

Royal Commission on
Electoral Reform and
Party Financing



Commission royale sur
la réforme électorale et
le financement des partis

REFORMING ELECTORAL DEMOCRACY

VOLUME 1



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The Report is available in both official languages as a set or as individual volumes.

Available in Canada through
Associated Bookstores
and other booksellers

or by mail from
Canada Communication Group – Publishing
Ottawa, Canada K1A 0S9

Catalogue No. Z1-1989/2-1-1991E
ISBN 0-660-14245-7 (vol. 1)
0-660-14244-9 (set)

Canadian Cataloguing in Publication Data

Canada. Royal Commission on Electoral Reform and Party Financing

Reforming electoral democracy : final report

Chairman: Pierre Lortie

Partial contents: vol. 3: Proposed legislation; –
v. 4: What Canadians told us.

ISBN 0-660-14244-9 (set);

0-660-14245-7 (vol. 1); 0-660-14246-5 (v. 2);

0-660-14247-3 (v. 3); 0-660-14248-1 (v. 4)

DSS cat. nos. Z1-1989/2-1991E (set);

Z1-1989/2-1-1991E (vol. 1); Z1-1989/2-2-1991E (v. 2);

Z1-1989/2-3-1991E (v. 3); Z1-1989/2-4-1991E (v. 4)

1. Elections – Canada. 2. Election law – Canada. 3. Advertising,
Political – Canada. 4. Campaign funds – Canada. 5. Voter
registration – Canada. I. Title.

JL193.C35 1991

324.6'0971

C91-098741-6

The Royal Commission on Electoral Reform and Party Financing and the publishers wish to acknowledge with gratitude the permission of the following publishers and individuals to reprint and translate in this Final Report material from their works:

The Globe and Mail; The New York Times Company; Andrew Sancton,
University of Western Ontario and Canadian Political Science Association,
Canadian Journal of Political Science; University of Toronto Press.

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Commission royale sur
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le financement des partis

TO HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL

MAY IT PLEASE YOUR EXCELLENCY

We, the Commissioners, appointed by Order in Council dated 15th November 1989, as revised and amended on 3rd October 1990, to inquire into and report on the appropriate principles and process that should govern the election of members of the House of Commons and the financing of political parties and of candidates' campaigns

BEG TO SUBMIT TO YOUR EXCELLENCY THIS REPORT.

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November 1991

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1

THE OBJECTIVES OF ELECTORAL DEMOCRACY



INTRODUCTION

IN NOVEMBER 1989, when the Royal Commission on Electoral Reform and Party Financing was established, East Germans and West Germans, along with the entire democratic world, were celebrating the freedom symbolized by the dismantling of the Berlin Wall. As we completed our work in the fall of 1991, peoples of central and eastern Europe and from what used to be the Soviet Union were taking tentative steps toward an uncertain future as citizens of rebuilt or burgeoning democracies. As these events demonstrate, the political order determines the degree to which economic and social freedoms, as well as social and economic justice, prevail. An equitable socio-economic order cannot be built on an inequitable political order.

The people of Canada were not unaffected by these historic developments in freedom and democratic government. Canadians looked with new appreciation on their democratic society and its political and economic rights and its freedoms. But even as they did so, many Canadians made it clear at the Commission's public hearings that in evaluating the processes of our electoral democracy they have found it lacking in several crucial respects. These Canadians are demanding that electoral reform not merely tinker with the electoral law; they are demanding that electoral reform focus on the broader and central purposes of electoral democracy.

Furthermore, the current challenges to democratic governance in Canada are not restricted to struggles over federal constitutional arrangements, critical as they may be to our future as members of a Canadian polity. Canada is not merely a federation; it is also, as the *Canadian Charter of Rights and Freedoms* states, a "free and democratic society". What makes us free and democratic are precisely those matters of electoral democracy that the Commission was privileged to address on behalf of Canadians.

Our mandate concerned the most basic of democratic rights – the right to vote, to be a candidate and to participate in free and open elections. Electoral reform, therefore, goes to the heart of the democratic process. It requires that we re-examine our electoral laws and practices to ensure that they fully and truly reflect common values – the basic passions and beliefs that determine how we harness the most powerful forces in a political society and how we order our collective life to achieve a free and democratic society.

HISTORICAL CONTEXT

This is not the first time in recent years that the electoral system has been the subject of study and reform. Since 1960, there have been at least four notable series of changes or proposals for change. The first series introduced the *Electoral Boundaries Readjustment Act* in 1964, which established an independent and impartial process for drawing the boundaries of federal constituencies. This process was removed from the purview of Members of Parliament and conducted instead by an electoral boundaries commission for each province, chaired by a judge of the superior court of the province.

Other major events of the 1960s were the 1964 appointment of the Committee on Election Expenses – the Barbeau Committee – and its 1966 report. Created in response to the rapidly rising cost of general elections, particularly for political parties, the Barbeau Committee proposed controlling election spending by limiting the amount of media advertising parties could purchase and the amount candidates could spend on advertising.

The election spending limits that emerged in the *Election Expenses Act* of 1974 were the product of further study by the Chappell parliamentary committee. (Canada, House of Commons 1971) The regulatory framework that ensued was much more extensive than that envisaged by the Barbeau recommendations. It limited expenditures by both candidates and parties, restricted election spending by other individuals and groups, regulated the timing and amount of paid advertising, and introduced tax credits for political contributions as well as partial reimbursement of election expenses incurred.

The last milestone in electoral reform in the past 30 years was the *White Paper on Election Law Reform*. (Canada, Privy Council Office 1986) Proposing comprehensive reform of the *Canada Elections Act*, the main objectives of the white paper were to extend the vote to more Canadians, to make the voting process more convenient, and to modernize the administration of elections. The white paper also proposed restricting government advertising during an election campaign, requiring more information to accompany published opinion poll results, and removing the restrictions on certain categories of voters to be candidates for election to the House of Commons.

The white paper was based on recommendations made by the chief electoral officer of Canada in 1984 and 1985 and by the broadcasting arbitrator. But the legislative proposal that would have implemented many of the white paper reforms, Bill C-79, died on the order paper with the call of the 1988 general election.

In acknowledging the crucial role of electoral reform in the democratic process, we must reconsider what Aristotle understood as authentic politics. Ethics and politics, he argued, are one and the same enquiry. Each demands that we ask: "How ought we to order our life together?"

This new focus on the ethical dimensions of political culture and practice has a particular salience in the Canadian context. The Charter gave rise to new expectations about the legitimate claims of citizens. It also transformed the basic structures of governance. Citizens no longer have to

rely on parliamentarians or political parties to have their claims included on the decision-making agenda. Citizens can now pursue their constitutional claims through the courts.

These changes are not merely hypothetical. On several critical issues related to electoral democracy, Charter challenges have resulted in court decisions that have altered the basic electoral law. Citizens have also used the ethical principles implied by the Charter to evaluate many election-related practices, especially by political parties, and they have found these practices wanting. As these evaluations make clear, practical reforms must proceed from ethical principles; ethics is not merely a concern of democratic theory.

THE COMMISSION'S MANDATE

The mandate given to the Commission on 15 November 1989 required us

to inquire into and report on the appropriate principles and process that should govern the election of members of the House of Commons and the financing of political parties and of candidates' campaigns, [including, but not so as to limit the generality of the foregoing, issues such as]

- (a) the practices, procedures and legislation in Canada;
- (b) the means by which political parties should be funded, the provision of funds to political parties from any source, the limits on such funding and the uses to which such funds ought, or ought not, to be put; [and]
- (c) the qualifications of electors and the compiling of voters' lists, including the advisability of the establishment of a permanent voters' list.

Our mandate did not refer to the Senate of Canada. The Senate is very much part of our system of parliamentary government, but, because its members are appointed, it is not part of electoral democracy. Senate reform could affect how seats in the House of Commons are assigned to the provinces. At present, the distribution of seats attempts to reconcile the constitutional principle of proportionate representation – that is, the representation of provinces on the basis of their population – and the constitutional provision whereby a province cannot have fewer seats in the Commons than it has senators. This approach to representation in the House of Commons has been necessary because of dissatisfaction with the way the Senate has fulfilled its role as a second chamber of Parliament that represents provinces as the constituent units of the Canadian federation. In its constitutional proposals released in September 1991, the government of Canada endorsed an elected Senate based on an equitable representation of provinces. (Canada 1991)

Until the Senate is reformed to reflect the federal principle of representation within Parliament, the assignment of Commons seats to provinces must be based on more than proportionate representation. Our recommendations to redistribute Commons seats therefore assume that the Senate remains largely unchanged. We do indicate, however, the implications of a reformed Senate for redistribution.

THE COMMISSION'S APPROACH

We began by consulting former and present senior federal and provincial officials involved with different elements of the electoral system, as well as political party officials. From these consultations we learned the main concerns of those most involved with the current election law. Shortly after, we invited some 75 scholars from across Canada to prepare papers on what they considered the major issues of electoral reform and the research projects that would be necessary to address them. Many of those who responded were also invited to a seminar at which they discussed the major issues with us, with a group of knowledgeable, experienced representatives from the larger political parties and with election officials from across Canada.

At the same time, we asked Canadians for briefs and submissions. The response was enthusiastic. Nearly 900 briefs and submissions were received: 233 from groups and associations; 195 from political practitioners and organizations; and 466 from election administrators and private citizens.

We originally scheduled 28 days of sittings in 25 cities across Canada between March and June 1990. To accommodate the heavy demand for hearings, however, in most cities we added evening sessions, and in several cities we had to schedule extra days of hearings. In total, we held 42 days of hearings in 27 cities. The record of this testimony extends to some 14 000 pages.

Our extensive research program responded not only to the advice we received from scholars, political practitioners and election administrators, but also to the issues raised in our public hearings. The research program ensured that we were informed on federal electoral and political practices, including the financing of political parties and candidates. Throughout, we added an historical perspective, to place the contemporary experience within the Canadian political tradition. We also recognized that any examination of Canadian electoral democracy would not be complete without examining the experience of the provinces and territories, and other western democracies. Our research projects thus incorporated comparative studies on the major topics of enquiry. Because of the experience of the United States in election finance regulation and the role of money in electoral politics, we had two major meetings in the United States. The first was a joint session with the Federal Election Commission in Washington, DC. In this session we considered the U.S. regulatory regime from a Canadian perspective. The second was a workshop organized jointly with the Joan Shorenstein Barone Center on the Press, Politics and Public Policy and the Institute of Politics, John F. Kennedy School of Government, Harvard University. This workshop brought together political and media practitioners from the United States and Canada to consider current U.S. efforts to reform its electoral process, including lessons that could be drawn for Canada.

In addition to the Commission's research co-ordinators and analysts, some 180 researchers from 28 Canadian universities, the private sector and,

for several projects, from universities and institutes abroad, were engaged in research. We were fortunate that our research program was able to attract some of the foremost scholars in Canada and abroad. Their studies, published along with our report, will contribute to a greater knowledge and understanding of electoral democracy in Canada and abroad.

Because we wanted the benefit of the experience and advice of those most familiar with the workings of the *Canada Elections Act* and provincial and territorial electoral laws, we also met during the past two years with the chief electoral officers across the country and consulted regularly with the registered national political parties. Our research projects benefited from their co-operation: they provided access to information that allowed us to analyse their structures, operations and financial practices.

The third major phase of our work consisted of symposiums and workshops in which preliminary research findings were evaluated by those with practical experience in election campaigns, political parties and the media. We also held symposiums with election officials on election administration, and with local party officials on managing campaigns under the current electoral law. In all symposiums we sought consensus on what were the major electoral reform issues and options.

Early in our public hearings, several witnesses spoke of the serious underrepresentation of Aboriginal people in the House of Commons. Aboriginal people have never been represented in proportion to their numbers in Canada – although they make up 3.5 per cent of the population, only 12 self-identified Aboriginal people have been elected to the more than 10 500 House of Commons seats available since Confederation – nine of them since 1960.

Among those proposing more effective Aboriginal representation was Senator Len Marchand, who in 1968 became the first Indian person elected to the House of Commons. Senator Marchand proposed that the Commission consider remedying this underrepresentation through the establishment of Aboriginal constituencies. Among others, New Zealand and the state of Maine have set aside seats for Aboriginal people in their legislatures – four seats for the Maori in New Zealand and two seats for the two Indian nations in Maine. Many Aboriginal persons who appeared at our public hearings referred to these examples to support their requests for direct representation in the House of Commons.

Toward the end of our hearings, several interveners from Aboriginal organizations urged more substantive consultations on Aboriginal issues than had taken place during our hearings. A representative of the Native Council of Canada recommended that the Commission establish a joint working committee with representatives of Aboriginal organizations to develop proposals for Aboriginal representation in the House of Commons.

To ascertain the views of Aboriginal leaders on the general concept of Aboriginal constituencies, we asked Senator Marchand to co-ordinate a series of consultations based on his brief. These consultations took place in

January 1991. Aboriginal leaders responded positively and requested a second round of consultations to discuss a more detailed proposal. This proposal would outline the implications of Aboriginal constituencies and how they could be established. This request led to the establishment of a Committee for Aboriginal Electoral Reform, chaired by Senator Marchand, and composed of Ethel Blondin, Willie Littlechild, Jack Anawak and Gene Rheaume, who with Senator Marchand represent five of the nine living Aboriginal persons who have been elected to the House of Commons since 1960. This Committee of Aboriginal leaders developed a concrete proposal that would guarantee a process for creating Aboriginal constituencies rather than guaranteeing a specific number of seats. The proposal was published in the Aboriginal press, and the Committee then conducted extensive consultations with Aboriginal people across Canada during May, June and July of 1991. The Committee's report on these consultations was presented to the Commission and made public on 18 September 1991. Its report is reproduced in Volume 4 of our report.

THE OBJECTIVES OF ELECTORAL REFORM

In considering how to reform the electoral process it became clear that we could not approach our task as a technical exercise, simply reforming disparate items in the electoral law. Rather, we needed to clarify the fundamental objectives of electoral democracy and propose reforms to meet these objectives. Two major studies aided our efforts to define these fundamental objectives. The first was an ethicological analysis identifying the values underlying the briefs and submissions we received. (Fortin 1991 RC)* The second was a major national survey of Canadian attitudes on electoral practices and reform proposals. (Blais and Gidengil 1991 RC) We then formulated six objectives and used them to assess the current federal electoral law and political practices and to develop our reform proposals.

Securing the Democratic Rights of Voters

The Canadian record on securing the democratic rights of voters – the most essential characteristic of an electoral democracy – is relatively good. Three factors in Canada's electoral law affect how we participate in the voting process.

First, the constitutional right of citizens to vote is guaranteed in the *Canadian Charter of Rights and Freedoms*. Electoral law, however, qualifies this right. Limiting the right to vote is not necessarily contrary to the Charter. The Charter allows limits on rights if they are prescribed by law and can be demonstrably justified as reasonable in a free and democratic society. Under the Charter, the onus has shifted to the state to justify exclusions; the right to vote is a constitutional right of citizens, not a privilege. Any

* In references to Royal Commission research studies, the date is followed by the initials RC.

limits on the right to vote must therefore be justified; Parliament no longer has the authority to set arbitrary limits. To secure the right of citizens to vote, this standard must be applied in assessing the limitations in the *Canada Elections Act*.

Second, to be eligible to vote a citizen must be registered. This statutory requirement serves two fundamental purposes: it ensures that only qualified voters vote and that they do so only once. Voter registration thus promotes the integrity of the vote.

Registering voters in a country the size of Canada is a major undertaking. Canada's current law and approach assume that because the state is responsible for voter registration more citizens are registered; this assumption is validated by comparative assessment. The vast majority of eligible Canadians are registered at every federal election.

At the same time, however, Canada's voter registration does disenfranchise some voters, either because of provisions in the *Canada Elections Act* or because of administrative shortcomings. Moreover, changing lifestyles and increased mobility, among other factors, have made it more difficult to meet previous standards of completeness. The federal registration system is also not as open as it could be, nor is it as open as many provincial systems. If we do not want voter registration to be an obstacle to citizen participation in voting, reforms are clearly necessary.

The third factor affecting how we participate in the voting process is the degree to which voting is accessible. Under our current law and practice, voting is relatively accessible for the majority of voters. For many, however, the system is less friendly. Statutory and administrative requirements can impose unreasonable burdens and unjustified restrictions. Voting in ways other than at a polling station on election day is treated as an exception to the norm and made unnecessarily complicated. We need to treat these other ways of voting as extensions of the normal voting process, rather than as exceptions to be tolerated only in special circumstances.

Enhancing Access to Elected Office

The laws governing the right to be a candidate determine the degree to which a political society is open or closed to the claims of its citizens to stand as candidates. By this measure, the Charter gives each citizen the right to be qualified for membership in the House of Commons, subject only to such reasonable limitations prescribed by law as are demonstrably justified in a free and democratic society. The *Canada Elections Act* requires a candidate to be a qualified voter and imposes several other qualifications. With few exceptions, however, candidacy is open to virtually all voters.

Yet when we consider the extent to which citizens have equitable access to candidacy, the Canadian electoral process appears far less open. In particular, women have been, and remain, greatly underrepresented among those nominated as candidates and elected to the House of Commons. In 1988, for instance, women were only 19 per cent of all candidates and only

13 per cent of those elected. Aboriginal people and members of visible minority groups are also underrepresented. Since 1960, there have been only nine self-identified Aboriginal persons elected. Members of visible minority groups represented 2 per cent of MPs following the 1988 election, although people from visible minority groups constitute slightly more than 6 per cent of the population.

Representation is fundamental to the concept of parliamentary democracy. In one sense, representation in governance identifies those represented, designates representatives and legitimizes institutional processes for securing agreements and resolving conflicts. In another and more fundamental sense, representative governance incorporates a society's definition of itself as a political community. Distinctions about who has a legitimate claim to political power are established in elections. In the process, a society pronounces whether it is open or closed to the claims of its citizens to stand as candidates for elected office, regardless of their sex, ethno-cultural heritage or financial resources. In this respect, a society is explicitly representing itself. In so doing, it reveals a great deal about its political culture and values.

Canada does not formally require candidates and, by extension, those elected to the House of Commons to reflect the nation's socio-demographic reality. Indeed, our theory and practice of representation reject any such notion that the process of selecting candidates or the electoral system itself should ensure that our society is reflected in those who are chosen as candidates or elected. Rather, representation promotes free and open competition for candidacy and election so that the best will be chosen as candidates and the best candidates will be elected.

At the same time, Canadian political parties acknowledge that Parliament should be an assembly of representatives whose legitimacy is endorsed by the degree to which the parties provide access to various segments of the population. In recruiting and selecting candidates, the large, national political parties have sought to ensure a measure of representativeness in their standard-bearers. Individuals from various language, ethno-cultural and religious communities have been recruited as candidates. Moreover, Canadian prime ministers since Sir John A. Macdonald have embraced the principle of representativeness when appointing cabinet ministers.

Despite these efforts, however, the large, national political parties have not extended this practice to several segments of the Canadian population. This virtual exclusion, particularly of women, from the corridors of political power is no longer acceptable. It is not merely a matter of political symbolism; elected representatives will not and cannot effectively represent the full range of Canada's interests if they do not reasonably reflect its society. To this extent, the electoral system fails to secure the best persons to sit in the House of Commons.

One of the challenges of electoral reform is thus to help reduce the systemic or structural barriers to candidacy without compromising the elements that constitute its strengths. This is no simple task: Canada is not

alone in this shortcoming, and several factors beyond political practices are at play.

Promoting the Equality and Efficacy of the Vote

Securing the rights of voters and enhancing the effective representation of Canadian society are necessary but insufficient conditions to ensure the equality and efficacy of the vote. The equality and efficacy of the vote are meant to achieve distinct but related goals. The equality of the vote is meant to ensure that the value of each vote is reasonably equal across territorially defined constituencies within a province. The efficacy of the vote means that voters who identify themselves as members of a 'community of interest' can influence the outcome of the vote whenever the community is a majority or significant minority in a territorially defined constituency. This objective has been used to justify drawing constituency boundaries such that members of rural, ethno-cultural and minority language communities have been able to influence the outcome of elections where they are concentrated. This, in turn, enhances the likelihood that the community would be represented by one of its own, and its parliamentary representation would thereby be more effective because its interests would be more clearly defined.

Equality and efficacy of the vote are fundamental objectives of an electoral democracy that aspires to the quality of representation that Canadians deem necessary for effective and legitimate representative governance. These two objectives have long been recognized in the assignment of House of Commons seats to provinces and in the drawing of constituency boundaries within provinces.

To achieve representation by population as a method of representing Canadians as members of provincial communities, the principle of proportionate representation was adopted at Confederation. This principle was the basis for assigning House of Commons seats to provinces and is entrenched in the constitution. Departures from this constitutional principle have been required, however, because the Senate has not proved an effective second chamber for regional representation. The assignment of Senate seats to provinces provides proportionately greater weight to smaller provinces than their population would warrant, and the Senate's powers are considerable. But because senators are appointed rather than elected, the Senate lacks the democratic legitimacy necessary to act as a check on the elected House of Commons.

The principle of proportionate representation in the Commons has therefore been compromised by a constitutional provision and by successive formulas for assigning House of Commons seats to provinces. The equality of the vote has been diminished accordingly. Although some restrictions must be maintained on the principle of proportionate representation, in the absence of a reformed Senate, the restrictions should be the least severe necessary to achieve proportionate representation. This is not the case with the present formula for assigning seats.

The efficacy of the vote as a fundamental objective of electoral democracy in Canada has also been recognized since Confederation. Partisan politics played a major role in drawing constituency boundaries until an independent process was adopted in 1964. Nonetheless, to the extent that representational principles mattered, the objective of representing communities of interest in drawing constituency boundaries was paramount. In the 1964 reform, equality of the vote was given enhanced status, but the criterion of community of interest was maintained. In a 1986 amendment, the representational objective of community of interest was given still more importance.

We recommend that the current representational system, with members of the House of Commons elected from single-member constituencies based on the plurality of votes cast in a constituency, be maintained. This system of representation performs best when constituency boundaries are drawn to achieve equality and efficacy of the vote. Relative equality in the number of voters in each constituency in a province is required not only to preserve the constitutional right that each vote be of equal value, but also because large variations in the size of constituencies tend to produce a legislature at significant variance with the distribution of the popular vote. Such occurrences undermine the legitimacy of Parliament and of the government. Moreover, boundaries can be drawn to adhere reasonably closely to equality of the vote and still promote efficacy of the vote. There is a widespread assumption that voter equality must inevitably be diminished by representing communities of interest, but the Canadian record since 1964 demonstrates that this need not be the case. The most relevant international comparison, with Australia, confirms that equality and efficacy are not necessarily contradictory. Voter equality in Australia requires that constituencies be within 10 per cent of state electoral quotients (compared with Canada's present standard of 25 per cent), yet communities of interest are still adequately acknowledged in drawing electoral boundaries.

The major exception to this generalization pertains to the Aboriginal people of Canada. Many factors, including their dispersal in most parts of the country and the practices of electoral boundaries commissions, have resulted in less than due consideration of their distinct identity when drawing constituency boundaries. More important, however, as shown at our public hearings and in subsequent consultations, many Aboriginal people would prefer direct representation based on Aboriginal constituencies. This would acknowledge that Aboriginal peoples, as the First Peoples of this land, have a status different from all other Canadians.

There is a compelling case for changing the *Canada Elections Act* to guarantee Aboriginal voters the right to create Aboriginal constituencies in one or more provinces where numbers warrant. By establishing a process for creating Aboriginal constituencies, rather than providing a guaranteed number of Aboriginal seats, Aboriginal constituencies would be created only when and where Aboriginal voters themselves chose this alternative to

voting in the constituencies where they reside. This process would also be compatible with the equality of the vote in Canada, since Aboriginal constituencies would be required to conform to the electoral quotients in each province. Through this process, Aboriginal constituencies could also be efficiently incorporated into our representative system of parliamentary government.

Consultations with Aboriginal leaders and communities, based on a specific proposal, indicate that there is sufficient support for establishing a process for creating Aboriginal constituencies that would meet the requirements of our traditions and constitutional principles. At the same time, our research indicates that this process would not depart from the traditions of representation in Canada. Nor would it depart from the principles that we recommend should govern the drawing of constituency boundaries in provinces, particularly the principle of equality of the vote.

Equally important, there are four major reasons why a process to create Aboriginal constituencies is in the interest of all Canadians. First, Aboriginal peoples have a unique status under Canada's constitution. Second, they have always expressed a desire to preserve their distinct identity rather than assimilate with Canadian society. Third, Parliament has special and exclusive responsibilities for Indian and Inuit peoples on matters that for other Canadians are provincial responsibilities. It is therefore essential that Aboriginal peoples be present in the House of Commons to speak for their interests. Fourth, the claims of Aboriginal peoples, as the First Peoples of this land, to effective representation, as defined by the Supreme Court of Canada, are unique.

Contrary to some opinion, Aboriginal constituencies would not 'ghettoize' Aboriginal peoples or isolate their representatives in Parliament. These constituencies and their MPs would be distinct but fully a part of the Canadian electorate and its representation in the House of Commons. Aboriginal voters who choose to vote in Aboriginal constituencies would vote for candidates who spoke not only to their specific interests, but also to national policies from an Aboriginal perspective. In this way, Aboriginal peoples could participate more fully in Canadian political life without having to assimilate and thus deny their distinct identity. Such direct representation would also send an important message to the international community about the participation of Aboriginal peoples in the Canadian polity and confirm their unique place in and contribution to the development and history of our country.

Strengthening Political Parties as Primary Political Organizations

Canadian experience, as well as that of other countries, demonstrates that a competitive political party system is an essential complement to the institutions of government. In this sense, political parties are primary political organizations.

Politics is inherently adversarial because basic human passions – including self-interest and the pursuit of power – are at play. The fundamental

task of governance in a free and democratic society is to restrain these passions. Citizens may organize themselves for political purposes into organizations such as interest groups or pressure groups. But only political parties can reconcile and accommodate diverse and competing interests to reach agreement on public policy. The objective of democratic institutions is thus to channel these passions so that society can reach agreement while protecting the rights of minority groups.

Contemporary populism, as it is called, challenges many basic assumptions that underlie our representative and parliamentary government and give prominence to political parties as primary political organizations. Populist critiques of contemporary representative government, and the role of parties within it, draw attention to several shortcomings in our current practices. At the same time, calls for non-partisan democratic politics to achieve consensus create an illusion about our capacity to restrain and order basic human passions. Where formally organized political parties do not compete for political power, the result is the dominance of factions or special-interest groups. Competition is not eliminated; rather, it occurs in different arenas and takes different forms. The pressure of competition in different forms does not rule out democratic government or political freedoms, but the capacity for organized democratic participation and political control by the public is reduced accordingly.

Under our system, competitive parties have organized the political processes of democratic parliamentary government. Although it is possible to have *representative* government without political parties, as is the norm in municipal government in Canada, *responsible* government requires political parties. Parties ensure that the government accounts for its policies and programs in the House of Commons and that at general elections voters can pass judgement on the government's record. Not surprisingly, then, Canadians acknowledge that political parties are primary political organizations in a parliamentary system.

At the same time, Canadians have become increasingly critical of how our large, national political parties are structured, how they operate and the extent to which they are accessible to Canadians in general and their adherents in particular. Our parties are seen as having shortcomings in the way they recruit and select their leaders and candidates for the House of Commons; also questioned are the opportunities their membership has to engage in political discourse and meaningful political participation. These shortcomings have resulted in national parties that lack a broad basis of membership and that tend to exclude certain segments of the body politic.

