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SPECIAL COMMITTEE ON ELECTORAL REFORM

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Chair: Kate White

**SPECIAL COMMITTEE
ON ELECTORAL REFORM**

Members: Kate White, Chair
Brad Cathers, Vice-Chair
Hon. John Streicker

Clerk: Allison Lloyd, Clerk of Committees

Witness: Peter Loewen, Director, Munk School of Global Affairs and Public Policy,
University of Toronto

EVIDENCE**Whitehorse, Yukon****Thursday, January 27, 2022 — 11:00 a.m.**

Chair (Ms. White): I will now call to order this hearing of the Yukon Legislative Assembly's Special Committee on Electoral Reform. Allow me to introduce the members of the Committee: I am Kate White, Chair of the Committee and Member of the Legislative Assembly for Takhini-Kopper King; Brad Cathers is Vice-Chair of the Committee and the Member for Lake Laberge; finally, the Hon. John Streicker is the Member for Mount Lorne-Southern Lakes.

This Committee was established by the Yukon Legislative Assembly on May 26, 2021. The Committee's purpose is to examine electoral reform and report to the Assembly its findings and recommendations. In our study of potential changes to the voting system, the Committee is seeking input from subject matter experts.

Today we have with us Peter Loewen. Dr. Loewen teaches in the Department of Political Science in the Munk School of Global Affairs and Public Policy at the University of Toronto. He is the director of PEARL — so Policy, Elections and Representation Lab — associate director of the Schwartz Reisman Institute, a Senior Fellow at Massey College, and a fellow with the Public Policy Forum. For 2020-2022, he is a distinguished visitor at the Institute for Advanced Study at Tel Aviv University.

Dr. Loewen's work has been published in several academic journals; he has edited four books and is a regular contributor to the media. We have asked Dr. Loewen to speak to us about the single-member plurality, or first-past-the-post, electoral system. We will start with a short presentation by Dr. Loewen, and then Committee members will have the opportunity to ask questions.

We will now proceed with Dr. Loewen's presentation.

Mr. Loewen: Thank you very much for the opportunity to meet with your special committee today. The work you're doing is important, and even fundamental, so I appreciate your willingness to engage with subject matter experts in this debate. I think we have an important role to play alongside you, and alongside citizens, so thank you very much for including me.

Let me make a quick introduction of myself by saying three things. First, I am a professor with an established expertise in electoral systems and in voter behaviour. This includes published work but also engagement as an expert witness in a variety of different legal cases and challenges to various aspects of electoral systems and electoral law. Second, I think I'm one of the few Canadian scholars who is on record as firmly opposed to the federal government and other parties' proposal to change Canada's federal electoral system after the 2015 federal election. I was happy to be among the few people holding that view, and I believe that the federal government's decision to not proceed was the right one. Third, I would let you know that personally, when I lived in British Columbia in 2009, I voted for electoral reform there for a single transferable vote system, and had I lived in Ontario in 2007, I would have voted

for the mixed-member proportional system that was on offer then.

So, I say all of this in hopes that you'll appreciate that I can bring to you an interesting perspective on the matter that you're considering.

I want to raise for you four points for your consideration and then to talk to you and take your questions about our first-past-the-post systems that we have in Canada. The first is the most important point, and it's the one that weighs most heavily in the choice between a first-past-the-post majoritarian system and other systems, and it is that electoral systems generate a fit between votes and seats, but also between votes and governments.

That fit is never perfect, and you have to decide whose voices you want to overweight and whose voices you want to underweight in that fit between votes and power. Let me just use two examples to illustrate this. I'll use one that's close to home for you. I won't use the 2021 election in Yukon, because it had a very unique outcome, but in the 2016 Yukon election, the Yukon Liberal Party won four in 10 votes, or 40 percent, and for this it received 11 of 19 seats, or roughly 60 percent of seats. So, 40 percent of votes translated into 60 percent of seats, which translated into 100 percent of Cabinet portfolios, so the ratio of seats to votes was 1.5 and of Cabinet power to votes was 2.5.

That's one way of thinking about disproportionality. How much more power did one party get versus the share of votes that it got?

Disproportionality runs the other way as well. The Yukon Party received one in three votes and for this was rewarded with approximately one in three seats, so the fit there was actually pretty good, but despite getting one in three votes, they received zero Cabinet portfolios. One in three votes got no representation in government. For the Yukon NDP, the numbers are more stark: One in four votes translated into one in nine seats and zero power.

So, what did the electoral system do? Especially in terms of power, it rewarded most the party that had the most but not the majority of votes. That's the nature of disproportionality in a first-past-the-post system, and advocates of our current electoral systems — like I might be — can't ignore the fact that some party ends up with a disproportionate amount of power, given the share of votes it received in the population.

What would have happened in 2016 under an alternative electoral system? It's actually quite hard to say, but for simplicity, let's just assume that a relatively pure PR system was being used, where the fit of votes and seats is very tight, or very close, and nothing about voters' preferences change, so let's assume that the vote shares were the same. Leaving them the same, we can re-allocate those seats, whereas the Yukon Liberal Party received 11 seats after 2016, it would have received eight. We would leave the Yukon Party at six seats, and we would allocate the remainder of seats — five — to the NDP.

