

Special Note:

This Backgrounder incorporates changes proposed by Michael Chong, M.P. on September 11th, 2014. It is hoped that if the *Reform Act, 2014* passes Second Reading that the committee studying the bill (Standing Committee on Procedure and House Affairs) will consider and adopt the proposed changes by amending the bill at Committee Stage.

The changes would:

1. Replace all paragraphs in the Reform Act, 2014 concerning party nominations with the following:
 - a. Replace the party leader in paragraph 67(4)(c) with a person to be designated by each registered political party.
2. Require that each House of Commons caucus, after very general election, as its first item of business and in a recorded manner, vote on each of the following four rules:
 - a. The review and removal of the party leader,
 - b. The election of the interim leader,
 - c. The election and removal of the caucus chair and
 - d. The expulsion and re-admission of a caucus member

Reform Act, 2014

On April 7, 2014, Michael Chong, Member of Parliament for Wellington-Halton Hills, introduced the *Reform Act, 2014*. The *Reform Act* is an effort to strengthen Canada's democratic institutions by restoring the role of elected Members of Parliament in the House of Commons.

The proposals in the *Reform Act* would reinforce the principle of responsible government. It would make the executive more accountable to the legislature and ensure that party leaders maintain the confidence of their caucuses.

Responsible government was introduced to Canada in the 1840s by Robert Baldwin and Louis-Hippolyte LaFontaine, reformers whose contributions to responsible government are commemorated in a monument behind Centre Block on Parliament Hill. Together, they led the first responsible government in Canada. Responsible government is the principle that the Executive Council (cabinet) is responsible and accountable to the elected Legislative Assembly (House of Commons), and not the appointed Governor.

Since Confederation, numerous and gradual changes have eroded the power of the Member of Parliament and centralized it in the party leaders' offices. As a result, the ability of Members of Parliament to carry out their function has been curtailed by party leadership structures. The *Reform Act* proposes to address this problem by restoring power to elected Members of Parliament.

The Need to Reform Parliament

In Canada's single-member district plurality (first-past-the-post) system, Canadians directly elect Members of Parliament to represent them in the House of Commons. This is the only franchise (excepting the occasional non-binding ad-hoc consultative Senate elections) that Canadians exercise at the federal level.

It is important to note why the role of the Member of Parliament is so vital to our system.

In many systems of government, citizens exercise three franchises, three votes. For example, in the United States, citizens exercise three votes at the federal level: A vote for the President, a vote for a Senator and a vote for a Congressman or Congresswoman. So, citizens have three avenues to pursue their democratic representation.

But in Canada, citizens exercise only one franchise, one vote: A vote for their local Member of Parliament. And they rightfully expect that their local member be responsive to their views.

It is for that reason that the role of the Member of Parliament in the Canadian system is so critical.

However, evidence demonstrates that Canadians are becoming increasingly disengaged with their elected Parliament. Recent public opinion research reveals that only 55 per cent of Canadians report being satisfied with the way democracy works in Canada,ⁱ dropping 20 per cent from 2004.ⁱⁱ Voter turnout during federal elections has reached an all-time low, and in the last federal election, four out of ten Canadians chose not to vote.ⁱⁱⁱ

Studies have found that many Canadians are disengaged because they feel that politicians work for someone else, and are therefore indifferent to their views.^{iv}

The *Reform Act* will help to re-engage citizens by introducing bottom-up reforms, giving greater decision-making authority to electoral district associations, and strengthening accountability in parliamentary party caucuses. When electoral district associations have the authority over selecting party candidates in local electoral districts, it ensures an increased local control over who represents the district in Parliament. The *Reform Act* also provides greater power to elected Members of Parliament to hold their party leaders to account, thus reinforcing the confidence that caucus must have in the leader, and strengthening the principle of responsible government, the foundation of the Westminster system of parliamentary democracy.

