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Debatable if voting reform would face Charter challenge



Justin Trudeau and Thomas Mulcair have promised electoral reform as soon as possible after the federal election this year, pledging to scrap the current first-past-the-post voting system.

A recent article in [Lawyers Weekly](#) explores the potential constitutional challenges to an alternative voting system, with Toronto litigator, mediator and arbitrator [Marvin J. Huberman](#) weighing in on the debate.

"There doesn't seem to be any constitutional issue, though it depends on what they want to change," says Huberman, who has tackled numerous constitutional cases throughout his career.

"We don't really know what's being proposed yet," he tells the legal publication. "Certainly Canada is a very different place today than when the model was adopted in 1867."

Lawyers Weekly reports the proposals would reject the first-past-the-post system, which is under attack because it allows a party to form a government with less than 50 per cent of the vote.

The publication speculates that a "ranked" voting system — in which the electorate ranks their choices of candidates in each riding — would be the most likely system to be proposed.



“If after the first count there is no candidate with 50 per cent plus one vote, a second count is taken and each second choice is added, and if necessary a third round,” the article states. “The candidate with the most combined votes wins.”

Huberman — who tells the publication that constitutional law remains near and dear to his heart — says it is within the purview of the government to draft legislation and have Parliament pass it, with the assumption that a majority supports it.

“Whether there would be a successful Charter challenge would remain to be seen,” he says in the article, adding that taking a proposal to the Supreme Court of Canada for an opinion would seem prudent given the serious nature of the change contemplated.

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