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émocratie en surveillance

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Submission to Special Committee on Electoral Reform

(Democracy Watch : October 7, 2016)

A. Summary of Submission

Democracy Watch's submission not only addresses the issues that the Committee has been mandated to study (viable alternate voting systems to replace the first-past-the-post system, as well as to examine mandatory voting and online voting), but also recommends other changes to the *Canada Elections Act* and enforcement system to ensure fair, democratic federal elections in Canada.

To this end, Democracy Watch interprets the phrase "viable alternate voting systems" broadly as raising issues not only with how votes are counted but also how voters are allowed to vote.

The submission is organized following the five principles that underlie the mandate of the Committee's study, as follows:

1. Effectiveness and legitimacy: that the proposed measure would increase public confidence among Canadians that their democratic will, as expressed by their votes, will be fairly translated and that the proposed measure reduces distortion and strengthens the link between voter intention and the election of representatives;
2. Engagement: that the proposed measure would encourage voting and participation in the democratic process, foster greater civility and collaboration in politics, enhance social cohesion and offer opportunities for inclusion of underrepresented groups in the political process;
3. Accessibility and inclusiveness: that the proposed measure would avoid undue complexity in the voting process, while respecting the other principles, and that it

- would support access by all eligible voters regardless of physical or social condition;
4. Integrity: that the proposed measure can be implemented while safeguarding public trust in the election process, by ensuring reliable and verifiable results obtained through an effective and objective process that is secure and preserves vote secrecy for individual Canadians;
 5. Local representation: that the proposed measure would ensure accountability and recognize the value that Canadians attach to community, to Members of Parliament understanding local conditions and advancing local needs at the national level, and to having access to Members of Parliament to facilitate resolution of their concerns and participation in the democratic process.

However, as you will see below, Democracy Watch has combined principles one and five, and principles two and three, for the purposes of its submission as those principles overlap directly with each other. You will also see that the submission contains several “hyperlinks” to various website and webpages that give further details concerning the proposals made in this submission.

As well, Democracy Watch first wants to highlight two urgent, key points relating to the Committee’s process:

1. **A referendum is not necessary, but a meaningful public consultation is needed:** As detailed in the Democracy Watch op-ed set out [here](#), a referendum can be a meaningful consultation method but there are other methods that are just as valid. Neither the Committee nor the government has used a meaningful consultation method so far because the hearings, town halls, online questionnaire all involve submissions by self-selected people, and so they are not demographically representative of Canadian voters. To ensure that Canadians’ values are upheld in any changes that are made (which the federal Liberals have committed to do in every decision they make), a meaningful consultation using either the best-practice study-circle method or constituent assembly method should be undertaken before any changes are implemented.
2. **The government should refer a case to the Supreme Court to rule on whether a vote percentage threshold is constitutional:** If the voting system is changed to include proportionality in some way, most commentators propose that, as in other countries, there should be a national threshold (of 3-5%) that a party would have to obtain in order to be represented in the House of Commons. However, according to two past rulings by the courts ([Figueroa v. Canada \(Attorney General\)](#), [2003] 1 S.C.R. 912, 2003 SCC 37 (CanLII) and [Longley v. Canada \(Attorney General\)](#), 2007 ONCA 149 (CanLII)), it may not be constitutional to have a threshold. To determine the constitutionality of a threshold, the government should refer a case to the Supreme Court for a ruling before any changes are made to the *Canada Elections Act (CEA)*.

I. Effectiveness and legitimacy and local representation

Democracy Watch proposes the following measures to increase the effectiveness and legitimacy of how the voting system reflects the democratic will of voters (and the following measures also address the issue of “Local Representation” addressed in the fifth principle that defines the mandate of the Committee’s study):

1. Prohibit parties and candidates from baiting voters with [false election promises or advertising](#), and from breaking election promises (unless truly unforeseen circumstances require them to be broken).
2. Do not implement mandatory voting as it violates the right of voters to refuse to endorse a candidate or party, and instead create a right to [refuse to cast a ballot](#) (as voters in Alberta, Manitoba, Ontario and Saskatchewan have in their provincial elections) or to vote "none of the above" and require election commissions to report how many Canadians do so (so voters can, if they want to, send a clear message that they do not support any of the candidates or political parties).
3. [Change the federal election voting system](#) to provide a more accurate representation of the popular vote results in each election in the seats held by each party in the federal House of Commons (as in many other countries) while ensuring that all elected officials are supported by, and are accountable to, voters in each riding/constituency (with a safeguard to ensure that a party with a low-level, narrow-base of support does not have a disproportionately high level of power in Parliament), and also to actually fix election dates for late fall every four years (unless an actual vote on non-confidence occurs earlier).
4. [Regulate nomination races](#) to ensure party leaders can’t appoint candidates or stop candidates from running (other than on grounds of “good character” such as no criminal convictions) and to ensure nomination races “are conducted in a fair, transparent, and democratic manner” (quotation is from the Conservatives’ 2006 election platform that promised to make changes) by giving Elections Canada the power to run nomination races and enforce the rules.

II. Engagement, accessibility and inclusiveness

The four recommended changes set out in the previous section would also all encourage voting and participation in the democratic process, but the following six changes should also be made to offer opportunities for inclusion of underrepresented groups in the political process, to foster greater civility and collaboration in politics and enhance social cohesion, and to increase accessibility and inclusiveness:

1. Change section 18 of the *Canada Elections Act (CEA)* so that the Chief Electoral Officer (CEO) is empowered not only to “provide” the public with information about how, when and where to become a candidate and to vote but can also conduct and provide funding to other broader voter turnout public education programs.

