFORM

2.1.1 WHAT IS PROPORTIONAL REPRESENTATION?

Proportional representation (PR) is a voting system intended to ensure that all political parties are allocated a share of the seats in a legislature that approximates, or is proportional to, each party's share of the popular vote. As Fair Vote Canada emphasizes, "The principle behind these voting systems is to get as close as possible to making every citizen's vote count. The goal is to maximize the number of citizens who can help elect the representatives they desire."[49] To that end, for example, under proportional representation, if Party A receives 25% of the popular vote, that fact would be reflected in the legislature by the party receiving 25% of the available seats. Under Canada's current "first-past-the-post" (FPTP) system, on the other hand, a party's share of the national vote is not necessarily reflected in its share of parliamentary seats. Table 3 shows the discrepancy between the percentage of the popular vote and the percentage of parliamentary seats in Canada's 2011 general election.

Table 3 – Percentage of Popular Vote, Number and Percentage of Seats, 2011 General Election

Political Party	Percentage of Popular Vote	Number of Seats	Percentage of Seats
Conservative Party of Canada	39.6%	167	54.22%
Liberal Party of Canada	18.9%	34	11.03%
Bloc Québécois	6.0%	4	1.30%
New Democratic Party	30.6%	102	33.11%
Green Party	3.9%	1	0.33%
Other	1.0%	0	0%
Total		308	

Sources: Library of Parliament, ParlInfo database; and Elections Canada.

As indicated above, Canada currently has an FPTP system, as do the United Kingdom, India and the United States of America. On election day, a voter is simply required to select one candidate on the ballot and place an "X" next to that candidate's name. The candidate receiving the highest number of votes in each constituency is elected, regardless of whether he or she receives a majority of the vote. In Canada and the United Kingdom, the party with the most candidates elected forms the government; the other parties form the opposition. Supporters of the FPTP system argue that it allows citizens more access to their member of Parliament and helps to balance urban and rural needs. However, detractors argue that the system is outdated and contributes to the marginalization of visible minority interests at the parliamentary level.

2.1.2 WHAT TYPES OF PROPORTIONAL REPRESENTATION SYSTEMS EXIST?

Various PR systems are in use around the world: single non-transferable vote, single transferable vote, List-PR, mixed member majoritarian, and mixed member proportional. The major features of each type are reviewed below.[50]

Single Non-transferable Vote: The single non-transferable vote system was formerly used in Japan, and is still used in Jordan, Taiwan and Vanuatu. On election day, voters are given only one vote and the candidates with the highest number of votes will be awarded a seat in the legislature. Therefore, in a constituency where there are 5 seats available and 15 possible candidates, the top 5 candidates will all be elected.

Single Transferable Vote: The most complicated of all electoral systems, the single transferable vote system is used in Australia to elect its Senate, as well as in Ireland and Malta. On election day, voters rank the candidates on the ballot. They may rank as many or as few candidates as they wish. Once all the votes are counted, a vote quota is established; candidates must meet the quota in order to be elected. In the first count, candidates who receive the necessary number of first-preference votes to satisfy the quota are elected. Any remaining votes for these candidates (that is, first-preference votes in excess of the quota) will be redistributed to the second choices on those ballots. Once these votes are redistributed, if there are still seats available after the second count, the candidate with the fewest first-preference votes is dropped and the second preferences on those ballots will be redistributed. This process continues until enough candidates achieve the quota to fill all available seats.

List-PR: The List-PR (proportional representation) electoral system is used widely in many European democracies. Prior to election day, each party draws up a list of candidates to run in each constituency. The parties place their preferred candidates at the top of the list and their least preferred candidates at the bottom. On election day, voters vote for a party, not a specific candidate. Once all the votes are counted, each party is awarded seats in proportion to its share of the national vote. The winning candidates are chosen according to their placement on the party list. Thus, if a party is awarded two seats, then the first two candidates on the party list obtain seats. This electoral system is very flexible and has been uniquely adapted to every country where it is used.

Mixed Member Majoritarian: The mixed member majoritarian (MMM) system, also known as parallel voting, is used in Japan, South Korea, Russia, and many other countries. In this system, voters have two votes on election day. One vote is for a constituency candidate who will be elected through a plurality majority system (usually FPTP). The second vote is for a party, which presents a pre-set list of candidates, similar to what is used in the List-PR system. An important feature of the MMM system is that the two votes are fully independent of each other. The party seats will not compensate for any disproportionate result in the constituency elections, which the mixed member proportional system, discussed below, seeks to do.

Mixed Member Proportional: The mixed member proportional (MMP) system is used in Germany, New Zealand, Italy and Mexico, and for elections to the Scottish and Welsh parliaments. As in the MMM system, voters select a constituency candidate who will be elected through an FPTP process; they also place a second vote for a party list, where candidates will be elected through a List-PR process. However, this system differs from the MMM system in that the List-PR seats attempt to compensate for any disproportionate results in the FPTP constituency seats. Additional seats are awarded through the List mechanism where the number of constituency seats won by a party fails to reflect overall voter support. There are variations among the various MMP systems in how this allocation is made.

Several non-PR electoral systems exist in addition to FPTP, but none are currently being considered for possible use in Canadian federal elections. These other non-PR systems include the alternative vote system, the two-round system, and the block vote system.

Alternative Vote: The alternative vote system, also referred to as preferential voting, is used to elect members of the Australian House of Representatives. On election day, voters are presented with a list of candidates which they must rank in their order of preference. To be elected, a candidate must receive a clear majority of the votes (50% plus one vote). If no candidate receives that majority on the first count, then the candidate with the fewest votes will be dropped and the second preferences on those ballots will be redistributed. This process will continue until one candidate receives the necessary majority and is awarded a seat in the House.

Two-Round: The two-round system, also referred to as the run-off system, is used to elect the legislatures of many countries, including France. This system has not one, but two, election days, generally held within two weeks of each other. Elections are conducted in the same manner as in the FPTP system, where voters select one candidate on a ballot. If a candidate receives a majority of the vote in the first round, he or she is declared the winner and will be awarded a seat in the legislature. Where there is no majority winner in the first round, a second election will be held with only the top two candidates from the first election results. The candidate with the higher number of votes in the second round will be elected.

Block Vote: The block vote system is used in several countries, including Bermuda, Thailand, and the Palestinian Authority. On election day, voters are able to cast as many votes as there are candidates on the ballot. The counting of the votes is simple: if 10 seats are available in the constituency, then the 10 candidates with the most votes will each be awarded a seat in the legislature. In essence, it is the FPTP system applied across multi-member constituencies.

Table 4 compares important features of the various PR and non-PR systems and lists some of the countries where they are in use.