So, now we've gone from a breakdown of 11, six, and two to eight, six, and five, a much more even split of seats that maps much more closely to vote shares in the population, but what

government would result? Well, let's assume that a coalition government emerged between the Liberal Party and the NDP. That's perfectly normal, perfectly acceptable in a parliamentary democracy; it happens in many other countries, and the fact that it hasn't happened with a few exceptions in Canada doesn't mean that it's not democratic.

Let's assume that a coalition emerges, with a Cabinet of 10 seats, and those seats are allocated between the two parties according to the relative vote shares. The Liberals would receive six seats, and the NDP would receive four seats. So, here's the rub now: There's still disproportionality. The Liberals are receiving 60 percent of power for 40 percent of the vote — less than 100 percent for 40 percent, as under first-past-the-post, but still a disproportionality. The second party in Cabinet is now receiving 40 percent of the power for one-quarter of the vote.

So, the disproportionality here is to the advantage of the party with the fewest votes. Broadly speaking, this trade-off will be present with any system that is more proportional, overweighting the votes of smaller parties within coalitions. So, PR simply does not solve completely the problem of disproportionality; it mostly just pushes it somewhere else, and that is largely the choice that I think you are wrestling with.

Let me make three more points very quickly, and then we can talk about the other relative merits and demerits of a first-past-the-post system.

First, you're not the first legislature to consider this, and you won't be the last. All recent efforts have failed — two in BC, two in PEI, one in Ontario, one failure to launch in New Brunswick, and multiple aborted attempts in Québec. Those efforts just show that this is hard to do and to achieve success. But do you know what they also show? That the sky didn't fall despite people trying to reform the electoral system, so don't shy away because this has failed elsewhere. If you want to try changing the electoral system, then you should go ahead and do it in just the way you're doing it now, through deliberation with citizens and experts.

Second, this is not the only democratic experiment you can engage in or reform you can pursue, so I encourage you to be very clear about what problem you're trying to solve. Electoral reform should not be the solution you look to for solving other problems. If you want more diversity in representation, if you want more women, more indigenous members, there are other solutions. If this is about a more fair or even allocation of ridings based on population, there are other solutions there, too. Electoral reform is a huge undertaking, changing a fundamental institution, and there may well be easier ways to go about getting some of the other outcomes that you might care about.

Third, in my own view, the ultimate choice should reside with voters or with citizens. There's a debate in Canada about whether we have reached the point of a convention, where those who want to change electoral systems should seek out permission through a referendum. I don't know that we've gone to that point yet. I'm skeptical that we have, but I do think that, nonetheless, you should not be setting the rules of your own game.

So, whatever major reforms you might propose, you should put it to citizens to have the final say. It will make reform harder, for sure, but it should be hard to change fundamental democratic institutions.

I want to thank you very much for your time and attention today. I look forward to your questions, and I'm happy to dive deep into the merits and demerits of a first-past-the-post system.

Thanks very much.

Chair: Thank you, Dr. Loewen. There are so many questions that I have. Mr. Streicker, as I can see you — would you like to start?

Hon. Mr. Streicker: I'm sure we're all going to have opportunities to ask a lot of questions. First of all, thank you very much, Dr. Loewen. I really appreciate your presentation and the directness of it.

One of the things that we've heard from a lot of people is, you know: What's the problem that we're trying to solve and also what are the values that we're trying to deal with? You made a statement right at the beginning of your words to us, talking about how there's never a perfect system, that the way in which we translate votes into seats or into governments — I think you said — will not be perfect.

I think that one of the things that we think about — and I don't want to speak for others on the Committee, but it really is about what is the best way in which to translate that interest of the public into a representative government. The way in which people vote seems to be pretty complicated. It's not just — there are a lot of different ways in which people vote. It isn't always just for an individual or a party or a leader or a platform or against other choices.

So, I think, as an exercise, we're taking it on because I think it's important to take it on as an exercise, whether or not it comes to something.

So, first of all, let me just start and ask you if you can go a little further into if our value, or the problem we're trying to solve, is the best way in which to represent those votes. Can you talk a little bit further about the pros and the cons of the system that is used in Canada, the first-past-the-post system, versus some of the other ones and what the trade-offs are that might make a difference? And if I could ask just one more thing, Madam Chair.

We are always trying to think of the context of the Yukon, which is a fairly significant geography with a pretty small population, where a lot of that population is concentrated in one urban area and less distributed across the territory. So, we know, as a legislature of 19 seats, that we're different from other provincial legislatures, and we're different from other territorial legislatures because we're the one that is partisan.

So, when you're giving us your thoughts around first-past-the-post and what values are held, as we choose one system or another, if you could think about us as well, that would be terrific.

Thank you, Madam Chair.

Chair: Thank you, Mr. Streicker. Dr. Loewen?