2. The prohibitions on one voter “vouching” for the identity of one other voter, and on using the voter registration card (VIC) as ID, should be removed – together these changes make it more difficult than necessary for hundreds of thousands of voters to vote. Instead, add the VIC to the current list of valid ID, and empower Elections Canada, and provide it with adequate funding, to hire and fully train all election workers for elections well before each election, and to make the voter registration list and ID checking even more accurate.
3. The [federal political finance system must be democratized](#) by: reducing the annual donation and loan limits to an amount an average voter can afford (ie. \$100-200, as in Quebec); reinstating the annual per-vote funding for parties along with public funding matching donations raised annually by parties and leading up to and during elections by candidates (as in Quebec), and; requiring disclosure of all gifts and donations to all types of candidates. The following current measures in the *Canada Elections Act* are all undemocratic: the \$3,050 annual donation limit (and during an election year from \$4,575), and the amount candidates can donate to their own campaign of \$5,000 (and \$25,000 for leadership candidates), and; the fact that banks are allowed to make unlimited loans to parties and candidates. All these measures only benefit wealthy donors and candidates, and facilitate corruption as occurred in Quebec. The *Act* should also be changed to require disclosure of donations of volunteer labour, and to prohibit secret gifts to nomination race and party leadership candidates (which are both currently allowed under the *Act*).
4. As part of the changes to the political finance system, restrict pre-election ad spending by parties and candidates (including via their riding association) and third parties.
5. Have Elections Canada determine the date and number of election debates, and oversee them, with the leader of every party that won at least 5% of the popular vote in the last election or that has at least one MP in the House of Commons allowed to participate, and require all broadcasters to broadcast the debates.
6. Allow [independent candidates to raise money in-between elections](#) (currently only party-backed candidates are allowed to do this, through their local riding association or their party that then transfer money to them once their election campaign begins).
7. Change the federal *Referendum Act* to allow for petitions leading to referendums, and also in all the other applicable ways recommended in this submission (especially concerning political finance and spending).

III. Integrity

The 11 changes proposed in the above sections I and II will all also increase the integrity of the electoral system, but the following 12 changes should also be made to safeguard public trust in the election process by ensuring reliable and verifiable results obtained through an effective and objective process that is secure:

1. Prohibit online voting as it presents a very real danger to the integrity of voting results according to almost all computer technologists including [Stanford University's David Dill](#) who was one of the organizers of the [statement by technologists warning of the dangers of online voting](#).
2. Empower Elections Canada to appoint all election workers – currently political parties and candidates who won or came second in the previous election have the dangerously unethical power to force returning officers to appoint the deputy returning officers, poll clerks, registration officers and central poll supervisors that they choose.
3. Empower Elections Canada to appoint the auditors for all the parties, riding associations and candidates – currently these entities choose their own auditors (which is a recipe for abuse and corruption).
4. Make the Chief Electoral Officer and the Commissioner of Canada Elections, and the Director of Public Prosecutions, actually independent by requiring them to be approved by at least a majority of opposition party leaders.
5. Require (finally) that the Commissioner of Canada Elections (CCE) [disclose the results of investigations and his rulings on all complaints](#), and require the Director of Public Prosecutions (DPP) to publish their reasons whenever they decide not to prosecute or agree to a plea deal. Currently, the *Act* contains a dangerously secretive rule that requires the Commissioner and the DPP to keep the evidence and rulings for all investigations secret in almost all cases (unless a prosecution or compliance agreement happens, or they decide that disclosure is in the public interest). This excessive secrecy makes it impossible to hold the CCE and the DPP accountable if they make unfair, biased or improper rulings or enforcement decisions.
6. Require anyone or any entity that uses robocalls to file a copy of each robocall script and recording, and a list of the numbers called, with the CRTC for the CRTC to keep for 5 years, and require political parties to keep a record of who accesses their voter database, and make it a violation for political parties to allow their database to be misused.
7. Increase the amount of all proposed fines to a level that will actually discourage violations (all the fines in the *Canada Elections Act* should be 10 times higher) and require courts to impose the maximum fine unless extraordinary circumstances mean it would be unjust to do so.
8. Give voters up to one year to challenge a fraudulent election result (voters only have 30 days now), and remove the requirement that a voter must give written notice to the returning officer when the voter applies to a judge for a recount (as that makes it more difficult to challenge election results).
9. Give the Commissioner of Canada Elections (CCE), and the CRTC, the clear power to apply for a court order that compels a person to testify, or a person or entity to disclose records, needed to investigate alleged violations of the *CEA* (as Elections Canada [recommended](#) in its 2012 report, and as election watchdogs in New Brunswick, Nova Scotia, Quebec, Ontario, Manitoba, Alberta and Yukon, and Australia and the U.S. can do, and as the Competition Bureau of Canada can do).

10. Require political parties, riding associations, candidates and third parties to provide any document requested by Elections Canada or the CCE to confirm compliance with the *CEA*, as [recommended](#) by Elections Canada.
11. Give [whistleblowers](#) a financial reward if they disclose evidence to Elections Canada, the CCE, or the CRTC that leads to a conviction.
12. Extend the federal *Privacy Act* and *Personal Information Protection and Electronic Documents Act* to cover political parties, riding associations and political candidates, as Elections Canada [recommended](#) in its 2012 report.

B. Details of Submission

I. Effectiveness and legitimacy and local representation

Democracy Watch proposes the following measures to increase the effectiveness and legitimacy of how the voting system reflects the democratic will of voters (and the following measures also address the issue of “Local Representation” addressed in the fifth principle that defines the mandate of the Committee’s study):

1. Enact honesty-in-elections measures

Prohibit parties and candidates from baiting voters with [false election promises or advertising](#), and from breaking election promises (unless truly unforeseen circumstances require them to be broken). Effectively prohibiting lying is a cornerstone of any political ethics process system, for the following reasons.¹ First, lying undermines reasonable, democratic debate because, depending on its exact form, it violates one or more rules of logic. Secondly, without honest debate, voters lose their right to be informed during elections, and are forced to cast their ballot in a context similar to betting during a game of poker, with high stakes, their money on the line, and imperfect information.

