fail to provide it. Reducing the spread between parties in Parliament works in the opposite direction and has fewer devotees. The voter is conditioned to identify with his constituency MP, but as yet has no opinion about additional MPs and whether such members would constitute a second class of MP. He often has difficulty identifying with a federal government in which his own province is seriously under-represented.

Elusive goal

An improved reflection within Parliament of parties' actual cross-country support is a laudable enough goal, but difficult to achieve. Much of its attainment has to be left to the very parties whose internal pressures led them to treat provincial concerns unevenly — the resulting under-representation of provinces in the various party caucuses is merely accentuated by our electoral system. Modifying the electoral system could help. But if it is altered, it is uncertain that the public would favour changes that would correct distortion but make majority government nearly impossible.

In November 1979, **Pierre Trudeau**, out of office and on the verge of retirement from politics, advocated a PR element in excess of the Task Force figure of 60. Over the Trudeau years since 1968, however, a higher figure would have left parliamentary caucuses little or no more representative than under the Task force proposal. At the same time, it would have produced more provincial representation discrepancies and reduced the chances of attaining majority government. The more ambitious electoral reform schemes involving a large or moderate PR element rectify some problems while aggravating others. If Parliament does consider modifying the electoral system, it may prefer a modest PR element that does little to cure our ills but has fewer side effects.■

William Dobell is professor of political science at the University of Western Ontario.

A Note on Constitutionality

Gary Levy

While advocates of proportional representation assume that the *British North America Act* poses no obstacle to the introduction of PR, critics sometimes point to two possible constitutional objections. The Preamble to the BNA Act states that Canada shall have a "constitution similar in principle to that of the United Kingdom", and Section 52 says that "the Number of Members of the House of Commons may be from time to time increased by the Parliament of Canada provided the proportionate representation of the provinces prescribed by this Act is not thereby disturbed".

In 1867 representation in the House of Commons was established by giving Quebec 65 seats and other provinces representation in proportion to their populations as compared with Quebec. The addition of new, sparsely populated provinces led to the 1915 BNA Act amendment which provided that no province could have fewer seats in the House than it had Senators. Uneven population growth during the first half of this century further distorted the distribution of seats and by 1946 Parliament recognized that the "proportionate representation" described in 1867 no longer existed.

A new formula was adopted. The population of the provinces as a whole was divided by the total number of seats in the House (except those for the Yukon and Northwest Territories) and each province was allotted the number of seats obtained by dividing its population by the quotient so obtained. This formula threatened the slower growing provinces with a loss of representation so the Act was amended in 1952 to provide that no province could lose more than 15% of its seats in any one redistribution.

Parliament abandoned the entire formula in 1974, returning to the principle of giving Quebec a fixed number of seats. This time, Quebec's representation will be increased after each census and the seats for the other provinces will be redistributed by a complex formula with different provisions for 'small', 'medium' and 'large' provinces. Without going into detail about past or present representation problems, it is clear that Section 52 has never guaranteed 'rep by pop' as an absolute principle. If a PR system were introduced giving Alberta's two million people the same representation as Quebec's six million, the courts would likely find the scheme in conflict with Section 52 and thus unconstitutional. But neither Pepin-Robarts nor other proposals go nearly that far. It is hard to imagine the courts upholding challenges to any reasonable PR scheme on the basis of Section 52.

Objections based on the Preamble are even more difficult to understand. The courts have never clearly enunciated what "similar in principle to that of the United Kingdom" means. The Fathers of Confederation opted for a federal form of government compared with a unitary one in the UK. The British upper house, with its largely hereditary membership, is quite different from the Canadian Senate. Canadian courts also have a function slightly different from those in Britain on account of the division of powers outlined in the BNA Act; they are frequently required to rule on the *vires* of legislation. In the light of these and other differences between Canadian and British practice, would the courts be likely to reject PR because Canada's constitution is supposed to be similar in principle to that of the UK? One must also keep in mind that Great Britain itself used a form of PR in the University Seats until 1945. On more than one occasion Speakers' Conferences on electoral reform have considered adopting more comprehensive PR and at least once a PR proposal was introduced in the British House.