Mr. Loewen: Thank you very much, Mr. Streicker, for those questions and particularly for the invitation to root it in

the unique circumstances of Yukon, which do set it apart, not only from provinces, as you know, but from the other two territories.

Let me give you a framework in which to think about these trade-offs. What I really want to do is to try to be as even-handed as I can in giving you a sense of how experts think about what the trade-offs are here. One common view of the trade-off between a proportional system and a more majoritarian or plurality-style system is the following — and this trade-off really comes down to: Is there more than one party in government, or is there just one party in government? Because that's really the empirical effect of having a PR system versus not.

There's a very good set of arguments by a scholar named G. Bingham Powell, and he basically says that there's a proportional and a majoritarian view of democracy. The proportional view is the following: That at the level of input, we should make sure that there is as much proportionality as possible between what the variety of views is in a population and the variety of views that end up in government.

That's a very legitimate view. When you think about what we're doing during an election, we have a lot of people with different priorities, and they see those priorities reflected in one party more than another. So, if 30 percent of people have a view, even if they're not the majority, why shouldn't they have a view represented in parliament? The proportional vision, I think, is rooted in the idea that we want to give as much equal weight as possible in the composition of legislatures, and then governments, to the variety of views that exist in a population. And that's a legitimate view, and that's a value that you can want to prioritize. I think of that principally as a value on the input side, right on the side of, when we get to the process of forming a Cabinet, do we want to have a proportional representation of views in there or not?

The argument for — and this is what makes it difficult, Mr. Streicker — the argument for a majoritarian system doesn't say that it doesn't matter; the argument for a majoritarian system says that we should be prioritizing something else and what we should prioritize is a mix of a few things: clarity of responsibility, effectiveness, and accountability, and accountability is really related to clarity of responsibility, so let's just talk about accountability and effectiveness. The argument then for a majoritarian or a first-past-the-post system is that you get one big party in power, and they may not have at the Cabinet table all the views that are represented in the population, but they have more room to manoeuvre in responding to public opinion, and there's more clarity of responsibility, so accountability is easier come time of an election, because if voters don't like what a government has done, they don't have to figure out which party is responsible. They can simply look and say that there is only one party in power and that party is responsible. That party, when in power, has more, in theory, room to manoeuvre in terms of the policies that it pursues because it is not in a constant negotiation with the other party that is in the Cabinet with them.

So, those are a couple of the competing sets of values that political scientists will sometimes think about when thinking

about the choice between a PR system and a more single-member system or a majoritarian system — the trade-off between proportionality of views and representation of policy interests versus manoeuvrability, effectiveness, and accountability.

Now, how true those views are empirically is actually hard to sort out, I have to tell you. I think that the even-handed answer is that we can find instances in which, from the majoritarian perspective, there are single-party majority governments which move to follow public opinion in a very respectable way, which try to do what the population wants and are responsive to it. And we can find examples of single-party governments that just don't care what the majority of population wants because they can keep winning with the same 40 percent of the vote. So, we can find different examples in our own country, and we can find different examples cross-nationally, and we can find examples of PR systems that have worked and have not worked, or worked well or less well, on that dimension of the representation of interests.

I think that the challenge in this debate — I will just say this and then turn it back to you — goes back to what you kind of asked me to reflect on at the end of this, which is that the Yukon is different from other places, and in some ways — I mean, maybe I subscribe to the *Anna Karenina* view of politics. *Anna Karenina* started with: Every happy family is happy in the same way, but every unhappy family is unhappy in its own way. The idea here is that really every quality is different, and Yukon has its own considerations. What has happened over time in Yukon is the same as what has happened in every other democracy, in our provinces and in other countries, which is that you have an electoral system, and it does a lot of the work of representation, but other practices emerge, other conventions emerge, and they do a lot of work to also do the work of representation, accountability, and effectiveness. So, can you change a system and can a professor come in here and tell you that if you change a system to this, here is how the outcomes will change? It is very hard to say that, because you don't know what other things are going to change at the same time. But as your committee thinks about the big contours of this debate, it really is about, effectively, whether you want to have a system that is going to tend toward one party with more power than maybe it earned but is accountable for decisions versus a bit more power-sharing but maybe some less accountability or clarity of responsibility. In broad terms, I think that is a fair characterization of the choice that you are making.

Mr. Cathers: Thank you, Madam Chair and Dr. Loewen. I appreciated your presentation this morning. I think it is also notable, as you touched on and as we have heard from some of the other presenters, that when you change the system, the outcome will not necessarily be the same; it does affect how and why people may be casting their ballots. It may change, depending on the electoral model that you are using. Some of the questions — what you can change — that strike me are whether there is widespread agreement that there is a problem and, if so, what the solution would be.

One of the questions that I would just ask you is if you could elaborate a bit more on your thoughts on what occurs if

you look at changes to the system in terms of whether you have a change in how people are casting their ballots and whether — for example, in our current system, there is an argument from some that there is a tendency for a lot of people to vote, especially in rural areas, in large part for the person versus the party. I would just appreciate it if you could elaborate on your thoughts about how changing different systems may lead to different considerations by voters on what they are primarily basing their vote on.