Table 4 – Comparison of Electoral Systems

Electoral System	Examples	Advantages	Disadvantages	Canadian Context
Proportional Representation Systems				
Single Non-transferable Vote	Jordan, Vanuatu	• Easy to use and understand • Fairly proportional • Greater potential of minority representation in Parliament	• Cannot guarantee a proportional result • Parties tend to have a narrow focus	• Simple • Possible proportional • Possible diverse representation
Single Transferable Vote	Ireland, Malta	• Proportional results • Geographic link to MP • Voters can influence coalitions • Vote for a candidate not a party • Possible for independent candidates to be elected	• Complicated and sophisticated • Counting results is time-consuming (can take up to two weeks) • Members of the same party will compete against each other	• Proportional • Link to MP • Effective government
List-PR	Austria, Belgium, Denmark, Finland, Netherlands, Norway, South Africa, Sweden, Switzerland	• Proportional results • Very few wasted votes • May permit greater representation of smaller parties, women and minorities • Limits regionalism • Creates effective governments • Encourages power-sharing within Parliament	• Difficult to use and understand • No geographic link to MP • Little choice over the candidate who will represent you • Tends to create coalition governments • Fragments the party system • Provides representation to extremist parties • Difficult to remove a party from power	• Proportional • No wasted votes • Possible diverse representation • Accountable • Broad-based parties
Mixed Member Majoritarian	Japan, South Korea, Russia, Cameroon	• Fairly proportional • Geographic link to MP • Voter has greater choice – one district and one national • Smaller parties may gain representation in the national vote	• Difficult to use and understand • Creates two classes of MPs (district versus national)	• Proportional • Link to MP • Possible diverse representation
Mixed Member Proportional	Germany, Italy, Mexico, New Zealand, Scotland, Wales	• Proportional results • Geographic link to MP • Greater representation of smaller parties, women, minorities in Parliament • Limits regionalism	• Difficult to use and understand • Creates two classes of MPs (district versus national)	• Proportional • Link to MP • Diverse representation

Electoral System	Examples	Advantages	Disadvantages	Canadian Context
Non-Proportional Representation Systems				
First-Past-the-Post	Canada, United Kingdom, United States of America, India	• Easy to use and understand • Constituencies are a reasonable size • Produces stable majority governments • Geographic link between constituents and MPs • Strong opposition in Parliament • Encourages broad-based parties • Vote for a candidate not a party • Possible for independent candidates to be elected	• Disproportionate results from popular vote • Exaggerates regionalism • Under-representation of smaller parties, women and minorities in Parliament • Promotes adversarial politics • Wasted votes • Possible to manipulate electoral boundaries • Difficult to remove a party from power	• Simple • Link to MP • Stable government • Inexpensive • Familiar
Alternative Vote	Australia	• Easy to use and understand • Geographic link to MP • Encourages broad-based parties	• Disproportionate results • Wasted votes	• Simple • Link to MP • Possible diverse representation
Two-Round	France, Egypt, Togo, Chad, Gabon, Mali, Mauritania	• Voters have a chance to change their mind • Actual winner will have 50% • Geographic link to MP • All votes are meaningful • Encourages broad-based parties	• Disproportionate results • Unpredictable results • The most expensive electoral system • Places a larger burden on voters • Voter turnout may decrease between first and second round	• Simple • Link to MP • No wasted votes • Possible diverse representation
Block Vote	Bermuda, Fiji, Thailand, Palestinian Authority, Philippines	• Easy to use and understand • Constituencies are a reasonable size • Vote for a candidate not a party • Geographic link to MP	• Disproportionate results • Exaggerates regionalism • Under-representation of smaller parties, women and minorities in Parliament • Wasted votes	• Simple • Link to MP • Inexpensive

2.1.3 How would the results of the May 2011 election have differed if Canada had had proportional representation?

Table 5 compares the number of seats that would have been allocated to each party under a system of proportional representation to the actual number of seats that were awarded under the present first-past-the-post system.

Table 5 – Comparison of Seats Awarded per Party Under Canada's Actual Electoral System and a Possible Proportional Representation System, for the 2011 General Election

Political Party	Actual Seats	Percentage of Seats	Possible Seats Under Proportional Representation	Percentage of Seats Under Proportional Representation
Conservative Party of Canada	166	53.90%	122	39.6%
Liberal Party of Canada	34	11.03%	59	18.9%
Bloc Québécois	4	1.30%	19	6.1%
New Democratic Party	103	33.44%	95	30.6%
Green Party	1	0.33%	13	3.9%
Other	0	0%		
Total	308		308	

Sources: Library of Parliament, ParlInfo database; Elections Canada, *Official Voting Results, Forty-First General Election 2011*.

2.1.4 Could electoral reform improve the representation of women, Aboriginal people and minority groups in Parliament?

In its 2004 report on electoral reform, the Law Commission noted that Canada's FPTP electoral system was established when the country's population was more homogeneous and much less mobile than it is today.[51] As discussed above, the FPTP system results in the under-representation of women, Aboriginal people and minority groups. Consequently, "[d]iverse representation represents one of the most important aspects of the electoral reform debate in Canada."[52]

Some argue that electoral reform will improve the representation of groups currently under-represented in Parliament. Women's groups in particular have argued that a PR system would be preferable to the current system in terms of attaining more representative results.[53]

An example of a PR system that could be emulated in Canada in order to increase the representation of women and Aboriginal people in Parliament is New Zealand's MMP system. Designed to use compensatory seats lists, New Zealand's MMP system has resulted in an increase in female and Maori legislators.[54]

The Scottish Parliament also uses an MMP system. Although some improvement in the number of women represented in Parliament was noted following the 1999 election, no minorities were represented in the 1999 Scottish Parliament. One possible reason put forth for the lack of minority representation was that none of the parties placed minority candidates in winnable constituencies.

It is important to note, however, that while a PR system may improve the representation of women, Aboriginal people and minority groups in Parliament, the adoption of such a system would not, in itself, be enough. Policies, strategies and political party commitment are also needed to ensure the effective representation of under-represented groups in Parliament and in Cabinet.[55]

2.1.5 WHAT ARE SOME CURRENT AND RECENT ELECTORAL REFORM INITIATIVES AT THE FEDERAL AND PROVINCIAL LEVELS?

At both the federal and the provincial levels of government, a broad range of electoral reform measures have been considered and, in some cases, implemented. Federally, fundamental reforms have been recommended by the Law Commission of Canada; in addition, a House of Commons committee has prepared a report recommending a process for examining options for electoral reform. Several provinces are currently studying the issue, including reform of the voting system and fixed election dates.

2.1.5.1 REFORM PROPOSALS AT THE FEDERAL LEVEL

In March 2004, the Justice Minister tabled the Law Commission of Canada report *Voting Counts: Electoral Reform for Canada*, which recommends the adoption of a mixed member proportional system. The report also makes recommendations on how to increase diversity in the House of Commons by ensuring better representation of women, minorities and Aboriginal people.

One significant reform that has already taken place at the federal level affects the registration of political parties. Largely as a result of the Supreme Court of Canada judgment in *Figueroa* v. *Canada*,[56] in 2004 the government introduced Bill C-3, An Act to amend the Canada Elections Act and the Income Tax Act. Among other major reforms, this bill included, for the first time, a definition of a political party (an organization one of whose fundamental purposes is to participate in public affairs by endorsing one or more of its members as candidates and supporting their election). It also lowered the candidate threshold that enables an organization to qualify as a political party and benefit from public funding and favourable tax treatment of political contributions; previously set at 50, that threshold was reduced to 1. This development is significant because it opens up the electoral system to small parties that had previously been excluded from the benefits of registration. The bill received Royal Assent in May 2004 (S.C. 2004, c. 24) and came into force that same month.

In the October 2004 Speech from the Throne, the government pledged "to examine the need and options for reform of our democratic institutions including electoral reform." In November 2004, the Standing Committee on Procedure and House Affairs was given an Order of Reference "to recommend a process that engages citizens and parliamentarians in an examination of our electoral system with a review of all options."