The reforms proposed in the *Reform Act* are not new. If enacted, they would restore Parliament to the way it worked in Canada for many decades. Furthermore, many of the reforms proposed in the *Reform Act* are similar to current practices in other Westminster parliaments. The *Reform Act* would, however, codify into statute practices that are currently governed by unwritten convention.

The *Reform Act* proposes three main reforms: Removing the statutory party leader control over local party candidates in paragraph 67(4)(c) of the *Canada Elections Act*, strengthening caucus as decision-making body, and reinforcing the accountability of party leaders to their caucuses. The *Reform Act* amends two Acts of Parliament: The *Canada Elections Act* and the *Parliament of Canada Act*.

It is important to note that the *Reform Act* would not come into force until seven days after the next general election.

Restoring Local Control over Party Nominations

Currently, the *Canada Elections Act* effectively gives a party leader authority over the selection of a candidate by an electoral district association. According to paragraph 67(4)(c) of the *Canada Elections Act*, a prospective candidate must submit to the Chief Electoral Officer of Canada, proof that a party leader has endorsed his or her candidacy. Only after this proof has been submitted, can the Chief Electoral Officer approve his or her nomination as a candidate for a party in an election. This requirement was introduced when the *Canada Elections Act* was amended in 1970.^v Without such endorsement, the name of a prospective candidate and the political party with which he or she is affiliated cannot be put on the election ballot.

In other Westminster parliaments, the leaders of political parties do not exercise this type of centralized authority. For example, in Australia's Labor Party and Liberal Party, decisions on candidate nomination are generally made by the local party membership.^{vi,vii} In the United Kingdom's Conservative Party and Liberal Democratic Party, candidates are generally selected by the constituency membership or constituency association.^{viii,ix} In these parties, the final decision on candidate nomination rests with the members of local constituencies.

The *Reform Act* proposes to amend the *Canada Elections Act*, allowing local control over party nominations by replacing the party leader in paragraph 67 with a person designated by the registered political party. It would be up to each registered political party to determine, through its party constitution and by-laws how that person would be designated.

The *Reform Act* would allow parties to restore greater local control over the selection of local party candidates. By restoring control to electoral district associations to nominate candidates, power is effectively restored to Canadians, since it becomes a local decision as to who gets to represent the party in an election.

Strengthening electoral district associations would enhance local engagement with political parties by giving these associations a stronger voice in a party's direction.

Strengthening Caucus as a Decision-Making Body

Caucus is central to the functioning of a Westminster parliament. Most parliamentary power flows from the institution of Parliament through the caucus leadership to individual caucus members. Therefore, the structure and governance of caucus, as well as the accountability of the caucus leadership to its members, becomes vitally important in the Westminster system. Those members who sit outside a recognized party caucus are distinctly disadvantaged.

It is important to draw a distinction between registered political parties (Conservative Party of Canada, Liberal Party of Canada, New Democratic Party of Canada, etc.) which are created and exist outside Parliament, and parliamentary parties – also referred to as caucuses or recognized parties – which exist inside Parliament.^x While there is significant correlation between both types of parties, they are separate in structure and governance.

It is clear that, due to a series of changes going back decades, the ability of Members of Parliament to carry out their functions has been curtailed by caucus leadership structures.^{xi} This stands in stark contrast to the significant power that members have in other Westminster parliaments, such as Australia and the United Kingdom.^{xii,xiii}

While the *Parliament of Canada Act* implicitly recognizes House of Commons caucuses by providing for the remuneration of House of Commons caucus chairs, no detail is provided as to how these caucuses should be structured or governed. In particular, no mention is made of how a House of Commons caucus chair is to be selected, nor is any mention made regarding caucus membership and expulsion. Currently, the structure, governance and membership of caucuses are regulated by unwritten convention. Over the decades, this unwritten convention has evolved in a way that has advantaged caucus leadership and disadvantaged caucus members.

The *Reform Act* proposes amendments to the *Parliament of Canada Act* in order to formally define the structure and governance of House of Commons caucuses.