Many factors explain these shortcomings. The impact of modern communications technologies, especially television, has focused public attention on party leaders. Technological developments have also enabled, if not forced, parties to conduct highly centralized election campaigns through the mass media and to use other means, such as polling, to tap into public opinion. In the process, party membership has declined in importance,

other than for periodically selecting candidates and leaders. The role of the membership in selecting candidates and leaders has also been tainted, however, by practices that most Canadians consider need reform. Finally, this state of affairs has been paralleled, if not caused, by the proliferation of special-interest groups. Many political activists, who previously would have pursued their public policy interests through a political party, now participate in advocacy and interest groups.

Despite the shortcomings of political parties and the challenge of special-interest groups, parties remain the primary political organizations for recruiting and selecting candidates for election to the House of Commons, for organizing the processes of responsible parliamentary government, and for formulating policy that accommodates and reconciles competing regional and socio-economic interests. As legitimate as interest groups are in a free and democratic society, by their nature they cannot perform these crucial functions. Accordingly, our democratic politics can be healthy and ethically sound only when political parties perform their essential functions in ways that are, and are seen to be, consistent with democratic principles and processes. It is therefore imperative that electoral reform address the fundamental objective of strengthening political parties as primary political organizations.

Promoting Fairness in the Electoral Process

Although fairness in the electoral process is not an entirely contemporary concern, fairness as a fundamental value of electoral democracy has become more prominent over time. Fairness in a free and democratic society presupposes a foundation of justice, in which the equality of citizens to participate in governance requires a fair opportunity to influence political institutions and public policy. This foundation of political justice is reflected in the principle of 'one person, one vote' and section 15 of the *Canadian Charter of Rights and Freedoms*, which declares that "every individual is equal before and under the law". At the same time, the rights and freedoms guaranteed by the Charter are subject to reasonable limits that can be "justified in a free and democratic society". The assumption here is that justice as fairness, among other fundamental values that are important to our society, must temper the unbridled exercise of individual rights and freedoms.

The way democratic theory, democratic institutions and constitutional law have evolved testifies to the degree to which fairness is now regarded as fundamental. Fairness does not override basic freedoms, for that would imply that freedoms are not contained within the concept of justice. But, in certain circumstances, fairness may justifiably restrict certain freedoms in the pursuit of justice itself.

Electoral laws promote fairness only to the extent that voters have a reasonable opportunity to assess the choices presented to them by those who seek elected office. This condition requires that election discourse not be dominated by those whose resources enable them to overwhelm the

efforts of others to present their case to the electorate. If discourse is dominated by those with the greatest resources, the equality of voters and the freedom to make choices about who should govern are impaired.

Elections are unlike the economic marketplace where fundamental rights and freedoms do not presuppose that individuals are equal. In the marketplace, fairness merely prescribes equal opportunity to participate; it does not restrict the ability of individuals or groups to accumulate resources and use them to advance their economic interests. In sharp contrast, the electoral process is predicated on the equality of the vote and of the right to be a candidate. This equality is granted so that each voter has the same opportunity to influence the outcome of elections.

It is important to emphasize that over the course of our political history we have progressively asserted the primacy of political equality. For instance, changes to Canadian electoral law have removed inequalities in the right to vote – in particular, disqualifications from the franchise based on property, sex and race. Through efforts to draw constituency boundaries that recognize equality of the vote, we have further asserted the fundamental value of ‘one person, one vote’.

At the same time, we have also progressively adopted measures that acknowledge that the right to vote can be politically meaningful and the equality of voters assured only if the electoral process itself is fair. Our independent and impartial system to register voters and administer the vote thus promotes fairness, as well as the integrity of the electoral process. Later, rules governing radio broadcasting were introduced to promote fair allocation of time so that candidates and parties would not be overwhelmed by those with greater financial resources and voters would be given the opportunity to hear and assess different points of view.

In 1974, the *Canada Elections Act* was reformed to limit the election expenses of candidates and registered political parties, place restrictions on independent election spending by individuals and groups, add tax credits for political contributions, and partially reimburse with public funds the election expenses of registered parties and candidates. This broadening of fairness explicitly recognized the role of money in election campaigns.

Canadians not only accept but also strongly support fair election spending. Spending limits on parties and candidates, restrictions on independent expenditures by individuals and groups, and regulated access to the broadcast media serve to ensure that electoral contests are not determined primarily by disparities in the financial resources of competing candidates, parties or other interested individuals and groups.

To promote fairness, the foundations of the current system must be preserved. Its scope must be extended, however, to acknowledge that access to elected office includes the rules governing the nomination of candidates by political parties. By ignoring this dimension of the electoral process, the current electoral law undermines fairness. Our rules governing access to registered party status under the *Canada Elections Act* and the basis for providing

public funding and access to the broadcast media must also be reformed to enhance fairness in election discourse.

Fairness also demands reform of the election finance regime. This regime provides for partial public reimbursement of the election expenses of candidates and parties. It also regulates election expenses of parties, candidates, and other individuals and groups. Reforms to public funding through reimbursements are required to ensure that public funds received by parties and candidates reflect their electoral support. Reforms are also needed to clarify the scope of election expenses to provide a fairer system of documenting election finance. Further, the law must be comprehensible to the thousands of volunteers who participate in our electoral process.

Finally, fairness demands that the election finance regime limit the ability of candidates, parties, and other individuals and groups to incur election expenses. Election expenses, therefore, must be defined to include the cost of any goods or services used during an election to promote or oppose, directly or indirectly, the election of a candidate or the program or policies of a candidate or party, or to approve or disapprove of an action advocated or opposed by a candidate, party or party leader.

At the same time, limits on election expenses must extend to other individuals and groups to ensure fairness. If only candidates and parties were limited in their election spending, 'independent expenditures' could give direct or indirect advantage to one or more candidates or parties. This would jeopardize the fairness that the electoral finance regime promotes. This is not merely a hypothetical outcome.

The unfettered spending by individuals and groups in the 1988 general election was a result of deficiencies in the *Canada Elections Act* combined with 1984 decisions that rendered inoperative the provisions in the Act on independent expenditures. The Act prohibits independent expenditures to directly promote or oppose candidates or parties; however, it permits independent expenditures that promote 'issues' as long as such advertising does not directly promote or oppose a candidate or party. Although this section of the Act was not in force in the 1988 general election, that election conclusively demonstrated that allowing unlimited independent election spending on 'issues' would not have adequately addressed the issue of fairness. No meaningful distinction can be drawn between the promotion of a 'partisan' position, on the one hand, and an 'issue' position, on the other. Any position on an election issue will inevitably be linked, directly or indirectly, to candidates or parties.

Fairness is a pressing, legitimate concern of the electoral process. Any law limiting election spending must be linked to the fundamental principle of fairness and, at the same time, impinge on the freedom of expression as little as possible. Such a law could not be justified if it ruled out independent expenditures completely. On the grounds of fairness, as well as freedom of expression, individuals and groups should be able to participate in an election campaign, to enrich electoral debate. This is not the same, however, as spending freely to affect the outcome of the election.

The challenge, therefore, is to draft a law that upholds the objective of fairness while meeting constitutional tests and judicial standards. Without such a law, the role of money in electoral competition would be unrestrained. We have seen the consequences of the U.S. electoral experience with no restraints on election spending and conclude that it is imperative that Canada not travel the same road. Our traditions and basic values, which are affirmed through the electoral process, are at stake at this critical juncture: they must be preserved and promoted. Our recommendations are designed to promote fairness in the electoral process by limiting the election expenses of candidates, parties, and other individuals and groups. These limits ensure a fair expression of opinions and views from all quarters, partisan and otherwise, and healthy and vigorous competition between those seeking office.

Enhancing Public Confidence in the Integrity of the Electoral Process

The integrity of the electoral process must be enhanced if Canadians are to be fully confident that their democratic rights are secure. Among other things, integrity means that any undue influence from financial contributions to candidates and parties is curtailed, that the policies and practices of the media in election coverage and political advertising do not manipulate voters, that elections are administered independently and impartially, and that the election law is effectively and reasonably enforced.

The Canadian requirement of full disclosure of contributions to candidates and political parties, and their expenditures, inspires public confidence. Inherent in disclosure are the principles of transparency and accountability. These principles must apply to the financial affairs of candidates, nomination and party leadership contestants, Members of Parliament, parties and registered constituency associations. These financial affairs must be open to public scrutiny. To achieve this objective, disclosure must be broad, provide timely reports, ensure sufficient information and produce information in a format that facilitates public access and media coverage.

Limits on the size and sources of political contributions are also part of the election finance laws of some provinces and countries. At issue is whether the integrity of the electoral process requires one or more of these limits in addition to spending limits and full disclosure. The need for such limits must also be assessed against the rights of individuals and groups to contribute financially to the electoral process, as well as against the need for candidates and parties to conduct competitive and informative election campaigns.

For candidates, political parties and voters, the media are an essential component of election campaigns. Candidates and parties rely on the media to communicate their campaign messages to voters, and voters receive much of their information about elections from the media. Although the role of the news media has changed over time, with the advent of new technologies and the evolution of the party system, news coverage has never been regulated. Even before the enshrining of press freedom in the *Canadian Charter of Rights and Freedoms*, the independent role of the news media was

recognized. At the same time, the importance of news coverage to parties, candidates and voters was generally accepted, especially in the television age. News organizations have traditionally accorded considerable importance to election coverage, although concerns have been expressed that this commitment is declining.

With the emergence of radio broadcasting came a recognition that parties needed some form of direct access to voters. Parties began to purchase broadcasting time in the 1920s and the Canadian Broadcasting Corporation (CBC) developed regulations for free-time election broadcasting in the 1930s. The purpose of the CBC regulations was to ensure fair access to broadcasting time for all recognized parties. Except for a ban on 'dramatization' in party broadcasts, which was in force from 1936 to 1968 (Boyer 1983, 370), the regulations have focused on questions of time allocation and access rather than content. In addition, the regulations provided for a blackout on campaign advertising at the beginning and end of campaigns and a ban on advertising on broadcast outlets outside the country to preserve the integrity of the rules regarding time allocation and expenditure limits. Content has been essentially a matter for the parties and controversy has focused primarily on the allocation of time among the parties.

The reporting of public opinion polls during campaigns has also been controversial in recent elections. These concerns involve the validity of polls, their effect on media coverage of campaigns, the quality of media reporting of polls, the publication of 'polls' that do not meet accepted professional standards, and the effect of polls on the decisions of voters and voter turnout. What must be addressed are the responsibilities of pollsters and the media for the accuracy, reliability and availability of polling data and the right of voters to acquire information relevant to the election.

Public confidence in any democratic system of representative government demands efficient election administration and impartial enforcement of the electoral law. Since 1920, elections have been administered and the election law enforced under the general supervision of the chief electoral officer of Canada, an independent officer appointed by the House of Commons.

Since that time the office of the chief electoral officer, now known as Elections Canada, has functioned, and has been seen to function, impartially. It has also become known for its effectiveness and commitment to providing world-class service to Canadian voters. The effectiveness and cost efficiency of elections administration have been hampered, however, by many provisions in the *Canada Elections Act* that do not recognize current realities or changes in technology. The Act must be sufficiently comprehensive to ensure the integrity of the electoral process and its immunity to pressures from the government of the day. At the same time, the Act must be sufficiently flexible to accommodate current realities and continuing technological change. Election administrators provide one of the most essential public services in a democracy, and their effectiveness should be facilitated, not impeded, by electoral law.

The enforcement provisions of the election law must inspire confidence in the integrity of the process. The current law patently does not do so. It fails to distinguish properly between election fraud and administrative infractions. Amendments to the *Canada Elections Act* have greatly added to the offences under the Act that are administrative in character and relate primarily to election and party finance. Moreover, most alleged offences concern the Act's administrative requirements.

Minor administrative infractions under the Act should not be treated as criminal offences. As the Commissioner of the Royal Canadian Mounted Police (RCMP) indicated clearly at our public hearings (Ottawa, 13 March 1990),* the RCMP's current procedures for investigation and for prosecution before the regular courts convey a misleading message to the public and thereby undermine public confidence in the integrity of the electoral system. For this reason, and because the rules to enforce the *Canada Elections Act* treat those who are investigated or prosecuted for administrative infractions inappropriately and thus unfairly, the current rules lead to unsatisfactory enforcement. When offences are prosecuted before the courts, the onus on the prosecution is increased, and very few complaints are prosecuted. The enforcement of administrative requirements, especially those affecting candidates and registered parties, thus demands reform.

THE ISSUE OF PROPORTIONAL REPRESENTATION

Although our mandate encompasses the way in which Canada organizes its electoral system for choosing members of the House of Commons, we decided at the outset to retain the single-member constituency, plurality voting system (sometimes referred to as 'first-past-the-post'). The Royal Commission on the Economic Union and Development Prospects for Canada – the Macdonald Commission – considered alternatives to our present system, including proportional representation, in its report (Canada, Royal Commission 1985) and research studies. (Irvine 1985) But so far none of these alternative systems has been placed before the House of Commons. We therefore do not recommend changes to this aspect of the electoral system, even though several interveners raised this issue at our public hearings.

Compared with our present electoral system, a proportional representation system would mean that the membership of the House of Commons would reflect more closely the relationship between votes cast for each political party and the number of seats won by each party, both nationally and in each region or province. As Table 1.1 indicates, countries that use proportional representation systems and have more than two competitive political parties achieve greater proportionality nationally between votes cast for parties and seats won.

* Transcripts of testimony before the Royal Commission are cited by the city where the hearing took place and the date.

Measured against countries that use proportional representation, Canada does well nationally. Our system does less well, however, in ensuring proportionality at the level of regions and provinces. In the recent past, for instance, each of the three largest political parties secured a reasonable percentage of the popular vote in a province only to find itself with few, if any, MPs in the House of Commons from that province. (Cairns 1968; Seidle 1988) An argument in favour of proportional representation, therefore, is that by having MPs better reflect their party's popular vote in each province, parliamentary caucuses would generally be more regionally representative than under our current system.

Table 1.1
Index of proportionality in recent elections

Electoral system	Country (election year)	Proportionality index
Single-member plurality systems	Canada (1988)	86
	Great Britain (1987)	80
	New Zealand (1987)	88
	United States (1988)	93
Proportional representation systems (various types)	Ireland (1987)	91
	Belgium (1987)	94
	Israel (1988)	96
	Federal Republic of Germany (1987)	99
	Denmark (1987)	96
	Sweden (1988)	96
	Italy (1987)	95

Source: The data on the party votes and seats are from the Inter-Parliamentary Union and National Election results reported in *Electoral Studies*.

Note: The proportionality index is the difference between the percentage of votes received and the percentage of seats won by each party, summed across the parties and normalized by adding both gains and losses in proportionality. It has a range from 0 to 100; the closer the index is to 100, the more each party's percentage of the vote approaches its percentage of seats won. The index as used here is a modification of an index for the 'deviation from proportionality' as applied by Taagepera and Shugart (1989, 104-5), and formally is:

$$\text{Proportionality index} = 100 - \frac{\sum |s_i - v_i|}{2}$$

where:

s_i is the percentage of seats won by party i ,

and

v_i is the percentage of votes received by party i .

Although such a change to the electoral system could not guarantee that national political parties in the House of Commons would be more responsive to representing and reconciling regional interests, including different interests within a region, than is now the case, it would increase the likelihood of this result. It would also help mitigate the public perception that particular provincial and regional interests, at times, are inadequately represented in the caucuses of the largest parliamentary parties and in the cabinet.

This being said, the rate of legislative turnover in the House of Commons indicates that the present electoral system is responsive to changes in voters' preferences. During the period from 1979 to 1988, when four general

elections took place, on average 24.9 per cent of MPs seeking re-election were defeated. In contrast, during the same period, the rate of defeat for members of the United States House of Representatives was 6 per cent. Moreover, the rates of defeat in the last two Canadian federal elections – 39.7 and 26.6 per cent, respectively – were considerably higher than in the 1979 and 1980 elections (20.3 and 15.0 per cent, respectively) (adapted from Atkinson and Docherty 1991).

In countries with a proportional representation system, political parties most often establish the order of the lists of candidates, which affects the likelihood of a particular candidate being elected. In some cases, voters have no choice but to support the party list as presented. Where the law allows voters to indicate a preference within a list, only a small proportion do so; sometimes the parties discourage voters from taking this step and, in effect, altering the order of candidates. (Bogdanor 1985, 9) The Canadian electoral system allows much greater scope for voters to judge the merits of particular candidates. The resulting responsiveness to voter preference is one of our system's greatest strengths.

A second argument in favour of proportional representation is that it promotes the representation of major segments of the population or groups that are not geographically concentrated, such as women or ethno-cultural communities. Women, for instance, tend to have greater representation in countries that use proportional representation. Contrary to what some have claimed, however, the international experience clearly indicates that this outcome is the consequence of political parties adopting male-female quotas or other measures of strengthening the position of women candidates. In countries that use proportional representation but whose parties do not take such action, the representation of women is similar to the Canadian record or worse.

Compared with our present electoral system, proportional representation would require MPs to be elected from multi-member constituencies, rather than single-member constituencies. Under proportional representation, each multi-member constituency would have a much larger population and cover a much larger geographical area than is now the case, if the House of Commons were to remain the same size. To achieve a sufficient degree of proportionality between votes cast and seats won by each party, such a system would require that each constituency elect five or more MPs and therefore be at least five times its present size in population and territory. This would mean that virtually all medium-sized cities – Calgary, for example – would each form one constituency, electing at least five members. Prince Edward Island and Newfoundland would be one constituency each; Nova Scotia, New Brunswick, Manitoba and Saskatchewan would have at most two constituencies each. Constituencies in the rural areas of the larger provinces would cover most of each province's non-urban territory. These larger constituencies would present many difficulties to Members of Parliament who must act on behalf of their constituents.

A better regional balance in the caucuses of national parties – perhaps the most compelling case for proportional representation in Canada – could be achieved by using such a system. But there is an alternative to having such a system apply to elections for the House of Commons. The Macdonald Commission presented a persuasive case that a Senate elected by a proportional representation system could achieve this goal. (Canada, Royal Commission 1985; Aucoin 1985) An elected Senate, as in Australia, would inevitably have elections based on political parties. At the same time, a Senate elected by a proportional representation system would better ensure that the parliamentary caucuses of national parties, including MPs and senators, represented the various regions. In addition, a more equitable distribution of Senate seats to the provinces would provide the less populated provinces with a greater influence in the parliamentary caucuses of national parties. The issues of how an elected Senate might be chosen and the distribution of Senate seats are among those the government of Canada has referred to a special joint committee, which began hearings on its constitutional proposals in autumn 1991.

THE ORGANIZATION OF OUR REPORT

In Volume 1, we devote a chapter to each of the above six objectives. In these chapters, we assess the performance of the current electoral law and procedures to determine how well the objectives are being met. This assessment, in turn, suggests where reform is needed and leads to our recommendations.

Volume 2 takes a more specialized approach to the mechanics of the electoral system, detailing specific legal and administrative changes required to implement our recommendations in Volume 1.

Recommendations in volumes 1 and 2 fall into two broad categories: recommendations to change electoral law and recommendations directed to participants in the electoral system – political parties, election officials, the media and polling organizations. The second category of recommendations is intended to convey to participants what we heard from Canadians about the electoral process: their experiences and their proposals for reform.

Volume 3 recommends changes to electoral law in the form of a draft legislative proposal for a new Canada Elections Act. In Volume 4, we present an overview and a sampling of the assessments and opinions offered at our public hearings. This volume also summarizes the presentations and discussions at our symposiums and seminars and contains the entire report of the Committee for Aboriginal Electoral Reform.

If all our proposals are adopted, there will be no increase in total costs to the federal treasury. We have identified a number of areas where costs can be reduced. Among other things, expenditures can be reduced in the registration process, where there is unnecessary duplication by the federal government in conducting enumerations in some provinces. Public money is also wasted in the way in which the vote-at card is distributed to voters and in the printing of voters lists. The savings arising from our proposed

changes to these activities would cover the costs of our initiatives to improve the institutions of our electoral democracy. Finally, our proposal to reduce the length of campaigns will reduce the costs for all concerned.

The sizeable task set out before our Commission would have been impossible to complete without the highly competent and dedicated people who agreed to join us. We were most fortunate to be assisted by such an outstanding team. The high calibre of assistance we received from all our staff – research co-ordinators and analysts, librarians, editors, translators, and administrative, clerical and secretarial personnel – is worthy of acknowledgement and praise; their names are listed in Volume 4, and we extend our thanks to all of them.

While it is difficult to single out any individual contribution in light of the remarkable efforts of so many, we would be remiss not to record our special gratitude for the work of the senior members of the team who were so critical to the success of the enterprise: Guy Goulard, Executive Director; Peter Aucoin, Director of Research; Jean-Marc Hamel, Special Adviser to the Chairman; Jules Brière, Senior Adviser, Legislation; Richard Rochefort, Director of Communications and Publishing; and Maurice Lacasse, Director of Finance and Administration.

We are also grateful for the co-operation we received from political parties when conducting our research projects and symposiums, the assistance given us by federal, provincial and territorial election offices, the invaluable research undertaken by specialists from universities and the private sector, and the contribution of individuals and groups who appeared at our public hearings.

CONCLUSION

The six objectives we have adopted to develop recommendations for electoral reform go to the heart of Canadian electoral democracy. In so doing, they address how best to secure the constitutional rights of Canadians, as individuals and as members of communities. They also address how best to secure the fundamental democratic values of the Canadian polity.

In many parts of Canada's electoral law and electoral process, these objectives lead to conclusions on electoral reform that are relatively straightforward. They easily meet the tests of common sense and practicality, and they respond to public concerns. In some instances, however, the issues involve trade-offs among fundamental values and are therefore highly contentious. Precisely because so much is at stake in any comprehensive reform, we have recognized and addressed the presence of conflicting values in examining the six objectives which should underlie the reform of our electoral democracy. Our goal was also to enhance the legitimacy of the Canadian House of Commons and of our institutions of governance. Legitimacy is a most important resource, if only for the economy it allows in the use of all the others.

"Our constitution is named a democracy, because it is in the hands not of the few but of the many," Thucydides explained to the ancient Athenians. It remains the cardinal rule today. The genius of a free and democratic people is manifested in its capacity and willingness to devise institutions and laws that secure fairness and equitable opportunities for citizens to influence democratic governance.

Our recommendations, adopted unanimously, ensure that the Canadian electoral process truly reflects the Canadian ideals of a free *and* democratic society.

2

THE DEMOCRATIC RIGHTS OF VOTERS



THE RIGHT TO VOTE

THE CANADIAN CHARTER of Rights and Freedoms gives every citizen the right to vote subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. The *Canada Elections Act* requires that qualified voters be at least 18 years old; it also disqualifies certain categories of citizens. The Charter introduced a new dimension to the franchise by making it a constitutional right of citizenship; this means that any disqualifications in the elections act must be justified under the Charter. Thus the onus of the argument has been shifted. No longer must a case be made to *extend* the franchise; rather, each restriction on the right to vote must be demonstrated to be justified in a free and democratic society.

We do not underestimate the impact of the Charter; but the right to vote must also be seen in the context of the historical evolution of representative governance and the individual rights implicit in it. The experience of the United States, with its long history of judicial review and a bill of rights, demonstrates that constitutional entrenchment of individual rights does not automatically override all legislative restrictions on such rights, including the right to vote. Canadians' experience with extending the franchise testifies to how we have transformed our political culture since Confederation, even though the right to vote was not enshrined in a written constitution.

This increasingly inclusive approach to the franchise has had the effects that many early proponents of democratic reform hoped for and predicted. Contrary to some early fears, extended political participation has not resulted in mob rule or debilitating factionalism, however imperfect our structures and policies have been. On the contrary, successive extensions of the franchise at various times in our history have corrected many injustices.

We do not therefore see the Charter guarantee as a threat. The Charter does not imply that rights are absolute; limitations can be imposed under certain conditions. We therefore assessed the current exclusions in the electoral law in a manner that respects the Charter as an integral part of our constitutional values but recognizes the need to uphold the dignity of democratic citizenship in relation to the significance of the franchise for the Canadian political community.

Our public hearings provided ample evidence that changes in the franchise are required. We heard many presentations about the need to enfranchise

Canadians who are now disfranchised for one reason or another. These interveners affirmed that the franchise is a matter of utmost political significance. The legitimacy of our political system rests on the franchise, for it is the principal means for the governed to express their consent; it should therefore be as inclusive as necessary to provide this essential legitimacy. We must thus assess each limitation as a question that goes to the heart of what we consider to be a free and democratic society.

We acknowledge that preserving this quality of our society demands some restrictions on the right to vote. For instance, it is inappropriate for very young children to have this right because they cannot make informed, rational and free choices about who should represent them.

Beyond the exclusion of young children, however, who should and should not vote is open to debate. In answering this question, a society is expressing its most fundamental beliefs about who should participate in the electoral process. This is vividly expressed in our history. At Confederation, the electoral law excluded the vast majority of citizens, primarily on the bases of economic class, sex and race. Removing these exclusions required that concepts of democratic citizenship be redefined. By our current standards, these former exclusions patently belong to history.

Past struggles to extend the right to vote were characterized by conflicting political values and vested political interests. The exclusion of non-propertied men, all women, and members of various racial groups was partly a function of political culture. It was also a function of the perceived partisan advantages in excluding certain categories of citizens.

By comparison, the present exclusions appear to have few, if any, significant partisan dimensions; rather, they stem from political principles and values. They are no less easy to resolve for this, but at the least they can be considered as questions of the public interest in franchise reform.

To address these exclusions, we must consider the meaning of the vote – the right of franchise – within representative democratic government. This requires examination of the basic values inherent in the idea of political representation.

Representation as Consent

Representative Government as Indirect Democracy

Our system of government is essentially an 'indirect' democracy. Citizens do not govern themselves directly; instead, they elect representatives to govern them. In this way, the consent of citizens is secured, however indirectly and imperfectly.

Between elections, these representatives have a mandate to govern – to make and administer laws – subject legally only to the constitutional distribution of authority between the different branches and orders of government and to the constitutional rights of citizens. Indeed, under the law, candidates for the House of Commons are barred from signing pledges that would restrict their freedom of action if elected.

The right of citizens to elect their governors is partly a matter of securing the legitimacy of the political system. It is also a matter of ensuring the representation of interests in the governing of society. The right to elect representatives is thus fundamental to a free and democratic society. Other rights, such as freedom of expression and association, are no less important as a consequence, but they flow from the political sovereignty of the people, as expressed most effectively in the right to vote.

Indirect Democracy and Citizen Risks

In choosing representative government, citizens restrict their participation in the governance of their society; they transfer the authority to govern to their representatives. In large societies, this is the only practical means to secure orderly and efficient government while allowing for a measure of citizen participation. The fact that citizens can elect and 'retire' these representatives at regular intervals serves to hold them responsible and accountable for what they do. Thus elections become the critical method of reconciling order with freedom.

But conferring a mandate to govern presents significant risks for citizens. (Smith 1991 RC) Chief among them are the tyranny of the majority over minorities, the abuse of power by elected representatives, and the undermining of the public good by excessive factionalism among citizens and their representatives. Debate about whose consent should count in the workings of representative government has thus focused on the theory and practice of the franchise.

Minimizing Risks

There are several ways to minimize the risks inherent in representative government. Frequent elections are one way. Where concern about these risks was high, elections are more frequent than in states where elected representatives were accorded greater deference. This is illustrated by the contrast between the two-year terms of members of the U.S. House of Representatives and the maximum five-year term of members of the British House of Commons.

A second way to minimize risks is to extend the election of officials to the executive and even the judicial branches of government; hence the contrast between the U.S. and Canadian traditions, for instance.

A third way is to make the executive branch responsible to the elected legislative branch and publicly accountable for its policies and programs through legislative debate and scrutiny. This is the case in the parliamentary system. Alternatively, the executive and legislative branches may have separate powers, so that each acts as a check on the other, as in the presidential-congressional system.