The committee tabled its report on electoral reform (Report 43)[57] in June 2005. It recommended that the government launch a "two-track" approach involving a special committee of the House of Commons and a citizens' consultation group. It further recommended that the process begin in October 2005 and be completed by the end of February 2006.

In its response, tabled in October 2005, the government agreed with the committee's substantive recommendations but not with the timetable, saying that more time would be required to set up and run a national citizen consultation process and to conduct committee hearings.[58] Ultimately, Parliament was dissolved before the consultation process could begin or a special committee could be set up.

In March 2007, the government began a three-month-long process of public consultations on democratic reform, holding a series of 12 citizens' forums: one forum in each province, one in the territories, and one national youth forum. Participants were asked to provide their views on such issues as the role of the House of Commons, the role of the Senate, the role of political parties, electoral reform, and the role of the citizen in democracy.

In September 2007, the government released a report entitled *Public Consultations on Canada's Democratic Institutions and Practices*.[59] The report indicated that, among other things, Canadians appear to be more favourable to the current first-past-the-post system than to one that includes proportional representation. However, the consultations also found that respondents were "open" to considering change, including a voting system in which every vote for a party counts.[60]

2.1.5.2 British Columbia Referendum on Proportional Representation

In April 2003, British Columbia created a Citizens' Assembly on Electoral Reform, an independent, non-partisan assembly of citizens with the mandate of examining the provincial electoral system and making recommendations on reform. The Assembly included 160 eligible voters: 80 women and 80 men, chosen from each of British Columbia's 79 constituencies, and 2 Aboriginal representatives. In December 2004, the Citizens' Assembly recommended the single transferable vote (STV) system as the best choice for the province, and in May 2005 the STV proposal was put to the voters of British Columbia as a referendum question in the provincial election. In order for the referendum to pass, it needed to be approved by 60% of all voters, and by a simple majority of voters in 60% of the 79 constituencies.

In the referendum, the STV proposal received 57% support – short of the required 60% majority – and was therefore not approved. However, as a result of the considerable support across the province for the proposed STV system, the Government of British Columbia indicated that another referendum on STV would be scheduled at the same time as the municipal elections in November 2008. In April 2006, the government announced that the referendum would be held at the same time as the 2009 provincial general election, and that the STV system would be implemented for the 2013 general election provided there was sufficient voter support in the referendum.[61] The referendum was held in May 2009; the STV proposal gained 39% voter support and was adopted in only 7 of 85 electoral districts, when 51 were required in order to ensure its implementation.

2.1.5.3 Reform proposals in Prince Edward Island

In December 2003, the Prince Edward Island Electoral Reform Commissioner recommended that the province adopt a mixed member proportional system.

However, the Commissioner also recommended further study of the issue, including more public consultation and public education, and he directed that any changes to the province's electoral system must be made by referendum. In December 2004 the Legislative Assembly established the Commission on Prince Edward Island's Electoral Future, with the task of developing a clear plebiscite question and recommending a date for holding the plebiscite. In May 2005, the commission released its proposal for an MMP system for the province. The plebiscite was held in November 2005, with a threshold for voter approval set at 60%. The proposal for electoral reform was rejected by 64% of the voters. The province's Special Committee on Electoral Boundaries recommended that another plebiscite be held at the same time as the next general provincial election in 2007, exclusively on the question of fixed election dates. However, no plebiscite was held.

2.1.5.4 Reform Proposals in Ontario

The Democratic Renewal Secretariat of Ontario was created in October 2003 to review the provincial electoral system. The *Election Amendment Act, 2005* received Royal Assent in June 2005, allowing for the selection of a Citizens' Assembly on Electoral Reform to examine the current electoral system and recommend possible changes.

In March 2006, Ontario's Minister Responsible for Democratic Renewal announced the formation of an Ontario Citizens' Assembly on Electoral Reform.[62] The assembly was made up of 103 members (52 women, 51 men) representing each of Ontario's constituencies, randomly selected by Elections Ontario from the Permanent Register of Electors for Ontario. Operating independently of government, the assembly's mandate was to "assess Ontario's current electoral system and others, and recommend whether Ontario should keep the current system or adopt a new one. If the Assembly recommends a change, the government will hold a referendum on that alternative within its current mandate."[63]

George Thomson, former provincial court judge and deputy minister in the Ontario and federal governments, was appointed chair of the assembly.[64] Members of the assembly convened in September 2006 with a schedule to meet twice a month for eight months. In May 2007, the assembly released a report entitled *One Ballot – Two Votes: A New Way to Vote in Ontario*, which recommended a mixed member proportional system. A province-wide referendum to decide whether to implement this new system was held in conjunction with the provincial election in October 2007. The proposal did not receive the requisite voter support – at least 60% of the total referendum ballots cast *and* more than 50% of the referendum ballots cast in at least 64 electoral districts – as prescribed in section 4 of the *Electoral System Referendum Act, 2007* (S.O. 2007, c. 1).

2.1.5.5 Reform Proposals in Quebec

In December 2004, the Quebec government introduced a draft bill in the National Assembly that, among other reforms, proposed a new mixed electoral system that would combine elements of the existing first-past-the-post system and a new proportional representation approach. In June 2005, the National Assembly

adopted a motion to appoint a nine-member parliamentary committee to study and make recommendations on the draft bill. The select committee, which began its proceedings in November 2005, was assisted by an eight-member Citizens' Committee, made up of four men and four women. Public consultations were held across Quebec beginning in January 2006.

The Citizens' Committee reported its findings to the National Assembly in April 2006. Its report rejected the government's draft bill and proposed a system of mixed member proportional representation similar to that of Germany. The committee's main criticism of the government's draft bill was that the proposed one-ballot system did not accurately reflect the wishes of the voters and would encourage strategic voting.

In December 2007, the province's Chief Electoral Officer released a report that discussed the characteristics of a "compensatory mixed system" and compared different scenarios through simulations and analyses.[65]

2.1.5.6 Reform Proposals in New Brunswick

In December 2003, the New Brunswick government established the Commission on Legislative Democracy and instructed it to propose an appropriate proportional representation model for New Brunswick. The commission held public hearings and community roundtables, received online submissions and questionnaires, and conducted independent research and analysis. In January 2005, its final report recommended a regional mixed member proportional system and advised that a binding referendum be held no later than the 2007 provincial election.

The provincial government responded to the commission's final report and recommendations by issuing *Improving the Way Government Works* in June 2006. With a change of government in the fall of 2006, a new report was released in June 2007 in response to the commission's recommendations. Entitled *An Accountable and Responsible Government*, it included 20 initiatives the province planned to undertake to improve and enhance legislative democracy in New Brunswick between 2007 and 2012.

2.1.6 Fixed Election Dates

In recent years, interest has been expressed both in Canada and abroad in holding elections at fixed intervals or on fixed dates. Various rationales have been offered for fixed-date elections, including: facilitating the planning of elections; ensuring predictability; providing governments with sufficient time to develop and implement a legislative agenda without the threat of an early election; removing the discretion and advantage of the governing party in determining the timing of an election; and removing the threat of dissolution. Others argue, however, that fixed-date elections would be inconsistent with a Westminster form of parliamentary government and the confidence convention, whereby the government must retain the confidence of a majority of the House of Commons or tender its resignation.[66] Nonetheless, the federal government, several provinces, and one territory have acted to pass fixed-date election legislation. Fixed-date elections are also being considered internationally; for example, the United Kingdom's *Fixed-term Parliaments Act 2011* received Royal Assent on 15 September 2011.