Thirdly, without honest debate voters lose their right to be informed of legislative and government actions in between elections, and actual solutions to problems are less likely to be implemented by governments. Fourthly, the effect on voters of dishonesty violates the fundamental ethics principle of one-person, one-vote as it allows one person (such as a politician) to gain the support of others on a false basis. Finally, there is evidence that dishonesty is a main reason for people losing interest in politics, including not voting.

¹ Many philosophers have set out reasons for concern about dishonesty, as summarized by Clancy W. Martin “*On Bullshit: Book Review*” (2006) *Ethics*, Vol. 116(2), pp. 416-421, at 418.

For example, an Elections Canada survey in 2006 found that 60% of non-voters were turned off politics because of dishonesty and other reasons.²

Of course, if an honesty law was enacted, it would be difficult in many situations to determine the truth about various aspects of a political situation. However, that barrier has not prevented politicians in many countries from enacting many laws and setting up enforcement systems requiring many people to be honest in many ways. It is illegal in many countries for welfare applicants, taxpayers, and corporate executives to lie on the forms they fill out and submit to government, enforcement agencies have been established to conduct inspections and audits, and high penalties are in place to discourage dishonesty in these areas. As well, in many countries if corporate executives lie in the corporation's financial statements, shareholders can sue for damage to their investments, and if a corporation's advertisement is false a government agency (for example, in Canada it is the Competition Bureau)³ has the power to fine the corporation and require it to cancel or correct the advertisement. In addition, in many jurisdictions (including across Canada) it is illegal for anyone to make a false claim about an election candidate.

Do these rules and enforcement systems ensure that everyone covered by them act honestly all the time? No, like any law and enforcement system they discourage or catch some or most violations but not all. And the same result, depending on how it is designed and operates, would likely occur with any honesty-in-politics law and enforcement system. Therefore, logically, failure to ensure compliance in every case cannot be posited as a reason for refusing to implement an honesty rule and system unless one also proposes to remove all the other legal rules requiring honesty.

Overall, when it comes to election candidates lying to voters, and politicians and government officials misleading the public in between elections, the rules are vague and enforcement has been weak. In fact, most election laws across Canada make it illegal for candidates to make a written pledge to do something specific if elected.⁴ The reason for this measure is given in the federal Canadian provision – to “prevent him or her from exercising freedom of action in Parliament, if elected, or to resign as a member if called on to do so by any person or association of persons.”⁵ This part of the provision reveals clearly how much the rules have been designed to protect politicians' rights, not voters' rights.

Of course, election fraud as a form of dishonesty is illegal in many jurisdictions (ballot-box stuffing, voting twice, posing as an eligible voter) – I am focusing instead solely on prohibitions against misleading voters. There are such measures in Canadian election laws, for example it is an offence in the federal law to “by any pretence or contrivance...induce a person to vote or refrain from voting or vote or refrain from voting

² Environics Research Group, Final Report: Public Opinion Survey at the 39th General Election, online: (Elections Canada: May 2006), <www.elections.ca/res/rec/eval/gese06/gese06_e.pdf>, pp.21-25.

³ *Competition Act*, (R.S.C., 1985, c. C-34), Part VII.1.

⁴ See, for example, *Canada Elections Act* (S.C. 2000, c. 9), section 550.

⁵ *Ibid.*

for a particular candidate at an election...⁶ However, judges have ruled in lawsuits filed against politicians or parties who have misled voters by breaking promises after elections that voters are naive to believe election promises and/or that explicit, false statements about facts (ie. not about beliefs concerning future actions (such as promises) are the only statements covered by the measures. As well, in part because the only possible penalty in the statutes is to annul the results of the election, voters have lost all but one such case (as far as my research could determine).⁷ In one municipal case, a candidate in municipal election made false public statements about facts, so he clearly misled voters, and so the court declared his election invalid and ordered that he pay \$20,000 of total costs for a by-election.⁸

There are reasons offered by some commentators not to prohibit dishonesty during elections. First, that when candidates make promises, they don't know what changes might occur if they win the election, and therefore shouldn't be penalized if they break promises. If honesty was required, however, a simple solution for candidates would be only to make promises that honestly set out the circumstances under which they would change direction post-election. Secondly, it is proposed that some candidates and parties may try to get away with making only vague promises. That may be true, however they would likely, over time, lose to those parties and candidates willing to set out a well-defined, contract-like platform that tells voters exactly what they will receive. Thirdly, it is proposed that politicians do face a penalty for breaking promises or being dishonest — the penalty of losing public support and the next election. However, promise-breaking politicians often don't lose the next election, especially when their broken promise only affects a minority of the population.

All of the above points to an honesty requirement that would have one exception -- politicians would be allowed to cite truly unforeseeable changes as a justifiable reason for breaking an election promise.

With regard to requiring honesty in between elections, some make the highly speculative, and patronizing, claim that politicians and government officials can't always be honest, because the public couldn't handle the truth. This viewpoint assumes that politicians and officials have (for some unstated reason) some special mental capacity that allows them to be exposed to reality, while everyone else must live in a fantasy bubble created by governments.

Principles set out in the Canadian federal ethics codes for Cabinet,⁹ for Cabinet staff,¹⁰ for members of the House of Commons (MPs),¹¹ and for government employees,¹² all say

⁶ *Ibid.*, clause 282(b) and clause 482(b).

⁷ *Friesen v. Hammell*, 2000 BCSC 1185 (CanLII). *Canadian Taxpayers Federation v. Ontario (Minister of Finance)*, 2004 CanLII 48177 (ON SC) <<http://canlii.ca/t/1jh71>>. *McEwing v. Canada (Attorney General)*, 2013 FC 525 (CanLII), <<http://canlii.ca/t/fxqs4/>>.

⁸ *Todd v. Coleridge*, 2009 BCSC 688 (CanLII).

⁹ Prime Minister of Canada, "Open and Accountable Government" online: (2015) <<http://www.pm.gc.ca/eng/news/2015/11/27/open-and-accountable-government/>>, sections IV.1, Annex A (Part I).