A fourth way to minimize risks is to allow citizens to initiate the recall of their elected representatives between elections; some U.S. states have this provision. A fifth way, found in a few political systems, is to permit

citizens to initiate referendums on matters of public policy, with legislators bound by the result. Finally, in some political systems, the legislators themselves may put matters to a referendum and be bound by the result. Recall and referendums are discussed in Volume 2 of our report.

Even in political systems that use these devices of 'direct' democracy, elected representatives remain primary in the governing process. The rise of the modern administrative state has served to ensure this, and nowhere has it been more evident than in systems where the executive branch has control over the legislative branch through cohesive political parties. This is clearly the experience in Canada.

The Evolution of the Franchise

Democratic citizenship under representative government implies the right to vote – the right to have a say in what values and interests are given priority in formulating public policy. At issue is the exercise of political power. In Canada, the franchise has been characterized by a complicated evolution of qualifications and disqualifications driven primarily by evolving public opinion on who should vote.

Regulation of the Franchise

At Confederation, no agreement could be reached about qualifications for the franchise. As a consequence, and in what was meant to be a temporary measure, the existing qualifications in each of the original provinces were used for federal elections. This situation remained until *The Electoral Franchise Act* of 1885.

From 1867 to 1885, the provinces varied in their approach to the franchise. In all cases there were property or income qualifications; only white males over the age of 21 who met these conditions were eligible to vote. In all provinces, however, property or income qualifications were set at a level that enabled the majority of male heads of households to qualify. It has been estimated that, by 1882, those who could vote made up approximately 16 per cent of the population in Quebec, Nova Scotia and New Brunswick, and 20 per cent of the population of Ontario. In Manitoba, the low property qualification and the primarily male population meant that 35 per cent of the population had the vote, whereas in British Columbia the relatively small number of white males meant that only 11 per cent of the population was eligible to vote, as seen in Table 2.1.

In 1885, Parliament adopted *The Electoral Franchise Act*. The Act reflected the concerns of Sir John A. Macdonald's Conservative government that Liberal-governed provinces were using their control over the federal franchise to expand the right to vote in ways that advanced Liberal interests, particularly in moves to enfranchise urban artisans and wage earners. The new federal law therefore set the property qualification at a level above the provincial average, thereby restricting the franchise slightly. This first attempt at a federal franchise did little to promote uniformity in the right

to vote. Not only did it establish variations in the property requirement from city to city, it also granted special concessions to maritime fishermen in its definition of property (defining fishing equipment as real property) and enfranchised only those Indian persons living east of Manitoba.

Table 2.1
Percentage of total population enfranchised, selected federal general elections, by province, 1867–1940

Province	1867	1882	1891	1900	1911	1917	1921	1930	1940
Ontario	16.5	20.2	26.4	27.1	27.4	39.4	58.6	55.2	61.8
Quebec	16.1	16.6	20.1	21.1	22.7	20.6	44.8	47.0	54.0
Nova Scotia	14.0	15.1	22.1	24.8	27.8	29.7	56.2	53.8	58.1
New Brunswick	15.2	16.9	21.1	27.3	28.7	29.9	52.7	50.7	55.1
Manitoba		34.8	30.3	27.9	21.4	29.3	41.8	46.9	58.2
British Columbia		11.0	13.3	21.9	21.2	38.4	44.0	48.0	57.8
Prince Edward Island		*	22.1	*	*	33.3	52.9	53.4	58.2
Saskatchewan					28.9	22.9	44.0	44.5	53.8
Alberta					28.6	32.5	46.5	41.6	53.2

Source: Ward 1963, 211–32.

*Not available.

By 1898, universal suffrage for Caucasian males had been adopted in all but two provinces for provincial elections. A Liberal federal government, however, was unable to reconcile the expectation of universal suffrage for males in much of the country with opposition from Quebec and Nova Scotia. The government escaped the dilemma by allowing the definition of the franchise to revert to the provinces. The result was universal manhood suffrage for whites in all provinces except Nova Scotia and Quebec.

The 1917 *War-time Elections Act* was introduced by the government of Sir Robert Borden in alliance with a wing of the Liberal Party not adverse to military conscription. The Act reasserted federal control over the franchise for federal elections. Among other things, this paved the way for the 1920 *Dominion Elections Act*, which established the first genuinely uniform federal franchise.

Female Suffrage

Two years previously, in 1918, Parliament had passed legislation adopting universal female suffrage (again with the exception of Indian persons living on reserves). This action also followed the wartime exigency; women who served or had close relatives in the forces were granted the right to vote under the *Military Voters Act, 1917* and the *War-time Elections Act* respectively.

Before 1836, women who met the property qualifications in the British North American colonies had the right to vote, although there is no

evidence that this right was exercised except in Quebec. (Cleverdon 1974, 214) Between 1836 and 1851, however, the colonies all passed laws explicitly disfranchising women; these laws continued in force following Confederation. By the end of the last century, the women's suffrage movement had arisen in Canada, as it had in Great Britain and the United States. Canadian women formed organizations such as the Canadian Suffrage Association, the Women's Christian Temperance Union, the National Council of Women, and the Women's Institutes to advocate extending the franchise to women.

By 1917, all the western provinces and Ontario had given women the vote. (Cleverdon 1974, 105) Pressure was mounting on Parliament to ensure that women who were enfranchised provincially would also be able to vote federally, given that the franchise was still defined by provincial law, and to extend this right to women in Quebec and the maritime provinces. Facing an election fought on the issue of conscription for wartime military service, the Borden government considered its options, including the enfranchisement of women. To maximize the number of female voters sympathetic to conscription, the government decided to grant the franchise to the close female relatives of men in active military service – much to the dismay of many suffragist organizations, which saw no reason to limit the extension of the franchise in this manner.

Owing its re-election in large part to newly enfranchised women, the government acted quickly to extend the franchise fully. Thus the franchise for women was enacted in 1918, with only a handful of MPs objecting on the grounds that women's "sanctified ... place" was in the home. (Ward 1963, 230)

Ethnicity and Race

At various times and for various intervals access to the vote has been denied on the grounds of ethnic or racial origin. The 1885 *Electoral Franchise Act*, for example, defined 'person' to exclude Chinese and Mongolians. This did not change until 1898, when the Liberal government's *Electoral Franchise Act* stated that the federal franchise would extend to all persons disqualified provincially because they belonged to some "class". The 1917 *War-time Elections Act* excluded from voting naturalized British subjects born in an enemy country and naturalized after 1902. The franchise was not extended to Canadians of Japanese descent until 1948.

The 1920 *Dominion Elections Act*, which finally put the federal franchise fully within the control of Parliament, did not provide for full universal suffrage. Rather, it disfranchised anyone disfranchised by provincial laws because of their racial origin, unless they were war veterans. This meant that Canadians of Japanese, Chinese and East Indian descent in British Columbia and Canadians of Chinese origin in Saskatchewan were denied the vote.

Other groups were disfranchised indirectly. Doukhobors and Mennonites were effectively disfranchised when conscientious objectors were denied the vote in 1917, a provision that was not repealed until 1955.

Some provinces also used language qualifications to discriminate against members of certain ethnic groups. (Qualter 1970, 11–12)

Aboriginal People

Aboriginal people – with the exception of the Métis, who have never been singled out in either federal or provincial electoral law – were denied the vote for many decades. The franchise for the Inuit was never seriously considered in the first several decades after Confederation. Because of their geographic isolation, they simply were not given the opportunity to vote. In 1934, however, Parliament added to the list of those disqualified “every Esquimaux person, whether born in Canada or elsewhere”. This provision was repealed in 1950.

The denial of the vote to Indian persons was accomplished in a more complicated but no less effective manner. From 1867 to 1885 and 1889 to 1917, this took the form of provincial property qualifications and express prohibitions in provincial statutes. From 1885 to 1898, Indian males not living on a reserve who met the relevant provincial property qualification and resided east of Manitoba could vote in federal elections. This limited right to vote was the result of a compromise amendment by the Conservative government to its own reform bill, following Prime Minister Macdonald’s efforts to secure the right to vote for all Indian males who could meet the normal property qualification. The opposition to Macdonald’s original proposal is well illustrated in the following exchange in the Commons between Macdonald and David Mills, a former minister responsible for Indian affairs:

Mr. Mills. What we are anxious to know is whether the hon. gentleman proposes to give other than enfranchised Indians¹ votes.

Sir John A. Macdonald. Yes.

Mr. Mills. Indians residing on a reservation?

Sir John A. Macdonald. Yes, if they have the necessary property qualification.

Mr. Mills. An Indian who cannot make a contract for himself, who can neither buy nor sell anything without the consent of the Superintendent General – an Indian who is not enfranchised?

Sir John A. Macdonald. Whether he is enfranchised or not.

Mr. Mills. This will include Indians in Manitoba and British Columbia?

Sir John A. Macdonald. Yes.

Mr. Mills. Poundmaker and Big Bear?

Sir John A. Macdonald. Yes.

Mr. Mills. So that they can go from a scalping party to the polls. (Canada, House of Commons, *Debates*, 30 April 1885, 1484)

In 1917, the *Military Voters Act* extended the franchise to Indian persons on active service, and the 1920 *Dominion Elections Act* guaranteed the continuation of this right to veterans. But the Act also disqualified Indians living on reserves. In 1944, the wartime amendments to the *Dominion*

Elections Act gave the vote to Indian persons who had served in the forces and to their spouses. In 1950, another amendment gave the vote to Indian people who were willing to waive their tax-exempt status with respect to personal property. Finally, in 1960, the government of John Diefenbaker introduced an amendment to the elections act to secure universal suffrage for Indian people.

The Franchise and Democratic Citizenship

This brief history of the franchise shows that exclusions have been justified, explicitly or implicitly, on the basis of criteria developed over time in relation to the meaning of democratic citizenship. This evolution reflected similar developments that transformed democracies in Europe and the United States.

Interests at Stake

Before universal male suffrage was adopted, the definition of democratic citizenship assumed that the interests to be represented in government were first and foremost economic in character. Those who did not own property lacked a valid claim to participate in the election of representatives; they were deemed not to have a sufficient stake in the governance of society. At best, those without property had their interests, such as they were, represented by legislators elected by property owners. All citizens might then be considered to be 'represented', but not in the direct manner of those with the right to vote.

Struggles to expand the franchise were thus efforts to redefine the meaning of democratic citizenship. Demands for universal male suffrage in the last century and the first decade of this century required a new understanding of the interests at stake in representative government – a shift from an economic definition to a definition of individuals as members of a political community.

Although much more was involved, women were also excluded from the franchise for reasons associated with an economic definition of political rights. The property criterion was used to deny them the right to vote; few women owned property, and women were considered 'property' themselves – the property of their fathers or husbands. As such they were 'represented' by the electoral choices of their male relatives.

Indian people were also denied the right to vote partly for this reason; those living on reserves did not have personal title to their land and were exempt from taxes on real or personal property. For these two reasons, among others, they were considered not to have a sufficient stake in the Canadian political system. As Richard Bartlett has noted, this second factor constituted "a curious reversal of the slogan 'no taxation without representation' to 'no representation without taxation'." (Bartlett 1980, 164)

Although Indian persons living on reserves were denied the right to vote until 1960, they were entitled to vote if they had been on active duty

in either of the two world wars or in the Korean conflict. The Department of Indian Affairs, commenting on this extension of the right to vote in 1917, pointed out that "owing to the large number of Indians who have enlisted in the Canadian Expeditionary Force, ... it has been contended, and justly so, that men who render service of such a nature to their country should be entitled to the fullest rights of citizenship". (Canada, Department of Indian Affairs 1918, 20) The Department went on to note that fully 35 per cent of the male Indian population of military age had enlisted during the First World War.

The treatment of certain racial minorities also had an economic dimension. This was especially the case with workers brought to Canada from Asia, who were seen as a threat to working-class interests; their exclusion from the franchise was as much an effort to deny them full participation in Canada's economic life as it was a denial of their right to participate in politics.

The significance of the property criterion was reinforced by the property qualifications imposed on candidates for election to the House of Commons. Property qualifications for those appointed to the Senate were even stricter, as the Senate's perceived role was in part to protect the rights of property.

Over time, this criterion was increasingly at odds with political sentiment in Canada and abroad. The evolution of political opinion first lowered the property qualification, then caused it to be removed altogether. This step acknowledged that property possession was no longer considered an indicator of the capacity to be a good citizen. Eliminating property qualifications redefined the understanding of democratic citizenship in a profound way. Citizens could now vote as a matter of political right, not as a function of their economic stake in society's governance.

At the same time, the idea of a stake in society remains a cornerstone of democratic citizenship, reflected in the fact that the right to vote is extended to citizens, not to all residents of Canada. That right is also limited, with only a few exceptions, by the provision that Canadian citizens who wish to exercise their franchise must live in Canada.

Rational and Informed Vote

The second major criterion respecting the franchise – albeit one that has always been more implicit than explicit in our electoral law – is that voters be qualified to cast a rational and informed vote. By this standard, children are not given the franchise. Adults judged to be mentally ill or mentally disabled have been denied the vote. Indian persons have been denied the right to vote on this ground: they were considered 'uneducated'. The rationale has also been used as one of many reasons to deny prisoners the right to vote; prisoners were considered incapable of casting an informed vote because they are isolated from society. In each case, the assumption was that voting requires the exercise of independent judgement and the capacity to engage in political discourse with other citizens.

The most numerous group excluded by this criterion was women. Even removing the property qualification for males did not bring about universal suffrage. Simply put, men did not consider women their intellectual equals. Women's struggle to secure the franchise required that they transform the political culture, changing its definition of democratic citizenship by overcoming sexist assumptions about their fitness as persons. This was no easy task, as illustrated by how long it took the women's suffrage movement to achieve its goal.

It is obvious that the criterion of a rational and informed vote can no longer be used to discriminate on the basis of sex. The current electoral law continues to use this criterion to exclude certain categories of citizens, however, including those under the age of 18 and those who are "restrained of [their] liberty of movement or deprived of the management of [their] property by reason of mental disease".

Responsible Citizenship

The traditional criteria for determining who should vote also reflected the view that those who do not conform to the norms of responsible citizenship – or what Jennifer Smith calls "the right conduct of politics in representative regimes" – should be disqualified from voting. Smith argues that representative government requires "an enormous degree of trust and civility among citizens"; the law therefore should encourage "the view that the vote is a serious responsibility of citizens. It means discouraging anything that would bring the vote into disrepute, or devalue it in citizens' eyes." (Smith 1991 RC)

This criterion has been used to disqualify citizens who are in prison and those convicted of offences against the election law. In these cases, one general and one particular, citizens are disqualified on the grounds that by violating the law, they have forfeited the right to participate as responsible citizens in the electoral process while they are incarcerated or for a specific period. The latter disqualification depends on the type of offence against the electoral law; the disqualification of prisoners makes no such distinction. This is unlike the law in some countries, such as France, Belgium and Australia, where disqualification varies with the type of offence or the length of the sentence. A justification for Canada's law is that law breakers should not be able to elect law makers; but there is no relationship between the conviction and the disqualification. Rather, all those serving a prison sentence at the time of an election are disqualified.

Impartiality

For reasons quite different from the first three, some public officials are disqualified from voting. They include the chief electoral officer, the assistant chief electoral officer, the returning officer for each constituency, and judges appointed by the Governor in Council, with the exception of citizenship judges. The rationale for these disqualifications is twofold.

Election officers are disqualified on the grounds that there must be, and must be seen to be, no conflict of interest or partisan behaviour on the part of those with executive and administrative responsibilities in conducting elections. Public confidence and trust in the integrity of the electoral process has been deemed sufficient justification for denying the vote in these cases. Judges have been disqualified on the grounds that the independence and impartiality of the judicial branch require that judges not be involved, or be seen to be involved, in partisan politics.

In the past, one other criterion cut across all four of the criteria just discussed: people who were under the care and responsibility of others. They included Indian persons, who were deemed to be wards of the state being prepared for citizenship; prisoners, who were in custodial care; women, who were considered the property of or were in the care of fathers or husbands; children, who were cared for by parents; and persons with mental disabilities, who were often confined to institutions. In other words, there was a generic category of individuals who were not considered autonomous, self-directing persons. Indian people, for example – and revealingly – were often compared to children. Hence the exclusion of these categories of persons at various times. It seemed logical that those who were being looked after by society should not or could not simultaneously participate in the governance of society. The extension of the franchise to some of these groups was in part a repudiation of paternalism.

Conclusion

The four criteria for determining who should vote – holding a stake in the governance of society, the ability to cast a rational and informed vote, conforming to the norms of responsible citizenship, and maintaining impartiality – remain the cornerstones of electoral law. Each provides a benchmark against which to assess whether an exclusion from the franchise is justified in a free and democratic society. The need for an explicit justification is a constitutional requirement because of the *Canadian Charter of Rights and Freedoms*. The Charter does not negate the value of these criteria. Rather, it requires that their use be justified explicitly and that the electoral law be formulated precisely to cover only the categories of persons meant to be excluded.

THE SECRECY OF THE VOTE

Before dealing with exclusions from the franchise, we wish to consider an important omission from the constitution – the secrecy of the vote.

Canadians now take the secret ballot for granted, but a secret ballot was not always the rule. The first three federal elections (1867, 1872 and 1874) were conducted with an open ballot, except in New Brunswick. At the time, many considered this to be “the manly, British way of exercising the franchise”, although as J.M. Beck notes, everyone was well aware that open voting “facilitated the bribery of voters and the coercion of employees by their superiors and of civil servants by the government”. (Beck 1968, 1)

Following the 1874 general election, provision was made for a secret ballot; since then Canadians have been able to vote in secret. The United Nations *International Covenant on Civil and Political Rights*, to which Canada is a party, establishes the right of every citizen "to vote ... at ... elections which ... shall be held by secret ballot, guaranteeing the free expression of the will of the electors". The *Canada Elections Act* recognizes this right implicitly; it is an offence for anyone present at the time of voting or at the counting of ballots to violate the secrecy of the vote. It also charges election officials with ensuring the secrecy of the vote. However, neither the *Canada Elections Act* nor the Charter proclaims the right to a secret ballot. It is appropriate, therefore, that our first recommendation concerning the right to vote affirm this essential dimension of the franchise.

Recommendation 1.2.1

We recommend that the *Canada Elections Act* state that the right to vote entails the right to a secret ballot.

DISQUALIFIED VOTERS

We now return to the disqualifications in the *Canada Elections Act*. Those disqualified from voting are the chief and assistant chief electoral officers; returning officers; judges appointed by the Governor in Council (except citizenship judges); prisoners; those "restrained of [their] liberty of movement or deprived of the management of [their] property by reason of mental disease"; and those "disqualified from voting under any law relating to the disqualification of electors for corrupt or illegal practices". In addition, with only a few exceptions, voters whose ordinary residence is not deemed to be in Canada, or voters in Canada who have no residence, cannot be registered and therefore cannot vote.

Election Officials

The chief electoral officer, assistant chief electoral officer and returning officers are disqualified, although the returning officer may be called upon to cast a tie-breaking vote in a constituency election following a judicial recount.

The traditional rationale for denying the vote to the chief and assistant chief electoral officers is that these officials have executive authority to make rulings with respect to enforcing and implementing the electoral law. This includes the registration of parties, the reimbursement of parties and candidates, enumeration and the revision of voters lists, the administration of the election, and the counting of the vote. To ensure integrity and credibility in electoral contests, election officials must be seen to be committed to fair electoral practices and indifferent to the outcome.

Thus, disqualification was based on the need for impartiality. In practice, however, this exclusion is symbolic and not justifiable in the context of the functions actually exercised. In four provinces – Quebec, Ontario, Alberta and British Columbia – the chief and deputy chief electoral officers have the right to vote, as does the deputy in every other province except Saskatchewan.

In Chapter 7, we recommend the creation of a Canada Elections Commission made up of six commissioners, with the chief electoral officer as chair. The exclusion of these seven election officers from the vote would not be justified given the experience in other Canadian jurisdictions, nor would it be justified for any other officer of the Commission. It is clear that voting is a private act and does not entail participation in partisan activities that could impair the integrity of the election process.

Recommendation 1.2.2

We recommend that all members and officers of the Canada Elections Commission, including the chief electoral officer, be qualified to vote.

The case for denying returning officers the vote was based in large part on the need for a mechanism to decide the outcome when an election remained tied following a judicial recount. The returning officers' tie-breaking vote is not secret: it is a public act. If they had the right to vote in the first instance, a tie-breaking vote would be their second vote.

The tie-breaking provision has been used just four times since Confederation and only once in this century, yet it denies almost 300 Canadians the right to vote. Al Dahlo, returning officer for North Vancouver, stated at our hearings, "I'm asking [the Commission] on behalf of myself and 294 other returning officers to consider us.... I think we deserve the right to vote." (Vancouver, 17 May 1990)

We consider this disqualification unreasonable. Returning officers can vote in Quebec; this has not raised doubts about their impartiality. Finally, the tie-breaking vote has rarely been required.

Recommendation 1.2.3

We recommend that returning officers be qualified to vote.

A new mechanism is therefore required to deal with a tie vote. If the vote were still tied after a recount, a special second election involving all candidates should be held. The electorate would then decide the matter. Such events would be rare; it is not reasonable to disqualify all returning officers because of events that occur so seldom.

Recommendation 1.2.4

We recommend that, in the event that an election remains tied after a recount, a special second election involving all candidates be conducted within three weeks of the recount.

The rules that should govern the conduct of such elections are discussed in Volume 2.

Judges

Some 800 judges are affected by the current exclusions in the elections act. These provisions were declared invalid by a Federal Court of Canada judgement shortly before the 1988 general election, following an uncontested statement of claim by two judges of the Federal Court. (*Muldoon 1988*) Judges are permitted to vote in provincial elections in Ontario, Quebec, British Columbia, Newfoundland, New Brunswick and Prince Edward Island, as well as in Great Britain, Australia, New Zealand, the United States, Germany and France.

The case for denying judges the vote rests on the assumption that members of the judicial branch should be, and should be seen to be, impartial. This flows from the need to ensure the independence of the judiciary from the executive and legislative branches in adjudicating the law. Given that partisanship is the fundamental dynamic of the executive and the legislature in both their selection and operation, the case for judicial independence and impartiality is sound.

But disqualifying judges ignores the fact that voters cast their ballots in secret as an act of citizenship. Because judges would exercise the franchise in secret, no compromise of their impartiality or independence arises, whatever the personal preferences of any individual judge. No public interest, including the need to preserve the independence of the judiciary, is served by disqualifying them.

Voting must not be confused with partisan activities. In stating that voting by judges does not undermine the independence of the judiciary, we are not implying that they should participate in political campaigns in any way, including making financial contributions to parties or candidates.

We should also note that voting by judges would not compromise their independence in deciding cases involving the election law. The *Judges Act* and judicial codes of conduct are sufficient guides to appropriate behaviour by members of the bench. It follows that no judge could be involved in a case concerning an election in a constituency in which she or he had cast a vote.

Recommendation 1.2.5

We recommend that judges be qualified to vote.

Persons with Mental Disabilities

The *Canada Elections Act* disqualifies "every person who is restrained of his liberty of movement or deprived of the management of his property by reason of mental disease". This provision was declared invalid in a 1988 judicial decision. According to Madam Justice Reed of the Federal Court of Canada,

paragraph 14(4)(f) as presently drafted does not address itself only to mental competence or capacity in so far as that quality is required for the purposes of voting.

It is more broadly framed than that. It denies people the right to vote on the basis of "mental disease". This clearly will include individuals who might suffer from a personality disorder which impairs their judgment in one aspect of their life only. There may be no reason on that basis to deprive them of the right to vote. What is more, paragraph 14(4)(f) does not deny all persons suffering from mental disease the right to vote, but only those whose liberty of movement has been restrained or whose property is under the control of a committee of estate.... The limitation ... is in that sense arbitrary. If it is intended as a test of mental competency, it is at the same time both too narrow and too wide. (*Canadian Disability Rights Council* 1988, 624-25)

This case requires that we reconsider the assumption that all persons with mental disabilities are incapable of casting a rational vote and that a person unable to make informed decisions in certain areas is also unable to make them in other areas.

The current disqualification clearly belongs to history, a history in which our understanding of mental illness and its effects was seriously deficient and the social stigma attached to mental illness was based on this ignorance. Mental illness no longer implies a necessary deficiency in the capacity to know one's political interests or to make choices on the basis of them; nor does it necessarily mean an impaired ability to act as a rational and informed voter in relation to the public interest. By itself, being deprived of the management of property does not mean that a person's exercise of the franchise would jeopardize the freedoms of other citizens or undermine the public interest in democratic government. Canada's election law contains no provisions requiring otherwise eligible voters to demonstrate any minimal standard of mental ability, knowledge or literacy.

Yet some citizens are clearly incapable, because of mental incapacity, of exercising the franchise in a way that meets the standard of a rational and informed vote. The integrity of the vote and the dignity of citizens who cannot function as voters for reasons of mental incapacity demand that there be some restrictions on the franchise. As Madam Justice Reed stated, she had "no doubt that ... a requirement of mental competence or judgmental capacity" (*Canadian Disability Rights Council* 1988, 624) might constitute a demonstrably justifiable limitation on the right to vote.

The franchise status of persons with mental disabilities varies among the provinces and in other countries. Across Canada, there is no consistent standard. In Quebec, only persons under curatorship are disfranchised. In Saskatchewan, those declared criminally insane under a Lieutenant Governor's warrant cannot vote. The Manitoba law disqualifies persons declared to be mentally disordered by order of the Court of Queen's Bench and whose custody has been assigned under the *Mental Health Act*. Newfoundland and Ontario have no restrictions. The other provinces have legislative provisions similar to the federal law. The U.S. states, which control the federal franchise, have laws that range from allowing all such persons to vote, to excluding only those declared 'incompetent' by the courts, to excluding all judged to be 'insane'.

Abroad there are variations as well. Great Britain, for example, distinguishes between patients in mental hospitals on a voluntary basis, who are entitled to vote, and involuntary patients, who cannot vote. In Germany, persons placed under trusteeship without their consent, those committed to a psychiatric hospital by virtue of the criminal code, and those confined in a psychiatric hospital, in accordance with procedures prescribed by law, for reasons of mental illness or mental deficiency, are excluded from voting.

Many groups representing persons with mental disabilities, senior officials of psychiatric institutions, and persons residing in such institutions testified at our public hearings about the experience in provincial elections where the franchise has been extended. Their testimony demonstrated clearly that the present exclusion casts too wide a net. At the same time, they cautioned that certain persons are vulnerable; care must be taken to safeguard their dignity and ensure that they are not subject to undue influence by over-zealous partisans or hospital employees. Close co-operation between the returning officer and hospital officials is required to alleviate potential problems.

Modern mental health legislation in Canada² embodies three guiding principles to define the notion of mental incapacity. These principles are (1) the recognition of 'incapacity' as a relative term that depends upon the specific context in which it is used – that is, the ability of a person, by reason of his or her mental state, to carry out a particular type of activity or make a particular type of decision; (2) the need to limit intervention only to the extent commensurate with the individual's degree of ability; and (3) the need for fair and due process defined expressly in law and meeting the standards of the Charter. A procedure must (a) give the person an opportunity to be heard and informed of all decisions taken in his or her regard; (b) rely on a determination made by a judge based on objective medical and social criteria; and (c) include a mechanism for review of the decision. Our recommendation takes these three principles into account.

Further, persons who have been deemed by the court to lack the capacity to understand the nature and consequences of their actions within

the norms of society should not be entitled to vote. If their incapacity has been judged to be so, then they must be deemed to lack the ability to make a rational and informed vote. This restriction would apply to persons committed to a psychiatric hospital as criminally insane. This follows the practice in several countries, including Australia and Germany.