2.1.6.1 FIXED ELECTION DATES AT THE FEDERAL LEVEL

Under the *Constitution Act, 1867*, the House of Commons may not sit for longer than five years. This means that an election must be called before the end of the five-year period. Traditionally, elections have been held at approximately four-year intervals. Under the Constitution, only the Governor General has the power to dissolve Parliament on the advice of the prime minister.[67]

In May 2007, Royal Assent was given to Bill C-16, An Act to amend the Canada Elections Act, requiring that, subject to an earlier dissolution of Parliament, a general election must be held on the third Monday in October in the fourth calendar year after polling day for the last general election. An important feature of the legislation is that the powers of the Governor General remain unaffected; these include the power to dissolve Parliament at the Governor General's discretion, acting on the advice of the prime minister.

It should be noted that the legislation does not require that the government lose the confidence of the House of Commons in order for the prime minister to advise the Governor General to dissolve Parliament before the date prescribed by the legislation. This was made clear by the then-minister for Democratic Reform when the bill was being debated in the House of Commons.[68] It was explained that if the prime minister could seek a dissolution of Parliament only if there were a loss of confidence in the government, the legislation would have to define the situations that would constitute a loss of confidence. To do so could open the doors to judicial review where disagreements might arise as to the meaning of loss of confidence. This is something that Parliament would clearly wish to avoid in order to prevent encroachment on its parliamentary privilege to regulate its own procedures.

Under the terms of the legislation, the first general election was to be held on 19 October 2009. The bill's wording, however, allowed for the four-year period to begin before 19 October 2009 in the event of an earlier dissolution of Parliament.[69] Thus, a general election was held in October 2008, following the Prime Minister's request that the Governor General dissolve Parliament. Under the terms of the legislation, the next general election should then have been held on the third Monday in October 2012, barring an earlier dissolution of Parliament. In fact it was held on 2 May 2011.

The Prime Minister's decision to seek a dissolution of Parliament in 2008 was challenged in the Federal Court of Canada.[70] The challenge was dismissed, with the decision being confirmed on appeal.[71] The courts held that the legislation did not limit the discretion of the prime minister to seek a dissolution, nor did it limit or otherwise affect the Governor General's constitutional power to dissolve Parliament acting on the advice of the prime minister.

2.1.6.2 FIXED ELECTION DATES AT THE PROVINCIAL/TERRITORIAL LEVEL

A number of Canadian provinces and one territory have enacted fixed-date election legislation. These jurisdictions include, in chronological order, British Columbia, Newfoundland and Labrador, Ontario, the Northwest Territories, New Brunswick,

Saskatchewan, Prince Edward Island, and Manitoba. The legislative provisions in each province or territory are similarly structured and closely mirror the federal legislation. All jurisdictions that have legislated fixed election dates have adopted four-year cycles for holding general elections. All have also upheld the Lieutenant-Governor's discretion to dissolve or prorogue a provincial legislature when he or she considers it appropriate.

Table 6 – Fixed-Date Elections at the Provincial/Territorial Level

Date	Jurisdiction	Statutes	Notes
27 August 2001	British Columbia	*Constitution (Fixed Election Dates) Amendment Act, 2001* Statutes of British Columbia 2001, c. 36	General election to be held on the second Tuesday in May every four years. First fixed-date election held in 2005. Subsequent election held on 12 May 2009.
16 December 2004	Newfoundland and Labrador	*An Act to amend the House of Assembly Act and the Elections Act, 1991* Statutes of Newfoundland and Labrador 2004, c. 44	General election to be held on the second Tuesday in October every four years. First fixed-date election held in 2007. Subsequent election held on 11 October 2011.
15 December 2005	Ontario	*An Act to amend the Election Act, the Election Finances Act and the Legislative Assembly Act, to repeal the Representation Act, 1996 and to enact the Representation Act, 2005* Statutes of Ontario 2005, c. 35	General election to be held on the first Thursday in October every four years. First fixed-date election held in 2007. Subsequent election held on 6 October 2011.
2 November 2006	Northwest Territories	*Elections and Plebiscites Act* Statutes of Northwest Territories, c. 15	General election to be held on the first Monday in October every four years. First fixed-date election held in 2007. Subsequent election held on 3 October 2011.
26 June 2007	New Brunswick	*An Act to Amend the Legislative Assembly Act* Statutes of New Brunswick 2007, c. 57	General election to be held on the fourth Monday in September every four years. First (and most recent) fixed-date election held in 2010.
28 April 2008	Saskatchewan	*An Act to amend The Legislative Assembly and Executive Council Act, 2007* Statutes of Saskatchewan 2008, c. 6	General election to be held on the first Monday in November every four years. First (and most recent) fixed-date election held in 2011.
22 May 2008	Prince Edward Island	*An Act to Amend the Election Act* Statutes of Prince Edward Island 2008, c. 9	General election to be held on the first Monday in October every four years. First (and most recent) fixed-date election held in 2011.
9 October 2008	Manitoba	*The Lobbyists Registration Act and Amendments to The Elections Act, The Elections Finances Act, The Legislative Assembly Act and The Legislative Assembly Management Commission Act* Statutes of Manitoba 2008, c. 43	General election to be held on the first Tuesday in October every four years. First (and most recent) fixed-date election held in 2011.

Source: Parliament of Canada, "Fixed-Date Elections in Canada" (updated by the Library of Parliament).

2.1.6.3 Fixed Election Dates in the United Kingdom

The United Kingdom began examining the issue of fixed-date elections following the May 2010 general election. That election resulted in a hung Parliament; and in the ensuing coalition negotiations, fixed-term parliaments quickly emerged as an important element of the constitutional reform agenda. The resulting coalition program for government made a commitment to establish five-year fixed-term parliaments. This resulted in the enactment of the *Fixed-term Parliaments Act 2011*, which received Royal Assent on 15 September 2011. The legislation fixes the date of the next general election as 7 May 2015, with subsequent fixed-term elections on the first Thursday in May every five years. An election could, however, be triggered prior to the end of the five-year term if:

- at least two-thirds of the House of Commons votes in favour of a dissolution; or
- a motion of non-confidence is passed and no alternative government is confirmed by the House of Commons within 14 days.[72]

2.2 Senate Reform[73]

2.2.1 What steps would need to be taken if a decision is made to reform the Senate?

Major changes to the Senate would require an amendment to the Canadian Constitution.[74] Any reform affecting the powers of the Senate, the method of selecting senators, the number of senators to which a province is entitled, or the residency requirement of senators can be made only under the general amending formula contained in section 38. This formula calls for the consent of the Senate and the House of Commons and the legislative assemblies of at least two-thirds of the provinces (seven provinces) with at least 50% of the population of all the provinces (the "7/50" formula).