The *Reform Act* would amend the *Parliament of Canada Act* by adding the definition of a House of Commons caucus.

The *Reform Act* would also formalize the procedure for the expulsion and re-admission of caucus members. Currently, the process for expulsion and re-admission is an undefined process that can vary between caucuses and individual cases. Under the *Reform Act*, a caucus member may only

be expelled if the caucus chair has received a written notice signed by at least 20 per cent of the caucus members requesting that the member's membership be reviewed and the expulsion be approved by a majority vote by secret ballot of all caucus members.

Expelled caucus members may be re-admitted if one of two criteria is met. One criterion for re-admission is that the expelled member is re-elected to the House of Commons as a candidate for that party. The second criterion is that the caucus chair has received a written notice signed by at least 20 per cent of the caucus members requesting a vote to re-admit that member, and the re-admission is approved by a majority vote by secret ballot of the caucus members present at a meeting of the caucus.

The *Reform Act* also sets out a formal procedure for the election of a caucus chair. The chair of caucus is elected following every general election, or following the death, incapacity, resignation or removal of caucus chair. The chair is elected by a majority vote by secret ballot of the members of caucus who are present at a meeting of caucus. That meeting is presided over by the caucus member with the greatest number of years of service in the House of Commons.

The *Reform Act* also sets out a formal procedure for the removal of a caucus chair. The chair of a party caucus can only be removed if the chair has received a written notice signed by at least 20 per cent of the caucus members requesting that the occupancy of the chair be reviewed at a meeting, and the chair's removal is approved by a majority vote by secret ballot of all caucus members. That meeting is presided over by the caucus member with the greatest number of years of service in the House of Commons.

Before the two rules above (concerning the expulsion/re-admission of caucus members and the election/review of the caucus chair) come into effect, caucus members would vote on each rule. This vote would be recorded and would take place after each general election as the first business of caucus. It would be up to each caucus to decide whether to release the vote results and the recorded votes of each member. Caucuses could choose to adopt or reject each one of the two rules in the *Parliament of Canada Act*. In the event of a rejection, caucuses could choose to revert to the unwritten status quo or to adopt another written rule in its place.

These measures, if adopted by party caucuses, will enhance the accountability of caucus leadership to caucus members, ensuring party leaders and their caucuses are mutually accountable by virtue of requiring the maintenance of confidence. This is particularly important in House of Commons caucuses, since it is only members of the House of Commons to which the constitutional convention of confidence applies.

Reinforcing Accountability of Party Leaders to Caucuses

By convention, leaders of parliamentary parties must maintain the confidence of their House of Commons caucuses. While this convention is frequently used in Australia and the United Kingdom, it is rarely used in Canada.

Since the 1960s, party leaders in most Westminster systems have become more powerful in relation to elected Parliaments. With a few exceptions, the checks and balances on the power of party leaders has weakened. One of those exceptions is the ability of party caucuses to conduct a leadership review, which is the most important check and balance on the power of party leaders. In the United Kingdom's Conservative Party, the United Kingdom's Labour Party, Australia's Labor Party, and New Zealand's National Party and Labour Party, the party caucuses retain the power to review their party leaders.^{xiv,xv,xvi,xvii,xviii} Within the last two decades, caucuses in all three countries have exercised this important power.

However, in Canada registered political parties have increasingly displaced the role of caucus in reviewing the party leader. Furthermore, the by-laws of registered parties make it difficult to initiate a leadership review.