¹⁰ *Ibid.*, Annex I.

that they are expected to do their jobs with “honesty”. However, these principles are not fully defined, and complaints filed with ethics watchdogs about Cabinet ministers failing to be honest have been rejected on the basis of vagueness and that the principles are not enforceable rules.¹³ It has been similarly difficult at the federal level in Canada to hold MPs accountable for misleading Parliament, which is prohibited among other types of “contempt.”¹⁴ The main problem has been that enforcement is partisan as MPs judge each other, so if an MP comes from the ruling party and that party has a majority in the legislature it is very unlikely that any ruling or sanction will be imposed (and conversely if the ruling party is a minority government it is very likely that the opposition parties will rule against the MP).¹⁵

Politicians switching parties in between elections is a particular form of political dishonesty that should also be prohibited. Similar to other forms of election dishonesty, it violates voters’ rights – in this case by overturning the effect of their vote without giving them an opportunity to change their vote. Using Canada again as an example, there is no specific rule in federal law prohibiting “crossing the floor” (as it is commonly known). Complaints that federal Canadian MPs who switched parties violated the rule requiring them to be honest were also rejected by the Conflict of Interest and Ethics Commissioner on the basis that the rules are vague and unenforceable.¹⁶

The potential potency of an honesty requirement to change politics in an ethical direction is revealed by the fact that, in response to the above-referenced complaints about MPs being dishonest (which were filed in 2006 and 2007, just a couple of years after the MPs code was enacted in 2004), MPs from all parties changed their ethics code in 2008 to make the rule requiring acting with honesty clearly unenforceable.¹⁷ Since 2004, MPs

¹¹ Parliament of Canada, “Conflict Of Interest Code For Members Of The House Of Commons,” online: <<http://www.parl.gc.ca/about/house/standingorders/appa1-e.htm/>>, subsection 2(b).

¹² Government of Canada, *Values and Ethics Code for the Public Sector*, online: <<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049/>>.

¹³ News Release: Federal Ethics Commissioner again improperly rules on ethics complaints, online: Democracy Watch <<http://www.dwatch.ca/camp/RelsMar2006.html/>>. News Release: Ethics commissioner again fails to enforce ethics rules -- refuses to deal with complaints about Accountability Act and income trust tax broken promises, online: Democracy Watch <<http://www.dwatch.ca/camp/RelsMar1607.html/>>.

¹⁴ The rule prohibits “deliberately attempting to mislead the House or a committee (by way of statement, evidence, or petition)” “Privilege vs. Contempt” *House of Commons Procedure and Practice, Second Edition*, online: (2009) Parliament of Canada <<http://www.parl.gc.ca/procedure-book-livre/Document.aspx?Language=E&Mode=1&sbid=ABBC077A-6DD8-4FBE-A29A-3F73554E63AA&sbpid=9686D5B2-9075-4451-8082-1446F8BE3C5E/>>.

¹⁵ See, for example, the situation involving Conservative Cabinet minister Bev Oda when the Conservatives were a minority government. Campbell Clark, “Speaker rebukes Bev Oda over document in Kairos case” online: (2011) *Globe and Mail* <<http://www.theglobeandmail.com/news/politics/speaker-rebukes-bev-oda-over-document-in-kairos-case/article566676/>>.

¹⁶ News Release: Democracy Watch sends letters to Ethics Commissioner requesting details on when he will rule on complaints against party-switchers Stronach and Emerson, and Prime Ministers Martin and Harper, online: Democracy Watch <<http://www.dwatch.ca/camp/RelsApr2706.html/>>. News Release: Ethics Commissioner refuses to deal with complaint about MP Wajid Khan switching parties and keeping report secret, online: <<http://www.dwatch.ca/camp/RelsMar1407.html/>>.

¹⁷ *Supra*, note 11. MPs added section 3.1 that made it clear that sections 1 and 2 of their *Code* did not contain “obligations” with which MPs had to comply.

had been protected by an ethics commissioner who refused to enforce the rule but in 2007 a new ethics commissioner was appointed and MPs wanted to ensure it was clear that the rule could not be enforced.

These cases, and the response from MPs and ethics commissioners, point to the need for clear, detailed rules, enacted in law so they can't be easily changed (and this conclusion applies to all the other rules proposed in subsections 5.2 to 5.5 below). The first, clear rule I propose is that honest statements and communications should be required at all times by all political actors in all their work communications and communications with voters, the public generally, and with other political actors (parliamentarians, government officials, lobbyists etc.).

Some say that there will be a flood of complaints or lawsuits (depending on the forum that would be review alleged violations) if dishonesty in politics was made illegal. While it may be that, as in war, the first casualty of politics currently is truth, very likely fewer politicians and government officials would be dishonest if they faced the possibility of a ruling from a court or quasi-judicial tribunal that they had lied to voters, especially if there were significant penalties for violations (such as a significant, mandatory fine – see more details concerning penalties in section 7). As well, fear of many court cases did not stop Canadian politicians from making dishonesty illegal for the 500,000 corporations in Canada (under securities and other corporate laws) and for millions of Canadians (under tax, welfare, immigration and other laws).

Concerning floor-crossing, some have proposed requiring any politician who wants to switch parties to resign and, if they wish, to run in a by-election.¹⁸ I think this proposal would have the unintended effect of decreasing the independence of MPs in relation to their party leader. Their leader would know that every MP in the party would face the possibility of losing their seat if they switched, and as a result their leader would know that they could abuse MPs' loyalty in various ways without a fear of loss of support. I believe a better model would be to allow MPs to switch parties if they can prove clearly that their party has broken election promises, or switched directions on significant policies, or if their party leader does not resign after being found guilty of ethical or other legal violations, or if they are expelled from their party caucus. This would allow MPs to stand up to their party leader's seriously unethical actions. However, I agree with David Gussow's proposal that if MPs switch parties in order to obtain a Cabinet appointment they should be required to resign and reaffirm the support of voters by running in a by-election.¹⁹ This would check MPs' unethical ambitions, and likely reduce the frequency of one of the most common floor-crossing scenarios.

