

## **Presentation to the Ontario Legislative Assembly Committee Hearings on Bill 155**

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My comments will be directed specifically toward sections 4 (a) and (b) of the bill, the decision rule for the referendum to have mandatory effect, and the stated rationale of the government for this rule, namely that changing the voting system represents a “foundational change to Ontario’s democracy” that requires a “solid majority of Ontarians across the province” from a process that produces a “clear outcome”.

The gist of my comments to follow will be that I can find no historical, legal, or normative justifications to support either this rule or the rationalization offered by the government. As such, I am appearing today to urge the committee to drop this rule and replace it with 50% plus one, period.

Before I begin, let me note that my research is directly relevant to this topic. My most recent major research project examined every instance of voting system reform in 18 western countries over a period of 150 years. I have also researched and published extensively on the past century and half of Canadian voting systems reforms.

What that research can tell us is that apart from the recent PEI and BC referendums, no voting system change decision in Canada was ever subjected to a super-majority rule. In fact, the establishment of all Canadian federal and provincial voting systems was by a simple majority vote of the designers. And all changes to provincial voting systems were by a simple majority vote of legislators. These changes include:

Ontario, 1885, change from plurality to limited vote for Toronto multi-member riding  
Ontario 1893, change from limited vote to plurality for Toronto multi-member riding  
Manitoba, 1920, change from plurality to STV-PR for Winnipeg multi-member riding  
Manitoba, 1924 change from plurality to alternative vote for rural ridings  
Alberta, 1924, change from plurality to STV-PR for urban multi-member ridings  
Alberta, 1924, change from plurality to alternative vote for rural ridings  
British Columbia, 1951, change from plurality to alternative vote province-wide  
British Columbia, 1955, change from alternative vote to plurality province-wide  
Manitoba, 1955, change from STV/AV to plurality for all ridings  
Alberta, 1956, change from STV/AV to plurality for all ridings

When we turn to international experience, the same patterns hold. All western countries have seen the establishment of their voting systems or any changes in their voting systems handled either through a simple majority vote of parliament or a simple majority vote in a referendum. Until recently such referendums were few: Switzerland in 1918 and France in 1946 – both dealt with by simple majority. In more recent examples – Italy and New Zealand in the 1990s – they too were decided by a simple majority. A few western European countries have entrenched their voting system in the constitution, thus necessitating a super-majority vote for any change. However, in each case the decision to subject it to constitutional protection also involved a super-majority decision.

Thus historically and comparatively, there are no precedents for the super-majority rules as applied to voting systems, except where they were expressly constitutionalized, other than the recent BC and PEI referendums.

Legally, the committee should be concerned about the potential Charter implications of weighting votes differentially through the super-majority decision-rule. The super-majority rule effectively inflates the voting power of those opposed to change while diluting the voting power of those seeking change. While the courts have been prepared to sanction some deviations from absolute equality of voting power as concerns the population size of electoral districts, they insisted on clear and compelling rationales as to how such deviations would serve the public interest before they agreed.

I see no such clear and compelling rationale for a deviation from voter equality in this case. The government comments justifying this decision, as they have appeared in government press releases and newspaper accounts, vaguely refer to the foundational importance of the voting system. But the voting system as law in Ontario has no superior standing to any other law. It too can be changed by a simple majority vote in the legislature, as it has been in the past.

Normally, where the courts have struck down districting arrangements in Canada because they have violated the Charter's guarantees of equality, they have left previous results created by those districts unaffected but called for new arrangements to be in place before the next election. But give the one-off nature of this vote, a ruling could have very different effects. If a challenge were heard before the vote, it could derail the whole process now set in motion; if a challenge were heard after the vote, it could lead the courts to strike down the results themselves.

Let me turn now to the normative arguments implicit in the government's defence of this super-majority rule. The government has stated that a super-majority is required for this vote because changing the voting system represents a 'foundational change to Ontario's democracy'. The problem with such arguments is that the foundation being defended is a pre-democratic and elitist one. The voting system arrangements put in place in 1867 were not the product of public input. Indeed, Ontario in 1867 was not even a democracy, as the franchise was so narrow that only the wealthiest white men could vote. Extending the franchise to all adult white men was not completed until 1888, and, of course, women and various ethnic minorities came even later. Nor can the government rely on the Lockean notion that because the people consented to use this form of ballot, they somehow approved of its use. What we know from studying public opinion about the voting system is that the public does not understand a great deal about it or how it works. Some might argue that the whole point of exercises like the Ontario Citizens' Assembly is open up public discussion and debate on this issue for the first time and let the people decide whether they really do want the status quo or something else. In such a situation it is normatively indefensible to privilege one side, as sections 4 (a) and (b) of Bill 155 presently do.