CITIZENS' ASSEMBLY ON ELECTORAL REFORM PRESENTATION

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THE FOLLOWING INFORMATION IS A BRIEF SUMMARY OF THE ESSENTIAL POINTS THAT MUST BE A CENTRAL THEME IN ANY ELECTORAL REFORM WHEREIN THERE IS AN INTENT TO RESPECT A CONSTITUTION THAT IS TYPICAL OF A RESPECTABLE MODERN DEMOCRACY, WHICH CANADA DOES NOT OPERATE AS. IT IS CLEARLY AN IRRESPONSIBLE AND UNACCOUNTABLE ARISTOCRACY. THE SIX RECOMMENDATIONS MADE HEREIN WOULD GUARANTEE THE RESULTS THAT THE REFORMS IN THE VOTING AND LEGISLATION ARE NEEDED.

CATEGORY: No electoral system change, Minority representation

ABSTRACT OF PRESENTATION

As an advocate for a mentally incapacitated physician, made a ward of the State (British Columbia Crown), I have dealt with the bureaucracy at all aspects of municipal, provincial, federal and social levels. The observations made by me are seriously disturbing and show a trend to undermine and erode the roots of democracy in Canada and if this trend and the insanity of anti-terrorism legislation is permitted to remain unchecked, the evaporation of all civil rights of Canadians would soon become a thing of past and Canada would become Iraq.

In my view the debate over the type of electoral system is futile, because if the focus is upon insuring that the representatives would act in the best interests of the public under all circumstances, there remains no real issue with their party affiliation. The view that majority population alone must prevail in the Parliament and the Legislative Assemblies is problematic because of the need for protection of the minority interests. The ideal proportionality would be the ability of the wiser and more knowledgeable citizens to be able to control the policy matters better but such intellectually based proportionality is not practical and would not survive a constitutional challenge despite the logistically superiority of the concept. The entire concept of proportional representation falls apart when it is admitted that the elected representative has the obligation to advocate the interests of even those individuals in the constituency who did not vote for him in the election. The actions of the elected representatives are to be guided by wisdom and prudence and not a sense of obligation to only those who voted for him. In many situations he or she must do what is not approved by the majority of the members of constituency in order to protect the rights of the minority groups even if they opposed his being elected but the Constitution of Canada requires the elected member to advocate for them. All we are to elect or select is a nice and honest man and trust him to discharge the constitutional obligations, nothing more. If the proportionality concept leads to violations of the Constitution, it must be disapproved.

If the motion for the proportional representation succeeds and is legislated it would only prove that the few citizens who opposed the process were outnumbered by the herd philosophy of

those who had a very superficial knowledge of how democracy is supposed to work, which is the biggest drawback of democracy and constitutes the basis for the concept of intellectualism, rationalism or common-sense based proportionality which the herd philosophy with allows landslides to NDP, Liberals and Conservatives almost in a cyclical fashion to come into power cannot accomplish. Canadians always begin to dislike the party in power. How would proportional representation cure that? As very wisely put by Mr. Bijan Basak (submission BASAK-0412 (Online)) that "[n]o system is absolutely perfect, but the current first past the post system is the most stable system. In a proportional system, the smaller parties will have disproportionately greater and consequently menacingly disruptive power" further supports that the emphasis on amending the election process is wasteful and distracting the focus must be on making the representatives act with high sense of morality and ethics with the utmost level of trustworthiness possible. Submission ST PIERRE-0006 (Online) by Mr. Paul St Pierre summarizes the argument against the proportional representation in a cogent and convincing manner. Dr Alastair Berry of Nanaimo, B.C., has succinctly put it this way " I think the present method is as good as any. It is simple. It may be unfair on the rare occasion, but I submit that any other system would be worse, and on more than the 'rare occasion'". A perfect fairness has never been a goal of law or constitution and the cost of attempting to accomplish that is enormous and not justifiable by the nebulous and speculative gains that might be made. Better results can be secured by use of rationality and reasonability of the actions of the member and the party on a case-to-case basis.
"It is a bogus claim that 'proportional representation' is 'fair' " is a very convincing conclusion made by Mr. Gary Mauser of Coquitlam, BC, (submission MAUSER-0359 (Online))