¹⁸ For example, NDP MP Peter Stoffer proposed Bill C-210, online: (2013) Parliament of Canada <<http://www.parl.gc.ca/LegisInfo/BillDetails.aspx?Language=E&Mode=1&billId=6253365/>>.

¹⁹ David Gussow "Crossing the Floor, Conflict of Interest, and the Parliament of Canada Act" online: (2006) *Canadian Parliamentary Review*, Vol. 29(2).

2. No to mandatory voting, yes to right to vote “none of the above”

Do not implement mandatory voting as it violates the right of voters to refuse to endorse a candidate or party. Instead create a right to [refuse to cast a ballot](#) (as voters in Alberta, Manitoba, Ontario and Saskatchewan have in their provincial elections) or even better put a "none of the above" on the ballot (with space at the bottom to give 1-2 reasons why), (so voters can, if they want to, send a clear message that they do not support any of the candidates or political parties). Also, require Elections Canada to promote this right as much as every other voting right in its advertising and other voter education efforts, and to report how many Canadians exercise this right (including, if voters are allowed to give a reason why they voted none of the above, a report of how many voters gave a reason, and the reasons broken down into categories).

3. Change the voting system to make the results more representative of voters' will

[Change the federal election voting system](#) to provide a more accurate representation of the popular vote results in each election in the seats held by each party in the federal House of Commons (as in many other countries) while ensuring that all elected officials are supported by, and are accountable to, voters in each riding/constituency (with a safeguard to ensure that a party with a low-level, narrow-base of support does not have a disproportionately high level of power in Parliament), and to allow voters to vote “none of the above” and also to actually fix election dates for late fall every four years (unless an actual vote on non-confidence occurs earlier).

4. Regulate nomination races to ensure fairness and local representation

[Nomination races must be regulated](#) to ensure party leaders can't appoint candidates or stop candidates from running (other than on grounds of “good character” such as no criminal convictions). The [Reform Act](#) (as it was called) enacted in 2015 didn't do enough to stop party leaders from abusing their powers to appoint candidates because while it changed the CEA to take the power to approve election candidates from party leaders, it allows parties to decide — however they want — who will approve candidates (so leaders, or a party council that the leader controls, could end up keeping this power in many parties).

A national [survey](#) in May 2013 found that 71% of adult Canadians want restrictions on the powers of leaders to choose their party's election candidates, to choose which MPs sit on committees, and to penalize politicians who don't vote with their party (only 20% were opposed; 9% did not answer).

Another national [survey](#) in November 2014 found that 61% want local riding associations to choose election candidates (only 24% want the leader to do this), and 73% want a

majority of MPs to decide whether to expel an MP from the party (only 17% want the leader to decide).

Nomination races should also be regulated to ensure they “are conducted in a fair, transparent, and democratic manner” (NOTE: that quotation is from the Conservatives’ 2006 election platform that promised to make changes to give Elections Canada the power to run nomination races and enforce the rules). The best way to do this is to take the regulation of nomination races away from parties and riding associations and empower Elections Canada to oversee them.

II. Engagement, accessibility and inclusiveness

The four recommended changes set out in the previous section would also all encourage voting and participation in the democratic process, but the following six changes should also be made to offer opportunities for inclusion of underrepresented groups in the political process, to foster greater civility and collaboration in politics and enhance social cohesion, and to increase accessibility and inclusiveness:

1. Empower the Chief Electoral Officer to do and fund broad voter education

Change section 18 of the *Canada Elections Act (CEA)* so that the Chief Electoral Officer (CEO) is empowered not only to “provide” the public with information about how, when and where to become a candidate and to vote but can also conduct and provide funding to other broader voter turnout public education programs.

2. Requiring more ID to vote and eliminating vouching

Not only is the elimination of “vouching” for the identity of a voter unfair, but even more so is the prohibition on using the voter registration card (known as the “voter identification card” or “VIC”) as one of the pieces of ID that voters can use to prove their identity and residence. Why do we have a voter registration system if the registration card sent to voters under the system won’t be allowed to be considered valid ID?

In the past, the Conservatives cited estimates from one study that don’t prove vouching fraud occurred (only “irregularities”), and are ignoring the fact that large scale fraud using vouching would be very difficult (given that under subsection 143(3) and (5) of the *Canada Elections Act (CEA)* each voter is only allowed to vouch for one other voter and only in their riding).

Even though 39 types of ID are [accepted at the ballot box](#), and the *CEA* (under section 143(2.1) allows the CEO to [add as many more as he likes](#), and even if only 0.8 percent of

voters used vouching in the last federal election, there really is no justifiable reason to prohibit vouching.

So the measures increasing the ID required to vote should be removed from the *Act* so that we have a voter identification system in which voters will be allowed to vote if vouched for by another registered voter (with the limit maintained that a registered voter can vouch for only one other voter), or if they present one piece of government ID, or one piece of ID showing their name along with another showing their name and address.

As well, the voter registration card (VIC) that Elections Canada sends out should be [added to the current list of valid ID](#) that can be presented along with another piece of ID.

Finally, Elections Canada should be empowered, and provided with adequate funding, to hire and [fully train all election workers](#) well before each election, and to make the voter registration list even more accurate (which will help prevent difficult ID situations, and also ensure that all election workers are properly checking and accepting ID).

As well, the *Act* should require Elections Canada to work proactively with all the 39 institutions on its list that issue ID (and other new institutions) to ensure they all include addresses on the ID they issue.

3. Democratize the federal political finance system

Concerning political donations, some commentators have claimed it is a big problem that in 2015 the election year donation limit for individuals was increased from \$3,600 to \$4,500 (previously anyone could give \$1,200 annually to each party, and another \$1,200 as a combined total to the riding associations of each party, and another \$1,200 combined total to the election candidates of each party, and all three limits were increased to \$1,500 and then by \$25 each year (subsection 367(1) of the *CEA*)).