Mr. Loewen: I would say this. I think that you are right in your intuitions about what to think about in terms of how things would change. So, the cardinal feature at this point of the first-past-the-post electoral systems in Canada is that, although they are local elections, they really lead to a big battle between parties. At the federal level, the vast majority of votes for a party are not decisively determined by the local candidate. The local candidate at a federal level matters decisively in perhaps 10 percent of cases. Now, that doesn't mean that members don't behave as though the local vote matters, because it may be that 50 percent of them think that they are in that 10 percent. But individuals are becoming less important and parties are becoming more important in our single-member district systems federally. Of course, that can't be the case in places where there are much fewer people living in a constituency where people are more likely to know someone personally, where they are probably making judgments — and kudos to the three of you for being elected, because people made judgments about your character and whether you were suitable to be their representative.

That is a point in favour of a first-past-the-post system — that we have localized elections where people are likely to vote for candidates who they know, and there is nothing wrong with that at all; I actually think that it is a great feature of smaller places. But to be fair to PR systems, you could adopt PR systems that do give prioritization to some local considerations. You could adopt a mixed-member proportional system, which would be a mix between local constituencies plus people who are elected off of a list where the seats are allocated proportionally to even out the disparity between seats and votes. You have a state where some people are elected into a constituency and others are elected from a list. You could adopt a single transfer of a vote system, like BC advocated and twice considered, which has multiple member ridings where people are voting for multiple individual candidates.

So, there are PR systems that will allow you to still have that element of local representation. Those are newer innovations in electoral systems, but they are used in serious countries that we would otherwise recognize as democratic. New Zealand and Germany both use MMP; Ireland uses single transferable vote. So, there are options there, but I think that what you will find is that, as you consider those, the limiting factor for how effective those systems will be at generating proportional outcomes is the fact that you have a small legislature. When you have just 19 members, your ability to have that mix of different types of members is constrained. If you go to a mixed-member system, you won't have 19 constituencies plus people off a list unless you add a substantial

number of seats to the Legislature. If you want to keep the same number of seats and have a mixed system, you are going to have to reduce the number of constituencies down to some number — maybe it is half of that number — and as you will all know, it is not easy to travel around the territory to represent people in big constituencies in summer and let alone in winter; it is costly. There is a trade-off there. There are ways around it, but that would be a practical limit on a mixed-member system in the territory.

Chair: I have a question. You mentioned that you lived in British Columbia in 2009 when there was that first referendum vote and you would have voted for the proposed change, and then you talked about Ontario and you would have voted as well. So, what has changed for you? Because not only are you a doctor of political science among other things, but as an individual, you had quite a path if you were willing to vote for it then but are now championing the first-past-the-post. Can you explain to us why your mindset has changed?

Mr. Loewen: I appreciate the question very much. The answer is that I am not sure that I would oppose a change to the electoral system in Ontario today, for example. The reason why I opposed the change at the federal level was because I think that Canada — with all due respect to each individual province and territory — is more complicated and complex than any of its constituent parts. My sense was just that we have a very unsteady balance in Canada. We are a place that has a lot of different regional economies. Obviously, we have different language groups in different places. We are becoming a very diverse country. We have very strong regions where people have very strong regional identities. My own sense was that, at the federal level, despite all of that, things have really worked for us as a country. It is among the best countries in the world, and when you think about how much conflict we could have had in Canada over time, given these baseline differences and the fact that we haven't had the kind of democratic fits and starts that a place like Italy had, despite the fact that we are actually as diverse at our core and fractious at our core as those other countries are — I thought that the electoral system probably had something to do with that, and so I thought that changing it was reckless, and I didn't know what problem it was trying to solve.

At the provincial levels, though, we have examples of provinces that have changed our electoral systems and gone back. Alberta had a single transferable vote system, or alternative vote system, for a period of time and changed back. The sky didn't fall. We have lots of provinces that had multi-member districts within a first-past-the-post system for a period of time.

So, I think that there is capacity for — I don't want to call it “experimentation”, because you are not experimenting and you are making big decisions. But there is capacity for trying different things within the provinces, and the stakes are lower. So, I think that, in those cases, it may have been worth trying.

The other thing that I would say is that, in Ontario and in British Columbia, something important preceded those proposals to change the electoral system, which is that in both provinces they constituted a citizens' assembly where they

asked everyday British Columbians and everyday Ontarians — that is a polite way of saying “non-politicians” — to consider different electoral systems and to learn about them. So, for people who are listening to this, this stuff is not simple; it can be confusing. Maybe it is not even interesting all the time. It is interesting to me, as a political scientist, but to learn it and to internalize the lessons of the trade-offs and to make a decision takes some effort. So, in both British Columbia and Ontario, they constituted citizens’ assemblies at which they gathered together regular citizens who, for a period of time over about a year in each case, spent time gathering together learning about electoral systems and then making a recommendation about what they thought would be best for the province — not best for any particular political party or best for any policy outcome that they wanted, because they are not politicians and they don’t have to worry about that. There is nothing wrong with worrying about that, but it wasn’t their job to worry about it. They made recommendations, and I just think that those recommendations are worth looking hard at because they are coming from citizens who are disinterested in what the political outcomes are but care about the system.