2.2.2 WHAT PROPOSALS HAVE BEEN MADE FOR ELECTORAL REFORM OF THE SENATE?

Table 7 – Proposals for an Elected Senate

	Electoral System	Constituencies	Timing of Election	Term
Canada West Foundation (1981)	Single transferable vote	Province-wide constituencies	Coincide with House of Commons elections	Not specified
Special Joint Committee (Molgat-Cosgrove) (1984)	First-past-the-post	Within province	Fixed dates every three years	Nine years (non-renewable): one-third elected every three years
Macdonald Royal Commission (1985)	Proportional representation	Not specified	Not specified	Not specified
Alberta Special Committee (1985)	First-past-the-post	Province-wide constituencies	Coincide with provincial elections	Equal to the life of two legislatures, half renewed at each provincial election
Government of Canada Proposals (1991)	Not specified	Not specified	Coincide with House of Commons elections	Not specified
Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie) (1992)	Proportional representation	Constituencies no larger than needed by proportional representation. Multi-member constituencies electing at least four senators	Fixed, not to coincide with House of Commons or provincial elections	Six years, non-staggered
Charlottetown Accord Proposals (1992)	Not specified. By people or by provincial and territorial legislatures	Not specified	Coincide with House of Commons elections	Not specified

Sources: F. Leslie Seidle, "Senate Reform and the Constitutional Agenda: Conundrum or Solution?," in Janet Ajzenstat, ed., *Canadian Constitutionalism: 1791–1991*, Canadian Study of Parliament Group, Ottawa, 1992, p. 116; Jack Stilborn, *Senate Reform Proposals in Comparative Perspective*, Publication no. BP-316E, Parliamentary and Information Research Service, Library of Parliament, Ottawa, November 1992.

2.2.3 How would seats be distributed under these proposals?

Table 8 – Proposed Seat Distribution for a Reformed Senate

	Canada West Foundation (1981)[a]	Special Joint Committee (Molgat-Cosgrove) (1984)	Macdonald Royal Commission (1985)	Alberta Special Committee (1985)	Government of Canada Proposals (1991)	Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie) (1992)[b]	Charlottetown Accord Proposals (1992)
Ontario	6–10	24	24	6	Not specified	30 / 20	6
Quebec	6–10	24	24	6		30 / 20	6
British Columbia	6–10	12	12	6		18 / 12	6
Alberta	6–10	12	12	6		18 / 12	6
Saskatchewan	6–10	12	12	6		12 / 8	6
Manitoba	6–10	12	12	6		12 / 8	6
Nova Scotia	6–10	12	12	6		10 / 8	6
New Brunswick	6–10	12	12	6		10 / 8	6
Newfoundland & Labrador	6–10	12	12	6		7 / 6	6
Prince Edward Island	6–10	6	6	6		4 / 4	6
Northwest Territories	1–2	4	4	2		2 / 2	1
Yukon	1–2	2	2	2		1 / 1	1
TOTAL	62–104	144	144	64		154 / 109	62

Notes: a. Proposal sets out ranges.

b. Proposal sets out two possible distributions.

Source: Jack Stilborn, *Senate Reform Proposals in Comparative Perspective*, Publication no. BP-316E, Parliamentary and Information Research Service, Library of Parliament, Ottawa, November 1992.

2.2.4 WHAT POWERS WOULD THE SENATE HAVE UNDER THESE PROPOSALS?

Table 9 – Proposed Powers for an Elected Senate

	Canada West Foundation (1981)	Special Joint Committee (Molgat-Cosgrove) (1984)	Macdonald Royal Commission (1985)	Alberta Special Committee (1985)	Government of Canada Proposals (1991)	Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie) (1992)	Charlottetown Accord Proposals (1992)
Money bills	Reject or reduce (subject to House of Commons override), but not increase or initiate	Supply bills subject to no delay	Not specified	House of Commons could override Senate on money or taxation bills by simple majority	No role in relation to appropriation bills and measures to raise funds, including borrowing authorities	30 days to deal with supply bills, House of Commons simple majority override on bills defeated or amended by Senate	Could force House of Commons to repass supply bills within 30 calendar days. Veto on bills that result in fundamental tax policy changes directly related to natural resources
Ordinary legislation	Powers similar to those of the House of Commons, but House could override by special majority	Suspensive veto of 120 sitting days	Six-month suspensive veto	House of Commons could override Senate by "vote greater in percentage terms"	Senate approval required	Senate approval required, House of Commons override. Nature of override not specified	Defeat or amendment of ordinary legislation would lead to joint sitting with House of Commons. Simple majority would decide outcome
Linguistic/ cultural matters		Double majority for "legislation of linguistic significance"	Double majority for "matters of special linguistic significance"	Double majority for "all changes affecting the French and English languages"	"Double majority special voting rule" for "matters of language and culture"	Double majority on "measures affecting the language or culture of French-speaking communities"	Double majority (all senators and all francophone senators) for bills "materially affecting the French language and culture"
Ratification of appointments	Ratify or reject appointments to national boards, tribunals or agencies	Appointments to federal agencies with important regional implications	None specified	None specified	Governor of Bank of Canada; heads of national cultural institutions, regulatory boards and agencies	Governor of Bank of Canada; heads of national cultural institutions, regulatory boards and agencies	Able to block all key appointments, including heads of key regulatory agencies and cultural institutions
Other	Power to ratify or veto constitutional amendments	None specified	None specified	Ratify non-military treaties	Six-month suspensive veto over "matters of national importance, such as national defence and international issues"		

Sources: F. Leslie Seidle, "Senate Reform and the Constitutional Agenda: Conundrum or Solution?," in Janet Ajzenstat, ed., *Canadian Constitutionalism: 1791–1991*, Canadian Study of Parliament Group, Ottawa, 1992, p. 116; Jack Stilborn, *Senate Reform Proposals in Comparative Perspective*, Publication no. BP-316E, Parliamentary and Information Research Service, Library of Parliament, Ottawa, November 1992.

2.2.5 WHAT ABOUT ABOLISHING THE SENATE?

Some have argued that the Senate should be abolished rather than reformed. This, however, could be accomplished only through major amendments to the Constitution. Although there is some discussion regarding whether the general amending formula (7/50) or the formula requiring unanimous consent would be required, it is most probable that unanimity would be necessary in order to effect such a major change.

2.2.6 WHAT POSITIONS HAVE FEDERAL POLITICAL PARTIES TAKEN REGARDING SENATE REFORM?

Some political parties have adopted formal positions on democratic reform and have put forward proposals to change the structure of the Senate.

Bloc Québécois: During the 2005–2006 election campaign, leader Gilles Duceppe said Senate reform would not be possible because the necessary constitutional changes would require the unanimous consent of the provinces.[75]

Conservative Party of Canada: In a policy statement released in September 2004, the Conservative Party indicated that it would "support the election of senators" were it to form the government, and that it "believes in an equal Senate to address the uneven distribution of Canada's population and provide a balance to safeguard regional interests."

In its campaign platform for the January 2006 election, the Party announced two reform proposals. It would:

- begin reform of the Senate by creating a national process for choosing elected senators from each province and territory; and
- propose further reforms to make the Senate an effective, independent, and democratically elected body that equitably represents all regions.[76]

The first proposal would involve a limited reform in the method of selection. The second would require more extensive reforms requiring a constitutional amendment. In his historic appearance before the Special Senate Committee on Senate Reform in September 2006, the only appearance before a Senate committee by a prime minister, Prime Minister Stephen Harper spoke of a step-by-step process for reform of the Senate that would involve legislation to shorten senatorial terms, followed by legislation to establish an advisory, or consultative, election process for senators on a national level. He also expressed a desire to initiate a process for constitutional reform leading to an elected Senate "in the near future."[77]

Liberal Party of Canada: The Liberal Party of Canada is not opposed to Senate reform, but maintains that constitutional amendments, with the consent of the provinces following consultations, are required to achieve substantive reforms, such as reducing term limits or changing the method of selection of senators.[78]

New Democratic Party: The NDP favours abolition of the Senate.

