

On the Creation of Lists

Last weekend you reached the consensus decision that the list tier in your MMP model should be a closed list. This raises questions about how parties will create their lists. Several of you were concerned about whether parties will have too much control over the creation of these lists and therefore too much power to determine who is awarded seats in the legislature. On the assumption that a provincial closed list has been chosen in part because it promotes better representation of women and other underrepresented groups, it is not surprising that you are interested in how this objective will be achieved. In addition, you want to know if there can be some assurance that the list will have on it candidates that represent the different regions of Ontario, rather than being exclusively composed of persons from larger urban areas.

This note is to help you decide how concerned you should be about this issue and sets out a range of options for encouraging or ensuring parties make decisions that produce balanced lists that have been created democratically and transparently.

Context

Party leaders generally have control over the composition of their party's lists. This is certainly true under closed list PR. It is important to remember that the leadership also has control over who is and who is not nominated to run in single-member districts. Under the current electoral system, voters can choose to support or reject a party's candidate but they do not have much influence over the nomination process itself. From this perspective, party lists are not dramatically different: voters can choose to support or reject a party's slate of candidates and they do not have a lot of influence over the creation of the lists.

Proponents of lists argue that parties have an incentive to run a diverse slate of candidates that reflects the demographic composition of society as a whole. Evidence from around the world shows parties make a concerted effort to create lists that are attractive to as many voters as possible. This dynamic helps produce a representative legislature by making sure women, visible minorities and members of other historically underrepresented groups are on party lists and get elected.

It is natural for parties to want to secure support from all parts of the province. Parties in Ontario also know that there are more single member seats in Northern and rural areas than strict representation by population would support. All parties have accepted this as a measure that adapts to the unique geography of Ontario. Therefore, it is not in their interest to lose support in these areas by creating a list that does not include a geographically balanced selection of candidates.

Options

What options are available to ensure that balanced, regionally representative lists are created in a transparent, democratic manner? All of these options assume that parties will be required to make their lists public before the election.

1. **No special measures:** you might decide to recommend no special rules or regulations in the belief that parties will understand the importance of creating regionally and demographically balanced lists through a process that can be defended with the electorate.
2. **A broad legal requirement:** you could recommend that the law that introduces this new electoral system simply require all parties to develop their lists through "a democratic and transparent process". The New Zealand electoral system, for example, provides that parties must create their lists "democratically". In this case it would be up to the parties to decide how best to meet this requirement. Voters could hold them accountable for how well they did when they cast their party vote.
3. **Independent Review:** this option would have two elements:
 - a) A legal requirement that parties develop party lists transparently and democratically and do so in a way that reflects the importance of demographic and regional balance.
 - b) An additional requirement that parties file with an independent body, such as Elections Ontario (several months before the election if the date of the election is known), a description of the process by which they will create lists that meet this standard. They would be required to specify:
 - the process to be employed to create the list;
 - how they will ensure that the lists will reflect the demographic make-up of the province;
 - how they will ensure appropriate representation from each geographic region of the province.

The independent body would review the process and provide an independent assessment of it against the legislated criteria.

At a prescribed point before the election, each party would be required to make public its list and the process by which it was created. Once again, the independent body would review this and provide a publicly available assessment of the process and the result.

Of course this option assumes that the public assessment by a body such as Elections Ontario would be a very powerful means of holding the parties accountable. In other words, its effectiveness depends on whether voters will take the assessment seriously and decide not to vote for parties whose lists or processes are seen to be inadequate.

4. **A specific requirement that the process achieve legally established goals:** this would require parties to achieve specific goals that represent a balance in terms of demographics and regional representation. While this would help to ensure a specific result, some would criticize it as an indirect way to introduce something very close to quotas. In addition, it would be hard to develop specific, measurable demographic and regional goals.

5. **Stronger sanctions for parties that receive a negative assessment:**
if you believe that public reporting to Ontario voters is not a sufficient incentive for parties to develop balanced lists through a transparent, democratic process, than more serious sanctions might be imposed. This raises a number of additional questions: what sanctions; imposed by whom; what is the legal test for non compliance; how far short of meeting the criteria must the party have fallen; what kind of hearing before the sanction is imposed; how would this be done at a point close to the next election; would there be a hearing, a right of appeal etc.?