Politicians, of course, can come up with — it is not all self-interest. You can come up with a system that you think is better for the province; you can all agree on it, and that would probably recommend it more to citizens than one in which there was disagreement. But to me, the fact that those politicians relied on citizens to recommend the electoral system to them gave it a bit more credence. I guess, Madam Chair, it was just the combination of the fact that I thought that the way we were doing it at the federal level was kind of reckless, and I didn’t think it had that citizen input at the start to create the kind of legitimacy that you would need for that big of a change on that big of a scale.

Chair: Thank you, Dr. Loewen, and I do appreciate you making the difference between both the federal and the provincial levels, and that does make sense.

Hon. Mr. Streicker: Thank you, Madam Chair, and thanks, Dr. Loewen. I have to tell you that I bet you that every person in Madam Chair’s riding knows who she is, that every person in the Vice-Chair’s riding knows who he is, and that probably everyone in my riding knows who I am; it is that way in the Yukon.

I just want to follow up on the notion of the citizens’ assembly. Say that we were to do that here and thus to pull it away from sort of our elected person’s bias — our partisan bias — and move it to more of a citizens’ group, one that is going to get informed about this. I heard a term yesterday: “sortician”. It is a term to mean that we would try to make sure that it is representative of the territory.

One of the things that I was trying to figure out from that type of process is: What happens then? Let’s imagine that there is a citizens’ assembly; let’s imagine that they work for a period of time and, in all fairness, come up with suggestions. Do you suggest that it would then go to a referendum that would go straight to a legislature to try to introduce? How binding — what is your sense? If it were to go to a referendum, how important are the terms of the referendum to understand — is it

just like a majority? BC had a complicated system about even how a referendum would lead to a change.

Mr. Loewen: Those are great questions. Let me answer them in turn, just in terms of what I would recommend.

If you constitute a citizens’ assembly, I would give them the power to recommend a system that the Legislature would promise to bring to a referendum. You can, of course, choose not to do it. If you had an all-party consensus that the system that was proposed was somehow unworkable, then you could kill it and you could all wear that, but I would give them the responsibility at the front end of saying that this is a serious thing that we are asking you to do and if you bring us a proposed reform, we will put it to the people. That is one thing.

Irrespective of whether you defer to a citizens’ assembly or not, I think that you should put the decision to voters because I think that they should have a say. It’s not because politicians are particularly untrustworthy — quite the contrary — but I just think that it is such an important thing — it is like a fundamental institution — that we should have more people having a say in it than just politicians. But I don’t think that the referendum and the citizens’ assembly have to be necessarily linked. I think that you have to have both, but if you don’t have a citizens’ assembly, you should still have a referendum.

As to the question, there are different ways of doing this. There is the question of whether you require a super majority or not. Do you require 60 percent or 65 percent? I am really not sure about this. In British Columbia, the first time there was nearly a super majority, but it didn’t come through. I am inclined to say that what I would want to see is a majority of voters and a majority of voters in a majority of constituencies. So, you want to have more than 50 percent overall, and you want to make sure that it is 50 percent in a majority of constituencies so it’s not one part of the territory seen to be foisting the change on other parts of the territory. If you constitute a citizens’ assembly and you let them know that those are going to be the end terms of it, they will step up to the plate in terms of coming up with a system that will be acceptable to people, irrespective of whether they live in Whitehorse or somewhere else.

Then there is the question of the ballot. I will tell you — because I wrote an expert opinion against it — that the ballot that was designed last time in British Columbia, just for what it’s worth, was completely unacceptable. They created a ballot that had two stages. The first one was: Do you want to get rid of first-past-the-post, yes or no? And then, if we get rid of it, which of these following systems do you like? I think that was the equivalent of telling people: Let’s have a choice between cake and ice cream for dessert. Do you want cake or ice cream? So, they want ice cream, and you say that the three flavours are chocolate, vanilla, and onion. No one would choose onion ice cream over cake. The easier thing would have been to just simply ask people to rank these four systems. We have the existing system and we have three others. What is your ranking of them? There is a simple way to count up these votes to determine which is preferred by the majority. So, what I would say is the following, in conclusion: Starting with the ballot, however you design that ballot, allow for the fact that people

may like some proportional systems but they may not like other ones, and don't assume that the thing they care about most is just PR or not PR, first-past-the-post or not first-past-the-post. If you are going to put up multiple — more than two — systems, let people rank them. Secondly, you should have a referendum, and 50 percent is probably fine, but make sure that it is 50 percent across the province. Third, I would encourage you to constitute a citizens' assembly.

Mr. Cathers: Dr. Loewen, I do appreciate hearing your thoughts on the ballot structure and the importance of having a referendum. That is one thing in this process that we have been clear about our views on — the importance of having a referendum, in part because it strikes me that one of the challenges with a citizens' assembly is that there is a natural bias to who ends up on it in that, whether you open it up to applications or send people invitations, people who aren't interested in the topic aren't as likely to participate.

