

**Submission of  
West Coast Legal Education and Action Fund**

**To the  
Citizens' Assembly on Electoral Reform**

**In response to  
A Call for Submissions on Changing the Electoral System of British Columbia**

**Summary of Recommendations**

WC LEAF makes the following recommendations:

1. That the Citizens' Assembly endorse a modified multi-member party (MMP) electoral system;
2. That the Citizens' Assembly recommend that a MMP system allocate 70% of seats to first-past-the-post riding results and 30% of seats to closed party lists;
3. That the Citizens' Assembly propose a minimum 5% of the popular vote as a threshold for political parties to acquire seats;
4. That the Citizens' Assembly recommend that each political party registered in British Columbia have a quota, in that they nominate women for a set percentage (such as 30-40%) of its riding nominations and list positions, in order to increase women's participation and representation;
5. That the Citizens' Assembly recommend to the Government of British Columbia that courses in leadership and elections be instituted at the elementary, junior and senior levels of school with an emphasis on the participation of girls;
6. That the Citizens' Assembly commit itself to presenting the government with social framework evidence outlining the barriers women face to their full participation in our electoral system and to ensure the government considers its obligations under the *Charter of Rights and Freedoms* and *B.C. Human Rights Code*.

West Coast Legal Education and Action Fund (West Coast LEAF) is the British Columbia branch of the national Women's Legal Education and Action Fund (LEAF). West Coast LEAF is a charitable, non-profit society that was founded in

1985 to secure equal rights for British Columbian and Canadian women as guaranteed by the *Canadian Charter of Rights and Freedoms* (the *Charter*). To this end, LEAF and West Coast LEAF engage in litigation, equality research, law reform and public legal education. Through such endeavors, the organization has developed particular expertise with respect to the interaction between equality among persons and laws having a particular impact on women. This submission represents the views of West Coast LEAF.

## **1. Women's Participation in Governance – The International Picture**

Political participation in the democratic process has many components, including grass roots activities such as exchanging opinions around the kitchen table, at the office and at family gatherings. It also includes the pursuit of education, involvement in community service, casting a ballot, and running for office. Throughout the world, women have made great strides toward full participation in the political process and democracy. The vote itself was only granted to women in piecemeal fashion, depending on the wealth and race of the individual woman, in the last century. Further, women have made great inroads in asserting their rights to education, their legitimate status in the work place, and their important role in civil society. But these gains have not been reflected in the degree to which women are represented in elected governments around the world.

IDEA, the International Institute for Democracy and Electoral Assistance, is a not for profit organisation based in Stockholm, Sweden that maintains a statistical database on the number of elected female representatives around the world. It also measures the success of different types of electoral systems in electing women. Statistics for the number of women represented in international legislatures illustrates the disparities that continue to exist, and throws British Columbia's levels of representation into relief.

While women are 52% of the world's population, they only hold 14% of the world's elected positions.<sup>1</sup> At 24% British Columbia is above the international average; however, when one considers the maturity of our democracy, the internationally recognized equality laws by which we are supposedly governed, and the civil freedoms our citizens can assert, this number is abysmally low. It is particularly low when one compares it to those countries with a proportional system of representation.

Proportional representation electoral systems generally elect more women. The top ten countries which elect the most women in the world all maintain a system of proportional representation. In these countries, including Sweden (40%), Denmark (38%), Finland (38%), and Norway (36%), over 30% of the seats in their legislatures are filled by women compared to the majoritarian or First Past the Post (FPTP) systems in which the average stands at 14%.

However, proportional representation alone has not been able to bring up the number of elected women. Many countries with a PR electoral system, including Israel (14%), Ireland (13%) and Italy (10%), have low percentages of women's representation because they have not implemented any proactive measures such as quota systems. The top ten countries, including Sweden, Denmark, Finland, and Norway have all implemented various incentives along with a system of PR to increase women's representation. All of these countries either use a system of legislated or party quotas for women.

## **2. Women's Under-Representation Impacts Public Policy**

The dearth of women in elected office has public policy ramifications that impact the entire population. There is a direct correlation between the number of women in elected office and the degree to which women's issues are addressed in the political sphere. Issues of particular concern to women including a public childcare system, affordable housing, and violence against women are not

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<sup>1</sup><http://www.idea.int>, accessed May 25<sup>th</sup>, 2004

adequately addressed within political debates and public policies because of women's under representation. Women not only bring their individual accomplishments to the arena of elected office, they also bring with them a lived experience that is distinct from those who currently comprise the bulk of the governing class.