Much like caucus structure and governance, little is set out in Canadian statute regarding leadership review. The *Reform Act* proposes to amend the *Parliament of Canada Act* to ensure that party by-laws recognize the caucus power to review the caucus leader, by making explicit what is currently unwritten convention.^{1,2}

¹ This unwritten convention was used in December, 2008 when the Liberal caucus encouraged the withdrawal of their leader Stephan Dion, and internally selected Michael Ignatieff as his replacement. (Knoll, 2010; <http://www.ruor.uottawa.ca/en/handle/10393/28664?show=full>) (Hébert, 2007; http://www.thestar.com/opinion/2007/09/28/confidence_in_dion_reaches_crisis_level.html) O'Brien and Bosc also recognize this convention. They state, that "If that party leader [leader of the opposition party] does not have a seat in the House, the caucus of the Official Opposition may designate another of its members to act as Opposition Leader." (House of Commons, 2009; p.38)

² The Hon. Peter Mackay, P.C., M.P., in his 2003 leadership campaign, proposed to define the caucus power to review the leader. In a speech on "Democratic Leadership" given in Lethbridge, Alberta, Mr. Mackay said, "Therefore I propose, should I be elected leader, that a vote of two-thirds of the members of my caucus, could trigger a leadership review by the party membership." Mackay, Peter. Notes for a Speech, "Democratic Leadership". March 6, 2003

Quite simply, the bill takes the current unwritten convention and makes explicit in statute the rules and process for caucus to review the party leader. The bill also requires that registered political party constitutions recognize the current caucus power to review the leader. In other Westminster democracies, the caucus power to review the leader has been made explicit, and in many cases, made explicit in party constitutions.³ The *Reform Act* proposes that a party leadership review may be initiated by the submission of a written notice to the caucus chair, signed by at least 20 per cent of the caucus members and mandates that the caucus chair make public the names of those caucus members requesting the vote. The review will occur by secret ballot, and the result will be determined by a majority vote of the all caucus members. When a majority of caucus members vote in favour of a leadership review, a second vote by secret ballot occurs immediately to select a person to serve as the interim party leader until a new leader has been elected. Aside from the election of an interim party leader, the *Reform Act* does not specify how a party leader is to be elected, leaving that decision to the political party.

Before the two rules above (concerning the review/removal of the party leader and the election of the interim leader) come into effect, caucus members would vote on each rule. This vote would be recorded and would take place after each general election as the first business of caucus. It would be up to each caucus to decide whether to release the vote results and the recorded votes of each member. Caucuses could choose to adopt or reject each of the two rules in the *Parliament of Canada Act*. In the event of a rejection, caucuses could choose to revert to the unwritten status quo or to adopt another written rule in its place.

³ In other Westminster democracies, the caucus power to review the leader has been made explicit. For example, the United Kingdom Conservative Party has codified this power in the *Fresh Futures* document. Although this document is not a part of the Conservative Party's constitution, it is a precedent setting document (The *Fresh Futures* document this has been confirmed by a staff member of the 1922 Executive Committee as a precedent setting document. The *Fresh Futures* document is also referred to in the UK Library of Parliament document, *Leadership Elections: Conservative Party*. United Kingdom, House of Commons Library, Leadership Elections: Conservative Party, Standard Note, SN/PC/1366, 7 December 2005, pp. 7-9). In the United Kingdom Labour Party, the caucus power to review the leader is codified in the Labour Party's constitution (*Labour Party Rule Book*, Chp. 4.2.B.ii). The New Zealand National Party (*Constitution and Rules of the New Zealand National Party*, S.82b) and the New Zealand Labour Party (*Constitution and Rules*, 2013, Rule 308 B) have also codified this important leadership review mechanism in their respective party constitutions.

The *Reform Act* does not affect, in any way, the current power of registered political parties and their members to review a leader or to select a leader, regardless of what their current practises are.

Evidence shows that Westminster parliaments that operate under the rules proposed in the *Reform Act*, like those in the United Kingdom, Australia and New Zealand, are no more unstable than the system Canada currently operates under. The length of time between leadership changes are about the same in both systems.^{xix,xx}

Currently, party leaders exercise a great deal of control over caucuses, with the result that caucuses decreasingly function as decision-making bodies. The provisions proposed in the *Reform Act* would make explicit the requirement that the party leader maintain the confidence of his or her caucus, making the leader more accountable and restoring the role of elected Members of Parliament.