I would appreciate hearing your thoughts on — if, as part of the process, there were to be a recommendation to form a citizens' assembly as one stage in the process, how would you suggest best approaching the issue of selecting people for that in a way that is most representative of the public and whether there is an ability to in any way deal with the challenge that the people who are most likely to participate are the ones who are interested in the topic?

Mr. Loewen: That, of course, is a concern. I think that you can imagine two very significant barriers to people getting involved in a citizens' assembly if invited. One is interest in the topic or interest in politics generally, and the other is just resources. Some people may look at this and say, "Well, it sounds like it is a lot of work for me to travel to Whitehorse or to travel somewhere else." Citizens' assemblies can meet all over the territory — so go to Old Crow as well. But they may say, "It is a challenge for me to get to a place, so I can't imagine doing that. And anyway, I don't know anything about politics. It's not for me." So, those are both big barriers to people psychologically for accepting the invitation, if asked.

I think the way you get around that is the following: First, you invite people; you don't let people identify themselves. You have a voters roll that has the name of every voter in the territory on it. You can randomly select people from that roll. That is basically the idea of sortition. Let's randomly assemble a group, and once you invite them, do everything you can to make it clear that this is something where, even if they don't know anything and even if they have trouble reading or feel like this isn't for them — there are ways to bring people into a process and to make it as accessible to them as possible. Then just make sure that you aren't penny-wise and pound-foolish here. If you want to do this thing, recognize that it is going to cost a bit of money to get people to different parts of the territory for the five, six, or seven weekends that you might do it. But it's really important because you are deciding what the future of your democratic institutions are going to look like, and that's worth the cost of doing it. You are still going to have selection into this. You are still going to have people who, despite your best efforts, are going to say, "No, thank you. This

is not for me." You are going to end up with people who are, it turns out, more interested in politics or whatever.

But what I will just say in defence of citizens' assemblies is — and the research on this is pretty clear, actually — that people change their views during these things. In their listening to other people and their listening to experts, they do change their views in terms of what kind of system you want to have, what the contours of that system are in terms of the balance between parties and representatives, and there are lots of options in front of them. So, I think that they can be up to the task of making a recommendation that reflects not only their own interest and engagement in the issue but also broader considerations about what is good for their territory. It takes some work, but I think the evidence is pretty clear that these citizens' assemblies can do the hard work of coming up with a system that people think is not only good maybe for the outcomes that they want, but good for democracy.

Chair: When you talk about how citizens can assemble and they can learn and change their points of view, I can say that, prior to yesterday's presentation from Fair Vote Canada, I thought a referendum was the only answer, but in yesterday's presentation, there was compelling evidence that said that, in referendum questions, the status quo wins.

In other presentations from other witnesses, we have heard both — so, in British Columbia, there was no campaigning for or against; it was information out and that was it. But then we had a conversation with Dr. Desserud in PEI, and there was a recognized group there for and against — obviously two groups could do it — and how one was very well-resourced compared to the other, and that was a disproportionate thing. Is there any cautionary tale about a referendum or things to be aware of if we choose to go that way?

Mr. Loewen: That is a very good question, Madam Chair. What we are asking in the question, really, is: How much do you want to resource the different sides of the issue to campaign for or against it? I think you can argue it both ways. I will tell you that I did a very extensive study in 2007 in Ontario, and there was very little evidence in the multiple ways that I looked at it that, really, knowledge was what was predicting why MMP lost in Ontario. People didn't like the system, so they didn't vote for it, and I know that it is always hard for Fair Vote to accept that — that they keep losing these referendums. They keep blaming someone else for it, but it may just be that people don't want change.

You can call that a status quo bias, but I think that it is actually a reasonable position. It is a reasonable position that — without being uncharitable about it — if someone comes to your house, knocks on the door, and says, "I want to talk to you about the heating system that you have in your house." You say, "Well, I don't know how it works; my house stays warm." They say, "But you don't understand. This is a really antiquated system and they have better ones in Germany. If you knew what you were talking about, you would want a new system." You would say, "Hold on a second. First of all, my house stays warm, and secondly, I think you have an interest in telling me about this, don't you? I mean, you just didn't show up on my

doorstep randomly. You are trying to sell me something, aren't you?"

A status quo bias is not an irrational thing for people to have. If people think something is working, a rational psychological response is to say, "This is fine. I don't want to hear any more."

I think the story that sometimes underlies what Fair Vote and other people will say is that, if these voters weren't so dumb, they would know what is good for them.

Maybe voters kind of know what is good for them and they like the systems that they have. I think that is why a referendum is a really good test. It is really fair to ask everybody. If you think that people are smart enough to vote for you and to engage in a democracy, they are smart enough to choose their electoral system or not. If we don't think that they are sophisticated enough for that, then let's shut the whole thing down. That is kind of my personal view of it. Professionally, I also think it is the case that people can make decisions on this.