Recommendation 1.2.6

We recommend that the following persons not be qualified to vote in federal elections:

- (1) a person subject to a regime established to protect the person or the person's property, pursuant to the law of a province or territory, because the person is totally incapable of understanding the nature and consequences of his or her acts; and**
- (2) a person confined to a psychiatric or other institution as a result of being acquitted of an offence under the *Criminal Code* by reason of insanity.**

Prisoners

The *Canada Elections Act* disqualifies as a voter "every person undergoing punishment as an inmate in any penal institution for the commission of any offence" (section 51(e)). This provision was declared invalid most recently by Justice B.L. Strayer of the Federal Court of Canada in *Belczowski* (1991) on the grounds that the provision is too broad. The decision has been appealed. Other cases, including *Sauvé* (1988), have found the provision to be justifiable under section 1 of the Charter. The decisions of the different courts appear to be proceeding in contrary ways; in the absence of new legislation, therefore, the validity of the provision, as it stands, can be resolved only by a decision of the Supreme Court of Canada.

The federal disqualification of prisoners is comparable to provisions in provincial law; the exceptions are Quebec and Newfoundland, where prisoners were given the right to vote in 1979 and 1985 respectively. Prisoners, including inmates in federal prisons, also voted in the 1980 Quebec referendum. By virtue of judicial decisions, prisoners also have the right to vote in provincial elections in Ontario and Manitoba. Alberta's election law allows remand prisoners to vote, and this right was granted to remand prisoners in Saskatchewan by judicial decision. The *Canada Elections Act* does not disfranchise remand prisoners; but it does not contain the provisions that would allow them to cast a vote.

Prisoners have the right to vote in some countries, including Italy, Sweden, Norway and Denmark, but not in many others, such as Great Britain, France, Switzerland and Greece. France also disqualifies some convicted persons who are not in prison. In the United States, all prisoners have the right to vote in some states, and some prisoners have that right in other states; but in the majority of states prisoners are disqualified from voting, in some cases

for life. In Australia, the right to vote is removed only from persons convicted of treason or of crimes punishable by sentences of five years or more.

Three main arguments for denying prisoners the vote have been advanced in cases where this disqualification has been challenged in the courts. The first concerns the administrative requirements of prisons to maintain security. The second relates to the capacity of prisoners to cast an informed vote. The third involves the criterion of a decent and responsible citizenry.

The first argument can no longer justify this disqualification, now that several jurisdictions have given prisoners the vote and have demonstrated that prisoners can vote without any threat to prison security. Moreover, in at least two explicit references to this matter, judicial opinion has declared that administrative reasons, including security, are not a sufficient justification for denying the right to vote. (Gould 1984; Lévesque 1985) Finally, officials from Correctional Service Canada, who assisted provincial officials in Quebec with provincial elections and the 1980 referendum, and from Newfoundland and British Columbia made it clear in their presentations before the Commission that neither security nor the good order of the institution is jeopardized when prisoners vote. (Dyotte, Brief 1990; Office des droits des détenu-e-s, Brief 1990; Frontenac Law Association, Brief 1990)*

The second ground for disqualifying prisoners proceeds from an understanding of the franchise as demanding an informed voting decision. This argument assumes that prisoners should be disqualified because they are denied access to the information and public discourse necessary to cast an informed vote. This argument was accepted by Mr. Justice Taylor of the British Columbia Supreme Court in *Jolivet* (1983), although not by other courts. In our view this objection is no longer relevant, even if it once was. Prisoners can now learn about politics through the printed and electronic media, to which they normally have access. Moreover, there are no administrative or security reasons related to their imprisonment that would deny inmates access to printed materials from candidates or parties.

The most crucial question is clearly the third objection, namely that prisoners have violated the law and thus have demonstrated that they are unwilling to abide by the norms of responsible citizenship. As Madam Justice Van Camp of the Supreme Court of Ontario put it in the *Sauvé* case (now under appeal), prisoners have "disqualified themselves".

[I]t seems to me that Parliament was justified in limiting the right to vote with the objective that a liberal democratic regime requires a decent and responsible citizenry. Such a regime requires that the citizens obey voluntarily; the practical efficacy of laws relies on the willing acquiescence of those subject to them. The state has a role in preserving itself by the symbolic exclusion of criminals from the right to vote for the lawmakers. So also,

* Briefs submitted to the Royal Commission are identified in the text only. They are not listed in the list of references at the end of this volume.

the exclusion of the criminal from the right to vote reinforces the concept of a decent responsible citizenry essential for a liberal democracy. (*Sauvé* 1988, 238)

This argument makes several invalid assumptions about the disqualification as it is now phrased in the *Canada Elections Act*. The first is that all prisoners, in violating the law, also violate the social foundations of liberal democracy. The second is that all who have violated the law have been sentenced to prison. Neither assumption can be supported.

First, many prisoners have not been convicted of a criminal offence. In 1989–1990, for instance, 21 per cent of admissions to provincial institutions were for violations of provincial or municipal laws.

Second, many prisoners are inmates for relatively minor offences, even if under the *Criminal Code*. Statistics Canada's data for 1989–1990 indicate that 28 per cent of admissions to provincial institutions were for failure to pay a fine; 43 per cent of the sentences being served were for less than 30 days and 38 per cent were for one to six months. (Canada, Statistics Canada 1990a, 67–68)

Third, remand prisoners, that is, those awaiting trial, are incarcerated. A count of inmates in provincial institutions during that period also showed that more than 4000 prisoners, that is, 22 per cent of the total population, were on remand and had not been convicted. (Landreville and Lemonde 1991 RC) In our society, a person is considered innocent until proven guilty, and these people should therefore not be denied the vote simply because they are incarcerated.

Finally, many who have violated the law are not in prison as a consequence. Their sentences may include probation or a fine but not incarceration.

Disqualifying all prisoners ignores the possibility that someone sentenced for a substantial period, but released on bail pending an appeal, may vote. It also overlooks the fact that someone in prison for a minor offence may be deprived of the vote, while someone convicted of a major crime may vote if released on parole just before an election is called.

In all these cases, there is no principled relationship between the violation of the law and the disqualification from voting. Rather, the relationship is between incarceration and disqualification. Moreover, this relationship is 'fortuitous' in its timing, as noted by Justices Bowlby and Monnin in the *Grondin* (1988) and *Badger* (1988) judgements respectively. As the John Howard Society of Alberta pointed out, several courts have declared that the disqualification of all prisoners from voting "surely casts too wide a net". (Brief 1990, 13) In so doing, the present law is unequal in its treatment of prisoners, who are only one of the categories of law breakers.

The objective of punishing law breakers is not so important that it should override the basic right to vote; this argument is well accepted. It is difficult nevertheless to interpret the present law as meaning other than that those incarcerated are denied the vote for punitive reasons. Indeed, the *Canada*

Elections Act states that the disqualification includes "every person undergoing *punishment* as an inmate ..." (emphasis added). If this were other than punishment pure and simple, the logic of the argument would disqualify everyone convicted of breaking the law, regardless of the sentence.

The disqualification must also be viewed in the context of evolving correctional policies here and abroad. The policy of Canada's Correctional Service is to provide for inmates "as normal an environment as the circumstances of security will allow and to safeguard [their] rights and dignity as a human being and as a member of Canadian society". (Canada, Correctional Service Canada 1985) Maintaining prisoners' rights, beyond those necessarily restricted as a consequence of being in prison, has been a consistent policy of the Correctional Service over the past two decades.

The scope of the current disqualification is clearly too broad. It fails to distinguish between types of offences and thus disqualifies persons who have committed offences that cannot in any way be considered significant violations of the essential norms of responsible conduct in a liberal democratic state. In terms of Canadian jurisprudence, this blanket disqualification cannot meet the proportionality test laid down in *R. v. Oakes* (1986), because the disqualification is not proportional to any intended objective. In Justice Strayer's view, the current provision is too blunt an instrument. Implicit in this argument is that the restriction would be acceptable if it were proportional to the offence.

Without minimizing the gravity of the offences committed by a number of prisoners, allowing some prisoners to vote would not undermine public confidence in the value of the vote or threaten the interests of other citizens. This would perhaps require an additional degree of tolerance on the part of some citizens toward those in prison. But tolerance has always been an important feature in extending the franchise, and we have concluded that the cause of Canadian democratic politics will be advanced as a result of a more generous approach to the franchise in this as in other cases.

Allowing prisoners to vote would also serve to highlight the importance of the right to vote. As Justice Bowlby pointed out in the *Grondin* (1988, 430) case, "[T]he right to vote is so firmly entrenched in the Canadian Charter that, unlike other protected rights and freedoms, it is excluded from the override power afforded to parliament and the legislature by s. 33(1) of the Charter." He went on to say that enfranchising prisoners would promote the principal goal of incarceration, the rehabilitation of prisoners.

The average number of persons imprisoned in Canada on any given day is about 29 600. The average number of persons on probation, parole or mandatory supervision is approximately 79 000. Of those in prison, about 18 100 are in provincial institutions, serving sentences of less than two years; the remainder, roughly 11 500, are serving longer sentences in federal penitentiaries. Of those in federal penitentiaries, approximately 60 per cent have no previous record of a federal prison sentence. Of all prisoners, 93 per cent

are serving sentences of less than 10 years. (Canada, Correctional Service Canada 1990; Canada, Statistics Canada 1990a)

Confinement in prison is meant to be the extent of punishment; the rights and freedoms of prisoners are to be limited only to the degree necessary to effect confinement. Extending the punishment to include disfranchisement is a limitation on democratic rights that is clearly a legacy of the past – a tradition that, at times, paid insufficient attention to democratic rights and to the need to limit them only for demonstrably justified reasons.

Limiting the right of prisoners to vote is justified, however, where the offences committed constitute the most serious violations against the country or against the basic rights of citizens to life, liberty and security of the person, including murder, kidnapping, hostage taking, treason, and certain sexual offences. Our tradition defines heinous crimes against persons or the country as those offences that are punishable by life imprisonment. Persons convicted of these crimes are considered to have gone beyond the pale of civilized behaviour.

People convicted of offences for which the maximum sentence is life imprisonment and who have been sentenced to prison for a period of 10 years or more have clearly violated the social contract. Society is therefore justified in disqualifying them from voting for the duration of their sentence.

This disqualification is rationally connected to the specific limitation on an individual's right to vote, because persons convicted of these crimes have offended the very foundations of a civilized political community. In so doing, they have declared themselves unwilling to participate in civil society in ways that respect the most fundamental rights of others or the basic character of the political system. Second, this disqualification is a minimum impairment of the right to vote. It is limited to the period of incarceration; prisoners disqualified from voting would regain this right upon release from prison. Third, and most important, the disqualification is proportional in terms of its purpose and effect. It removes the vote only from persons whose criminal behaviour has seriously violated the fundamental criteria of democratic citizenship.

We conclude that there are no demonstrably justified reasons for disqualifying the vast majority of prisoners. At the same time, those convicted of treason or of the most serious offences against individuals should be disqualified during the time they are in prison.

Recommendation 1.2.7

We recommend that persons convicted of an offence punishable by a maximum of life imprisonment and sentenced for 10 years or more be disqualified from voting during the time they are in prison.

Canadians Living Abroad

Voters not resident in Canada cannot exercise their franchise because there is no provision for registering them to vote. The exceptions to this general exclusion are members and certain employees of the Canadian forces, federal public servants and their spouses and dependants living abroad with them. Canadians live abroad for many reasons, including their occupation or that of their spouse or parents; in many cases their presence abroad contributes to the direct benefit of Canada or Canadian interests and ideals. As CUSO stated, "it would be a tremendous step forward to grant Canadians who are helping to promote Canada's image as a leader in foreign aid the right to the choice of government at home". (Brief 1990, 2) Nor is it the case that all Canadians living abroad have severed their ties to Canada.

We conclude that the administrative difficulties of serving voters living abroad do not constitute an acceptable justification for disfranchising these citizens. The United States, France, Germany, Australia, and Great Britain make provision for voters living abroad to be registered and to vote, as do Quebec and Alberta. In all these cases it has been recognized that with modern telecommunications and the international press, the argument that citizens living abroad cannot be informed about public affairs at home no longer applies. Moreover, with increasing globalization of the world economy, the number of Canadians travelling and living abroad will likely increase in the coming years.

At the same time, we think it reasonable and fair to expect Canadians not resident in Canada to demonstrate their continuing attachment to the Canadian polity if they wish to participate in its political processes. The question is what criteria would be both meaningful and practical. Given our objective of securing the democratic rights of citizens as voters, we should not impose any requirement that citizens return to Canada at some date, testify that they intend to return at some prescribed or undefined time, or maintain an attachment to Canada. Rather, as is the case with much of what we do in the electoral process, we should trust these Canadians. We should assume that they continue to have a stake in Canada and keep themselves sufficiently informed as citizens. In other words, we should not attempt to impose on citizens living outside Canada conditions that are not imposed on those residing in Canada.

We can, however, require citizens abroad to testify that they have not become involved in another political system. To meet this criterion, citizens living abroad should be required to certify that they have not voted in a foreign election at the national level since leaving Canada. Citizens living abroad would then be allowed to vote in federal elections.

Recommendation 1.2.8

We recommend that eligible voters not resident in Canada be qualified to vote in federal elections, provided they certify that

they have not voted in a foreign national election since becoming a non-resident.

Age of Voting

The *Canada Elections Act* stipulates that to be a qualified voter a citizen must be at least 18 years of age. The only exceptions to this age requirement are Canadian forces personnel who are regular members, reserve members on full-time training or active service, or members of the special force. These persons are qualified to vote even if they have not attained the age of 18. Since 17-year-olds are accepted into the Canadian forces, members of the forces who are 17 years old constitute a special category of voters.

Until 1970, the right to vote was limited to those who were at least 21 years of age. On 23 October 1969, the government of Pierre Elliott Trudeau announced its intention to introduce legislation to lower the voting age to 18, although there had been no strong public demand for such a change. The law setting the minimum voting age at 18 was passed virtually unanimously the following year.

Three arguments were put forward at that time. The first focused on the extent to which those to be enfranchised had a stake in the governance of society. The second concerned the extent to which they could be expected to exercise a mature and informed vote. The third concerned their level of participation in activities of citizenship.

These same criteria apply today, although the Charter has shifted the onus of the argument. In 1969, a case had to be made to extend the franchise. Now, a case must be made to restrict the franchise. However, as John Courtney stated at our hearings, "the whole issue is such an arbitrary one that you define what you consider to be a reasonable age, and you have to make a case for it". (Saskatoon, 17 April 1990)

One consideration arising because of the Charter is discrimination against 17-year-old civilians. According to one legal scholar, "This is discrimination with respect to those under 18 years of age who are not in service as members of the forces. It would be difficult to support such discrimination by applying the criteria identified in section 1 of the Charter." (Garant 1991b RC) Given this inconsistency, the question arises whether the voting age should be lowered to 17 for all citizens or raised to 18 for those in the forces to ensure equality before the law.

The second consideration arises from the Charter's requirements concerning limitations on rights. The Canadian Bar Association made several points in its brief to the Commission.

It might readily be assumed that 18 is a reasonable minimum age at which to attribute the responsibility of voting.... These apparently reasonable assumptions might not readily withstand scrutiny under section 1 of the *Charter*.... If justification is to be based on the fact that the act of voting requires a certain mental capacity, evidence should be available to support

the proposition that an 18 year old has sufficient capacity, while a 17 year old does not. Although it might be clear that a two year old is incapable, it is difficult to draw rational distinctions between individuals who are 17, 18 or 21.... It is not ... clear that [developmental psychology] would support the age of 18 as an appropriate dividing line. (Brief 1990, 13-14)

Developmental psychology theory has identified six distinct stages in the development of moral judgement capacity. (Kohlberg 1958) Kohlberg's stages are intended to classify individuals according to their level of cognitive awareness and acceptance of responsibility. Between 16 and 20, adolescents are generally at stage 4, which is characterized by a recognition of authority and social order. The adolescent is able to make a moral judgement on the basis that proper action consists in carrying out a duty to respect authority and to maintain the established social order. (Cloutier 1982)

The Canadian Bar Association also questioned the pertinence of tying the voting age to the age of majority:

The second ground of potential justification for disqualifying citizens below the age of 18 is general policy objectives.... These policy grounds might include a social consensus supporting the notion of an "age of majority" However, fewer and fewer powers, privileges and responsibilities are tied to the so-called age of majority.... The right to vote ... is specifically guaranteed by the *Charter*.... Restrictions on *Charter* rights must be directed toward objectives which are "pressing and substantial"; it is far from clear that support of a general notion of "age of majority" constitutes such an objective. (Brief 1990, 14)

Given these conclusions, the three criteria raised in the 1969 debate must be considered once again. The choice of any particular age is to some extent arbitrary. The decision should, however, be broadly justifiable on the basis of defined criteria.

The first criterion pertains to the degree to which citizens under the age of 18 have a sufficient stake in the community. The nature and extent of 'adult' responsibilities entrusted to those under 18 are considerable. In 1990, for instance, almost 50 per cent of Canada's 700 000 16- and 17-year-olds were in the work force; close to 50 per cent of 16-year-olds filed income tax returns. Rights and responsibilities are also conferred on 16-year-olds under provincial laws on social and employment policy. The ability to obtain a driver's permit is one example.

The second criterion is the ability to exercise a mature and informed vote. Several interveners at our hearings suggested that young men and women today are more mature and better informed than their predecessors. Research tells us that by the age of 15 or 16, most young people have acquired a view of the social and political world that is not significantly different from the perceptions and understanding of adults. In addition, although the amount

and depth of civics education vary between and within provinces, courses are now generally offered in high schools across the country. (Pammett and Myles 1991 RC) Moreover, as with the rest of the population, today's youth have more sources of information on current affairs than was the case even two decades ago. Thus, in terms of political competence, 16 could be just as defensible an age as 18.

The third criterion, responsible citizenship, raises the question of whether young people generally act responsibly when they participate in public affairs. There is no evidence to suggest that they act otherwise. Research on their political attitudes indicates that they tend to be less cynical about the political process and are more likely than older persons to have a sense of political efficacy – a feeling that participating in the political process is meaningful and worthwhile. (Pammett and Myles 1991 RC)

When the voting age was lowered from 21 to 18 in 1970, extension of the franchise did not work to the benefit of any one political party over time. Extending the franchise to citizens under 18 years of age could serve to reinforce the belief that participation counts and the notion of civic responsibility. (Enviroics 1990) Moreover, since the majority of 16- and 17-year-olds would still be living at home when they cast their first vote, they might be more likely to vote than would those who were slightly older but living away from home.

These arguments for lowering the voting age to 16 constitute the best case for this proposal, but they are not sufficiently compelling. Ultimately, any decision on the voting age involves the judgement of a society about when individuals reach maturity as citizens. Under most statutes, a person is not considered an adult until age 18; for example, a person under 18 is not an adult for purposes of criminal proceedings unless special application is made under the *Young Offenders Act*. Further, a minor requires parental consent for many important decisions, including applying for citizenship, getting married and seeking certain medical interventions. As expressed many times at our hearings, there remains a strong conviction that the time has not come to lower the voting age. This is also the conclusion of every other democracy with the exception of Brazil and Nicaragua.

Since Confederation, the franchise has undergone regular change to include an ever-increasing number of Canadians. As our society continues to evolve, it is possible that a lower voting age will become the focus of stronger demands by those concerned and greater support on the part of Canadians, particularly if the law is changed to eliminate the need for parental consent on certain important decisions. The voting age is not specified in the constitution and is therefore relatively easy to change. We therefore conclude that the voting age should be set at 18 years of age but that Parliament should revisit the issue periodically.

Recommendation 1.2.9

We recommend that the voting age be set at 18 years of age.

Non-Citizens

People living in Canada who are not Canadian citizens are not entitled to vote, a provision that conforms with the Charter. Given the criterion of a stake in Canadian political life and the risks citizens take in representative democracies, it is not only appropriate but also entirely reasonable that this restriction continue to apply.

Those who wish to participate in Canada's political life must commit themselves to a permanent stake in our governance and share in its risks; they have an obligation to seek Canadian citizenship. The right conduct of politics in representative governance implies that the vote is significant to citizens. This demands that only citizens possess the franchise.

Recommendation 1.2.10

We recommend that the right to vote extend only to Canadian citizens.

VOTING IN CANADA

Introduction

The exercise of the franchise is one of the critical elements in maintaining public support for our form of government. Through voting, voters participate, however indirectly, in the nation's governance, giving their consent to the institutional arrangements for exercising political power. Voting is also the most efficient and effective way for the vast majority of citizens to register their political views and indicate changes in their preferences. Through the vote, citizens choose who should represent them in the House of Commons and thus which party will form the government. Voter turnout is therefore a basic measure of citizens' confidence in the political system and, ultimately, of the health of the polity.

As one of the bases of democratic government, the right to vote must not be impeded by the law or by administrative measures used to register voters or conduct the vote; nor should it be undermined by the absence of appropriate remedial measures. A principal objective of electoral reform is thus to ensure that all voters who wish to exercise their constitutional right to vote have a reasonable opportunity to do so.

Not all voters vote at every election. This pool of non-voters averages about 25 per cent of the electorate at any given federal election. Yet studies of voting behaviour reveal only a small hard core of perennial non-voters; those who never vote are estimated at perhaps 5 per cent of the electorate. Much more common, therefore, and accounting for most of those who fail to vote in any given election, are the occasional non-voters.

Our primary interest in voter turnout is a practical one. People fail to turn up at the polling booth for a variety of reasons. For some it may be a

lack of interest in the election or in politics generally; others may find it difficult to vote that particular day because of travel or illness. We need to determine, to the degree possible, what percentage of occasional non-voters would vote if existing legal or administrative impediments were removed.

The Canadian Record

Voter turnout in federal elections, as measured by the percentage of registered voters who actually cast a ballot, has averaged around 75 per cent since 1945. There have been significant fluctuations from election to election, as shown in Table 2.2. Turnout has been as low as 67.9 per cent, in the early 1950s, and as high as 80.6 per cent, in 1958. Turnout can be affected by a variety of factors, including weather or the time of year. The elections of 1953 and 1980, for example, took place at the height of the summer holiday season and in the middle of winter respectively; this is thought to have affected turnout in both instances. Overall, however, as depicted in Figure 2.1, voter turnout peaked at about 80 per cent in the period 1958 through 1963, then declined gradually thereafter.

Table 2.2
Turnout rates for general elections, 1945–1988
(per cent)

General election (date)	Turnout
1945 (June 11)	76.3
1949 (June 27)	74.8
1953 (August 10)	67.9
1957 (June 10)	75.0
1958 (March 31)	80.6
1962 (June 18)	80.1
1963 (April 8)	80.3
1965 (November 8)	75.9
1968 (June 25)	75.7
1972 (October 30)	76.7
1974 (July 8)	71.0
1979 (May 22)	75.8
1980 (February 18)	69.3
1984 (September 4)	75.3
1988 (November 21)	75.3
Post-war average	75.3

Source: Canada, Chief Electoral Officer (various), using reported voter registration and vote totals.

Contrary to popular belief, Canada's voter turnout rate does not stand up well to international comparisons. Canadians' apparent satisfaction with the current turnout rate relates no doubt to the favourable comparison with the lower rate in the United States. In fact, however, Canada's turnout rate has been consistently below the international average over the past four decades, as shown in Table 2.3. Further, as is evident in Table 2.4, which ranks 33 countries by turnout during the 1980s, Canada's record is even less impressive than that of several of the newer democracies.

Table 2.3
Turnout rates, Canada and other democratic countries, decade averages^a

Decade	Canada	All other democracies	Voluntary voting democracies	Voluntary voting democracies excluding Switzerland, United States
1940s	75.0	82.1	78.6	81.8
1950s	73.3	82.7	79.3	82.0
1960s	77.3	83.1	80.1	82.9
1970s	74.7	81.5	79.1	83.0
1980s	73.3	80.6	78.2	82.6
<i>N</i>		(17/18) ^b	(13/15) ^{b,c}	(11/13) ^{b,c}

Source: Canada, Chief Electoral Officer (various); for other countries, see Table 2.4.

^aTurnout based on registration figures, except for the United States (voting-age population).

^bFrance included as of the 1960s.

^cThe Netherlands included as of the 1970s.

Moreover, and more troubling, Canada's turnout rate is slipping further behind the international average. (Black 1991 RC; Jackman 1987) The growing gap is clearly evident in Figure 2.1, which summarizes comparative trends in voter turnout rates in Canada and in other democracies, some of which have compulsory voting. Given that Canada is roughly comparable in socio-economic terms to the countries of western Europe, virtually all of which have better turnout rates, there is a reasonable basis for inferring that our institutional arrangements are contributing to our lower turnout rate.

Voter Turnout: Institutional Factors

Studies of differences in voter turnout have increasingly identified institutional factors as accounting for major variations. Several studies have demonstrated that certain constitutional provisions, political system characteristics, and electoral law features in combination provide a better explanation for differences in turnout than do factors associated with political culture, such as attitudes, values and beliefs. (Jackman 1987; Blais and Carty 1990;

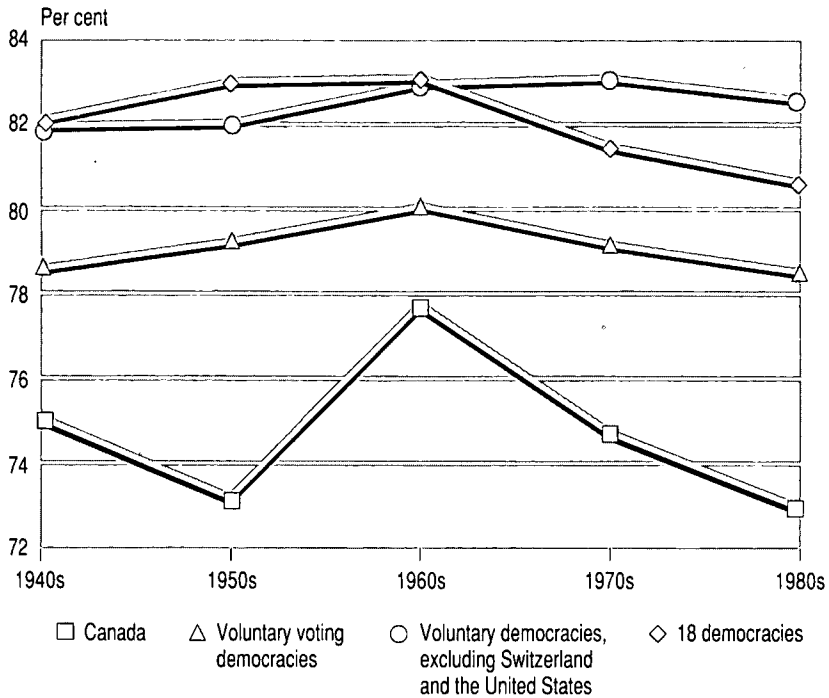
Table 2.4
Turnout rates, Canada and 32 other democracies, 1980s

Rank		1980s
1	Australia	94.3*
2	Belgium	93.8*
3	Austria	91.5
4	New Zealand	90.5
5	Bahamas	90.5
6	Italy	89.8*
7	Iceland	89.2
8	Sweden	89.1
9	Luxembourg	88.1*
10	Germany	87.3
11	France	86.2
12	Denmark	86.1
13	Venezuela	84.3
14	Netherlands	83.4
15	Norway	83.1
16	Greece	82.0*
17	Mauritius	80.1
18	Israel	79.0
19	Costa Rica	78.9*
20	Finland	78.2
21	Barbados	77.3
22	Jamaica	77.1
23	Portugal	76.8
24	Botswana	76.0
25	Ireland	74.2
26	United Kingdom	74.0
27	Spain	73.4
28	Canada	73.0
29	Japan	71.4
30	India	62.0
31	Trinidad and Tobago	58.8
32	United States	54.3
33	Switzerland	47.5

Source: Black 1991 RC.

*Compulsory voting.

Figure 2.1
Turnout rates, Canada and other democracies, decade averages



Source: Adapted from Black 1991 RC.