Furthermore, marginalized groups of women tend to have even lower representation in legislatures of countries with single member plurality (SMP) electoral systems as opposed to PR ones.<sup>2</sup> This limited presence of women from marginalized groups, including Aboriginal women, women of colour and women with disabilities, means two things. First, the perspectives and needs of women most directly impacted by cuts to social services and other policy decisions are not heard in the political realm. Second, unless something is done to rectify this situation, political institutions will continue to decline in importance for these groups as sites where they can advance their interests and thereby participate in the political process.

### **3. The Barriers to the Equal Participation of Women in Politics.**

There are many social, economic, and political reasons why women as a group are underrepresented in political life. Historically, women were directly excluded due to legal prohibitions on the right to vote and hold office; today, they are shut out due to continuing factors such as a lack of access to education, financial limitations, and a paucity of role models in the political realm. West Coast LEAF is deeply concerned about all of these factors. Until the social and financial barriers are addressed, electoral reform will only be minimally effective at increasing women's participation in politics.

#### **a) Social**

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<sup>2</sup>Nancy Peckford, "A Mandate for Equality Women and Electoral Reform: Pursuing a Feminist Policy Agenda in Canada (Ottawa: National Association of Women and the Law, 2002) at 13.

Social barriers include gender socialization wherein girls are intentionally or unintentionally directed away from public leadership roles that are commonly seen as more confrontational and aggressive, toward careers such as nursing and teaching that better fit the stereotype of women as care-givers. Most importantly, there is still social expectation that women are responsible for domestic work; hence, they are more likely to be primary caregivers for both children and aging parents, while holding jobs outside the home as well. The combination of the two forces, women being discouraged from pursuing high profile careers and the pressures of family and caregiving, mean that women are often shut out of the informal networks that give rise to opportunities to run for public office. These networks are formed in the most informal of settings: the golf course, the firm party, or the bar after work. All of these settings are places where women, due to social and family constraints, are far less likely to be found than men.

## **b) Economic**

Economic barriers to women's participation in government include lack of universal daycare, statistically greater numbers of women than men living below the poverty line, and a continued wage gap between men and women in comparison to male counterparts. Women are far less likely to have flexible work environments that allow them to take time off for nomination and election processes.

## **c) Political**

### **i) Electoral System**

Statistical evidence shows that a country or province's electoral system can have a positive effect on the election of women. Women constitute about 14% of FPTP legislatures while that percentage is nearly tripled in Sweden, which has a PR electoral system.

### **ii) Party Politics**

Political barriers are often inherent in the party process itself. The political arena is seen as reflective of traditional male characteristics which often serve to deter women from getting involved. Furthermore, most parties in Canada tend to be traditional, hierarchical structures dominated by white males who are most likely to back candidates with similar backgrounds and credentials.

### **3. The Legal Obligation under the *Charter of Rights and Freedoms* to Foster Equal Representation of Women in the Legislature**

Canada's electoral system is not only a political issue but also a constitutional one. Under Section 3 of the *Charter of Rights and Freedoms*, "Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein."<sup>3</sup> In legal cases concerning electoral boundaries, the courts ruled that while s. 3 "did not guarantee Canadians absolute equality of voting power," it did guarantee them the right to effective representation.<sup>4</sup>

According to David Beatty, professor of law at the University of Toronto, Canada's SMP system may actually be in violation of *Charter* rights because it violates the right to vote set out in s.3. The test of effective representation articulated by the Supreme Court requires relative parity of voting power and "effective representation of the diversity of our social mosaic."<sup>5</sup> The SMP electoral system fulfills neither requirement.

Equality is a guaranteed right under the *Charter* and is one of the most important values in a democracy. A substantive approach to democracy emphasizes values and principles such as equality, inclusion, and participation. It rejects majoritarianism as the defining principle of democratic governance and decision-making and aspires to norms that value and promote diversity, inclusion

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<sup>3</sup>Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.

<sup>4</sup>Trevor Knight, "Unconstitutional Democracy: A Charter Challenge to Canada's Electoral System" University of Toronto Faculty of Law Review, Vol. 57, No. 1, Winter 1999 at 27.

<sup>5</sup>Ibid. at 31.

and belonging. It does not merely employ a “majority rules” approach because it recognizes that a formal system of representation may not be enough to protect and further democratic values. When an electoral process is not representative of the general populace, it serves to intensify social, economic and political inequality. Thus, a substantive interpretation of democracy entails a focus on equality and *Charter* values when considering avenues of electoral reform. (For more analysis on the importance of substantive democracy, please consult LEAF’s factum in the *Newfoundland Association of Public Employees v. Newfoundland case*).<sup>6</sup>

#### **4. Characteristics of a MMP System Necessary to Enhance the Participation and Representation of Women in the Legislature**