What I propose to do is further amend the directive "efforts should be directed towards pressuring the existing parties to change their non-democratic methods of selecting candidates" of Mr. Robert Beech of Burnaby, BC, (submission BEECH-0386 (Online)) to state that shift the emphasis from the democratic method of election/selection to compel a humane, compassionate and democratic conduct on the part of the members elected by the public. Once all of the members of the house are working in the interests of the public in a collaborative fashion the entire concept of proportionality and the partisan emphasis would vanish. That would lead to reduction of the current seven party system to a lot more economic and simpler two party system. As Mr. Christopher Joblin of Whiterock B. C. (submission JOBLIN-0399 (Online)) correctly puts it in the maxim " Trading One Evil For Another", the proposed change accomplishes nothing and distracts us from the more rational goal of amending the conduct to make it more amicable and less adversarial such that public and politicians are not attacking each other. In hinting that this so called proportional representation reeks of a non-democratic attitude, Mr. Gary Mills Terrace, BC (submission MILLS-0394 (Online)) has noted "[d]emocracy by its very nature is a form of majority rule. This means that the person with the most votes is the winner. The people who did not vote for the winner have to have the maturity to accept the will of the majority". The sense of dissent is not to be encouraged through slicing up the governing body into pies or sectors on a permanent basis. That prevents adoption of goodness. Just like the internal party conflicts of view end after the election of the party leader that is to be encouraged after the provincial and federal elections and well to allow the Legislative and the Parliament to function as a unified democratic body instead of the current adversarial and highly uncivil fashion where the interest of Canadians are regularly ignored in

settling their person fights for which invitations to "take it outside" have recently been made. If the entire population of B. C. (or Canada in the case of MPs) is unable to find a "Few Good Men" to run the place, there can be no reasonable expectation to entitlement to a democracy. Mr. Derek Johnson of Powell River, BC, (submission JOHNSON-0266 (Online)) advises that "[w]e need an effective government more than a more representative government" a viewpoint hard to argue with. I propose to take it further from that point where he left without telling us how to make the government more caring and effective.

1. LIFTING THE PARLIAMENTARY IMMUNITY

It is necessary to view the hiring of each MP or MLA and the ruling party as having been hired to do a job. The MP or MLA being in contract of duty to care to his or her constituents and the ruling party to the tax payers representative non-partisan watch-dog body analogous to Canadian Tax-Payers Federation. The system can be built around appropriate punitive consequences for the offending MP/MLA and the ruling party with provisions for removal of the representative and the non-confidence vote against the party. Lift the immunity of the MPs against civil suit and criminal complaints for the citizens of his constituency is a highly desirable step in light of the complete lack of trust of the public in their representatives. Electoral system change is an exercise in futility.

When the representatives of public are caught lying in the mandate and breaching a promise would be liable in tort? In other words would you consent to amending the Parliament Act to remove the immunity of MPs and MLAs. I see no reason why a party in power made of honest people would not be amenable to signing a contract of the mandate with the Canadian Tax Payer Federation with the terms of a contract breach of which would expose the party to damages on behalf of the Canadians injured from the fraudulent promises made? If you truly are honest and do not intend to engage in fraud there should be no reason to worry.

At this time section 4 of the *Parliament of Canada Act*, R.S. 1985, c P-1 immunizes the MPs from civil suits.

> s. 4. The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise (a) such and the like privileges, immunities and powers as, at the time of the passing of the *Constitution Act*, 1867, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, in so far as is consistent with that Act; and (b) such privileges, immunities and powers as are defined by Act of the Parliament of Canada, not exceeding those, at the time of the passing of the Act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members there of.

The only way to insure holding of the MP/MLAs accountable to the constituents and be responsible for protecting their *Charter* rights and if there is negligence or fraud in that he could be sued by the constituents. That would insure that the caucus would pay attention because otherwise they would have to foot the legal bill to defend and if there are additional provision to revoke the Membership in the Parliament if the MP is successfully sue three times and the MLA removed from the assembly. The system would become accountable by default. The party would have made a contact with the Taxpayer Federation and would not do anything contrary to public interest in the budget contrary to the wishes of the public or against the promises upon which they were elected there. That is the minimum level of integrity that votes demand. Nothing less would do.

2. DECENTRALIZING PARLIAMENTARY REFORM

Movement towards greater level of democracy through reforms to the Parliamentary operation. Greater recognition of private members' bills, and a greater role for MPs in shaping legislation. We need to distribute the powers amongst the backbenchers who play almost no role in the House of Commons or a provincial Legislature other than being a seat filler. All that public does is send a member to decorate a seat in that House. He or she is not heard and has no voice. Liberals have made some noise about this in their mandate, but they would likely not do anything about the idea. It would remain only on paper. Legislative amendments may be helpful in decentralizing the power and make inroads that an MP/MLA can take the concerns of the constituents to Ottawa or Victoria in a meaningful manner, other than simply make promise with full knowledge that he would never be allowed to voice that in any event.

3. ETHICS/ACCOUNTABILITY COMMISSIONER OFFICE FOR THE PUBLIC

Making the office of Ethics/Accountability Commissioner office accessible to citizens where the members of public can file complaints against the arrogance, negligence and reckless disregard of public issues by the MPs and MLAs. If there is such sort of dual control through discipline proceedings and the court proceedings the high accountability would eliminate any concerns that skewed or biased representation might introduce. This is necessary to introduce transparency and accountability through publishing of the misconduct of the MPs in a manner analogous to other professionals. This would be complementary to the

4. STATE FUNDED LEGAL COUNSEL FOR ALL s. 24 of *Charter* APPLICATIONS.

All violations of constitutional rights of the voters must be protected by a lawyer funded by the State. Attorney General of British Columbia and Legal Services Society have insisted on refusing a lawyer to the impecunious whose *Charter* rights have been violated by the Attorney General of British Columbia.