Now, to the more technical question — so, leaving aside the characterizations — of: Should you equip people to learn about this? My view is yes. If you have a citizens' assembly and you go to referendum and citizens have gone to all that effort to decide on an electoral system, then stand up some bodies that have the ability to then go to citizens to talk about why they are doing this and why they are not doing it. Talk about it on the radio; put a budget there for some people to go to talk at town halls, or wherever else they want, to express why the citizens' assembly chose to submit its choosing. If groups want to, under the finance regime that you have, raise money to campaign for or against an electoral system, I think that is just fine. Why not have a democratic debate over it? But let's just not start with the assumption that, because electoral reform keeps losing in Canada, somehow people are wrong for choosing that. I am not saying that you are saying that, Madam Chair; Fair Vote says that, and they are wrong about that. There is a reason that they don't like referenda; it's because they don't win them, but I don't think it is necessarily because voters are dumb. In fairness to the PEI case and Professor Desserud, voters in PEI did vote for electoral reform, and the government ignored it. There is a case where they did win a referendum.

Hon. Mr. Streicker: Dr. Loewen, I want to try to pull together a few of the threads that I have heard from you. I liked your description of onion cake. Also, you talked about how the BC referendum question did not seem fair to you or, in your perspective, that it was not correct. I have sort of imagined that if we went to a citizens' assembly, they would make some recommendations that might include first-past-the-post, but they might say: "Here is a system — or here are systems — that we think are worth asking the public about." If they came back and just said: "First-past-the-post", I don't think that we would go to referendum because I think that is what we have, but if they said something else, we would go to a referendum. They might say: "First-past-the-post or this system", or they might say, "First-past-the-post or these other two systems", but I am thinking that if you were going to get a recommendation, it would be for: What should there be? I think that one of the challenges always is what we know versus a whole range of

systems where we are not landing on something specific. I hope that the citizens' assembly — and I'm a big fan of the whole notion of a jury of peers where everybody can be just as educated about a topic in their own way and they will make the best decision and they would look at what the reality of the Yukon is and try to pick something that would make sense for us here with our size, population, and distribution.

I guess I am asking you to say — what would be a good referendum question? It would be to pick from these systems but maybe not as many as PEI put out there. Were you saying that it should be a ranked ballot? I know that these are very specific, but I am trying to think about your perspective around how this all might work. How would this citizens' assembly link to that referendum?

Mr. Loewen: My intuition would be the following, and actually, it is an intuition that makes reform more likely, not less likely. If you choose to have a citizens' assembly, I would task them with recommending a single system and then let voters choose between that single system and the alternative. If they do propose multiple systems, you have to let voters rank them.

When you go to buy a car from a car lot, you don't buy a series of options. You don't say that you want the front of a truck, the back of a car, and the middle of a van. You say that you want this one thing with everything that it has. You have to choose things as they are as a whole. A ranked ballot lets you do that. A system like BC which said, "Are we going to have reform or not?" and then lets you choose between reform ones, just ignored the fact that a very sizable percentage of voters liked some systems but didn't like all of them more than first-past-the-post. Just to make it easier and to focus the debate and make the debate about a real system versus the current system, I would task a citizens' assembly with doing that hard work of choosing that one proportional system or that one alternative system that they want to put up against the existing system. That is more likely, I think, to lead to reform because it is more likely to lead to a reasonable discussion that voters can engage in and that politicians can engage in about one alternative versus the system that is in front of voters.

But should you have a citizens' assembly or a legislative committee that recommends more than one alternative system, I think you have to allow for a straight ranking of those systems by voters and then use a kind of majority run-off system on the ballot to determine what the majority preferred choice is.

Mr. Cathers: Thank you, Dr. Loewen and Madam Chair. I would just ask two things. You touched on the disproportionality of votes. I have a two-part question. The first part is: There is also the issue of disproportionality in the relative power of each person's vote, and we have in the Yukon a situation of a fairly large difference between the number of votes required to win the most populous riding and the least populous and what percentage you think is appropriate for maximum variance above and below the average line between ridings.

The second part of my question is, as it comes to the issue of the balancing of power and policy interests with the trend that has happened across the country — both territorially and

provincially and federally — for more of the major decisions being addressed in regulations. They are approved only by Cabinet instead of being debated in the Legislative Assembly — what your thoughts would be on the issue of the trend in Canadian politics toward that and how that ends up translating into what power of people in casting their vote — what power that their representatives do or don't have over the major policy decisions being made.

Mr. Loewen: I am unfortunately going to punt on both of these questions, but I will tell you why. On the first question about acceptable variations — so really, the question is: How big of a difference can you have in how many people there are in ridings, between different places? I am a boundary commissioner in Ontario right now for federal electoral redistricting. I don't have a professional opinion on how much variation you should have. I want to be careful about saying that.

What I will say is the following: In Canada and federally — and in the case of the Yukon Territory as well — we have much more variation than other countries would consider to be acceptable in terms of variation in population between constituencies. We are abnormally tolerant of very large variances in Canada. Our Supreme Courts' rule at the federal level of plus or minus 25 percent is internationally exceptional. I would say that and I think that it is just important to note that.