However, the real problems are:

- that the current donation limit is 10 times higher than an average voter can afford;
- that the high donation limits make it easier for businesses and other organizations to funnel large donations through their executives and employees, and;
- that the Conservatives are eliminating the most democratic part of the federal political finance system – namely the per-vote annual funding that parties receive.

As well, most commentators (and most media) ignored the even more undemocratic political finance change made in 2015 – the increase in the donation a candidate can make to their own campaign from \$1,200 to \$5,000, and for party leadership candidates from \$1,200 to \$25,000 (under subsections 367(6) to (8) to the *CEA*).

These were huge, and hugely undemocratic, increases that will only benefit wealthy candidates.

There are also loopholes in the rules for campaign spending by nomination race and party leadership candidates that must be closed -- unlike election candidates, nomination and leadership candidates do not have to count goods or services as campaign expenses.

In addition, unlimited bank loans to candidates and parties are allowed (section 370(2) of the *CEA*). Banks are regulated by the federal government, and this measure allows them to pick and choose candidates and parties to support (likely only sure winners) and buy influence with them through loans.

So to have a fair, and democratic political donations system, the donation and loan limits must all be decreased to \$200 (Quebec lowered its limit to \$100 in 2013). And the per-vote funding must be reinstated (although it should be reduced to 75 cents annually because the past amount of \$1.95 annually allowed some parties to prosper financially without having to reach out and maintain the support of voters in between elections). As well, as in Quebec, public funding that matches donations raised annually by parties and leading up to and during elections by candidates should be implemented.

The following other flaws with the current federal political finance system also need to be corrected:

- donation limits and disclosure requirements are needed for “volunteer labour” donated to parties and candidates any time, including during nomination races, election and party leadership campaigns, and including disclosure of people who organize fundraising events or volunteer for riding associations, to close this existing secret donations loophole;
- as federal political party leadership campaign candidates are required to do, all candidates, politicians, parties and riding associations must be required to disclose publicly all donations, gifts, and the status of any loans, regularly and during the week before election day, so voters know who is bankrolling them;
- disclosure of the identity of each individual donor's employer must be required (as in the U.S.) and disclosure of each donor's direct organizational affiliations must also be required (to help ensure that corporations, unions and other organizations are not funneling donations through their employees or board members);
- riding associations and political parties must be prohibited from spending the money they raise in improper ways such as giving grants to community groups or individuals as a way of buying votes;
- riding associations and political parties must be prohibited (as federal election candidates and MPs have been) from having a secret trust fund and from taking secret, unlimited donations into the fund;
- secret, unlimited donations to all candidates in nomination race, election and political party leadership campaigns must be banned (as they have been banned for federal election candidates);
- as the UN Convention Against Corruption and other international standards require, the bank accounts of all public officials who have decision-making power must be monitored for suspicious transactions;

- the penalty for taking a secret donation of money, property or services, or having a secret trust fund, or violating spending rules, must be increased to minimum \$100,000 fine and a multi-year jail term, and loss of any severance payment, and a partial clawback of any pension payments;
- a public funding system should be established that matches the donations made to any nomination race, election, and party leadership candidate who raises a specific minimum amount of money showing they have voter support;
- the system of per-vote public funding of federal political parties should be maintained, and similar systems established across the country, but the annual amount should be only be \$0.75 per vote received (to ensure that in order to prosper parties need to have active, ongoing support of a broad base of individuals) and riding associations should be required to receive a fair share of this funding (to decrease the control of party headquarters over riding associations);
- spending limits must be established for political party leadership campaigns to ensure a level playing field for all candidates.
- wherever election dates are fixed every few years, spending by candidates, riding associations, political parties and third party interest groups must be limited for a few months before each election day, and;
- donations by political parties to riding associations and candidates must be limited to decrease the possibility of party headquarters influencing the selection of candidates by riding associations, and to make associations and candidates more independent from party headquarters.

4. Restrict pre-election ad spending by parties and candidates and third parties

In 2014, the limit on advertising spending by “third party” interest groups and individuals was expanded to cover all ads “in relation to” an election or by-election (section 350 of the *CEA*).

Before that, only ads run during the election campaign period are counted, but this change means the full costs of an ad run just before an election and into the election period by an interest group or voter could be counted toward the total amount of paid advertising that an interest group or voter is allowed to run during the election period.

It makes sense to extend the limit on pre-election advertising given that federal election dates are now, sort of, fixed every four years. The fixed election date allows parties, candidates and third parties to spend strategically before the election campaign begins, as that spending is not restricted by current limits.

The Supreme Court of Canada upheld limits on paid advertising spending during election campaign periods in the 2004 ruling in the [*Harper v. Canada*](#) case. But the SCC made it clear in that ruling that the limit had to be reasonable. The calculation of reasonable takes into account the definition of advertising, the cost of advertising (how many ads could be run), and the period of time the limit applies. The B.C. Court of Appeal rejected

a provincial limit on third party advertising spending in a 2011 [ruling](#) because the definition of advertising was too comprehensive.

The reasonable compromise that should be made is to limit pre-election paid advertising spending by third parties for the 90-day period leading up to the election campaign period, and to set the limit for that period at a reasonable amount. The [current limit](#) for the election campaign period of 35 days is \$200,100, so by extension a reasonable limit for the 90-day pre-election period would be \$515,000.

However, what is not taken into account by these limits is the actual cost of advertising, which does not necessarily go up or down by the rate of inflation (which is how the legal limit is currently changed each year). A better way to determine what both limits should be would be to take the original limit back in 2004 (\$150,000) that was upheld by the Supreme Court of Canada, and to calculate how that amount should be changed annually based on a “market-basket” calculation of the actual cost of advertising.