Some inroads have been made by the Supreme Court of Canada and other courts in helping with that by allowing courts to order advance cost (see: ***British Columbia (Minister of Forests) v. Okanagan Indian Band***, 12 Dec 2003 SCC 71; ***Paluska v. Cava***, (6 May 2002) ONCA M28254 C37150; ***New Brunswick (Minister of Health and Community Services) v. G. (J.***) [1999] 3 S.C.R. 46; ***Pleau v. Nova Scotia*** (Prothonotary), (22 January 1999) NSSC S.H.No.151044; ***Winters v. Legal Services Society***, [1999] 3 S.C.R. 160); ***Attorney General of Canada v. Savard***, (10 April 1996) YKCA YU00291; ***John Carten Personal Law Corp. v. British Columbia (Attorney General),*** (5 November 1997) BCCA CA020526; ***R. v. Rowbotham et al*** (1998), 41 C.C.C. (3d) 1 (Ont.C.A.)). The lifting of the immunity would become meaningful only if there is an ability to prosecute the breach of duty by the MLA/MP. Consideration should also be given to impose on the MLA/MP a duty to advance litigation on behalf of an aggrieved constituent to insure restoration of the violated *Charter* right through s.24 application. MLAs/MPs habitually engage in conduct that is offensive to the *Charter* rights, breach of oath of office and other egregious breaches of their professional obligations and the breach of the contract of ascent to office of MLA/MP. The state persists with contempt of the court compelling re-litigation of *Charter* violations, which is a serious breach of the implied contract with the tax-payers. (see: ***Auton (Guardian of) v. British Columbia (Attorney General),*** (9 Oct 2002), Vancouver Registry, BCCA 538 No. CA027600; ***Eldridge***

v. British Columbia (Attorney General), [1997] 3 S.C.R. 624). However legislative amendments of the Legal Services Society and or of Attorney General of British Columbia would be necessary to insure that the State does not continue to raise obstacles in granting the financial legal assistance or state funded legal counsel, to prosecute the misconduct of the MP/MLA.

5. PERSISTING WITH PASSING OF WHISTLEBLOWER LEGISLATION AND LONGER TERMS.

Persisting with passing of whistleblower legislation to encourage people to report the misconduct of MLAs/MPs is admittedly a very sensible thing to insure that the elected representatives remain loyal to the electorate and not drift from the straight and narrow. There has been some talk on the issue of long-term planning, which is an impossibility in the current election system with a 4-year term. The trouble with the long-term approaches to governing is that on the short run (i.e. 4 years of a term), there are going to be hardships necessary in order to wait for the results in the long run. Anyone who has been to a good diet plan or with a personal trainer knows the importance of such long-range goals. Impatience – the hallmark of the Western culture and most remarkable element of the Canadian culture makes any long term plan implausible and readily susceptible to rejection. The reason why no government has considered preventive health-care and investment into education for long range benefits is because they are unwilling to let another party (the one who would be in power in 12-16 years from now) to reap the credit for the punishment (higher taxes, reduced interim services and longer work hours) that the current party in power would need to impose on Canadians to make the long-term plans work. In the result, the ongoing miseries and problems of Canadians are here to stay unless the duration of the election term is extended from 4 to 20 years. Absurd, may be but there can be alternate ways to renew the term instead of a fresh election through arrangements analogous to lease renewal of business real estate. A more practical option is to have a continuous term Parliament or Legislative Assembly with a third of it turned over every two years. Upper house of some Parliament with 6-year term operate in that fashion.

6. ENDING JUDICIAL TYRANNY

In order for the MLAs/MPs and the State to be held accountable there must be strict scrutiny of the judicial misconduct with an aim to end judicial tyranny (as we now have). Judges should be appointed and allowed to continue only with strict control circumstances and investigations of complaints against them prompt and frequent. The notion of judicial activism by the Supreme Court of Canada is a myth and the modest level to what it might be occurring should be acceptable. There is in-built accountability of Supreme Court justices but it must be enforced with more diligence. The concept of a *Provincial Charter of Rights* raised by Mr. Hal Adam (submission ADAM-0117) which over-rides the *Canadian Charter of Rights and Freedoms* is legally impermissible because the *Charter* which is part of the *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act*, 1982, Schedule B, *Canada Act* 1982, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44] is the supreme law and above the Parliament itself therefore cannot be amended to allow any provincial statute to over-ride the federal statute.

PS: Unless the above amendments are promised in a reliable manner, it would be only appropriate for the electorate to boycott elections of the municipal, provincial and federal government representatives.

Democratically yours, Dr. Carole Ann Brown.