Lijphart 1990; Black 1991 RC) Even studies that argue that political culture is the primary determinant readily acknowledge that institutions matter a great deal. (Crewe 1981)

The structure of institutions, laws, and political organizations in democratic states clearly affects the way people behave. Different institutional arrangements establish different opportunities and costs for individuals exercising their right to vote and for political parties mobilizing the vote. Different outcomes are thus the result of different incentive systems. Institutional arrangements and administrative practices are not neutral in their effect on people's propensity to exercise their right to vote, even when they share values about political participation.

Comparative research is especially useful in this regard. The factors found to be most important in explaining differences relate to the electoral system, the party system, the legislative-executive structures of government, and the basic electoral law.

Research has found that to the degree the electoral system promotes proportionality in translating party votes into party seats in the legislature, turnout rises. The average turnout in systems with some form of proportional representation (PR) is 82 per cent, compared to 73.6 per cent for plurality systems like Canada's. PR systems vary in the degree to which they translate

votes proportionally into seats, but they generally enjoy greater turnout. (Blais and Carty 1990) Such systems appear to offer an incentive for voters to vote and, equally important, for parties to mobilize their voters. Conversely, where there is not (or does not appear to be) a high correlation between votes cast for a party candidate and the seats a party obtains, the incentive to vote and to mobilize voters declines accordingly.

Second, the incentive for voters to vote and for parties to mobilize voters is partly a function of the degree to which a competitive party system is operating. Where only one party is strong, the parties have less incentive to commit resources and to mobilize as many voters as possible; their supporters also have less incentive to vote. Many voters will consider the outcome of an election a foregone conclusion and will not bother to vote, whether because their preferred choice has a safe seat or because voting for other parties' candidates would be voting for a lost cause.

Third, in political systems where several competitive political parties can secure some representation in the legislature, voter turnout is likely to suffer somewhat if governments tend to be formed through coalitions built by legislative leaders rather than as a direct consequence of the election result. Although parties in these circumstances may have a high incentive to mobilize the vote, voters have somewhat less incentive because they do not see themselves as determining directly which party will form the government. (Jackman 1987)

Conversely, in systems with only two strong parties, voters have a greater sense of participating directly in determining which party forms the government. The effect of a multi-party system in depressing voting turnout is not strong, however. (Blais and Carty 1990) Furthermore, in multi-party systems where there is greater ideological variety represented in the legislature, particularly when newer groups such as environmentalists are represented directly, turnout tends to be higher. (Crepaz 1990)

Fourth, other factors being equal, political systems with a single legislative chamber tend to have higher turnout than political systems with two legislative chambers. In one-chamber systems, voters have a greater chance of affecting government policies through their electoral choices than do voters who select two sets of legislators. Those voters know that public policies will likely be the result of compromises worked out between the leaders of the two legislative chambers. For similar reasons, turnout in national elections in federal systems is adversely affected by the division of power between the two orders of government.

There is also compelling evidence that giving voters ready access to advance polls well before election day and generally making voting as easy as possible contribute to higher turnout. In Sweden, for example, any eligible voter is entitled to vote up to 24 days in advance of the election simply by visiting a local post office. Since the early 1980s, more than a third of Swedish voters have consistently used this system. (Black 1991 RC) In

New Zealand, polling stations are set up in unconventional settings, such as race tracks, shopping malls, and other places where there are likely to be large crowds. The two countries, both non-compulsory systems, enjoy turnout rates that are well above average. In Texas, experiments with non-traditional polling locations, such as retail areas, and the use of mobile polls have resulted in increases in turnout averaging 18 to 22 per cent. (Cooper and Christe 1991)

Two further measures clearly enhance voter turnout. The first pertains to the day of the election. Canadian elections are held on a Monday, unless it is a federal or provincial holiday, in which case the election is held on the Tuesday. Many European countries hold their elections on Sunday, resulting in higher turnout. We encountered some support for voting on Sunday during our hearings, but others were quite adamant that voting should not take place on Sunday for religious or other reasons.

The second measure that increases voter turnout is a compulsory voting law, as found in Greece, Australia, Belgium, Luxembourg, Italy and Costa Rica. In none of these cases, however, does turnout reach 100 per cent, because valid excuses are numerous, sanctions are not severe, and the law is not vigorously enforced. The rationale for compulsory voting is essentially threefold: voting is a civic duty; the legitimacy of government is enhanced; and candidates and political parties are not required to spend limited campaign time and resources to get out the vote. In these countries, compulsory voting is predicated on compulsory registration. (Australia, Queensland 1990)

The Canadian electoral system has relied on voters' voluntary participation to secure the consent of citizens to the outcome of elections. Canadian electoral law has required neither compulsory registration nor compulsory voting. In our tradition, the state has assumed responsibility for registration, but people have the right not to be enrolled on the voters list. Even if they are enrolled, they have the right not to vote.

Although every effort must be made to ensure that voters are registered and are able to vote if they wish to do so, the public interest in electoral democracy need not extend to a requirement that citizens vote. The Canadian approach has assumed that voters have the right not to vote, and we agree with this view.

Moreover, compulsory voting laws are rarely enforced effectively or equitably because citizens must be given the benefit of the doubt when they explain why they did not vote. The Australian experience is relevant here; only those who admit that they did not vote and offer no reasonable excuse, or who refuse to reply to requests for a reason, are prosecuted and fined. This means that the law is enforced only on people who do not want to vote or who do not know that they could easily offer an acceptable excuse. In the first instance, people are prosecuted because of a decision that ought to be a free choice; in the second instance, they are prosecuted because they are ignorant of the law.

Compulsory voting would be unacceptable to most Canadians, given our understanding of a free and democratic society, and unfair to other Canadians, who may not fully understand their rights. Compulsory voting would run counter to the tradition of the vote as a right to be exercised freely; for this reason, its enforcement would also be problematic. Moreover, efforts to apply the law fairly and reasonably might very well lead to prosecutions only of those who reject the idea of compulsory voting. Without a civic culture to support the principle of compulsory voting, this solution could be worse than the problem.

In summary, research demonstrates the significant effects of institutional factors on voter turnout. Some factors, related to the structure of the political system, lie outside the realm of electoral law. Others may be more readily amenable to electoral reform but must also be rejected for reasons unrelated to voter turnout. But research does support the general premise that institutional reform at the micro level – such as voter registration systems and voting arrangements – does affect turnout. These factors fall within our mandate and principal objectives.

Voting and Non-Voting: Determinants

Canadians' voting behaviour varies by province, constituency, and individual characteristics. Examining these non-institutional characteristics helps determine why some voters do not vote; this in turn may suggest how administrative procedures should be designed, modified, or eliminated to improve voter turnout, as well as the extent to which such changes might be expected to improve turnout. Knowing why some voters do not vote is an important prerequisite to changing the electoral law. If we discover, for example, that many non-voters are simply not interested in elections, it is unlikely that administrative changes will have much impact. But the converse might very well be the case.

Provinces and Territories

There are significant provincial variations in voter turnout at federal elections, as shown in Table 2.5. The average turnout in the three most recent federal elections ranged from about 64 per cent in Newfoundland to 83 per cent in Prince Edward Island. Turnout in the other Atlantic provinces was slightly above the national average, while turnout in Quebec and Ontario was slightly below. Turnout in Manitoba was also slightly below average, while in Saskatchewan it was slightly above. Alberta was at the low end of the range, but not as low as Newfoundland.

It has also been argued that the availability of early returns from eastern Canada may help depress turnout in the western provinces. Because the polls close at 8 p.m. local time, voters in western Canada may learn of the national outcome before the polls close and be discouraged from voting. However, in the two provinces most affected, Alberta and British Columbia, turnout in provincial elections is nearly the same as or lower than in federal

elections. Moreover, in the parts of Saskatchewan located in the mountain time zone (the same zone as Alberta), turnout in federal elections is higher than the Canadian average and consistent with the higher turnout for the province as a whole.

Table 2.5
Average voter turnout, federal, provincial and territorial elections, 1980-88

	Average federal voter turnout	Average provincial and territorial voter turnout
Ontario	74.3	60.8
Quebec	73.0	77.7
Nova Scotia	74.3	72.5
New Brunswick	74.6	82.0
Manitoba	72.3	70.9
British Columbia	76.0	77.4
Prince Edward Island	83.0	82.1
Saskatchewan	75.7	83.1
Alberta	68.3	55.6
Newfoundland	63.7	78.7
Yukon	75.0	78.4
Northwest Territories	68.7	70.6
Average federal turnout	73.2	

Source: Various reports from federal and provincial chief electoral officers.

More careful constituency-by-constituency analysis of the time zone factor fails to yield statistically significant results. Overall, our research suggests that the putative time zone effect is not a particularly important determinant of non-voting in western provinces. (Eagles 1991b RC) In the absence of statistically significant results, however, there are no doubt a number of western Canadians who resent being reminded of the electoral weight of central Canada, and some of them may have decided on occasion not to vote for that reason.

Moreover, voters in western Canada generally may feel that their votes count for less because the election outcome has so often been determined before their votes are cast. For example, in the 1980 election, by the time the Ontario results were announced, it was clear that the Liberals had won enough seats to form the government. Had the results been announced from west to east, however, Canadians would have had to wait until the Prince Edward Island results were broadcast to learn who would form the government. One cannot help but feel that this would have conferred an entirely different meaning on the vote for western Canadians.

Constituency Characteristics

The context in which elections take place includes both the socio-economic characteristics of constituencies and the political dynamics of constituency contests. Research shows that differences in this context are associated with differences in voter turnout. Using aggregate data, contextual factors can be measured by establishing a statistical profile of federal constituencies. For example, Statistics Canada data can be used to determine, among other things, the proportion of low-income families in each constituency, the percentage of residents who are university graduates, or the proportion of the labour force working in professional, administrative and managerial occupations.

Several socio-economic factors have been shown to correlate directly with voter turnout. First, as the mean income of a constituency increases, so does voter turnout. Second, the occupational profile of a constituency has some influence; turnout is higher in constituencies with a significant percentage of professionals and white collar workers. Third, population mobility has a significant impact: the more stable a constituency's population, the higher the turnout. Finally, other factors being equal, turnout tends to be lower in constituencies with substantial Aboriginal populations. (Eagles 1991b RC)

Research has also shown that factors such as the level of campaign expenditures, the closeness of the constituency contest, and the presence of a smaller party or independent candidates – factors one might think would raise the level of interest in a local campaign or make individual votes seem more critical to the outcome – in fact have little independent impact on differences in voter turnout across constituencies. (Eagles 1991b RC)

Although specific events or issues in a given election may increase or suppress turnout, the general conclusion from research conducted for the Commission is that the socio-economic profile of a constituency is more strongly correlated with voter turnout than are factors such as local campaign expenditures. This is in line with similar research in other countries.

These characteristics are simply associated or correlated with turnout. With aggregate data we can never establish with absolute certainty the exact causal linkages between contextual factors and turnout and how they work at the individual level. The effect of socio-economic status, for example, likely reflects the aggregate of individual characteristics. In addition, however, the overall milieu of the constituency may affect turnout, so that even better-off individuals residing in an economically depressed constituency may be less likely to vote than they would be if they lived elsewhere. The effects on turnout may therefore be the result of a combination of these factors.

Voters and Non-Voters: Socio-Demographic Characteristics

The general relationship between socio-economic factors and voter turnout at the aggregate level is confirmed through survey research of the voting behaviour of random samples of Canadian voters. As shown in Table 2.6, survey data for 1984 (the most recent year for which data are available) pertaining to age, family income, marital status, occupation and religion have

a distinct effect on turnout. Other factors being equal, voters are more likely than non-voters to be older, married and better educated; to be employed and to have a higher family income; to have been born in Canada; to be in a white collar occupation or a homemaker; and to belong to one of the main religious groupings. (Pammett 1991 RC; MacDermid 1991 RC) In the past in Canada, as in many other countries, there was a distinct gender gap: women were less likely to vote than men. In recent years, however, this gap has closed considerably. (Canadian National Election Study 1984, 1988)

Table 2.6
Demographic correlates of voters who voted, 1984

Age					
18–21 63%	22–29 71%	30–39 83%	40–49 85%	50–59 88%	60+ 88%
Family income (thousands of dollars)					
Under 10 74%	10–15 77%	15–20 79%	20–30 81%	30–40 82%	40+ 86%
Marital status					
Single 70%	Widowed, separated, divorced 77%				Married 84%
Occupation					
Student 68%	Unemployed 70%	Blue collar 77%	Clerical/ sales 81%	Homemakers 82%	Professional/ business 85%
Religion					
Other 71%	None 72%	Jewish 78%	Roman Catholic 82%	Protestant 82%	

Source: Adapted from Pammett 1991 RC.

Note: Percentages indicate the proportion in each category who voted. For example, 63 per cent between the ages of 18 and 21 voted; 37 per cent in this age group did not vote.

Of all of these factors, the most important determinant is age. Regardless of other characteristics, older voters tend to vote more regularly than younger voters. When socio-economic characteristics are combined with provincial factors, it can be shown that specific sub-groups in the population are either much more likely or much less likely to vote. Voter turnout for young unmarried students with no religious affiliation living in British Columbia is about 40 per cent. By contrast, voter turnout for members of a group such as married, middle-aged, well-educated, Protestant or Catholic professionals living in Prince Edward Island is about 90 per cent. Thus, beyond the basic categories, the variation in turnout can be quite dramatic.

Voters and Non-Voters: Attitudinal Factors

Voters and non-voters are also characterized by differences in political attitudes. As shown in Table 2.7, voters are more likely than non-voters to believe that their own vote affects the outcome of elections, to read about politics, to be interested in an election, and to be interested in politics generally.

Table 2.7
Attitudinal correlates of voters who voted, 1984

Vote doesn't matter			
Strongly agree 63%	Agree 70%	Disagree 83%	Strongly disagree 92%
Reads about politics			
Often 91%	Sometimes 85%		Seldom/never 73%
Interested in election			
Very interested 95%	Fairly interested 93%		Slightly/not interested 67%
Interested in politics			
Very interested 98%	Fairly interested 92%		Not very interested 79%

Source: Adapted from Pammett 1991 RC.

Note: Percentages indicate the proportion in each category who voted. For example, 63 per cent who strongly agreed with the statement that their vote doesn't matter voted in the 1984 election, while 37 per cent of this group did not vote.

These findings are not unexpected, but they do show that voters and non-voters have different attitudes about electoral democracy and that non-voters are more likely to be disengaged from the political process. In particular, responses to the question about the importance of the vote show whether respondents are fundamentally disenchanted with, or alienated from, the political system.

Reasons for Non-Voting

In addition to their socio-economic and attitudinal characteristics, it is important to know why non-voters did not vote in a given election. This is especially important for understanding the motives of occasional non-voters, who make up a much larger group than the perennial non-voters. Through survey research, the reasons for not voting can generally be identified. They may involve a rejection of electoral politics, perhaps only for a specific election; alternatively, an administrative inconvenience or impediment may have been the reason – the voter was not registered or found it too difficult to leave the house or get to the polling station.

Thus two types of self-professed non-voters emerge. The first are those who are too busy or uninterested to cast a ballot. These we will call the 'uninterested' non-voters. The second group includes voters who were not registered and thus were unable to vote, or who were away or ill, especially on election day, and could not cast a ballot. These we will call the 'administratively disfranchised' non-voters (ADNVs). In other words, not all non-voters are alienated or uninterested in the electoral process. The act of voting entails costs in time and effort. There may well be a significant number of citizens who find it too difficult or costly to cast a ballot in a particular election.

Survey data on people who did not vote in the 1974, 1980 and 1984 elections show that 53 per cent, 56 per cent and 43 per cent respectively claimed to be away, sick, or unenumerated, as shown in Table 2.8. In short, about half were busy/uninterested non-voters and about half intended to vote but did not for the reasons just noted.

Table 2.8
Reasons for non-voting, 1974–1984
(per cent)

	1974	1980	1984
Away	38	39	23
Sick	13	13	9
Busy	10	2	19
Uninterested	37	40	39
Unenumerated	2	6	11
Total	100	100	100
N	(437)	(182)	(483)

Source: Pammett 1991 RC, based on Gallup Polls and Canadian National Election Study (1974, 1980, 1984).

As Table 2.9 shows, administratively disfranchised non-voters are more likely to be single, younger and less educated than those who vote; at the same time, they are more likely to be older, married and better educated than non-voters classified as uninterested. For example, only 18 per cent of people who voted are between 18 and 25 years old, compared to 45 per cent of uninterested non-voters. Similarly, 25 per cent of voters are university-educated, versus only 12 per cent of uninterested non-voters.

Moreover, as Table 2.10 indicates, the administratively disfranchised, while less positive than voters about the political and electoral process, are nonetheless more positive than the uninterested non-voters. For example, 26 per cent of the busy/uninterested agreed strongly with the statement that their vote doesn't matter, compared to only 6 per cent of those who voted.

It is reasonable to conclude that 50 per cent of administratively disfranchised non-voters would likely vote if certain obstacles were removed.

As a result, the overall turnout rate would increase by almost 4.5 percentage points. Further, if we also assume that roughly 25 per cent of uninterested non-voters, especially those who were too busy, would also vote if access to the vote were made easier, turnout would increase by an additional 3 percentage points. Taken together, therefore, these two increases could conceivably improve turnout in federal elections by more than 7 percentage points. (Pammett 1991 RC)

Table 2.9
Comparing voters, ADNvs and uninterested non-voters
(per cent)

	Voters	ADNvs	Busy/ uninterested
Age			
18-25	18	35	45
Marital status			
Married	72	57	48
University education	25	16	12

Source: Data provided to the Commission by Jon Pammett, based on National Election Studies and Gallup Polls.

Note: Each cell represents the percentage of voters, ADNvs, and uninterested non-voters for each socio-demographic category, e.g., 72 per cent of voters are married versus 48 per cent of the uninterested.

Table 2.10
Comparing voters, ADNvs and uninterested non-voters
(per cent)

	Voters	ADNvs	Busy/ uninterested
Vote doesn't matter			
Strongly agree	6	15	26
Political reading			
Often	46	28	11
Interest in election			
Very interested	38	17	6
Interest in politics			
Very interested	19	13	6

Source: Data provided to the Commission by Jon Pammett, based on National Election Studies and Gallup Polls.

Note: Percentages show proportion in each category who concurred with the indicated response category for each of the attitudinal items mentioned in Table 2.7.

The survey data therefore show that, although non-voters who claim to have been administratively disfranchised are generally less interested in politics than those who did vote, they are not as politically disengaged as those who simply declare themselves uninterested in voting. The fact that they did not vote at a given election does not necessarily represent a rejection of

the electoral process. Rather, it reflects the fact that some were not registered and others could not vote because of other factors, such as being away or ill.

Individuals who are reasonably motivated will usually find ways of overcoming obstacles and voting. Those less motivated, however, may be unwilling or unable to overcome the same barriers; thus they could well be deterred from voting despite an initial inclination to do so. These are voters who have voted in the past and will likely do so again in the future, though the chances of their doing so are likely contingent on easy access to the voting process.

This interpretation suggests that reforms to make the registration and voting processes more open and accessible will increase the likelihood of these non-voters casting ballots. The objective of electoral reform must be to eliminate or at least to reduce significantly the barriers to and costs of voting as long as the integrity of the process is not jeopardized.

MAKING THE REGISTRATION AND VOTING PROCESSES VOTER-FRIENDLY

Introduction

Registration and voting must facilitate voter turnout if the right to vote is to be secured. Both processes stand in need of major reform. The registration system needs to be revamped fundamentally to ensure that, insofar as possible, it is accessible to those wishing to register and its coverage of qualified voters is complete and accurate. The voting process also needs to be updated to remove rigidities and complexities, to bring voting methods into line with the best practices of electoral systems elsewhere in Canada and abroad, and generally to make the process voter-friendly while preserving the integrity of the vote.

Given the procedural character of the registration system and the voting process, the reforms we propose are necessarily detailed. In this chapter, therefore, we outline the principles and general direction of the reforms we consider essential. A more detailed discussion and specific recommendations are provided in Volume 2 of our report.

The Registration of Voters

The registration of voters serves two fundamental purposes: it determines the eligibility of voters to vote, and it prevents them from voting more than once. In these ways, registration is a regulatory mechanism to ensure the integrity of the vote. Assembling voters lists for each constituency also assists candidates and parties in canvassing voters and encouraging their supporters to vote. In these indirect ways, voters lists are an important instrument for mobilizing voters, thereby promoting political participation and voting.

Canada's approach to the registration of voters consists of three phases:

1. An enumeration or census of voters, administered by returning officers in each constituency using specially appointed enumerators for each polling division.

2. Revision of the preliminary lists produced by the enumeration. This is structured as an appeal process; those not enumerated may apply to be registered, corrections may be made, and objections to those on the preliminary lists may be raised.
3. In rural polling divisions, those not on the voters list can register and hence vote on election day at their polling station if another registered voter from the same polling division vouches for them.

The enumeration process is marked by two major characteristics. First, it is initiated by the state through a nation-wide enumeration carried out by enumerators under the direction of returning officers in each constituency. Second, enumeration is conducted only after an election is called. In both respects the Canadian approach is unique among democracies.

Keeping the onus on the state to seek out voters and enrol them on a voters list was strongly supported at our public hearings. Canadians do not favour any move toward a system where the onus rests on individual voters to register or to ascertain whether they are on the voters list. The experience in the United States, for example, has demonstrated that voluntary registration entails major obstacles to voting. (Courtney and Smith 1991 RC) On a practical level, voluntary registration is not an effective device to secure a meaningful right to vote. Ongoing struggles to reform the U.S. system attest to the deficiencies of voluntary registration. Great Britain, to take another example, has also experienced shortcomings in using a system of essentially voluntary registration. A 1987 study revealed that in 1981, 2.5 million eligible voters were not on the register and another 2.6 million people were wrongly included. (Pinto-Duschinsky and Pinto-Duschinsky 1987)

We conclude that the registration system should continue to be based on state responsibility and should be conducted in a manner predicated on trust. These features are a solid foundation upon which to reform registration in ways that maintain the integrity of the electoral process and improve its capacity to provide more complete and accurate lists of voters.

Reforming Registration

The present registration system is inadequate in several respects. Enumeration fails to register many voters, especially in major urban areas. Among those frequently missed by enumeration are homeless people or people living temporarily in shelters, students living away from home who wish to vote in their home constituency, voters with hearing or reading deficiencies, and voters who are fearful of unannounced visitors or visits from government officials.

Second, the revision process, whereby those not registered by enumeration can be enrolled on the voters list, is too complex, cumbersome and limited to serve this vital purpose effectively. Third, voters not on the voters list are permitted to register and vote on election day only in rural

polling divisions, as defined by the *Canada Elections Act*. This procedure is not available to those in urban polling divisions; if they have not been registered through enumeration or revision, they cannot vote.

These shortcomings have administratively disfranchised a significant number of voters. This need not be so; several reforms could eliminate these obstacles. As discussed more fully in Volume 2, they include changes in enumeration and revision and the extension of election-day registration to all voters.

At the same time, enumeration is not the only effective way to compile preliminary voters lists, nor is it always the most cost-efficient. For the 1980 general election, for example, the chief electoral officer decided that there was insufficient time to conduct an enumeration; he determined, however, that the final voters lists for the 1979 election, held nine months previously, would constitute satisfactory preliminary lists, which could be revised by a special registration drive. This approach cost a great deal less than conducting a new enumeration. It also resulted in fewer complaints than usual – and a large majority of these could have been avoided if voters in urban polling divisions had been able to register on election day.

The 1980 experience demonstrated that a properly managed revision can produce lists of high quality when reasonably complete lists of voters already exist. Two provinces, Ontario and British Columbia, maintain continually updated lists of voters. In Ontario, the lists are maintained by the Ministry of Revenue and are used for municipal and school board elections. In British Columbia, the lists are maintained by Elections British Columbia and are used for provincial, municipal and school board elections. With appropriate co-operation and technical modifications, these lists could be purchased and used by Elections Canada as preliminary lists for federal elections, thus eliminating the expense of enumeration in these two provinces. As outlined in Volume 2, our studies indicate that this approach is feasible and worth pursuing.

Except for British Columbia, provinces and territories do not maintain continually updated lists for provincial elections; they conduct enumerations to compile preliminary lists during the election period. Alberta conducts its enumeration outside the election period on a three-year cycle. Newfoundland does so at the discretion of the provincial cabinet.

In every case, then, voters lists are available at some point and could be used as preliminary federal lists if they were sufficiently current, assuming the co-operation of the agencies responsible for registration and the possibility of making the necessary technical modifications. Chief electoral officers from across Canada recognize the duplication of effort that exists and acknowledge that it serves no public policy or public interest purpose.

Giving the chief electoral officer the authority to use provincial or territorial lists as preliminary lists would constitute a useful reform. Provinces and territories could also use final federal voters lists as their preliminary lists for elections if the federal lists were still current. Given that the cost of

the last federal enumeration was just over \$27 million, while the total cost of all provincial enumerations for the most recent elections was approximately another \$30 million, such a measure would result in considerable savings to Canadians. Moreover, such an approach on the part of Elections Canada could serve as an incentive for one or more provinces and territories to maintain continually updated lists, since their use by all levels of government would justify the initial investment and the ongoing cost of maintenance.

The Voting Process

For the vast majority of registered voters, the voting process is simple and accessible. On election day, they go to the assigned polling station, usually located relatively close to home, give their name and address to a deputy returning officer, receive a ballot, go to a voting booth and mark the ballot in secret, fold it so it remains secret, and return the folded ballot to the deputy returning officer, who places it in the ballot box.

The *Canada Elections Act* is deficient, however, in instances where a voter, for one reason or another, is unable to exercise the franchise in this simple and straightforward manner. Although the Act does make some provision for voters who cannot vote in this manner, both its underlying philosophy and its specific provisions are less than voter-friendly. Voting other than on election day is not equally available to all voters, and for some this alternative is not available at all. Moreover, to use these and other exceptional procedures, a voter must be well informed about the details of the election law and must know well in advance that he or she will require their use in order to vote.

To achieve our objective of securing the democratic right of voters to vote, the philosophy that underlies the voting process must be changed. Elements of the process that have until now been considered exceptions must become extensions of the normal voting process. In addition, the alternatives available to voters must be expanded to include procedures in use elsewhere in Canada or in other countries that have been shown to enhance access to the vote and to increase voter turnout. Finally, the Act must be simplified to ensure that these new provisions, as well as changes in existing provisions, can be understood and used easily by voters, candidates and their agents, and election officials.

The following alternatives to voting at a normal polling station on election day are provided in the Act: the advance poll; voting in the office of the returning officer; voting by proxy; voting at a mobile poll; and voting by special ballot. However, these alternatives apply only in limited circumstances and for narrowly defined categories of voters.

Advance polls enable voters to vote before election day on three specified days. However, this opportunity is not readily accessible in many rural polls, especially in remote areas. The same shortcomings, especially the lack of accessibility, apply to the provision allowing voters to vote at the

returning officer's office (essentially another form of advance voting) on certain days prior to election day.

An alternative to voting in person on election day is the proxy vote. Registered voters who meet certain conditions can appoint another registered voter to vote on their behalf at the first voter's assigned polling station. This means that the voter's vote is not secret; nor can the voter be guaranteed that the proxy vote will be cast as instructed. In any event, the rules governing this procedure are so complex and demanding that it is used infrequently.

The Act also provides for the use of mobile polls, but only in very restricted circumstances. Mobile polling stations move to where voters are located and remain there only for the period necessary to conduct the vote. At polling stations established in hospitals, for example, the station may be closed for short periods to take the ballot box to patients confined to bed. Mobile polls may also be used for Canadian forces and public service voters living abroad.