As well, to be fair, political party and candidate ad pre-election ad spending should be limited during that 90-day period by extending the current election campaign period limitations. Liberal Senator Dennis Dawson has introduced a [private member bill](#) to cover paid advertising by parties and candidates for that three-month period but the bill simply extends the current election spending limit to cover that period, so it doesn't really address what the limit should be during the two periods (pre-election vs. election campaign) or whether the current limit should be increased.

5. Have Elections Canada determine the date and number of election debates

Elections Canada should determine the date and number of election debates and oversee them, with the leader of every party that won at least 5% of the popular vote in the last election or that has at least one MP in the House of Commons allowed to participate, and require all broadcasters to broadcast the debates.

6. Allow [independent candidates to raise money in between elections](#)

Currently only party-backed candidates are allowed to do raise money in between elections, through their local riding association or their party that then transfer money to them once their election campaign begins. This is unfair to independent candidates – the *CEA* should be changed to allow them also to raise money in between elections.

7. Allow petitions to initiate referendums

Change the federal *Referendum Act* to allow for petitions leading to referendums, and also in all the other applicable ways recommended in this 1991 [article](#) (concerning political finance and spending rules etc.) by Duff Conacher.

III. Integrity

The 11 changes proposed in the above sections I and II will all also increase the integrity of the electoral system, but the following 12 changes should also be made to safeguard public trust in the election process by ensuring reliable and verifiable results obtained through an effective and objective process that is secure:

1. Prohibit online voting

Prohibit online voting as it presents a very real danger to the integrity of voting results according to almost all computer technologists including [Stanford University's David Dill](#) who was one of the organizers of the [statement by technologists warning of the dangers of online voting](#).

2. Empower Elections Canada to appoint all election workers

Allowing the parties and candidates that came first or second in the previous election to appoint any election workers is a recipe for corrupting election results. Elections Canada should appoint all election workers – the parties and candidates could nominate people but Elections Canada should appoint them all.

If this change is not made, then at least subsections 34(1), 35(1) and 39(3) and (4), and 124 of the *CEA* must be changed to say that the returning officer may appoint as a deputy returning officer or poll clerk or registration officer or central poll supervisor any qualified person suggested by anyone.

Currently those subsections say that if the winning or second party from the previous election suggest people to fill these positions, the returning officer can only appoint those people, which essentially ensures that the people who fill these positions all have dangerous partisan conflicts of interest.

3. Empower Elections Canada to appoint the auditors

Sections 377 and 403.11 of the *CEA* should be changed to empower Elections Canada to appoint the auditors for all the parties, riding associations and candidates.

Allowing these entities to choose their own auditors is a recipe for corruption and violations of the election spending limits, and general donation and spending rules, in the *CEA*.

4. Make the Chief Electoral Officer and the Commissioner of Canada Elections, and the Director of Public Prosecutions, actually independent

Changing the Commissioner of Canada Elections from a Chief Electoral Officer (CEO) appointee to a Director of Public Prosecutions (DPP) appointee in 2014 did not reduce the Commissioner's independence from the government, and his effectiveness. The DPP is no more or less independent from Cabinet than the CEO, and the Commissioner already submits evidence to the DPP after each investigation, and the DPP already decides whether to prosecute.

A real problem is that the DPP is chosen by Cabinet just like the CEO is, and so both lack independence from the government. The solution is to strengthen the appointment process for the DPP, and all the officers of Parliament including the CEO (and the Commissioner), and all Cabinet appointees, by establishing the [Public Appointments Commission](#) that the Conservatives promised in 2006, and by requiring that a majority of opposition party leaders approve the appointment of all of these key democratic good government watchdogs.

Some may claim that the CEO is more independent than the DPP because he is supposedly chosen by Parliament. However, there is no real difference in their independence, especially when there is a majority government. The CEO is actually chosen by the Prime Minister and Cabinet (through some secret process that is not specified in the *CEA*) with his appointment only confirmed by a resolution passed in the House of Commons (which the ruling party can easily pass whenever they have a majority).

Both the CEO and the DPP have fixed terms of office; can only be dismissed for cause (again with a resolution passed by the House of Commons (and also the Senate for the CEO); both have to submit their annual budget to the government, and; both submit an annual report to Parliament.

At least the DPP's selection process is known as it is set out in the law that governs the DPP. Then-Minister of Democratic Reform Pierre Poilievre [claimed](#) on February 10, 2014 that "the Director of Public Prosecutions is appointed on the recommendation of an independent panel that is chosen members by all political parties as well as the law society."

This is not fully true. Under subsection 4(2) of the [Director of Public Prosecutions Act](#) the Attorney General (AG) submits a list of up to 10 nominees to the panel. As a result, the AG actually chooses the DPP because the panel can only recommend from people from among the AG's nominees.

As well, if you add it up, the panel members are four people chosen by the ruling party (one chosen by the party, the two Deputy ministers, and the person chosen by the Attorney General), and three people chosen by others (one each chosen by Liberals and NDP, and one chosen by the Federation of Law Societies of Canada). That gives the

ruling party a majority on the panel currently (if another party wins enough seats in the next election to become a recognized party in the House, then the ruling party will choose four out of eight members of the committee).

To ensure an actually fully independent Commissioner, the law should be changed in the following ways:

- the Public Appointments Commission (PAC) that the Conservatives [promised](#) in the 2006 election should be established (with the approval of all parties in the House required for the appointment of all the members of the PAC);
- the PAC should be required to conduct a merit-based, open, public search for candidates for the DPP, and for candidates for the Commissioner position;
- the PAC should submit a short list of candidates for DPP, and for Commissioner, and the approval of all party leaders in the House should be required for the people appointed as DPP and Commissioner.

Every officer of Parliament, including the CEO, as well as all other good government watchdogs such as the Parliamentary Budget Officer (PBO, who should be made into an officer of Parliament), should be appointed the same way.