- ⁱ Anderson, Kendall, et al., “Lost in Translation or Just Lost?: Canadians’ Priorities and the House of Commons”, Samara Democracy Report #5, Samara Institute, February, 2013. p.2.
- ⁱⁱ Anderson, Kendall, et al., “Who’s the Boss?: Canadians’ Views on Their Democracy”, Samara Democracy Report #4, Samara Institute, 2012. p.1.
- ⁱⁱⁱ Bastedo, Heather, et al., “The Real Outsiders: Politically Disengaged Views on Politics and Democracy”, Samara Democracy Reports, Samara Institute, December, 2011. p.2.
- ^{iv} Bastedo, Heather, et al., “The Real Outsiders: Politically Disengaged Views on Politics and Democracy”, Samara Democracy Reports, Samara Institute, December, 2011.
- ^v <http://www.parl.gc.ca/content/lop/researchpublications/bp437-e.htm>
- ^{vi} Australian Labor Party National Platform and Constitution, Constitution, part D. s.9. http://d3n8a8pro7vhmx.cloudfront.net/australianlaborparty/pages/121/attachments/original/1365135867/Labor_National_Platform.pdf?1365135867
- ^{vii} *The Liberal Party of Australia is a Federation of Divisions.* <http://www.liberal.org.au/the-party/our-structure>
- ^{viii} Constitution of the Conservative Party, Schedule 7. s.15 http://www.bracknellconservatives.org.uk/sites/www.bracknellconservatives.org.uk/files/constitution_0.pdf
- ^{ix} Liberal Democrat Federal Constitution Article 4 and Appendix *Leadership Election Regulations.* <http://libdems.org.uk/constitution.aspx>
- ^x House of Commons. (2009). *House of Commons, Procedure and Practice* (2nd ed.). (R. Marleau, & C. Montpetit, Eds.) <http://www.parl.gc.ca/procedure-book-livre/Document.aspx?Language=E&Mode=1&sbdid=73CC891E-0676-4773-850B-CCDCB472AD8C&sbpid=BE842475-5632-4969-835B-FC015CE50169#2A5D426A-8787-4546-BD7E-F5AD097DF39F>
- ^{xi} Carty, R. K., Cross, W., & Young, L. (2007). *Rebuilding Canadian Party Politics.* UBC Press. p. 110 <http://goo.gl/Rn0x4v>
- ^{xii} United Kingdom, House of Commons Library, Leadership Elections: Conservative Party, Standard Note, SN/PC/1366, 7 December 2005, pp. 7-9.
- ^{xiii} Labour Party Rule Book, 2014. Chapter 4.2.B.ii United Kingdom, 2014.
- ^{xiv} United Kingdom, House of Commons Library, Leadership Elections: Conservative Party, Standard Note, SN/PC/1366, 7 December 2005, pp. 7-9.
- ^{xv} Labour Party Rule Book, 2014. Chapter 4.2.B.ii United Kingdom, 2014
- ^{xvi} Guaja, Anika, “Labor leadership spill: the rules of the game”, *The Conversation*, [University of Sydney], 27 February 2012. <http://theconversation.com/labor-leadership-spill-the-rules-of-the-game-5575>
- ^{xvii} New Zealand National Party. *Constitution and Rules of the New Zealand National Party.* S.82.b. https://www.mynational.org.nz/Folder?Action=View%20File&Folder_id=118&File=Rule_Book.pdf
- ^{xviii} New Zealand Labour Party. *Constitution and Rules, 2013.* Rule 308.B. https://www.labourparty.org.nz/sites/default/files/2013%20NZLP%20Constitution_0.pdf
- ^{xix} <http://reviewcanada.ca/magazine/2012/06/keeping-party-leaders-honest/>
- ^{xx} Blais, A., & Cross, W. P. (2012). *Politics at the Centre: The Selection and Removal of Party Leaders in the Anglo Parliamentary World.* New York: Oxford University Press.