Those who object to PR because of the Preamble were perhaps confused by a recent Supreme Court decision on Parliament's authority to abolish or alter the Senate. Admittedly, the Court said Parliament cannot unilaterally change fundamental features of our constitution such as the method

of choosing Senators: "The substitution of election for a system of appointment would involve a radical change in the nature of one of the component parts of Parliament . . .[since the Preamble refers] . . .to a constitution similar in principle to that of the United Kingdom, where the Upper House is not elected".

But at the same time the Court noted that the 1965 amendment establishing compulsory retirement at age 75 for Senators was not inconsistent with the Preamble although members of the House of Lords hold office for life. Once again it seems to be a question of degree. Any government worth its salt should have no trouble devising a system of proportional representation that would violate neither the Preamble nor Section 52 of the BNA Act.■

Gary Levy is with the Research Branch of the Library of Parliament.

ELECTORAL REFORM IN QUEBEC

Russell Ducasse

In April 1979, **Robert Burns**, then minister of state for electoral and parliamentary reform, tabled a green paper on electoral reform in the National Assembly. A discussion paper rather than a statement of government policy, the green paper presented a series of proposals for public debate.

Entitled *One Citizen, One Vote*, the paper began by outlining the shortcomings of the present electoral system used in both Québec and the rest of Canada. Québec general elections since 1936 provide numerous examples of the distortions that the plurality system can produce by failing to reflect a party's percentage of the popular vote in its share of seats in the legislature:

- twice since 1936 the party that won the largest share of the popular vote lost power by failing to obtain as many seats as its principal opponent
- in 1973 the Liberal party won 102 of the 110 seats with only 54.7% of the vote
- in 1976 the Parti québécois elected 71 members with 41.4% of the vote while the Liberals were left with 26 seats and 33.8% of the vote

The result is an unrepresentative legislature and an under-represented electorate. Although it does not reject the present system out of hand, the green paper advances three reform proposals.

The first is a modified **regional proportional representation** model. Québec would be divided into 28 large ridings, each electing three to five members, according to the size of the population, for a total of 120 National Assembly members. Parties would present constituency lists of candidates equal to the number of seats to be filled and voters would select a party list rather than a particular candidate. Party strength as expressed in the popular vote would be accurately reflected in each party's share of the seats in the legislature. The system is 'modified' because it entails a bonus for the party with the most votes and limits the number of members in each riding in order to prevent a proliferation of parties.

The second proposal is known as the **2/3—1/3 mixed system**. Two-thirds of the Assembly — enlarged to 160 members — would be elected under the present system, the other third by a proportional method. This would involve two kinds of riding: the present 110 plus 13 large multi-member ridings from which the additional 50 members would be elected. On voting day electors would choose both a constituency member and a party list to fill the seats in one of the 13 large ridings.

The paper draws on the West German experience for its third model, the **mixed German system**. The National Assembly would be enlarged to 220 members, 110 of whom would be elected under the present system. The other 110 would be elected in 28 regional multi-member ridings on the basis of proportional representation. Again, voters would make two choices, one for a party list and one for a local member.

Recognizing that there are advantages and drawbacks to each proposal, the green paper leaves the final choice to the voters. A 1979 Laval University survey discovered, however, that Quebecers are less than favourable toward the proposed reforms. Only 25% of the 1000 people surveyed favoured the election of one-third of the members by a proportional system. Fewer still agreed with increasing the number of seats in the National Assembly; 40% of those questioned disagreed with the idea and a further 14.6% were only moderately in favour ('plus ou moins d'accord').

Members themselves appear no more enamoured of the proposed reforms. A survey of 35 MLAs (20 government and 15 opposition members) indicated that 45% of government members favoured electoral reform but the figure fell to 22% among opposition members. Even Robert Burns admitted that reform was likely to face considerable obstacles: "It's pretty hard to persuade cabinet that the electoral system that brought them to power is no good and should be changed."

Burns' resignation in August 1979 coincided with what the green paper calls "an extensive information dissemination program in all parts of the province . . .followed by a round of consultations with citizens and interested groups" intended to "indicate to the government the course that should be followed." Responsibility for electoral reform now lies with the minister of justice but for the moment the subject appears to be on 'hold' and the outcome is by no means certain.■

Russell Ducasse is a political scientist with the research service of the National Assembly library.