5. Require and Commissioner of Canada Elections and Director of Public Prosecutions to disclose their rulings on complaints

No one can tell if the Commissioner's enforcement record is worse now than before because the Commissioner is not required to disclose details about his record (and doesn't do so voluntarily). In [refusing to disclose](#) his rulings on more than 3,000 complaints he received since 1997 when Democracy Watch requested them in April 2012, the Commissioner gave the unjustifiable reason that the rulings might make him look bad.

One of the past rulings that points to why the accountability of the Commissioner needs to be increased is the ruling on complaints about [fraud robocalls in the 2008 federal election](#) in the B.C. riding of Saanich-Gulf Islands. Essentially, the Commissioner gave up on that investigation, laying the basis for the much greater fraud robocall scam in the 2011 federal election. The Commissioner's weak enforcement actions only became public because the complainants disclosed the letters they received from the Commissioner.

Section 510.1 to the *CEA*, section 16.31 of the *Access to Information Act*, and (16(1) of the *Director of Public Prosecutions Act*) all combine to prohibit the Commissioner and the Director of Public Prosecutions (DPP) from disclosing the results of investigations and the Commissioner's rulings on complaints unless, essentially, the Commissioner does a compliance agreement with the violator, or if the DPP prosecutes the violator or if they feel disclosure is in the public interest.

It is important to note that this measure does not apply to the CEO – if someone sent Elections Canada information alleging a violation of the *CEA*, Elections Canada could disclose that information in its annual estimates report to Parliament, or in its post-election or post by-election reports (filed under sections 533 to 537 of the *CEA*), or just through testimony before a parliamentary committee (as all testimony is protected by privilege and immunity) or in an interview with the media (in addition, there are no restrictions at all on the CEO sharing that information with the Commissioner of Canada Elections).

The DPP is also not required to publish their reasons whenever they decide not to prosecute, and whenever they decide to agree to a plea deal (as they did, very questionably, when they had [clear evidence](#) that Doug Finley and Irving Gerstein deliberately executed the in-and-out advertising funding scheme that the Conservatives used in the 2006 federal election).

So to ensure actually fair and proper election law enforcement, the Commissioner must be required to disclose his rulings on all complaints (after he has completed his investigation), and the DPP required to explain publicly whenever he decides not to prosecute.

Every officer of Parliament, including the CEO, as well as all other good government watchdogs such as the Parliamentary Budget Officer (PBO, who should be made into an officer of Parliament), should also be required to disclose all their rulings and decisions. As long as they are not required to do this, no one will be able to tell whether they are making unfair, biased and improper rulings.

6. Fully track and disclose robocalls

Currently, people or entities that make robocalls are only required to register and keep just the script and recording of the call for only 1 year.

It should be changed to require anyone or any entity that uses robocalls to file a copy of each robocall script and recording, and a list of the numbers called, with the CRTC for the CRTC to keep for 5 years.

As well, political parties should be required to keep a record of who accesses their voter database, and to make it a violation for political parties to allow their database to be misused.

NOTE: Despite these new measures, it will always be difficult to stop someone doing anonymous fraud robocalls through an offshore or foreign provider as it will be difficult to effectively prosecute businesses located in other jurisdictions or in the "cloud".

7. Establish effectively high fines for violations

All the fines in the *CEA* should be 10 times higher (by changing sections 500-507 of the *CEA* -- -- for example increase the fine in subsection 500(1) of the *CEA* from \$2,000 to \$20,000).

As well, courts should be required to impose the maximum fine unless extraordinary circumstances mean it would be unjust to do so.

8. Give voters adequate time to contest election results

Voters only have 30 days now to file a challenge to an election result for the reason that fraud changed the result – this should be changed to one year (under subsection 527(1) of the *CEA*). As well, they have to file an application (under section 524 of the *CEA*) and they should also be allowed to file an action that allows for disclosure of evidence.

As well, the requirement that a voter must give written notice to the returning officer when the voter applies to a judge for a recount should be removed because it will make it more difficult to challenge election results as it may be difficult for a voter to locate a returning officer after an election. (remove it by deleting subsection 301(1) of the *CEA*).

9. Allow for court order to compel testimony

Give the Commissioner of Canada Elections (CCE), and the CRTC, the clear power to apply for a court order that compels a person to testify, or a person or entity to disclose records, needed to investigate alleged violations of the *CEA* (as Elections Canada [recommended](#) in its 2012 report, and as election watchdogs in New Brunswick, Nova Scotia, Quebec, Ontario, Manitoba, Alberta and Yukon, and Australia and the U.S. can do, and as the Competition Bureau of Canada can do).

10. Require disclosure of documents to enforcement agencies

Require political parties, riding associations, candidates and third parties to provide any document requested by Elections Canada or the CCE to confirm compliance with the *CEA*, as [recommended](#) by Elections Canada.

11. Protect whistleblowers

Give [whistleblowers](#) a financial reward if they disclose evidence to Elections Canada, the CCE, or the CRTC that leads to a conviction.

12. Extend privacy protection provisions to protect voters

Extend the federal *Privacy Act* and *Personal Information Protection and Electronic Documents Act* to cover political parties, riding associations and political candidates, as Elections Canada [recommended](#) in its 2012 report.

VI. Conclusion

The Committee and/or the government must immediately undertake a meaningful consultation concerning electoral reform – if they do not then we will never know what changes most Canadians actually want the most.

The government must also immediately refer the issue of a vote-percentage threshold to the Supreme Court of Canada for a ruling to determine the constitutionality of a threshold – if it doesn't then the voting system could be changed in a way that will later be ruled as unconstitutional.

Changing the vote counting system alone will not make Canada's elections more honest, ethical, open or waste-preventing, and the changes will have to be made carefully to ensure that they actually make the results of elections (in terms of the makeup of the House of Commons) more representative in ways that will make the decisions of the House more representative of what most voters want the most.

All of the above changes are needed to make Canada's election more honest, ethical, open and waste-preventing. Canadians deserve no less than all of these changes, and making them will be a big step toward making Canada a world-leading democracy, a goal to which all federal MPs should aspire to in all the legislative changes they consider and enact.