In both SMP and PR systems, the simple presence of women in the legislature does not mean debates and policies are balanced or address women’s issues. The increase in the number of women in the Canadian House of Commons over the past 20 years has not resulted in substantive equality for women. This is partly because party discipline requires that parties recruit like-minded women who conform to party platforms or because there are not enough women in elected positions to rally support. Research on Scandinavian legislatures has shown that significant shifts in policy do not occur unless women constitute more than 20% of elected representatives. The United Nations has gone even further in identifying 30% as constituting critical mass for women.<sup>7</sup>

The following elements of any PR system must be addressed in order to effectively increase women’s participation and representation:

##### **a) The Type of List**

Open lists allow voters to indicate which candidates they prefer while closed lists mean that voters cast their ballot for specific parties. Candidates are

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<sup>6</sup><http://www.leaf.ca/legal-pdfs/Nape%20final%20factum.pdf>

<sup>7</sup>Supra note 2 at 8.

then elected in the order that they appear on the list. The order candidates appear on the list is determined by the party.

While open lists provide greater choice for voters, they also contribute to greater intra-party factionalism and competition. The Law Commission of Canada also notes that they are "not as effective at promoting the candidacy and successful election of women, unless quotas are established guaranteeing women a certain percentage of winnable positions."<sup>8</sup>

West Coast LEAF proposes the adoption of a closed list system, with an option for review after three provincial elections. This compels parties to take responsibility for gender equality by ensuring lists are balanced and women are not simply placed at the bottom with little chance of being elected.

## **b) Quotas**

Quotas ensure that women make up a specific percentage of candidates proposed for election by a specific party, of party lists, or of reserved seats in the legislature. With quotas, the onus is on parties, who control the recruitment process, to seek women out for political positions as opposed to placing the burden of breaking into closed party networks on individual women. It also ensures that women are not token representatives, isolated in political life.<sup>9</sup>

Quotas for women can be instituted at the party level, as in many Nordic countries, or can be legislated at the national level as in France and South Africa. Alternatively, quotas for women can also be mandated constitutionally, as in the Philippines or in Uganda.

The concept of a "double quota" is unique in that it ensures that women not only constitute a specific percentage of party lists, but also ensures they are not occupying positions at the bottom of the list with little chance of being elected.<sup>10</sup>

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<sup>8</sup>Canada, *Voting Counts: Electoral Reform for Canada* (Ottawa: Law Commission of Canada, 2004) at 105.

<sup>9</sup>[www.idea.int/women/parl/ch4c.htm](http://www.idea.int/women/parl/ch4c.htm), accessed June 25<sup>th</sup>, 2004.

<sup>10</sup>[www.idea.int/quota/aboutquotas.cfm](http://www.idea.int/quota/aboutquotas.cfm), accessed July 2, 2004.



Quotas for women are not discriminatory, nor are they against the notion of equal opportunity, primarily because they serve to address real and specific barriers which prevent women from equally participating in politics. They recognize that a diversity of women's experiences is desirable in the political arena because these experiences contribute to debate and development of effective policy. Furthermore, they ensure that women are not token representatives of equality but rather, are recognized and respected as equal citizens with the right to equal representation.

Whereas formal equality asserts the importance of "equal opportunity," substantive equality focuses on "equality of result." The latter recognizes that simply removing formal barriers to the participation of women is not enough to combat discrimination and hidden barriers that prevent women from getting and staying involved in politics. Because many of these barriers are not easily or quickly eliminated, proactive measures such as quotas are required to ensure the political inclusion of women. Quotas can be a temporary measure, applied only until the barriers for women's entry into politics are removed and women are equally represented.

Quotas for women have been implemented in many countries but there is no international standard as to how they are employed. Most countries have applied them to the percentage of candidates nominated by a party for election but it is important to ensure that women are placed high up on party lists and to make sure they are nominated in a "winnable" ridings.

## **6. Conclusion**

International initiatives to increase women's representation have all recognized that dominant groups have an unfair advantage when it comes to achieving political power. Other groups, most often marginalized groups such as women, are largely excluded. As a result, electoral reform is critical to increasing women's representation in politics.

However, proportional representation, while a more effective system for increasing women's participation, is not enough. Research shows a higher percentage of women are elected in countries which couple proportional representation systems with proactive measures such as quotas to increase women's representation. These measures can include gender parity on party lists and constitutional, legislative, or political party quotas for women. Introducing quotas will not automatically remove all barriers for women's equal participation; rather, they must be coupled with increased education around equality rights and equal representation, and grassroots mobilization of diverse groups of women.

These electoral reforms recognize that the *Charter of Rights and Freedoms* and the *B.C. Human Rights Code* impose a positive obligation on the government to end women's inequality and implement policies and programs that end the historical disadvantage women have experienced. This experience of disadvantage is reflected in our elected bodies in B.C. and Canada, and is one that can clearly be remedied through the implementation of electoral reform.