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Sent: Friday 5 January 2024 13:50
To: ELC Research
Subject: Research: Maintain constitutional constraints

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A chairde,

I look forward to the wide-ranging research to be conducted by An Coimisiún Toghcháin on a general basis. However, certain matters raised within the draft research programme may cause constitutional difficulty. I consider for instance, the reference at p. 15 to the overall number of TDs.

As the Commission would later be tasked with providing information on a neutral basis for any referendums of a minor or major nature, it ought not to make proposals on matters which would later require a constitutional amendment. To do otherwise would mean it would fall foul of the public law principle of *nemo iudex in causa sua* and risk treading the lines of the jurisprudence in *McKenna (No. 2) v. An Taoiseach* [1995] 2 I.R. 10, *Doherty v. Referendum Commission* [2012] IEHC 211, [2012] 2 I.R. 594, and *McCrystal v. Minister for Children* [2012] IESC 53, [2012] 2 I.R. 726. Although these cases considered information provided by the government or a Commission during a campaign, it would be a similar risk if information from the same body was given from a partial perspective a few years previously. Therefore, these are subjects that ought to be reserved for consideration by the Oireachtas alone, or given to consideration to bodies which would not be charged with delivering information during the campaign. For example, it was not the Constitutional Convention or the Citizens' Assembly which provided information to voters on the marriage equality or termination of pregnancy referendums after they had been called.

This would mean that the Commission ought to avoid research of a specific nature coming to any conclusion, or making any public statements, on whether change is or is not merited on matters delineated within the constitution, such as:

- The voting age at general elections
- The electoral system
- The ratio of TDs to total population
- Whether the number of days for polling could be extended in ordinary circumstances
- Whether there ought to be by-elections to fill vacancies (this one requiring some legal interpretation, as to whether filling of casual vacancies necessarily requires an election)

to consider some of the matters specified within Article 16.

With regards,
William Quill BL
[REDACTED]