Except for members of the Canadian forces and public servants posted abroad, and their spouses and dependants living with them, there is no provision to allow voters living abroad to obtain a ballot and then to tender the ballot in person to an election official or return it by mail. Finally, there are no provisions to allow voters with disabilities to vote using a special ballot.

Reforming the Voting Process

The *Canada Elections Act* must be adapted to expand and modify current voting procedures – including reforms to ensure that the special needs of certain voters are met – to make the exercise of the franchise as accessible as possible while still providing the safeguards necessary to ensure the secrecy of the vote and the integrity of the voting process. Our recommendations, presented in detail in Volume 2, are designed to produce a voting process with two basic components: ordinary voting and the special ballot.

Ordinary Voting

We propose that the ordinary voting procedures for voting at a voter's assigned polling station and at advance polls be extended to include voting at temporary mobile polling stations in many more circumstances than now provided for in the Act. Mobile polling stations would be similar in all respects to regular and advance polling stations, except that they would be available only for a period sufficient to conduct the vote at specified locations, such as nursing homes or communities in remote areas. In this manner, they would be a useful complement to regular and advance polling stations. We also propose that the provisions governing advance polls be made more flexible and broadly available. Any voter who has reason to believe that it would be difficult to vote at an ordinary polling station on election day could vote at an advance poll. For maximum convenience, advance polls would be open for two days spread over two weekends.

Special Ballot

We also propose to extend the use of the special ballot. The special ballot is now available only to members of the Canadian forces in Canada, Canadian forces personnel abroad and public servants posted abroad and their spouses and dependants living with them. This method of voting is extremely flexible, in that it allows voters to vote without having to appear at a polling station. The voter receives a ballot, marks it and returns it in person to an election official or by post to an election office. Several countries, including Australia, Germany, Great Britain, the United States and the Netherlands, as well as the provinces of Quebec, New Brunswick, Manitoba, British Columbia, Saskatchewan and Alberta, successfully use this kind of ballot, commonly referred to as a postal ballot.

Time Off for Voting

The *Canada Elections Act* provides that every employee who is a qualified voter shall have four consecutive hours to vote during the hours the polls are open on election day. If an employee's hours of work do not allow for these four consecutive hours, the employer is to provide time off at regular pay for the period necessary to meet this requirement. If an employer is required to provide time off for voting under this requirement, the hours provided may be arranged at the convenience of the employer. It is an offence for an employer to fail to abide by these provisions.

The rationale for the four-hour provision, first introduced in the 1920 *Dominion Elections Act*, is to ensure that every voter has a reasonable opportunity to cast a ballot on election day. The provision thus contributes to the objective of securing the constitutional right to vote. Every province but Prince Edward Island has a provision for employees to have time off to vote, as do most other democracies.

The obligation of employers is to ensure that employees have four consecutive hours in which to vote. This does not necessarily require them to provide four hours during working hours. Rather, time off is combined, if necessary, with time when employees would not normally be working – so long as the four hours are consecutive during the time polls are open.

At the same time, employers should not be required to pay employees for four hours of time off; a maximum of two hours of time off at regular pay should be sufficient in all but a few circumstances. For instance, employees who work 12-hour shifts that encompass the hours of voting on election day, and who cannot vote within a two-hour period, could use the special ballot or vote at an advance poll. In the case of workers who are paid on an hourly, piece work, or other basis and who normally work during the period of time off work provided to vote, they should be paid the equivalent of what they would normally earn, for up to two hours of the time off work for voting.

Employers and employees should reach an agreement regarding time off for voting. Employees should give adequate advance notice to their

employers regarding when they intend to vote, but employers should retain the right to determine when time off would be taken by employees and should not be required to pay employees for time that they would not normally be working.

The right to time off for voting does not apply to certain categories of voters working in the transportation sector if they are eligible to vote by proxy or are not working in the constituency where they are registered to vote and it would take them more than four hours to travel to their polling station. Given the changes we recommend, voters in these circumstances would now be able to vote by special ballot or at an advance poll. In addition, there should be an exemption for employees who work too far away from their polling station to be able to vote during the hours that the polling station is open, as giving them time off work would impose a requirement on employers without achieving the purpose of the Act. These voters should also use the special ballot or vote at an advance poll. Finally, election officials should be excluded from this provision, given their responsibilities on election day.

Recommendation 1.2.11

We recommend that

- (a) every employee who is a qualified voter have four consecutive hours to vote on election day;**
- (b) employers be required to provide whatever time off is necessary to provide for these four consecutive hours at the convenience of the employer;**
- (c) employers be required to provide regular pay for time off for voting to a maximum of two hours; and**
- (d) this provision not extend to persons working as election officials on election day, Canada Elections Commission employees, or employees who, by reason of their employment, are too far from their polling station to be able to vote on election day during the hours the polling station is open.**

NOTES

1. An enfranchised Indian was one who had given up his Indian status.
2. *An Act respecting the Public Curator and Amending the Civil Code and other legislative provisions* (S.Q. 1989, c. 54); *Mental Patients Protection Act* (R.S.Q. P-41); *Mental Health Act* (R.S.O. 1980, c. 262); *Mental Incompetency Act* (R.S.O. 1980, c. 264); *Interpretation Act* (R.S.O. 1980, c. 219); *Dependant Adults Act* (R.S.A. 1980, c. D-32); *Mental Health Act* (R.S.A. c. M-13.1); *Mental Health Act* (R.S.M. 1970, c. M110); *Mental Health Act* (R.S.B.C., c. 256); *Neglected Adults Welfare Act* (S.N. 1973, No. 81); *Infirm Persons Act* (R.S.N.B. 1973, c. I-8); *Mental Health Act* (R.S.P.E.I. 1974, c. M-9); *Incompetent Persons Act* (R.S.N.S. 1967, c. 135); *Mentally Disordered Persons Act* (R.S.S. 1978, c. M-14); *Mental Health Act* (R.S.N. 1971, No. 80); *Mental Health Services Act* (S.S. 1984-85-86, c. M-13.1); *Mental Health Act* (R.S.N.B. 1973, c. M-10); *Mental Health Act* (S.N.W.T. 1985, c. 6); *Mental Health Act* (R.S.Y. 1986, c. 115); *Mentally Incompetent Persons' Estates Act* (R.S.N. 1971, No. 234); *Dependant Adults Act* (S.S. 1989-90, c. D-25).

ACCESS TO ELECTED OFFICE



INTRODUCTION

THE CHARTER STATES that every citizen has the “right ... to be qualified for membership” in the House of Commons, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. The qualifications established for membership are set out in the *Constitution Act, 1867* and the *Canada Elections Act*.

These qualifications are important for two reasons. First, they determine the eligibility of citizens to be candidates. Second, they set the requirements that must be met by citizens who wish to be candidates. In each case, the right to be a candidate must be considered in the context of parliamentary government and the norms that should govern this fundamental question of access in a free and democratic society.

The right to be a candidate ensures that representative government is by citizens. Canadians elect members to the House of Commons directly. By contrast, the prime minister and the cabinet – the ministers of the Crown in whom executive authority is vested by the constitution – are not elected directly. They are selected through Canada’s system of responsible government. Nor are members of the judiciary selected by direct election; they are appointed by the prime minister under the Crown’s executive authority. Finally, the second house of Parliament, the Senate, is appointed by the executive. The only direct link between Canadians and these organs of government, therefore, is through their representatives in the House of Commons. Under the constitution, these members are elected for a maximum of five years.

Canadian elections are primarily contests between the candidates of political parties; citizens who wish to be serious contenders for election to the House of Commons must therefore secure a party nomination. In 1988, for example, non-affiliated candidates represented 9.8 per cent of all candidates and received less than 1 per cent of the total vote. (This group of candidates included independent candidates and those who represented parties that had failed to meet the registration requirements.) (Bertram 1991 RC) Thus the right of citizens to be candidates can be exercised effectively only to the extent that the nomination process of political parties provides fair access.

The question of candidacy therefore revolves around two groups of issues: the qualifications for candidacy found in constitutional and electoral law, and the processes political parties use to select candidates for election to the House of Commons. The first constitutes the formal or legal foundations

of candidacy, the second the *realpolitik* of candidacy. Our mandate requires that we examine both.

THE RIGHT TO BE A CANDIDATE

The *Canada Elections Act* requires that candidates be qualified voters. However, this is not a sufficient condition. The right to vote and the right to be a candidate are not one and the same. The former confers the right to participate in choosing elected representatives; the latter confers the right to be a candidate for elected office. This distinction arises because there are different responsibilities and obligations associated with the exercise of each right. Candidates and members of the House of Commons have responsibilities and obligations that go beyond those of voters, precisely because they are presumed to act on behalf of other citizens. This distinction has long been recognized in Canada's electoral law and that of other democracies.

The Evolution of Qualifications

As with the right to vote, the laws governing the right to candidacy for federal elections have had a chequered history. At Confederation, agreement could not be reached on a federal law to govern qualifications for candidacy or membership in the House of Commons. There was agreement, however, that senators should be barred from election to the Commons, and a provision to this effect was included in the *British North America Act, 1867* (now known as *Constitution Act, 1867*). As a consequence, provincial laws concerning candidacy prevailed, as they did for the franchise, and candidacy requirements varied across the country.

Provinces had certain common requirements: candidates had to be British subjects, male and at least 21 years old. Every province had a property qualification greater than that required of voters, although the dollar amount varied from province to province. By Confederation, every province had also accepted that judges could not be members of the legislative branch and therefore could not be candidates. In addition, persons holding government contracts could not be members of the House of Commons; neither could public officials. Because ministers received a salary from the Crown in addition to their stipend as MPs, they met the definition of public official. Members appointed to ministerial posts therefore had to resign their seats and seek re-election as candidates holding a ministerial portfolio, to obtain the approval of voters for this deviation from the principle. Finally, persons convicted of corrupt or illegal election practices were excluded from candidacy for specified periods of time.

Provincial rules on 'dual' representation were not uniform. In Ontario and Quebec, members of the provincial legislature were eligible to be candidates for and members of the House of Commons. But New Brunswick and Nova Scotia had taken legislative action on dual representation. In New Brunswick, members of the provincial legislature could be candidates for election to the House, but they had to resign their provincial seat before

they could sit in the Commons. Members of the Nova Scotia legislature could be neither members of the House of Commons nor candidates for election to the Commons.

Finally, it was possible to be a candidate in more than one constituency, but a person could not hold more than one seat in the House of Commons. If elected in more than one constituency, the member had to choose which seat to hold.

Parliament began to legislate on matters affecting candidacy and membership in the House of Commons in 1873. That year a private member's bill to disqualify members of provincial legislatures as candidates for the House of Commons was enacted. In the first House of Commons, members of the Ontario and Quebec legislatures held seats while retaining their provincial seats. In fact, a majority of both provincial cabinets held Commons seats. (Ward 1963, 65) The entry of Manitoba into Confederation in 1871 brought two more members of a provincial legislature to the House of Commons. The bipartisan agreement to end this early practice recognized the need for MPs to be independent of the provincial order of government.

In 1874, federal law eliminated the property qualification for candidates. This brought Canadian law into line with contemporary British and U.S. practice and acknowledged that the qualification had not been enforced.

In 1878, federal laws tightened the provisions on government office holders and contractors to ensure the independence of the House of Commons from government. The 1878 statute also disqualified as candidates sheriffs, clerks of the peace, county Crown attorneys and registrars in recognition of their responsibilities for administering federal elections (which were still conducted by the provinces). Other than this provision, provincial public officials were not, and have never been, disqualified by federal law from candidacy for the House of Commons.

Although multiple candidacies were never common, there were several instances in which candidates, particularly prominent political figures, contested two seats, notably Sir Wilfrid Laurier and Sir George-Étienne Cartier. Sir John A. Macdonald even contested three seats in a single general election: two in September 1878 and a third in October, since at that time, polling day did not have to be held on the same day across the Dominion. (Ward 1963, 81) Of the 14 cases in which a candidate won two seats, 12 involved party leaders. The rationale for this practice was, first, to provide a safe seat for the party leader; the second reason was to have the party leader contest a seat previously held by the other party. Needless to say, the practice required a number of by-elections following the general election. (Ward 1963, 81–82)

In 1919, federal legislation required that "members elected in two districts ... had to choose one of them or be penalized for it, unless it could be established that one of the candidatures was without their knowledge" (Ward 1963, 80–81)

The same year, the electoral law was amended to extend the right to be a candidate to women, coinciding with the extension to them of the right to vote.

In 1931, the provision requiring ministers appointed following an election to resign their seats and seek re-election was repealed. This requirement had caused inconvenience to more than one government; it had also been an important factor in the constitutional crisis of 1926. Repeal of the provision made ministers an “absolute [exception] to the general rule that an office of emolument disqualifies for the House of Commons”. (Ward 1963, 97)

In 1948, the election law stipulated for the first time that candidates be qualified voters, although it did not require that candidates reside in the constituency where they sought election. In 1970, the law required that voters be Canadian citizens. In 1982, the Charter entrenched the right of every citizen to be qualified for membership in the House of Commons and thus to be a candidate, subject to the requirement that disqualifications must be prescribed by law and must constitute reasonable limits that can be demonstrably justified in a free and democratic society.

As the right to seek membership in the House of Commons evolved, federal law established more firmly the independence of Parliament from the executive branch and from the provincial order of government. At the same time federal law maintained the practice of disqualifying certain categories of persons as candidates. Some are disqualified by virtue of the public offices they occupy, and some are disqualified because they have been convicted of offences under the *Canada Elections Act*.

Qualifications for Candidacy

Prospective candidates must be eligible to sit in the House of Commons. Eligibility is defined by electoral law, constitutional law and other requirements.

Some disqualifications are based on the office a prospective candidate already holds. Sometimes the nature of the office is incompatible with both membership and candidacy. In other cases, eligibility to be a candidate should be considered separately from eligibility to sit in the House of Commons; the offices in question may be incompatible with membership in the House, but not incompatible with candidacy. This crucial distinction is not found in the current electoral law. If this distinction were applied, it would be necessary for a successful candidate to resign from the office in question only after the election, before taking a seat in the House.

In addition, there may be some categories of persons who should not be eligible for candidacy because their circumstances would not permit them to fulfil the responsibilities of candidates or the representative obligations of a member of the House of Commons.

Finally, the elections act requires that candidates be qualified voters. This is a reasonable and necessary condition for candidacy since it establishes who is a member of the polity.

Recommendation 1.3.1

We recommend that only qualified voters be eligible to be candidates.

Incompatibility of Offices

Certain official positions are incompatible with candidacy and membership in the House of Commons. The three categories of persons affected by this criterion are senators, judges and election officers.

Senators The *Constitution Act, 1867* states that senators “shall not be capable of being elected or of sitting or voting as a Member of the House of Commons” (s. 39). Senators are already Members of Parliament, and the constitution makes it clear that the two houses of Parliament have separate functions, powers and responsibilities in the legislative process.

Separating the memberships of the upper and lower legislative chambers was an important development in the reforms that culminated in responsible government in the late 1840s. Along with other reforms, this separation served to ensure the independence of the lower house from the executive branch under the authority of the colonial governor.

Separating the two houses also brought Canadian practice into line with the British tradition. The peers of Parliament, that is, members of the House of Lords, have always been disqualified from sitting in the House of Commons. This reflects the distinct and separate status of the House of Lords and the different representative roles of members of the two houses. Consequently, peers are disqualified from standing for election to the House of Commons. A 1960 controversy confirmed this traditional disqualification and led subsequently to the *Peerage Act 1963*, which made it possible for a hereditary peer to disclaim a peerage and thus to be a candidate for election to the Commons. Anyone holding a life peerage (the equivalent of a senator in Canada) would be obliged to renounce the peerage before seeking a seat in the House of Commons.

Because the reason for disqualifying senators as candidates is fundamental to the Canadian constitution, we see no cause to alter this disqualification.

Recommendation 1.3.2

We recommend that senators be disqualified as candidates for election to the House of Commons while they hold office.

Judges The *Canada Elections Act* provides that judges appointed by the Governor in Council, other than citizenship judges appointed under the *Citizenship Act*, are not qualified to vote. They are thereby disqualified as candidates. A Federal Court of Canada decision has declared this disqualification from voting invalid. Moreover, we recommend that judges should have the right to vote. We see no conflict with their independence or impartiality implied by this right. It is a right of citizenship, exercised in secret.

It does not follow, however, that judges should have the right to be members of the House of Commons. The independence of the judicial

branch is a fundamental principle of our system of government and requires that membership in the judiciary be separate from membership in the legislative branch.

Moreover, the principle of independence, along with the principle of impartiality, also requires that judges not be eligible to be candidates for election to the House of Commons. Candidacy, even for candidates who are independent of any political party, implies partisanship. This is clearly contrary to the basic idea of impartiality. Judges must be and must be seen to be impartial.

Recommendation 1.3.3

We recommend that judges, including federal, provincial and territorial judges, other than citizenship judges be disqualified as candidates for election to the House of Commons while they hold office.

Election Officers The chief electoral officer, the assistant chief electoral officer and returning officers are not qualified to vote and are thereby disqualified as candidates. We recommend that these officials be given the right to vote. This is an act of citizenship and is exercised in secret. No conflict with the impartiality of election officers is implied by giving them the right to vote.

Candidacy is by definition a public act of partisanship, however, and requires different criteria to preserve impartiality. The impartiality expected of permanent election officers, of the members and managerial and professional staff of the Canada Elections Commission that we recommend in a subsequent chapter, and of officials appointed for each election demands that they be disqualified as candidates. There is clear and obvious incompatibility between their functions and candidacy. They cannot be both impartial officials responsible for conducting elections and participants in the electoral contest.¹

Recommendation 1.3.4

We recommend that election officers, members of the Canada Elections Commission and the Commission's managerial and professional staff be disqualified as candidates for election to the House of Commons while they hold office.

Compatibility with Candidacy

Some persons occupy official positions or have official relationships with government that are incompatible with membership in the House of Commons but not incompatible with candidacy. This applies, for example, to members of provincial legislatures and territorial councils, public servants and other public employees, and persons holding contracts with the federal government.

Provincial Legislators and Territorial Councillors Members of provincial legislatures and territorial councils are disqualified as candidates for the House of Commons while they hold office. Dual representation was abolished in 1873, under federal legislation prohibiting members of provincial legislatures from even being candidates for election to the House of Commons.

We see no reason to return to dual representation. The constitution divides legislative authority between the federal and provincial orders of government, and the federal and provincial legislatures have independent authority over matters within their jurisdictions. Moreover, it is well established in constitutional law that neither Parliament nor a provincial legislature may delegate its assigned powers to the other. This fundamental constitutional fact means that the two orders of government must be distinct and independent of each other. It follows that membership in Parliament and in provincial legislatures should be separate.

The same logic applies to territorial councils, although they do not have the same independence from Parliament. Territorial governments are responsible for representing the interests of their citizens on matters authorized by federal law. For this reason territorial councillors should not be qualified to sit on a territorial council and in the House of Commons at the same time. Members of municipal councils are not covered by the *Canada Elections Act*. We do not believe that this constitutes a gap in the law, given that municipal governments fall within provincial jurisdiction.

Federal law need not, however, disqualify members of a provincial legislature or territorial council from seeking election at the federal level if they wish to bring to the House of Commons policy issues or concerns pertaining to the province or territory they represent. The functions of candidacy do not entail the functions of an elected representative in the House of Commons. If elected, however, these members would have to resign their provincial or territorial seat before taking a seat in the House of Commons, as the *Canada Elections Act* now requires. Allowing these members to be candidates could result in a rise in the number of by-elections if they won but turned down a seat in the Commons; the likelihood of this outcome is small. Candidates in this position would be forced by public pressure to declare their intentions well before election day. This should also remove any conflict of interest between being a member of a provincial legislature or territorial council and being a candidate.

Recommendation 1.3.5

We recommend that

- (a) members of provincial legislatures and territorial councils be qualified as candidates for election to the House of Commons but be required to resign their seat in a provincial legislature or on a territorial council if elected; and**
- (b) the *Parliament of Canada Act* be amended accordingly.**

Public Officials A wide range of public officials are excluded from candidacy by the *Canada Elections Act*. The Act states that every person is ineligible "who accepts or holds any office, commission or employment, permanent or temporary, in the service of the Government of Canada at the nomination of the Crown or at the nomination of any of the officers of the Government of Canada, to which any salary, fee, wages, allowance, emolument or profit of any kind is attached, during the time he so holds that office, commission or employment". Ministers are exempt from this provision, as are members of the Canadian forces on active service as a consequence of war, and members of the Canadian forces reserve who are not on full-time service other than active service as a consequence of war. Public servants and other public sector employees who have been granted a leave of absence to seek a nomination and be a candidate are also exempt from this provision. These public officials perform functions under the executive authority of the Crown, as represented by ministers. They cannot be members of the executive branch and the legislative branch at the same time, given their separate and distinct responsibilities. Their functions as officials within the executive branch are incompatible with membership in the House of Commons.

As the current law implies, however, there is no reason to exclude these officials from candidacy if they obtain a leave of absence to seek a nomination and contest an election. The impartiality and neutrality expected of public officials relates only to the performance of duties specific to their position. It ought not to imply that they are denied the right to seek a nomination candidacy or be a candidate. Moreover, given the provisions of the law with respect to leaves of absence, such persons are not rendered incapable of performing the duties of a public official in an impartial and neutral manner following an unsuccessful nomination or electoral effort.

The *Canada Elections Act* covers all public employees who are considered public servants under the *Public Service Employment Act*, as well as individuals employed by government agencies and corporations subject to the *Canada Labour Code*. It does not encompass order-in-council appointees, who are not entitled to leaves of absence. The law specifies, however, that public employees must be granted a leave of absence by the employer or the employer's agent (such as the Public Service Commission) before seeking a nomination or contesting an election. If it is judged that the future effectiveness of an employee under the authority of the Public Service Commission may be impaired by contesting a nomination or an election, the request may be denied. On the other hand, employees whose employers are subject to the *Canada Labour Code* are entitled to a leave of absence.

Three questions arise. First, should the right to take a leave of absence (rather than the right simply to *apply* for leave) be an entitlement? Second, should public employees at all levels, including those appointed by order in council, be entitled to this right? Finally, should leaves of absence extend

beyond the election campaign period to cover employees elected to the House of Commons?

Public employees in six provinces are entitled to a leave of absence to participate in electoral politics: British Columbia (non-management employees); Alberta (all non-management personnel); Manitoba (all employees except deputy ministers and designated staff); Ontario (all but senior staff); Saskatchewan (all employees); and Quebec (all but deputy ministers, assistant deputy ministers and associate deputy ministers). In British Columbia and Manitoba, moreover, leave can be extended for five years if the candidate is elected. New Brunswick law provides that a leave of absence *may* be granted. This also applies to management personnel in British Columbia, whereas Alberta and Ontario make no provision for senior management.

The right of citizens employed by the Crown to be candidates for election to the House of Commons should be limited only where it can be demonstrated that the public interest in an impartial and neutral public service would be seriously impaired by the exercise of this right. The principles of an impartial and neutral public service are described in a *Statement of Principles Regarding the Conduct of Public Employees*, published in 1986 by the Institute of Public Administration of Canada, which is an independent national association of public administrators from all orders of government. The statement makes it clear that impartiality and neutrality are required of public servants while in office. These principles do not require that public servants have a non-partisan personal history. Rather, impartiality and neutrality are to be judged on the basis of performance while in the employ of the state.

This interpretation conforms with federal administrative practice. Many federal public service officials were once members of ministers' 'exempt' staff – staff appointed by and serving ministers as partisan aides. The converse is also true. Departmental officials are often seconded to a minister's office for short periods; this is common practice in several countries, including Great Britain and France. Further evidence of the possibility of impartial and neutral public service from people with partisan connections is the tradition of appointments to the rank of deputy minister of persons from outside the public service; they may have links to the prime minister or the party in power, but they are expected to eschew partisan politics while occupying a public service position. Moreover, to the extent that the public interest is served by the election of people with extensive knowledge of and attachment to the public sector, we should not be discouraging public servants from seeking office if that is their desire or requiring that they give up their livelihood to do so.

If public service impartiality and neutrality do not require that public servants, even at the highest levels, have no political past – even an immediate past – it follows that all public employees should be entitled to exercise the right to seek nomination as a candidate and to be a candidate,

provided they take a leave of absence. This would be a leave of absence as an employee of the Crown, not leave from a particular position. The employee would be entitled to a position at an equivalent level if she or he returned; the guarantee would not extend to a return to the same position.

The professionalism of the public service is the basis on which this right can be reconciled with impartiality and neutrality. To imply otherwise is to belie federal practices and traditions. Certainly, in individual cases there may be tensions between individual public servants who exercise this right and their political masters in the government of the day. But these tensions are present in any event, as ministers may suspect the loyalties of officials promoted to their current positions by a previous government or by procedures beyond the control of ministers.

At the same time, we acknowledge that public servants have no right to tenure as public employees beyond the time necessary to seek a nomination or be a candidate. In our view, the right to be a candidate should not entail any protection of an individual's position in the federal public service or as a member of the board or staff of a commission, agency or Crown corporation following an election. If elected to the House of Commons, the individual's employment with the Crown should be deemed terminated. Public service employment legislation might provide for a leave of absence before or after the election period, as is the case in other jurisdictions, but this entitlement should not be inherent in the right to be a candidate.

Recommendation 1.3.6

We recommend that

- (a) federal public service employees and members of the boards and staff of commissions, agencies and Crown corporations have the right to a leave of absence, following the issue of the writ, to seek a nomination and to be a candidate in a federal election;**
- (b) if the individual is not nominated, this leave of absence expire seven days after the nomination date; if the individual is a candidate, it expire seven days after a candidate has been declared elected;**
- (c) public servants on such a leave of absence continue to receive the non-salary benefits to which they are regularly entitled; and**
- (d) this not preclude any agreement between the above-noted employees and their employer about a leave of absence before or after the writ period.**

Persons Holding Contracts with Government Every person holding a contract with the federal government is disqualified from being a candidate.

The rationale for this is the need to avoid conflict of interest if a contractor becomes a member of the House of Commons. The potential conflict of interest concerns a Member of Parliament, not a candidate. If persons holding contracts with the government were elected, they would merely have to bring the contractual relationship with the government into line with the rules governing the conduct of MPs. Current provisions with respect to the letting of contracts with government require that their dealing be a matter of public record. We do not, therefore, see any reason to exclude any such person from being a candidate.

Recommendation 1.3.7

We recommend that the disqualification from being candidates of voters holding contracts with the government be removed.

Ineligibility

Finally, some categories of persons may be declared ineligible to be candidates because they cannot meet the requirements of candidacy or membership in the House of Commons; those who cannot fulfil the conditions of membership in the House should not be eligible to be candidates. They include people legally deprived of the right to manage their affairs, Canadian citizens who are foreign residents, and certain prisoners and persons who have been convicted of corrupt or illegal practices under the *Canada Elections Act*.

Legal Capacity The right to be a candidate requires that a citizen be able to meet certain legal conditions that have been imposed on candidacy to protect the integrity of the electoral process. Candidates state under oath that their nomination papers are in order, that they consent to the nomination and that they have attested to the financial reporting documents submitted to the chief electoral officer by them or on their behalf by their official agent. Candidates must be legally responsible for actions taken during a campaign and be able to be prosecuted if the Act is contravened. Those who have been legally deprived of the right to manage their property and persons under the age of 18 cannot perform these functions of candidacy or accept the legal responsibilities entailed. It follows that these persons cannot meet the statutory requirements to be candidates, even if some of them are qualified as voters.

Given the strong public interest in the integrity of electoral law as it pertains to the conduct of candidates, all candidates must be able to act with full legal authority and responsibility.

Recommendation 1.3.8

We recommend that voters who have been legally deprived of the right to manage their property be ineligible to be candidates.

Canadians Living Abroad We recommend that voters living abroad be entitled to vote. Canadian voters living abroad are effectively disfranchised at present, but they are eligible to be candidates.