2.2.7 WHAT METHODS DO OTHER MAJOR WESTERN DEMOCRACIES USE FOR SELECTING SENATORS?

This section reviews the methods of selecting senators in the 15 major Western democracies with bicameral legislatures (Australia, Austria, Belgium, Canada, France, Germany, Ireland, Italy, Japan, Mexico, the Netherlands, Spain, Switzerland, the United Kingdom, and the United States of America).

2.2.7.1 ELECTION AND APPOINTMENT

As shown in Table 10, direct election (at least in part) is used to select senators in a majority of the 15 countries (9, or 60%). In four countries (Austria, France, Germany, and the Netherlands), senators are elected indirectly, while in two (Canada and the United Kingdom), senators are appointed. Two countries (Belgium and Ireland) have a mix of directly elected and appointed senators, while one (Spain) has a mix of directly and indirectly elected senators.

Table 10 – Method of Selection in Senates of the Major Western Democracies

Country	Method of Selection	Voting Method
Australia	Directly elected	Proportional
Austria	Indirectly elected	Proportional
Belgium	Directly elected and appointed	Proportional
Canada	Appointed	
France	Indirectly elected	Proportional and majority
Germany	Indirectly elected	Members of Länder (state) governments
Ireland	Directly elected and appointed	Proportional
Italy	Directly elected	Proportional and simple majority
Japan	Directly elected	Proportional and simple majority
Mexico	Directly elected	Proportional and majority list
Netherlands	Indirectly elected	Proportional
Spain	Directly and indirectly elected	Simple majority
Switzerland	Directly elected	Simple majority
United Kingdom	Appointed	
U.S.A.	Directly elected	Simple majority and absolute majority[a]

Note: a. Two states – Georgia and Louisiana – require absolute majorities for a senator to be elected.

Source: Inter-Parliamentary Union, PARLINE Database.

2.2.7.2 VOTING METHODS

Of the nine major Western democracies in which at least some senators are directly elected, six countries use proportional voting methods, either entirely or in part. Only three major Western democracies (Spain, Switzerland, and the United States) use simple majority systems for the most part.

Of the four major Western democracies in which senators are indirectly elected, three (Austria, France and the Netherlands) use proportional methods to choose senators, while in Germany, members of the Bundesrat are chosen from members of the Länder (state) governments.

2.2.8 Senate Reform Initiatives[79]

Proposals for Senate reform are not a recent phenomenon, but have been around for decades and represent an enduring debate in Canadian politics.[80] In recent years, several bills have been presented on the subjects of term limits and Senate selection. In the April 2006 Speech from the Throne, the Harper government said it would "explore means to ensure that the Senate better reflects both the democratic values of Canadians and the needs of Canada's regions."[81] To that end, the government has pursued what it called a "step-wise approach" by introducing bills to limit Senate terms and to provide for advisory, or consultative, elections. In the current Parliament, these measures are embodied in Bill C-7, discussed below.

2.2.8.1 Senate Term Limits

Since the 2006 general election, the government has introduced bills in each Parliament proposing to limit senatorial terms. The most recent bill, introduced in the 41st Parliament, is Bill C-7, An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits. The bill combines proposals to limit Senate terms and to enable the voters of a province to select their preferences for Senate nominees.[82]

Bill C-7 proposes to limit the tenure of senators appointed after 14 October 2008 to one non-renewable nine-year term. (In earlier versions of the bill, the terms were renewable.) The mandatory retirement age of 75 would continue regardless of the date of appointment.

One concern expressed by some legal scholars is whether Parliament may act alone to amend the provision in the *Constitution Act, 1867* that currently limits Senate terms (section 29). The Constitution is silent on the question of whether provincial concurrence is needed. The amending provisions of the *Constitution Act, 1982* indicate that provincial concurrence (seven provinces representing over 50% of the population of all the provinces) is needed for certain amendments affecting the Senate, such as the powers of the Senate or the method of selection of senators. Senate tenure is not listed among these matters. However, the Supreme Court of Canada noted in a 1980 judgment that alterations affecting the fundamental features or essential characteristics of the Senate would require provincial approval.[83] There are questions as to the effect and continued validity of that judgment, given that it was decided prior to the current amending formulae in the Constitution. Even assuming that the judgment is still relevant, there is uncertainty as to whether a term limit of nine years would affect the essential characteristics of the Senate as a house of sober second thought and regional representation.[84]

In recent years, Senate tenure has been studied by two Senate committees: the Special Senate Committee on Senate Reform, in 2006, and the Standing Senate Committee on Legal and Constitutional Affairs, in 2007.

The special committee tabled its report in October 2006. The committee agreed with the principle of defining term limits and noted, regarding Bill S-4, which was introduced in May 2006 in order to limit tenure in the Senate, "there appears to be no need for additional clarity on the constitutionality of Bill S-4."[85] Bill S-4 received second reading in the Senate in February 2007 and was referred to the Standing Senate Committee on Legal and Constitutional Affairs. In June 2007, that standing committee tabled its report on the bill. The committee re-examined the constitutional issues surrounding the term limits. It recommended extending the length of terms from 8 to 15 years, making the term appointments non-renewable, and maintaining the retirement age of 75 years. In addition, the committee concluded there were "significant constitutional concerns" about the bill. It therefore asked the government to refer Bill S-4 as amended to the Supreme Court of Canada and recommended that the bill "not be proceeded with at third reading until such time as the Supreme Court of Canada has ruled with respect to its constitutionality."[86] Later in June 2007, the Senate adopted the standing committee's report.

2.2.8.2 Senate Selection and Appointment Process

Since the 2006 general election, the government has introduced the following bills proposing to establish a senatorial selection process that would enable the voters of a province to vote for the persons whom they wish to have considered for appointment to the Senate:[87]

- Bill C-43, introduced in December 2006 (1st Session, 39th Parliament);
- Bill C-20, introduced in November 2007 (2nd Session, 39th Parliament);
- Bill S-8, introduced in April 2010 (3rd Session, 40th Parliament); and
- Bill C-7, introduced in June 2011 (1st Session, 41st Parliament).

Bill C-43 and Bill C-20 proposed a federally regulated process to be conducted by the Chief Electoral Officer of Canada. Bill S-8 proposed a model statute that prescribed an electoral process that provinces and territories could choose to adopt in order for voters to select their nominees for appointment to the Senate. These three bills died on the *Order Paper* with prorogations or dissolutions of Parliament.

In the current Parliament, the government has introduced Bill C-7, An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits. Part 1 of the bill prescribes the selection process for senators. It is identical to the process set out in Bill S-8. Under Bill C-7, the selection process would be conducted entirely by the province or territory and overseen by its electoral officials. Nominees selected by the electors would be submitted to the prime minister, who would be obligated to consider them in making his or her recommendations to the Governor General for appointment to the Senate. It is important to note that the provinces and territories would not be obligated to establish a Senate nominee selection process modelled on the framework as set out in the schedule.

There has been limited discussion on whether the reform of the selection process contemplated in Bill C-7 can be achieved by Parliament acting alone and without a constitutional amendment. Some argue that any permanent change to the selection of senators would require a constitutional amendment.[88] Others have suggested that the prime minister could agree to accept a different method of selecting senators for recommendation to the Governor General, effectively waiving any right conferred upon him or her by constitutional convention.[89]

In the 1980 *Senate Reference* case, however, the Supreme Court of Canada held that the fundamental character of the Senate – *including* the method of appointment – cannot be altered by a unilateral action of Parliament.[90] Whether the approach proposed by the government constitutes altering the "fundamental character" of the Senate is uncertain.