I will tell you that I have done research with colleagues in my lab on what the relationship is between how populated a riding is versus other ridings and whether there is better alignment between what the politicians do and the citizens in that riding or where that riding is more likely to choose the majority-preferred candidate. We don't find a lot of relationship, by the way, between the quality of democracy within a riding and how disproportionate its population is compared to other places. So, I think that Canada is exceptional, though I don't know that it actually impedes on the quality of our democracy. That would be my answer.

On the second point, democracies have an information problem. For voters, we can never see everything that is going on, and we only get a chance, in some ways, to make a summary judgment every three or four years on how well a government has done. It is never the case that we can see all of that information, but I do think that we have seen, over time in Canada and in our provinces, a diminution of the extent, depth, and even the quality of debate going on in our legislatures, and I think that this is probably not to the benefit of greater accountability. Government is becoming more complex, so it is looking for ways to do things faster and with less oversight, but I think that, in fairness to the facts, there has been some decline in our capacity of parliaments to hold governments to account on the decisions that they are making. I think that is probably not positive.

Chair: Thank you, Dr. Loewen. We had a presentation earlier from Dr. Everitt who suggested that, instead of looking at a full-scale reform of legislative process or electoral process, we could look at individual tweaks as far as correcting some of those issues. One of the things that I will highlight is, of course, majority governments with far less than the majority of the

votes. You did make a statement about coalitions or the assumption that there would be a coalition, but we are a perfect example where we are not in a coalition based on a decision that one of us in this call has made. Are there any suggestions that you would make as far as tweaks that we could make that would see that proportionality maybe adjusted without going into a full electoral reform process?

Mr. Loewen: Yes — so a couple of things to say about that. You do have a supply agreement. The government is functioning, so I gather that it is working well. The spirit of those, in some sense, is that you figure out the things you can agree on and then you get those done, and then you will disagree on the stuff that you can't agree on. I think that is actually a very healthy way of thinking of what a legislature should do.

Just in terms of smoothing out our politics, what I would say is that — and COVID has actually shown us this a little bit — legislatures and governments can work well when parties are really clear about what they agree on and they empower governments to do the things that they agree on, and then they accentuate the stark disagreements that they have over other issues. That really helps voters to sort stuff out. They can say that you all agree on this, so they are not going to vote on that — all the parties agree — but here are the things that they disagree on, and being able to see where parties disagree and articulating that makes things work better.

The choice of a supply agreement rather than asking for Cabinet seats — I don't know the history of that decision. It would be a different story if you had two parties in Cabinet. I think that you should give it a try sometime and see how well it works, but you can have that in a first-past-the-post system if you want to have it. I mean, you can have it in a PR system if you want to have it. It is a very democratic way of governing, just as supply and service agreements are a democratic way of governing.

What I would encourage you to do is — irrespective of whether you decide to go down the path of electoral reform or not — if there are other things that you think are important, if you want to have more indigenous members of your legislature, if you want to have a greater gender balance in your legislature, if you want to have people from a variety of different backgrounds in your legislature in terms of the professions that they come out of, or the professions that they don't come out of, what I would say is that there are other ways to get at that. There are ways to encourage parties to campaign finance and through pledges between parties to bring more female candidates forward, to bring more indigenous candidates forward. There are things that we can do to make our politics better if there are things that we want to improve without having to go to all the length of changing a whole electoral system if there are other things that we want to have within our system. To the degree that you have all-party or multi-party consent to some of those types of things, why not just do them for the good of doing them? Don't change an electoral system so you can get some second-order benefits; just change your practices or your regulations to encourage you to get those other benefits, like greater participation of women in politics or of

indigenous candidates or whatever else it is that you might be concerned about.

Chair: Mr. Streicker, a very short question.

Hon. Mr. Streicker: Thanks, Madam Chair. Your question was mine, so I will just say that I really appreciated listening to that response and to all of the responses, and so I will defer.

Chair: Dr. Loewen, have you any final statements for us today or thoughts to leave us with?

Mr. Loewen: I will say thank you very much for giving me this time to talk to you, for asking great questions. I would like to commend you on being a committee that obviously knows its brief well and is taking this issue really seriously. I think it is important that citizens see how seriously politicians take issues like this. Thank you very much. I have really appreciated the chance to chat with you, and I admire the weight that all three of you are putting on this issue. Thank you very much for including me.

Chair: Thank you very much, Dr. Loewen.

Before I adjourn this hearing, I would like to say a few words on behalf of the committee. First, I would like to thank the witness, Dr. Loewen, and I would also like to thank the Yukoners who are listening and watching this hearing either live or into the future. More hearings with expert witnesses are scheduled for this week and Monday, and transcripts and recordings of the committee's hearings will be available on the committee's webpage at yukonassembly.ca/scer. The Special Committee on Electoral Reform will soon be launching a survey to collect feedback from the public, and the committee also intends to hear from Yukoners at public hearings in the future.

This hearing is now adjourned.

The Committee adjourned at 11:59 a.m.