To promote the aims of electoral contests and protect the integrity of the electoral process, it is justified to require that persons who wish to be candidates be residents of Canada at the time their nomination is filed. Meeting this condition should serve as evidence that such candidates intend to take part actively in the election process and, if elected, to represent their constituents in Parliament. However, the Act should retain the current provision that states that members of the Canadian forces on active service as a consequence of war have a right to candidacy.

Recommendation 1.3.9

We recommend that any voter not a resident of Canada on the date on which her or his nomination is filed be ineligible to be a candidate, unless a member of the Canadian forces on active service as a consequence of war.

Prisoners We recommend in Chapter 2 of this volume that, with some exceptions, prisoners be entitled to vote. The question of their eligibility as candidates and members of the House of Commons thus arises. The law does not address this question; prisoners are disqualified from voting and are therefore ineligible to be candidates. During our public hearings, many groups argued in favour of extending the right to vote to prisoners, but they drew a distinction between the right to vote and the right to be a candidate.

The rationale for excluding prisoners from candidacy and membership in the House of Commons is twofold. First, MPs are expected to represent their constituents and serve them in their dealings with government. Although prisoners might be able to perform some of these functions, it is obvious that they could not represent their constituents in Parliament from prison. Second, candidates must be able to participate in the election campaign to provide the electorate with the opportunity to assess their candidacy and to engage in a dialogue with them. Thus, persons serving sentences that overlap with the electoral period would be unable to carry out these necessary functions.

The right of prisoners to be candidates must be balanced with the public interest in effective representation and operation of the House of Commons. The public interest requires that members of the House of Commons fulfil their duties on behalf of their constituents, including their legislative functions.

At issue is whether voters would elect a prisoner given that the responsibilities of MPs require their presence in the House and its committees along with direct service to constituents and that these responsibilities cannot be discharged at a distance. It might seem reasonable to let normal conditions

and requirements apply and allow the electorate to decide. However, Members of Parliament must provide representation for all constituents in their constituencies – not only their supporters but also those who did not vote for them. Voters who voted for someone other than the winning candidate have every right to expect their MP to represent them in Parliament and to provide the services expected of an MP. In Canada, those voting against the elected candidate usually constitute the majority of voters in a constituency. Those who voted against a winning candidate who was a prisoner sentenced to a lengthy period covering all or a substantial part of the average term of Parliament would find themselves without an MP to represent them in Parliament or provide these services.

In Quebec, the law allows prisoners to be candidates if they are serving a sentence of less than two years. The prisoner must meet all conditions of candidacy; beyond that, the decision is left to the voters. This rationale was used in *MacLean* (1987). The dispute centred on an individual who had been convicted of a criminal offence and who, by provincial law, was prohibited from being a candidate for five years. The decision was that, under section 3 of the Charter, the law could not prohibit his candidacy. The choice, said the court, was to be made by the voters.

In Australia and Great Britain, prisoners are not eligible to be candidates if they are convicted and imprisoned for more than one year. In France, prisoners are effectively barred from candidacy through a disqualification to enrol and hence to vote.

However, in assessing who should have the right to candidacy, it must be emphasized that those seeking election to the House must also be able to fulfil certain crucial functions during the campaign period. These include participating in public debates and meeting with constituents, responsibilities that even a person serving a short sentence could not carry out if it coincided with the electoral period. Hence it is reasonable and appropriate that those unable to perform these essential functions of candidacy be ineligible to be a candidate. Obviously, these restrictions would not apply to those on parole.

Recommendation 1.3.10

We recommend that any prisoner who is serving a sentence that includes the period from nomination day to election day be ineligible to be a candidate.

The rules of the House of Commons, however, do not demand removal of an elected member who is subsequently imprisoned. An MP can be serving a sentence for any offence and still remain a member of the House of Commons. To ensure that the representational needs of constituents are met, MPs who are sentenced to prison for more than six months should be required to resign their seat.

Recommendation 1.3.11

We recommend that the *Parliament of Canada Act* be amended to require that any sitting member sentenced to prison for six months or more resign his or her seat.

Persons Convicted of Corrupt or Illegal Practices Persons convicted of corrupt practices under the *Canada Elections Act* are excluded from candidacy for seven years; those convicted of illegal practices are ineligible for five years.

Although we propose removing the concepts of corrupt and illegal practices from the elections act, we believe that the courts should still be able to impose penalties for conviction of certain serious offences; among the penalties would be exclusion from standing as a candidate at the next election. This would ensure that when this penalty was imposed, there would be a rational connection between the offence and the limit on the right to candidacy. This provision is required to fulfil a fundamental requirement of the electoral law – securing the integrity of the electoral process.

Recommendation 1.3.12

We recommend that the penalties for conviction of serious election offences include the provision that a judge can disqualify a person from being a candidate at the next election.

Conditions of Candidacy

Elections are conducted under rules designed to foster and secure the public interest in representative government. The public interest includes the need to ensure that the right to candidacy is not abused in ways that diminish public confidence in electoral contests or in the enforcement of election law.

Simultaneous Candidacies

The *Parliament of Canada Act* prohibits a person from seeking candidacy for election to the House of Commons in more than one constituency at the same time. Given the ambit of this provision, it properly belongs in the *Canada Elections Act*.

Recommendation 1.3.13

We recommend that

- (a) the *Canada Elections Act* prohibit a person from being a candidate for election in more than one constituency at the same time; and
- (b) the *Parliament of Canada Act* be amended accordingly.

Nomination Requirements

Electoral laws in democratic countries invariably require that prospective candidates demonstrate that they have a degree of support for their candidacy from other citizens. This does not necessarily require selection and nomination by a political party. It does, however, require nomination by a specified number of voters living in the constituency in which nomination is sought. This requirement is justified by the need to have elections contested only by candidates who have already demonstrated that they represent the political preferences of some voters.

Electoral law also invariably requires that candidates certify, and be legally able to certify, that they will fulfil the legal obligations of candidates. These obligations are imposed to uphold the integrity of the electoral process and to assure the polity of effective enforcement of the electoral law. Moreover, given that elections are conducted largely at public expense, it is reasonable to ensure abuses do not occur.

Persons who are unable or unwilling to meet these conditions must forgo their right to be a candidate. The conditions should not impose an unreasonable burden on citizens seeking to exercise this right; but at the same time it is not unreasonable that there be conditions. A balance must be struck between the right of candidacy and the public interest in fair and orderly elections.

The *Canada Elections Act* requires prospective candidates to secure nomination by 25 eligible voters living in the appropriate constituency and to pay a deposit of \$200. The deposit is refunded if the candidate is elected or receives at least 15 per cent of the valid votes cast. The 25 signatures are required to demonstrate that prospective candidates have a measure of public support for their candidacy. The deposit seeks to ensure that the person's candidacy is serious and related directly to the electoral process.

These conditions are not adequate. The deposit is unfair in that it penalizes too many candidates; the number of votes needed to claim reimbursement of the deposit is often too high for all but the winner and the runner-up. Serious independent candidates, and even candidates from registered political parties, often lose their deposit with no public purpose being served.

The deposit is also ineffective because, at \$200, it is hardly a financial deterrent to a frivolous candidate. Many people consider it an acceptable price for the publicity that goes along with being a candidate. The deposit was originally set at \$50 in 1874 and then increased to \$200 in 1882; it was an effective deterrent for that time. Adjusted for inflation, the deposit would now be set at \$2500.

The public interest in setting conditions on candidacy is twofold. First, there is a legitimate public interest in the integrity and effectiveness of electoral competition. Candidates should be required to demonstrate that they are serious. At the same time, financial obstacles should not be used to discourage candidacy. Rather, the seriousness of a candidacy should be

measured by the test of public support. Nomination by voters, rather than self-nomination, is meant to demonstrate public support. Given the expansion of the franchise and the average size of constituencies, however, 25 signatures are not an adequate reflection of public support.

The requirement that a candidate be nominated by 25 voters was set in 1874, when the average number of voters in a constituency was less than 5000. (Ward 1963, 214) The average number of voters in a constituency today is about 60 000 – a twelvefold increase. Taking these figures into consideration, and accounting for the time required to obtain signatures in support of a nomination and the current geographic size of most constituencies, we conclude that a tenfold increase in the number of signatures required should be sufficient to serve the intended purpose. Except in constituencies now classified as Schedule III districts (which we suggest renaming as ‘remote constituencies’), a candidate for nomination should be required to obtain 250 signatures of voters in that constituency; in remote constituencies, 100 signatures should be sufficient.

Further, given the distances that someone might have to travel to comply with the Act’s requirements for filing the nomination documents in person with the returning officer, we propose to allow the transmission of nomination documents to be carried out by facsimile or by filing them with any official designated by the returning officer. The official may then transmit the documents by whatever means possible, including facsimile, to the returning officer with the original documents mailed at the same time. Intervenors before the Commission stressed the need for such flexibility, particularly in larger constituencies.

Unlike the situation in 1874, when political parties were not recognized in election law, most candidates today are selected and endorsed by political parties that are themselves registered under the *Canada Elections Act*. Under the conditions for registration, political parties are required to demonstrate that they are continuing political organizations with a substantial base of support among the electorate.

Their status as registered political parties means that they have a legitimate claim to nominate candidates through constituency associations. For candidates nominated and confirmed by the party leader in this way, the requirement to obtain signatures is redundant.

Recommendation 1.3.14

We recommend that

- (a) in the case of candidates of registered constituency associations, the signatures of a member of the executive and the official agent of the constituency association be required, certifying that the nomination has been made in accordance with the constitution of the association;**

- (b) in all other cases, the number of signatures required for nomination be 250 voters in that constituency, except in remote constituencies, where the number required be 100; and
- (c) the returning officer be permitted to accept, as an original document, nomination papers received via facsimile.

The second public purpose served by conditions on candidacy is ensuring the integrity of the electoral process and protecting public investment in the conduct of elections and the support of electoral campaigns. In this latter respect, for instance, candidates are required to declare under oath that they will meet the Act's financial reporting requirements. Candidates who fail to fulfil their obligation to report on contributions and expenses undermine the integrity of the system and impose additional costs on the public treasury by forcing Elections Canada to initiate enforcement procedures.

The candidate's \$200 deposit does not cover the expense of enforcement, nor is it a deterrent to candidates who do not fulfil their obligations. In 1988, 92 candidates, or 6 per cent, failed to file their election expense returns by the deadline, and considerable expense had to be incurred to enforce the law. At the same time, the deposit imposes a penalty on candidates who do meet their obligations but do not obtain sufficient votes for reimbursement.

Only those who do not meet their obligations under the law should be penalized. The cost to a candidate of failing to comply should therefore correspond to the costs resulting from this failure. Elections Canada estimates that the current cost of enforcement is a minimum of \$1000. The deposit is not to deter frivolous candidates; this objective is achieved by requiring public endorsement for a nomination. Instead of making a deposit, therefore, candidates should post a performance guarantee that would be refunded or cancelled if they met their obligations under the *Canada Elections Act*. This performance guarantee could also be posted for the candidate by supporters or an organization such as a constituency association or party. Under these new conditions, we do not believe the size of the performance guarantee would be a serious hindrance to candidates who intend to abide by the requirements of the law.

Recommendation 1.3.15

We recommend that candidates be required to provide a performance guarantee of \$1000, the guarantee to be cancelled or fully refundable to candidates who meet their obligations to file reporting documents in accordance with the requirements of the *Canada Elections Act*.

Candidates Who Fail to File a Report

In Volume 1, Chapter 7, we recommend changes to the reporting requirements of the *Canada Elections Act*. Currently, winning candidates who fail

to submit the required reporting documents lose the right to sit or vote in the House of Commons until the conditions are fulfilled. This provision, which was first introduced in the *Dominion Elections Act* of 1920, should be retained. Further, submission of the necessary reporting documents should be a condition for candidacy at the next election. These requirements are necessary to protect the integrity of the electoral process and constitute a reasonable limitation on the right to be a candidate. The reporting requirements for candidates are not onerous; in fact, most candidates comply within the prescribed period.

We recognize that this requirement places an explicit limitation on the Charter right to be qualified for membership in the House of Commons. However, given that the reporting requirement is not onerous – and the potential impact on the integrity of the electoral process is severe – a much greater burden is placed on the public interest. The lack of such a rule creates the possibility of abuse that can never be contained. We therefore conclude that limiting the right of those who have demonstrated unequivocally their unwillingness to abide by the minimal legal requirements of candidacy is reasonable and justified in a free and democratic society.

Recommendation 1.3.16

We recommend that

- (a) the requirement in the *Canada Elections Act* to submit the required reporting documents or lose the right to sit or vote in the House of Commons until the conditions are fulfilled be retained; and
- (b) candidates who have not complied with the *Canada Elections Act* reporting requirements for a previous election by the deadline for filing nominations in a subsequent election be ineligible to be candidates at that election.

Right to a Leave of Absence

Public sector employees whose employer is subject to Part III of the *Canada Labour Code* have the right to a leave of absence to seek a nomination and to be a candidate during the election period. This is not simply the right to apply for leave but an entitlement; the employer must grant the leave. In Quebec, a similar provision applies to all employers in the province. These provisions recognize that the right to seek nomination and be a candidate is diminished to the extent that some citizens are unable to do so because of the terms of their employment.

The need to expand the opportunities for people from the private sector to become involved in political life led to the funding of the Institute for Political Involvement, a national non-partisan organization whose membership included large and small companies, business associations and private

individuals. The Institute has prepared *A Model Corporate Policy on Political Leave for Employees* (1981) that draws upon the best practices of existing corporate policies.

The model recommends that regular employees be entitled to a leave of absence to run for office, to return to the position they occupied or an equivalent, and to continue to participate in pension plans and other benefit plans while on leave of absence. Such provisions recognize that in many instances a person could not run for office unless the employer granted a leave of absence. They are of greatest benefit to employees whose financial and family circumstances would make them hesitant to assume the risk involved in running for office if they were required to resign. By protecting employment, such measures promote accessibility to candidacy and, ultimately, a more representative House of Commons.

Analogous provisions are found in Canadian law for jury duty. Five provinces – Newfoundland, Quebec, Ontario, Saskatchewan and Alberta – recognize in law that the performance of certain citizens' public responsibilities takes precedence over the rights of employers with respect to employees.

The right to candidacy is so fundamental that it is not subject to the notwithstanding clause of the Charter. The objectives of the *Canada Elections Act* should take precedence over federal or provincial laws governing employer-employee relationships. To the extent that the right is exercised during a very limited period, the provision is not a major intrusion into labour law, and it pertains directly to a central objective of the electoral process. This provision does not constitute an invasion of provincial jurisdiction.

Seeking a nomination and being a candidate are fundamental acts of citizenship and should be treated as such when an individual's employment status affects his or her capacity to undertake them once the writ has been issued. The recommended provision in the *Canada Elections Act* for the electoral period does not preclude any agreement between employers and employees about a leave of absence before or following the writ period.

Recommendation 1.3.17

We recommend that

- (a) every employer, on receiving written notice, grant a leave of absence following the issue of an election writ to an employee seeking nomination and candidacy in a federal election;**
- (b) if the individual is not nominated, this leave of absence expire seven days after the nomination date; if the individual is a candidate, it expire seven days after a candidate has been declared elected;**
- (c) employees on such a leave of absence continue to receive the non-salary benefits to which they are regularly entitled; and**

- (d) this not preclude any agreement between employees and employers about a leave of absence before or after the writ period.

The Right to Representation – By-Elections

When a vacancy occurs in the House of Commons between general elections, and the chief electoral officer has received a warrant for the issue of a writ from the Speaker of the House of Commons, the Governor in Council has six months to set a date for a by-election. This provision in the *Parliament of Canada Act*, coupled with the lack of a maximum campaign period for by-elections, means that residents of a constituency where an MP resigns or dies may be deprived of representation for a potentially lengthy period. In four instances in 1977–78, for example, constituents were without an MP for more than a year.

Some flexibility is required in setting a date for a by-election, but this requirement must be balanced against the fundamental right of Canadians to representation. Thus we believe that the deadline for calling and holding a by-election should be set at no more than 180 days from the day the Speaker of the House is informed of the vacancy. This would mean that the maximum period that constituents could be without a representative in the House would be six months, which as we discuss elsewhere is the maximum length of time a constituency should remain unrepresented. Further, the same restrictions on the length of the electoral period that apply to general elections should also apply to by-elections.

The only exceptions would be when a vacancy occurs within six months of the expiration of the time limit for the duration of the House of Commons or when a general election has been called. In both these situations the general election takes precedence over the by-election.

Recommendation 1.3.18

We recommend that

- (a) the provision pertaining to the issue of a writ for a by-election be deleted from the *Parliament of Canada Act*;
- (b) the *Canada Elections Act* require that a by-election be called and held within 180 days of the day the Speaker of the House of Commons is informed of the vacancy;
- (c) the recommended election period of 40 to 47 days apply to by-elections;
- (d) if a vacancy occurs within six months of the expiration of the time limit for the duration of the House of Commons, the provisions pertaining to the issue of the writ for the by-election not apply; and

- (e) if a writ has been issued ordering a by-election to be held on a date after the dissolution of Parliament, the writ be deemed to have been superseded and withdrawn.

REPRESENTATION

Representation in the House of Commons

A generally accepted principle is that every Canadian voter should have an equal opportunity to seek a candidacy for election to the House of Commons. Membership of the House of Commons should therefore provide, on average and over time, a relatively accurate reflection of Canadian society. Although the principles of electoral democracy do not demand that citizens be represented in the House of Commons in a manner that mirrors Canadian society, neither do they assume that citizens will be represented by a political class whose membership is restricted to certain segments of society. All things being equal, the House of Commons should reasonably reflect the country's diversity. All things are not equal, however, if obstacles to participation inhibit and, in certain cases, deter members of certain groups in Canadian society from seeking candidacy.

Sex, race, ethnicity and physical ability must not determine who can enter the political arena. The issue of representation takes on an important symbolic aspect since it contributes to the extent to which Canadians identify with their representative institutions; people who are consistently underrepresented may feel alienated and thus reject institutions that do not allow for the accommodation of their identity. (Breton 1986) The composition of the representative body also affects the type of issues that receive public attention, the priority attached to them on the public agenda, and how and when they receive consideration. This is not to suggest that all matters of public policy have different salience for different demographic segments of society, that opinion on public policy will always divide along demographic lines, or that normative or ideological considerations cannot unite individuals from different segments of society. At the same time, however, MPs elected only from a limited subset of Canadians cannot be said to represent our society fully in all its important dimensions. In this sense, a profile of MPs as a body over time constitutes a valid indicator of the openness, equity and fairness of our electoral process.

An examination of membership in the House of Commons reveals that major segments of Canadian society are underrepresented. Many of these segments have been demanding greater access to the political process for a long time. Over the past two decades, however, particularly in the debate leading to the adoption of the Charter, these demands have achieved greater prominence. Moreover, the Charter has provided a new focus for their demands and a new language of constitutional and political discourse with which to articulate them. (Cairns 1991) This was clearly evident in our public hearings generally and at our symposium on women's participation in federal politics in particular.

Women are the most underrepresented segment of Canadian society. They account for more than 50 per cent of the electorate, yet in 1980 only 5 per cent of MPs were women. In 1984 women accounted for just 9.9 per cent of MPs, and by 1988 the figure had risen to 13.2 per cent (see Table 3.1). Women are underrepresented by 74.1 per cent relative to their demographic weight. In other words, they are only 25.9 per cent of the way to attaining proportional electoral representation. As the Canadian Advisory Council on the Status of Women told us, "Despite modest improvements in the participation of women in public life since the Royal Commission on the Status of Women reported in September 1970, twenty years later we must conclude, as did that Commission, that 'the voice of government is still a man's voice'." (Brief 1990) Not surprisingly, an attitudinal survey has shown that women are consistently less likely to find current arrangements acceptable. (Blais and Gidengil 1991 RC)

Ethno-cultural communities have also been traditionally underrepresented in the House of Commons. It appears, however, that some of these communities have greatly increased their representation. The difficulties inherent in this type of analysis will be discussed later in this chapter.

Using 1986 census mid-term projections, members of ethno-cultural groups reporting either single or multiple origins other than French, British or Aboriginal constituted 21.7 per cent of the population. At the same time, 16.3 per cent of MPs were from these groups (see Table 3.2). Excluding members of visible minorities, who face specific and distinct situations in seeking membership in the House of Commons, the electoral representativeness of ethno-cultural groups exceeds 90 per cent.

Table 3.1
The election of women to the House of Commons, 1980-88

Year	Party	Percentage of MPs	Percentage of population	Percentage of electoral representation
1980	Lib.	8.0	50	10.0
	PC	1.9		
	NDP	6.0		
	Total	5.0		
1984	Lib.	12.5	51	19.4
	PC	9.0		
	NDP	13.3		
	Total	9.9		
1988	Lib.	15.7	51	25.9
	PC	12.4		
	NDP	11.6		
	Total	13.2		

Source: Young 1991a RC.

On the other hand, the situation of visible minorities, who are also defined according to ethno-cultural characteristics, poses a challenge. Defined as "persons, other than aboriginal peoples, who are non-Caucasian in race or non-white in colour", visible minorities accounted for about 6 per cent of the population in 1988 but 2 per cent of MPs, which places their electoral representation at 32 per cent. (Canada, Employment and Immigration Canada 1991, 25) There is some evidence of change as succeeding generations – the children and grandchildren of immigrants – are integrated into the Canadian political community. This does not, however, alter the fact that some communities have remained virtually excluded from the federal political process, despite a longstanding presence in Canada.

Table 3.2

The election of ethno-cultural groups to the House of Commons, 1984–88

Year	Party			Percentage of population		Percentage of electoral representation	
		Percentage of MPs from ethno-cultural minorities (visible minorities excluded)	Percentage of MPs from visible minorities only	Ethno-cultural minorities (visible minorities excluded) ^a	Visible minorities only ^b	Ethno-cultural minorities (visible minorities excluded)	Visible minorities only
1984	Lib.	22.5	0.0				
	PC	13.3	0.0				
	NDP	10.0	10.0				
	Total	14.5	1.1	15.4	6.3	94.2	17.5
1988	Lib.	19.3	3.6				
	PC	13.0	0.0				
	NDP	9.3	7.0				
	Total	14.3	2.0	15.4	6.3	92.9	31.7

Source: Adapted from A. Pelletier 1991 RC.

^aThe criterion used is ethnic origin. Ethno-cultural minorities here exclude British, French and Aboriginal (single and multiple origins).

^bThis percentage results from a special compilation of Statistics Canada census data that combined criteria such as ethnic origin, birthplace and mother tongue to determine if an individual is a member of a visible minority. See Canada, Statistics Canada 1990d.

Aboriginal persons make up about 3.5 per cent of the population of Canada. Since 1960, when Indians living on reserves received the vote, there have been only nine self-identified Aboriginal MPs. Currently, Aboriginal persons make up about 1 per cent of MPs – for a rate of electoral representation of 28.6 per cent. Given the special status of Aboriginal peoples in Canada, the question of their electoral representation is discussed separately in Chapter 4.

Persons with disabilities have also faced major barriers to nomination and election to the House of Commons. Many of the barriers that impede

access by other underrepresented groups have also deterred participation by persons with physical disabilities. For example, the Canadian Association of the Deaf pointed to the escalating cost of seeking nomination: "For the average able-bodied person, [the cost of seeking a nomination for one of the larger political parties and running for political office] is a very expensive gamble to undertake. For a deaf or otherly-disabled person, it is quite frankly prohibitive." (Brief 1990, 3) Persons with disabilities who wish to run for office must incur greater costs than those borne by others, over and above the costs associated with the normal use of assistive devices. Recommendations outlined later in this chapter address the obstacles identified by representatives of persons with disabilities and should help to increase their presence in the electoral process.

These shortcomings in representation have roots in our institutions and in our social and economic structures. It is thus important to understand the sources of these problems as they affect each group to determine whether and to what extent it is possible for electoral legislation to alter these structures and thereby promote more equitable representation.

The Electorate and Voting Preferences

The issue of underrepresentation requires an assessment of whether discrimination exists in Canada's political system and, if so, an indication of what its sources might be. The most obvious starting point is to ask whether these representational deficits result from discrimination by voters against candidates from the underrepresented groups.

We do not have sufficiently strong evidence to answer this question definitively for all groups, but the hypothesis does not appear to be borne out in the case of women. Public opinion polls, survey research on voting behaviour and aggregate analyses of voting patterns do not indicate that voters discriminate against women candidates. Voters do not show a particular preference for male politicians, nor do they appear to vote disproportionately for male candidates. As one study concluded, in similarly placed competitive circumstances women and men appear to perform equally well in election contests. (Hunter and Denton 1984)

This finding may not apply to all underrepresented groups. Representatives of several visible minorities were clear on this point: they affirm that racial discrimination is present in our political system, and that it contributes to the relative exclusion of minorities from elected office. (Simard 1991 RC) Representatives of these groups nonetheless agreed with representatives of women's groups that we should also look for answers earlier in the electoral process, in particular in the candidate selection process. Any discrimination by the electorate is unlikely to be overcome if members of underrepresented groups are unable to reach the starting blocks.

Candidacy and Representation

Evidence from our hearings and research suggests that the process of nominating candidates constitutes the most formidable barrier to members of

underrepresented groups. This is especially true in constituencies where nominated candidates of particular political parties have a good chance of being elected.

The candidate selection process is particularly important because of the high turnover of MPs, through either the defeat or the retirement of the incumbent. This means that there are numerous opportunities for political parties to nominate candidates representing the full diversity of Canadian society and who have a reasonable chance of election. The character and impact of barriers to party nominations therefore warrant examination. The process of candidate selection is addressed in detail in Chapter 5. Other parts of the process, however, have a demonstrable effect on underrepresented groups. These are the focus of this chapter.

Systemic Discrimination

In assessing the underrepresentation of certain segments of society, it is neither useful nor appropriate to assign blame to specific individuals or associations. No factor in the nomination process can be singled out to explain the persistent underrepresentation of some segments of society. Systemic discrimination exists in our society, and there is no reason to believe that political structures are any exception. Measures to address these systemic factors are thus required. This approach assumes that pervasive cultural attitudes and institutional practices have a great impact on certain groups, even if society succeeds in eradicating overt discrimination.

The concept of systemic discrimination, though now widely accepted, is relatively recent. The 1971 U.S. Supreme Court judgement in *Griggs* accepted that the impact of a discriminatory action, rather than its motive, must be used to determine whether discrimination has occurred. The court ruled that when statistical data demonstrated that specific groups were dramatically underrepresented in particular occupations, this outcome, rather than proof of an intention to exclude specific groups, constituted sufficient evidence to conclude that systemic discrimination was present and that remedies were required.

The concept of systemic discrimination is equally well established in Canadian human rights legislation and jurisprudence. The objective of the Canadian human rights legislation is to prevent discrimination rather than punish wrongdoing. This promotes the goal of equal opportunity for each individual to achieve “the life that he or she is able and wishes to have”. The 1987 decision of the Supreme Court of Canada in *Action Travail des Femmes* clearly indicated that the emphasis on discriminatory effects rather than intent was central to the *Canadian Human Rights Act*. In other words, the Supreme Court judgement underscored that a focus on whether there was intent to discriminate did not adequately deal with the many instances where the effects of policies and practices are unintentionally discriminatory.

This discrimination does not necessarily mean lack of compliance with the law; rather, it often signals that unintentional – or systemic – factors

are at play. Discrimination often emanates from deeply ingrained cultural attitudes and practices; they may be unintentional or unacknowledged, but they systematically devalue members of certain social groups. Moreover, section 15(2) of the Charter on affirmative action programs provides that "any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups" would not constitute a contravention of the equality rights guaranteed in section 15(1). This is an explicit recognition that equal laws can result in inequality if applied to persons in unequal circumstances.