NOTES

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1. Please see section 2.1.5 of this document for more information on current and recent electoral reform initiatives at the federal and provincial levels.
2. Elections Canada, *Voter Turnout at Federal Elections and Referendums*.
3. Jared J. Wesley, *Slack in the System: Turnout in Canadian Provincial Elections, 1965–2009*, Paper for presentation at the annual meeting of the Canadian Political Science Association, Concordia University, Montréal, 3 June 2010.
4. See Parliament of Canada, Bill S-22: An Act to amend the Canada Elections Act (mandatory voting), *LEGISinfo*, Debates at 2nd reading, 9 February 2005 and 8 June 2005.
5. Elections Canada, *Explaining the Turnout Decline in Canadian Federal Elections: A New Survey of Non-voters*, March 2003, Section 8. See also Statistics Canada, "Reasons for not voting in the May 2, 2011 federal election," *The Daily*, 5 July 2011.
6. *Fitzgerald v. Alberta*, 2004 ABCA 184.
7. See Michel Bédard, *Legislative Summary of Bill C-16: An Act to amend the Canada Elections Act (expanded voting opportunities)*, Publication no. LS-578E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2 May 2008.
8. Elections Canada, *Report of the Chief Electoral Officer of Canada on the 39th General Election of January 23, 2006*, Ottawa, 2006, p. 56.
9. R. Pennings, "Feds' Sunday voting plan could backfire," *Calgary Herald*, 16 December 2007, p. A11; Wesley (2010), Appendix, Figure 2.2.
10. A. Blais, A. Dobrzynska and P. Loewen, *Potential Impacts of Extended Advance Voting on Voter Turnout*, Elections Canada, Ottawa, September 2007.
11. See Julie Cool, *Women in Parliament*, Publication no. 2011-56-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 10 May 2011; Parliament of Canada, "Women – Federal Political Representation."
12. Law Commission of Canada, *Voting Counts: Electoral Reform for Canada*, Ottawa, 2004, p. 62.

13. John Gray, "Once more, few women, fewer minorities," *Canada Votes 2006 – Reality Check*, cbc.ca, 3 January 2006.

14. See Simon Fraser University, "Women and Elections," *Elections*.

15. Ibid.

16. Jerome H. Black, "The 2006 Federal Election and Visible Minority Candidates: More of the Same?," *Canadian Parliamentary Review*, Vol. 31, No. 3, Autumn 2008, pp. 30–36.

17. The Strategic Counsel, *Survey of electors following the 40th General Election: A Report to Elections Canada*, Toronto and Ottawa, March 2009.

18. Daniel Guérin, "Aboriginal Participation in Canadian Federal Elections: Trends and Implications," *Electoral Insight*, Elections Canada, November 2003.

19. Anna Hunter, "Exploring the Issues of Aboriginal Representation in Federal Elections," *Electoral Insight*, Elections Canada, November 2003.

20. J. R. Robertson, *Legislative Summary of Bill C-2: The Canada Elections Act*, Publication no. LS-343E, Parliamentary Research and Information Service, Library of Parliament, Ottawa, 9 March 2000.

21. J. R. Robertson, *Legislative Summary of Bill C-24: An Act to amend the Canada Elections Act and the Income Tax Act (Political Financing)*, Publication no. LS-448E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 11 June 2003.

22. The amendments to the political financing provisions of the *Canada Elections Act* brought about by the bill took effect in June 2007.

23. Previously, individuals could contribute the following amounts: $5,000 collectively to a party, candidate, riding association and nomination contestant within the same political family in a calendar year; $5,000 to an independent candidate in an election; and $5,000 to leadership contestants within a particular leadership contest.

24. Elections Canada, *Modernizing the Electoral Process – Recommendations from the Chief Electoral Officer of Canada Following the 37th General Election*, November 2001, Recommendation 8.1.4, p. 131.

25. Elections Canada, *Recommendations of the Chief Electoral Officer of Canada to the House of Commons Standing Committee on Procedure and House Affairs Respecting Specific Issues of Political Financing*, 26 January 2007, p. 33.

26. *Longley v. Canada (Attorney General)*, 2006 CanLII 36358 (ON S.C.).

27. *Figueroa v. Canada (Attorney General)*, [2003] 1 S.C.R. 912. In *Figueroa*, the Court struck down the provisions of the Act that denied party registration status to parties with fewer than 50 candidates running in an election. Party registration confers important benefits on political parties; these include the reimbursement of election expenses, the ability to issue tax receipts, and the listing of the party name beside the candidate's name on the ballot. The Court held that the exclusion of parties that did not meet the 50-candidate threshold undermined the right to meaningful participation of individuals in the electoral process, resulting in a breach of section 3 of the Charter. The legislation was further held to deprive individuals of the right to information to assist in exercising the right to vote.

28. *Longley v. Canada (Attorney General)*, 2007 ONCA 852 (CanLII).

29. *Harper v. Canada (Attorney General)*, [2004] 1 S.C.R. 827.

30. Prior versions include Bill C-54, An Act to amend the Canada Elections Act (accountability with respect to loans), 1st Session, 39th Parliament, which was introduced in the House of Commons in May 2007 and was reported back to the House of Commons with amendments in June 2007. The bill was reinstated as Bill C-29 after the prorogation of Parliament in the fall of 2007, but died on the *Order Paper* with the dissolution of the 39th Parliament in September 2008.

31. It should be noted that some of these gaps are an inevitable product of the so-called "grandfather clause" in section 51(1) of the *Constitution Act, 1867*, and the "senatorial clause" in section 51A of the *Constitution Act, 1867*. The "grandfather clause" guarantees that a province has no fewer seats in the House of Commons than it had at the passage of the *Constitution Act, 1985 (Representation)*, S.C. 1986, c. 8. The "senatorial clause" requires that a province may not have fewer seats in the House of Commons than its allotment of Senate seats.

32. The government had on three previous occasions introduced bills in the House of Commons seeking to alter the seat allocation formula: Bill C-12: An Act to amend the Constitution Act, 1867 (democratic representation), introduced in April 2010 (3rd Session, 40th Parliament); Bill C-22: An Act to amend the constitution Act, 1867 (democratic representation), introduced in November 2007 (2nd Session, 39th Parliament); and Bill C-56: An Act to amend the Constitution Act, 1867 (democratic representation), introduced in May 2007 (1st Session, 39th Parliament).

33. Office of the Minister of State (Democratic Reform), "Backgrounder – Democratic Representation Act," Ottawa, 1 April 2010.

34. See Sebastian Spano, *Legislative Summary of Bill C-18: An Act to amend the Canada Elections Act (verification of residence)*, Publication no. LS-573E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 6 November 2007. The bill came into force with Royal Assent in December 2007.

35. House of Commons, Standing Committee on Procedure and House Affairs, *Improving the Integrity of the Electoral Process: Recommendations for Legislative Change*, 13th Report, June 2006.

36. The committee heard anecdotal evidence from the 39th general election that, in some polling stations, magazine subscription labels were accepted as satisfactory proof of identity and address. See Ibid., p. 27.

37. *Henry v. Canada (Attorney General)*, 2010 BCSC 610.

38. Court of Appeal of British Columbia, Case Number CA38128.

39. See Sebastian Spano, *Legislative Summary of Bill C-6: An Act to amend the Canada Elections Act (visual identification of voters)*, Publication no. LS-572E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 5 November 2007.

40. *Canada Elections Act*, S.C. 2000, c. 9, s. 524(1)(*b*).

41. *Wrzesnewskyj v. Attorney General (Canada)*, 2012 ONSC 2873 (CanLII).

42. *R. v. Bryan*, 2007 SCC 12.

43. *Harper v. Canada (Attorney General)*, para. 41.

44. Ibid., para. 47.

45. Ibid., para. 52.

46. For example, the Chief Electoral Officer's report following the 38th general election resulted in a number of legislative changes through Bill C-31, An Act to amend the Canada Elections Act and the Public Service Employment Act, 1st Session, 39th Parliament.

47. Elections Canada, *Responding to Changing Needs: Recommendations from the Chief Electoral Officer Following the 40th General Election*, Ottawa, June 2010.

48. Elections Canada, *Completing the Cycle of Electoral Reforms: Recommendations from the Chief Electoral Officer on the 38th General Election*, Ottawa, 29 September 2005.

49. Fair Vote Canada, *Dubious Democracy: Report on Federal Elections in Canada From 1980–2004*, Toronto, January 2006, p. 14.

50. Sources include Ace Project, *Electoral Systems Index*; Heather MacIvor, *Proportional and Semi-Proportional Electoral Systems: Their Potential Effects on Canadian Politics*, Paper presented to the Advisory Committee of Registered Political Parties, Ottawa, 23 April 1999; John C. Courtney, *Plurality-Majority Electoral Systems: A Review*, Paper presented to the Advisory Committee of Registered Political Parties, Ottawa, 23 April 1999; Law Commission of Canada (2004).

51. Law Commission of Canada (2004), p. 33.

52. Ibid., p. 37.

53. For additional information on women and Parliament, see Cool (2011).

54. It should be noted that pursuant to New Zealand's *Electoral Act, 1993*, a formula is set out in order to determine the number and boundaries of Maori seats in Parliament. There is also a constitutional requirement for a minimum number of Maori seats. New Zealand, nonetheless, has seen an increase in Maori representation over and above the legislated and constitutionally mandated minimum.

55. For examples of recommendations on this matter, see Law Commission of Canada (2004), Recommendations 6–12, pp. 176–178.

56. The Supreme Court ruled in June 2003 that the 50-candidate threshold for party registration violated section 3 of the *Canadian Charter of Rights and Freedoms*.

57. House of Commons, Standing Committee on Procedure and House Affairs, *Report 43*, 7 June 2005.

58. Government of Canada, "Government Response to the Forty-Third Report of the Standing Committee on Procedure and House Affairs," 7 October 2005.

59. Government of Canada, *Public Consultations on Canada's Democratic Institutions and Practices*, 10 September 2007.

60. Jack Aubry, "Poll shows voters favour winner-take-all system," *Ottawa Citizen*, 16 September 2007.

61. British Columbia, Legislative Assembly, *Debates*, 2nd Session, 38th Parliament, 27 April 2006, p. 4127.

62. Government of Ontario, Democratic Renewal Secretariat, "McGuinty Government Moves Forward on Historic Electoral Reform Initiative," News release, 27 March 2006.

63. Ibid. See also the website of the Citizens' Assembly on Electoral Reform.

64. Ibid.

65. For more information on the report, see Chief Electoral Officer of Quebec, "Press release No. 2 – Report of the Chief Electoral Officer on the voting system," 21 December 2007.

66. See J. R. Robertson, *Legislative Summary of Bill C-16, An Act to amend the Canada Elections Act*, Publication no. LS-530E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 3 May 2007.

67. See the *Constitution Act, 1867*, s. 13 (Governor General acting "by and with the advice of the Queen's Privy Council"), and section 50 (five-year maximum duration of the House of Commons subject to earlier dissolution by the Governor General).

68. House of Commons, *Debates*, 18 September 2006, p. 2877 (Statement by The Honourable Rob Nicholson).

69. See *Canada Elections Act*, s. 56.1.

70. *Conacher v. Canada (Prime Minister)*, 2009 FC 920 (CanLII), [2010] 3 FCR 411.

71. *Conacher v. Canada (Prime Minister)*, 2010 FCA 131 (CanLII).

72. See Oonagh Gay, *Fixed Term Parliaments Act 2011*, Standard Note SN/PC 6111, U.K. House of Commons Library, London, 3 November 2011.

73. Information in this section is based on Brian O'Neal and Sonia Ménard, *Senate Reform*, Publication no. TIPS-79E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, October 2004.

74. Mollie Dunsmuir, *Constitutional Amending Formula*, Publication no. TIPS-19E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, November 2000.

75. Mark Kennedy, "Martin supports elected Senate, but changes won't come soon, PM says," *Ottawa Citizen*, 14 December 2005, p. A3.

76. Conservative Party of Canada, *Stand up for Canada: Conservative Party of Canada Federal Election Platform 2006*, 13 January 2006, p. 44.

77. Senate, Special Committee on Senate Reform, *Proceedings*, 1st Session, 39th Parliament, 7 September 2006, p. 2:9.

78. See, for example, Stéphane Dion, "The Senate reform bill: A constitutional danger for Canada," *Inroads Journal*, Vol. 31, Summer/Fall 2012, pp. 2–11.

79. Information in this section is based on Sebastian Spano, *Legislative Summary of Bill C-7: An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits*, Publication no. 41-1-C7E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 27 June 2011.

80. For more information on the evolution of the Senate see J. Stilborn, *Senate Reform: Issues and Recent Developments*, Publication no. 07-42E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 21 January 2008.

81. Government of Canada, "Speech from the Throne," 4 April 2006.

82. Previous efforts to limit Senate terms were as follows: Bill S-4: An Act to amend the Constitution Act, 1867 (Senate tenure), introduced in May 2006 (1st Session, 39th Parliament); Bill C-19: An Act to amend the Constitution Act, 1867 (Senate tenure), introduced in November 2007 (2nd Session, 39th Parliament); Bill S-7: An Act to amend the Constitution Act, 1867 (Senate term limits), introduced in May 2009 (2nd Session, 40th Parliament); and Bill C-10: An Act to amend the constitution Act, 1867 (Senate term limits), introduced in March 2010 (3rd Session, 40th Parliament).

83. *Re: Authority of Parliament in relation to the Upper House*, [1980] 1 S.C.R. 54.

84. For a more detailed discussion, with references to the various legal opinions on this issue, see Spano (2011).

85. Senate, Special Committee on Senate Reform, *Report on the Subject-Matter of Bill S-4, An Act to Amend the Constitution Act, 1867 (Senate Tenure)*, 26 October 2006.

86. Senate, Standing Committee on Legal and Constitutional Affairs, *Thirteenth Report*, 1st Session, 39th Parliament, 12 June 2007.

87. See Spano (2011).

88. Senator Serge Joyal, *Legal, Constitutional and Political Imperatives to Senate Reform*, Unpublished paper, February 2000, p. 14.

89. G. Gibson, *Challenges in Senate Reform: Conflicts of Interest, Unintended Consequences, New Possibilities*, Fraser Institute, Vancouver, 2004, p. 14.

90. *Re: Authority of Parliament in relation to the Upper House*.