This approach to discrimination acknowledges that societies and institutions adopt laws and practices that may have unintended or undesired effects on particular groups and that, when these effects can be shown to have occurred, positive steps can reduce and eliminate their discriminatory dimensions. In examining the underrepresentation of women and others in Canadian politics, we have therefore given considerable weight to the outcome of processes such as candidate selection and elections.

Ethno-Cultural Minorities and Participation in the Political Process

Relatively little research has been devoted to the political integration of racial and ethno-cultural minorities in Canadian society. A clear understanding of this situation is complicated by the difficulties associated with defining ethnic identity and using Statistics Canada census data. The definition of ethnicity is generally accepted to be based on objective criteria such as shared language, religion and culture and on subjective criteria that identify these characteristics. Furthermore, the identity of an ethnic group results from its relations with other groups, that is, the notion of 'we' and 'they'. Thus, as a result of these interactions, the boundaries of ethnicity tend to evolve over time.

To determine the size of the Canadian ethno-cultural population, the census relies on self-identification to classify individuals into ethno-cultural groups. As a result, two individuals belonging to the same ethno-cultural community according to objective criteria would not necessarily be classified as belonging to the same ethno-cultural group if they responded differently to the census questionnaire. A second limitation in the data is that the choice of variables that refer to the objective and subjective criteria and the questions used to collect census data have undergone significant changes over time, which some people have suggested could ultimately affect the validity of meaningful comparisons. However, as Herberg observed, "the degree of comparability is not so variant that it seriously interferes with the use of census statistics relating to a particular ethnic factor". (1989, xviii)

A final methodological point worth noting in assessing the performance of ethno-cultural communities in the electoral system is determining who is an ethno-cultural candidate or MP. In the research conducted for us, the classification of a candidate or an MP as belonging to an ethno-cultural group relied on a set of multiple criteria including place of birth, religion, language,

ancestry and participation in an ethnic association. (A. Pelletier 1991 RC) It is important to note that our research assumed, based on this classification, that the individual still identifies himself or herself as an ethnic individual, which (1) may not necessarily be the case and (2) may not be related to his or her desire to act as a representative or spokesperson for ethno-cultural groups.

From the early days of Confederation until the 1960s, members of many ethnic and racial groups were virtually barred from entering the country by an "explicitly racist and restrictive immigration policy". (Stasiulis and Abu-Laban 1991 RC) Further, and for almost as long a time, many racial groups were excluded from politics through the denial of the franchise or exclusion from candidacy. In some cases, these exclusions lasted until the middle of this century.

Our public hearings and research revealed that many ethno-cultural groups have profound feelings of alienation in both their access to the vote and their participation in political parties and elected office. These findings echo the report of the parliamentary committee on the participation of visible minorities in Canadian society (Canada, House of Commons 1984), which lamented the low rate of political participation among members of visible minorities. It stressed the lack of information on the electoral process, the desire of visible minority groups to engage in greater participation and the desire of parties to include them to a greater extent in their activities.

Participation in the Electoral Process

Interveners and members of visible minorities interviewed in the course of our research emphasized several factors to explain their absence from the electoral process. Chief among these was that the current enumeration process misses many members of visible minority groups because of language barriers and the hesitancy or reluctance of members of these communities to participate in a process they do not fully understand. Even if members of visible minority groups are enumerated, language difficulties and lack of understanding of the electoral process still act as impediments to voting. As Deborah Wong told us at our public hearings, "Language barriers and cultural differences ... may tend to alienate ethnic minorities from ... Canadian society, and maybe the democratic process as well.... I am concerned about them being part of our system and feeling comfortable, as well as making sure they understand the electoral process and voting." (Calgary, 22 May 1990) To overcome some of these problems, we recommend in Volume 2, chapters 1 and 2, several changes to registration and voting.

To participate in the electoral process, a voter should be a citizen. Canadian citizenship is obtained after three years of residence. This prerequisite to participate in the electoral process is liberal compared with that of many countries. This prerequisite remains important as a necessary transition period to permit new immigrants to become more familiar with the Canadian political culture. This period should be perceived as the first step to increase the political competence of members of ethno-cultural groups

regarding the Canadian political system. Simard concluded, based on extensive interviews with members of several visible minority communities, that it was necessary to increase the political competence of members of visible minorities – that is, to develop a better knowledge of the Canadian political system and the electoral process – to increase their participation in the voting process. (1991 RC) As she pointed out, the lack of political competence of visible minorities may be accentuated by linguistic barriers, lack of information, individual level of motivation, as well as by some internal factors such as religious differences and economic disparities or by the undemocratic background of the immigrant. This analysis underscores the importance of the role that education can play.

In this regard, an examination of the written information provided to immigrants seeking Canadian citizenship is revealing. Overall, it suffers from a lack of comprehensive description of our electoral process; of the democratic values embodied in our electoral laws, which channel and give substance to the behaviour and actions of political parties, candidates and Members of Parliament; and of the rights of citizens and the democratic responsibilities they are expected to fulfil.

Clearly, the education and language skills of prospective citizens have a direct bearing on these issues; but this does not remove the onus from immigration policies and programs to give prospective citizens the means to understand their new political structure and electoral system. Our obligation to new immigrants should not end with the decision to admit them to the country. Indeed our survey of citizenship judges revealed that better, more comprehensive and systematic educational programs for immigrants would facilitate and hasten their participation in the electoral process.

Our recommendations aim to enhance the participation of new Canadians in the registration and voting process. This objective would be much easier to achieve, however, if greater and more systematic efforts were made to give new Canadians the opportunity to acquire a better understanding of the process right from the beginning of their lives in Canada.

Representation Within Political Parties and the House of Commons

Although many presentations to the Commission focused on making the vote more accessible to members of ethno-cultural communities, increased representation of visible minorities within political parties and in the House of Commons was also a concern.

Even after the right to vote and to stand for election was granted to ethno-cultural groups, the number of MPs from these groups remained small and their influence limited. This limitation is vividly captured in the tragic situation faced by two Jewish MPs of the 1930s, Sam Jacobs and Sam Factor, whose efforts to open Canada's borders to victims of Naziism were ignored by the King government. (Abella and Troper 1982, 14–15)

Between 1867 and 1964, fewer than 100 of the thousands of MPs elected were of an ethnic origin other than French, British or Aboriginal. Those

few elected were largely of German, Ukrainian or Jewish origin. During this period, only two MPs were from visible minority groups. (Canada, Royal Commission 1970a, 282) Since 1965, representation of ethnic groups has been rising steadily: 121 MPs of other than English, French or Aboriginal origin have served in Parliament. Of these, more than 70 per cent were of Jewish or northern and eastern European origin (see Table 3.3). This is explained in large part by: (1) the demographic weight of Canadians of European descent, which exceeds 60 per cent, (2) the fact that for the most part they immigrated before 1967, and (3) the fact that, for many, their cultural heritage, political background and language helped accelerate their integration into Canadian society.

Table 3.3

Members of the House of Commons from ethno-cultural groups, by origin, 1965–1988

Ethnic origin	Number of MPs
Southern European	22
Northern and Eastern European	72
African and Arab	5
Asian, Indian, Filipino	3
Latin-American, Haitian	2
Black	2
Jewish	13
Australian, New Zealander	2
Total	121

Source: A. Pelletier 1991 RC.

In the period 1965–1988, 10 of the 121 MPs from ethno-cultural groups were from visible minority communities. (A. Pelletier 1991 RC) The Canadian situation compares favourably with that in England where no member of a visible minority has been elected since the Second World War. (Anwar 1986, 98) In the 1983 British general election there were 18 candidates from visible minorities but none were elected. (Anwar 1986, 104; Fitzgerald 1983, 394) In Canada, there were 29 candidates from visible minorities in the last general election and six became MPs. The representation of visible minorities in the United States more closely resembles our own situation. In 1991, the electoral representativeness – that is, how the percentage of elected officials from the minority group compares with the percentage of that group in the general population – of Blacks in the House of Representatives stood at 50 per cent and that of Hispanics at 33 per cent. (Interviews with Joint Center for Political Studies, Washington, DC; Congressional Black Caucus, Washington, DC)

Over the past decade, the three largest political parties have demonstrated increased sensitivity to the cultural diversity of the electorate, and to the need to include members of all ethno-cultural groups in their ranks and among their candidates. The Liberal and New Democratic parties have set up permanent internal structures for representing ethno-cultural groups, with a mandate to increase the participation of minorities in their party. All three parties have nominated greater numbers of candidates from racial and ethno-cultural minorities, in many instances in constituencies where the relevant group is present in large numbers.

In general, ethno-cultural groups are now relatively well represented in the House of Commons. Visible minorities, however, remain an exception. To what is this exception attributable? Several factors have been suggested: latent or overt racism; the cost of pursuing a nomination; negative media coverage; and the lack of sufficient party support. We cannot underestimate the impact of these factors; they obviously limit the ability of members of visible minorities to participate fully in the electoral process. In particular, we must highlight the role of the media in reinforcing the exclusion of visible minorities from the wider political process. In her research, Eileen Saunders found a clear pattern of exclusion in media coverage: "(i) minorities are underrepresented in the media; (ii) when present, minorities are represented in a limited range of roles, and those are usually characterized by their marginal status; (iii) minorities are represented as being different, whether in terms of basic personality characteristics or general aptitude for particular social roles; and (iv) alternative or oppositional definitions of their situation, emanating from minority groups themselves, receive little play in the media". (Saunders 1991 RC)

Some factors, such as the marginalization of visible minorities in media coverage, are unacceptable, and sustained efforts to change them are required. Others, however, must be assessed against the backdrop of the changing composition of Canadian society.

A recent report from the Economic Council of Canada documents how Canada is rapidly becoming much more ethnically diverse. (Economic Council of Canada 1991) During the 1980s, Canada received 1.25 million immigrants, most of whom were members of visible minorities. Since the mid-1960s, the pattern of immigration has shifted dramatically, as shown in Table 3.4. Although Europeans once dominated immigration, the emphasis has now shifted to immigration from Asia, the Caribbean, and Central and South America.

New immigrants face major cultural, political, social and economic change: finding work and a position in Canadian society naturally takes precedence over an interest in political participation. Research shows that there must be a certain degree of social mobility within a group to favour the emergence of ethno-cultural candidates. As Wolfinger pointed out: "Middle-class status is a virtual prerequisite for candidacy for major office; an ethnic group's development of sufficient political skill and influence to secure such a nomination also requires the development of a middle class". (1974, 49) This factor contributes to understanding the representative strength

of ethno-cultural communities, especially those of European origin whose class status, according to the 1986 census, is comparable to that of French and English Canadians. Some visible minority groups, because of their more recent immigration, have not achieved comparable economic status. We also must acknowledge that social and economic integration do not in themselves lead to political integration. The lack of political interest, at least at the outset, is reinforced by the fact that some immigrants may be disinclined to participate in politics. This is particularly true of those from countries with oppressive political regimes or non-democratic political cultures. Further, and closely related to social integration and political participation, two-thirds of visible minority group members are first-generation Canadians. Thus, it is clear that the process of adaptation and integration of Canada's new immigrants into the social fabric will generally be characterized by a transition period.

This transition period should be seen as a collective phenomenon that does not preclude the nomination of first-generation members of cultural groups. For instance, between 1965 and 1988, only 28 per cent (34/121) of MPs from ethno-cultural groups were born outside Canada. In 1984, this rate stood at 32 per cent (14/44) and in 1988 it rose to 42 per cent (20/48). For MPs from visible minorities, this rate was 40 per cent (4/10) between 1965 and 1988 and 67 per cent (4/6) in 1984 and 1988. (A. Pelletier 1991 RC) This individual pattern does not, however, obviate the prerequisite for a transition period. The fact that there is a high rate of ethno-cultural MPs born outside Canada is a good indication that they are facing fewer barriers than in the past. The period between immigration into Canada and nomination as a candidate will vary from one individual to another and depend on ethnic origin, age and other factors such as economic and social factors.

Table 3.4
Immigration patterns for Canada, 1986
(per cent)

Country / region of birth	Percentage of total	Period of immigration
Europe	62.3	65% before 1967
Asia	17.7	44% after 1978
United States	7.2	—
Caribbean and Bermuda	5.0	59% between 1967 and 1977
Central and South America	3.8	62% after 1978
Africa	2.9	56% between 1967 and 1977
Oceania	0.9	68% between 1967 and 1977
Other	0.2	—
Total immigrant population	3 908 150	

Source: A. Pelletier 1991 RC. Adapted from Statistics Canada 1986 census data.

Table 3.5
Representation of visible minorities in the House of Commons, 1965–1988

Election	Census	Visible minorities only		
		MPs (N)	MPs (%)	Population (%)
1988	1986	6	2.0	6.3
1984	1986	3	1.1	6.3
1980	1981	4	1.4	3.9
1979	1981	3	1.1	3.9
1974	1971	3	1.1	2.3
1972	1971	2	0.8	2.3
1968	1971	2	0.8	2.3
1965	1961	0	0.0	2.0
—	1951	—	—	1.9
—	1941	—	—	1.2
—	1931	—	—	1.1
—	1921	—	—	1.2
—	1911	—	—	1.3
—	1901	—	—	1.4
1965–1988	—	10	—	—

Sources: A. Pelletier 1991 RC; Canada, Statistics Canada 1990d; and 1961, 1971 and 1981 census data.

Note: The 1984 and 1988 figures are based on the 1986 census, which for the first time provided a definition for visible minorities. For all other censuses, because there is no special compilation of data on visible minorities, we used only the ethnic origin criterion; here we excluded British, French, Aboriginal and European (single and multiple origins, which are compiled only for the 1981 census). If the same methodology were used for the 1986 census, the percentage of visible minorities in the population would be 5 per cent rather than 6.3 per cent.

Collectively, the political integration of members of visible minorities appears to span roughly one generation. As Table 3.5 shows, the 1988 representation of visible minorities in the House of Commons (2.0 per cent) corresponds to their representation in the Canadian population at the time of the 1965 general election. In other words, between 20 and 25 years elapsed before visible minority groups achieved representation equal to their demographic weight in 1965 in the House. This gap was more accentuated previously. Thus although current figures point to their underrepresentation, the situation should be seen in the context of the political integration process and the time required to complete it. Moreover, the years needed to achieve representation in proportion to numbers appear to be shrinking. As noted by Stasiulis and Abu-Laban, "some of the barriers that are associated with immigrant status in a new country disappear or lessen for second and further generations". (1991 RC) Their research suggests that the second generation does not encounter barriers to participation in political parties and that

the party youth organizations tend to reflect the diversity of the institutions (such as universities) in which they are situated. This accelerated integration is also imputable to an increased openness in Canadian society, including on the part of political parties and the electorate the heightened willingness and interest of members of visible minority communities to participate in the political process of their new society, and the growing number of visible minority MPs who serve as role models.

This pattern by no means suggests that difficulties for members of visible minority groups in seeking representation can be dismissed on the grounds that, over time, they tend to disappear. We must recognize that the dynamics of political integration appear to be hastening the inclusion of members of visible minorities in the political process as they did for members of other ethno-cultural groups. Unrelenting efforts to eradicate racism from our society must be sustained. At the same time, ensuring that members of visible minorities have full access to the voting process, become more familiar with the Canadian political system, benefit from less biased media coverage and have access to a fairer nomination process is crucial in improving their participation. The electoral reforms we propose, taken in their entirety, should eliminate many of the barriers confronting members of minority communities, and facilitate and promote their access to the democratic process.

Women and Underrepresentation

Profile of Women Candidates and MPs in the 1988 Election

Women are clearly underrepresented in the House of Commons, but it is not so clear how to assess the relative importance of the barriers that are said to explain this inequity. Any attempt to redress the current situation should be based on a solid empirical assessment of the effect of these barriers. A description of the current situation is a useful starting point.

What can be said about the background of the women in the House of Commons – their education, their occupation and their political experience? How does this profile differ from that of the men in the House, from that of women who ran unsuccessfully for a seat, from that of women active in municipal politics or from that of women in general? Our analysis is based on a comparison of the biographical profiles of candidates for the three largest political parties who contested a seat in the 1988 election with the profiles of all members of the House of Commons. Although not discussed here, it is clear that differences exist among the parties in the educational, professional and other characteristics of the candidates and elected members.

Women and Men in the House of Commons A much larger proportion of male as compared with female MPs are married (95 per cent compared with 68 per cent) and, on average, male MPs have more children (indeed, a major percentage of female MPs have no children). The age profiles of men and

women in the House are generally similar, although more female MPs are concentrated in the 40–49 category than in the younger or older groups. The professional and educational backgrounds of male and female MPs are also similar. Virtually the same percentage of men and women in the House have a university degree. In their training and professional profiles, relatively more female MPs have a degree in the social sciences and relatively fewer a degree in engineering. There are relatively fewer lawyers among the female MPs but more with a background in business. Both groups of MPs appear to have had similar levels of experience in politics at the provincial and municipal levels.

Women Candidates for the House of Commons Compared with women MPs, unsuccessful female candidates in the 1988 election were younger and had slightly fewer children. The unsuccessful candidates had a similar profile for university training, with a somewhat greater emphasis on studies in social sciences and less on economics and business administration. They also had a somewhat different professional profile, with fewer in law and business and more in education, administration and social services. The unsuccessful candidates more closely resembled the profile of the general population of female professionals. A final important difference concerned the lack of political experience for unsuccessful candidates. Less than 1 per cent of these women had a background in municipal politics (compared with 8 per cent for female MPs), and only 9 per cent had experience at the provincial level (compared with 15 per cent for female MPs).

MPs and the General Population To what extent are the members of the House representative of the population in general? In several respects, the profile of MPs differs considerably from that of the general population. For example, and perhaps not surprisingly, the 25–39 age group is substantially underrepresented in the House, and the 40–49 group is overrepresented. One interesting difference between women and men is that women over the age of 50 are underrepresented among female MPs, and men over 50 are overrepresented among male MPs.

Roughly 65 per cent of the working-age population is married, with only a small difference between men and women. The percentage of married women MPs is roughly similar; but the proportion of married men MPs is much higher, underscoring the availability of strong family support for men and the difficulties facing women in combining a political career with family responsibilities.

It is difficult to compare the occupational profile of MPs with that of the general population. There are no MPs who fall into the occupational category of workers or clerks, who constitute approximately 60 per cent of the general male and female labour force. On the other hand, 13 per cent of female MPs and 15 per cent of male MPs are lawyers; yet lawyers make up only a fraction of 1 per cent of the total population. Overall, it is clear that

the law and business categories are overrepresented in the House, among both women and men MPs, with underrepresentation among male MPs of the agriculture–fisheries category, and of the health care category among women MPs.

Barriers to Entry

Witnesses before the Commission and our research studies identified several barriers impeding women's access to candidacy and to the House of Commons. Some of these barriers relate to broad social phenomena; as important as these factors are, they do not lend themselves to solutions by institutional or legal reform of the electoral system. For example, a frequently cited factor is the effect of sex role socialization: women have been socialized to see politics as an unsuitable, even undesirable, vocation. This is reinforced by the relative scarcity of female role models. A recent survey of adolescents revealed that young men were much more interested in politics than were young women. This distinction begins as early as high school when almost 50 per cent of males, but only 33 per cent of females, indicate an interest in politics. (Hudon et al. 1991 RC)

Among the structural barriers identified, however, two are paramount. The first is the cost of the nomination process; the second is the lack of concerted efforts by political parties to support women seeking nominations. Although the two are clearly interrelated, we analyse them separately.

Financial Barriers During our hearings, at the symposium on women in federal politics and in surveys, women identified cost as the most formidable obstacle to nomination. The impact is usually greater on women because they are generally at a financial disadvantage relative to men, and particularly because women are more likely to find themselves in an expensive contested nomination: 47 per cent of women faced contested nominations, compared with 31 per cent of men in the 1988 election. (Erickson 1991 RC) They also receive fewer and smaller donations than men. As Judy Erola, a former federal cabinet minister, stated at our research symposium on women in federal politics: "I think we have to move ... to make donations to nominations legitimate tax credits.... In that way you are going to be able to get women to donate to women. They still don't make enough money but, if they can get a tax credit, they are more likely to do so." (Symposium on the Participation of Women in Federal Politics, 1 November 1990)

Women appear to lack the professional or social contacts needed to build financially competitive campaign organizations. This is illustrated by the characteristics of official agents; according to research conducted for the Commission by R.K. Carty (1991a RC), female candidates are less likely than men to have a professional as their official agent. The author of a study of women candidates for the Liberal Party in the 1988 election concluded: "The obstacles that women in the Liberal party faced in the 1988

election are systemic rather than openly discriminatory. The financial burden of an expensive nomination campaign ... [creates] more of an obstacle for women than for men ... who on the average have a higher income and more access to campaign funds [and] are in a better position to finance an expensive nomination." (Leduc 1990, 43)

This conclusion was confirmed by Janine Brodie in a survey of 47 women candidates for the three largest parties in the 1988 election. Funding outweighed all the other factors that these women considered major barriers to nomination and to candidacy. In fact, more than 90 per cent of these women suggested that Parliament should set limits on the amount spent during nomination contests; some 80 per cent suggested that the limit be less than \$5000. (Brodie 1991 RC)

One factor that imposes an unequal financial burden on women seeking elected office is the cost of child care. Taxpayers can deduct the cost of child care required to earn income from employment or a business or to take an occupational training course. The deduction is not permitted, however, in the expenses incurred to seek nomination or be a candidate. For candidates responsible for the care of their children, child care is a necessary expense – one that they must incur if they wish to seek nomination and election.

Party Support Over the past two decades, and further to the recommendations of the Royal Commission on the Status of Women in Canada (1970b), women's groups inside and outside political parties have pressured parties to become more representative. The three largest parties have responded in some measure to these demands. Women's commissions are now guaranteed representation on the governing bodies of each of the party organizations, as well as at policy and leadership conventions. The NDP has given its governing bodies the mandate of equal representation of women and men. All three parties have established funds to assist women once they are nominated: the Ellen Fairclough Foundation of the Progressive Conservative Party (1983), the Judy LaMarsh Fund of the Liberal Party (1984), and the Agnes MacPhail Fund of the New Democratic Party (1986). These funds provide modest assistance – between \$500 and \$1500 – to women candidates, many of whom have used the grant for child care expenses. The leaders of these three parties have also given increased attention to women's issues, including specific policies for women in the parties' electoral platforms, and participated in the televised 1984 leaders debate on issues of concern to women.

Since 1989 the Ontario NDP has had affirmative action guidelines for nominating and electing members of specific target groups. The objective was to set aside a specific group of 'priority' constituencies of which 75 per cent would be targeted for candidates from affirmative action groups: women, members of visible minorities, persons with disabilities and Aboriginal people. In the 1990 Ontario election, 27 per cent of the NDP members elected were women, double the percentage of women in the House of Commons.

At its 1991 convention, the federal New Democratic Party became the first large national party in North America to adopt a policy to promote the nomination of women candidates in a specified number of constituencies. The objective of the policy is to have women candidates in at least 50 per cent of constituencies.

Despite these initiatives, and in some cases strong statements by the leaders of all three of these parties on the importance of attracting more women into the political process, progress has been slow. This is true for the participation of women within political parties and the number of women seeking candidacy. The national leaders have called for broader representation, but local associations often appear reluctant to field women candidates. (Brodie 1991 RC) Constituency associations have considerable influence in the selection of candidates. Initiatives by the leadership to nominate women candidates are sometimes opposed by the executive of local associations on the pretext that such a decision would be "undemocratic". This tends to occur in relatively safe constituencies, hence compounding the problem.

The ideal index of local party support for women candidates would be to compare the number of women who ran for nomination to the number who became candidates and to the number who were elected. Unfortunately, statistics on the former are not available. A good index is the propensity of parties to nominate women in 'losing' or 'unwinnable', as opposed to 'safe' or 'winnable', constituencies. Lynda Erickson reports that in 1988, 30 per cent of all female candidates stood for election in constituencies considered winnable for their party, compared with 51 per cent of all male candidates. (1991 RC) These figures, based on a party's past performance in a constituency, are lower than the figures provided by constituency associations to assess the electoral chances of a candidate in their constituency. According to the local associations, 62 per cent of women candidates were in winnable seats, compared with 67 per cent of male candidates. Comparisons of the number of women candidates and the number of women elected in recent elections appear to indicate that in the Progressive Conservative and Liberal parties, the gap is shrinking. In 1988, women represented 12.5 per cent of all candidates for the Progressive Conservatives and 12.4 per cent of that party's MPs (see Table 3.6). This is attributable in part to the strength of the party's electoral victory; but the success of women candidates for the Liberals suggests that the national parties are making concerted efforts to nominate more women in winnable constituencies.

Women's Role in Political Parties Within political parties, women continue overwhelmingly to occupy the lower rung or pink-collar positions. As shown in Table 3.7, except in the case of constituency secretary, women rarely account for more than 30 per cent of executive positions, election campaign managers or candidates' agents. This confirms the conclusion of previous research on women's party involvement: the higher the position, the fewer

women occupy it; and the more competitive the party in the constituency, the fewer the number of women involved in the local party association. As Bashevkin concludes, "Women's numerical representation in [political institutions] tends to be inversely related to both the level of party activity and to the competitive position of a party organization." (1991 RC)

Table 3.6

Women: candidates and elected, general elections of 1980, 1984 and 1988

Year	Party	Women candidates (N)	Women candidates as percentage of all candidates	Women elected (N)	Women elected as percentage of all elected
1980	Lib.	23	8.2	12	8.0
	PC	14	5.0	2	1.9
	NDP	32	11.4	2	6.0
	Total	69	8.2	16	5.0
1984	Lib.	45	16.0	5	12.5
	PC	23	8.2	19	9.0
	NDP	64	22.7	4	13.3
	Total	132	15.6	28	9.9
1988	Lib.	51	17.3	13	15.7
	PC	37	12.5	21	12.4
	NDP	84	28.5	5	11.6
	Total	172	19.4	39	13.2

Source: Young 1991a RC.

Table 3.7

Sex of constituency association and campaign position holders, 1988 election
(per cent)

	Male	Female
Constituency association president	80	20
Constituency association treasurer	67	33
Constituency association secretary	32	68
Election campaign manager	72	28
Election candidate's agent	79	21

Source: Carty 1991a RC.

Entry to Politics Another troubling question is why so many fewer women than men seek nomination. Several factors appear to be at work here.

Based on the socio-economic analysis presented earlier, it is clear that family responsibilities, still shouldered largely, and as a prime responsibility, by women, deter many competent and interested women from seeking

office at least until their children are older. A second factor is that women tend to have less employment security and thus face a greater potential impact if they lose their bid for public office at the nomination stage, as a candidate or following one term in office. As the Canadian Advisory Council on the Status of Women noted, "One of the most obvious financial costs associated with running for elected office is the risk to employment. Many women cannot afford to gamble their jobs on the chance of winning an election." (Ottawa, 11 June 1990)

Finally, it is clear that some women are deterred by the differential media treatment they receive as political contenders. Our research showed that although the coverage of women in politics has improved over the last two decades, it remains stereotyped, focusing much more often on women's appearance, personal life and opinions about specific issues such as abortion. (Robinson and Saint-Jean 1991 RC)

Comparative Experiences Women's persistent underrepresentation in politics has prompted different reactions in several countries to redress the problem.

The United States, for instance, is an international leader in affirmative action to increase the participation of women and racial minorities in educational institutions and the workplace; it has not, however, adopted a similar approach to improving its political representation, despite a very weak record in electing women. Women currently make up only 5 per cent of members of Congress and 18 per cent of state legislators. Given the vast sums of money required to contest an election in the United States, attempts to achieve better balance in the representation of women have come largely through the efforts of private groups and political action committees, which have raised money for prospective candidates. They include Americans for Democratic Action, the National Organization of Women, the National Political Congress of Black Women, the National Women's Political Caucus Victory Fund, the Women's Fund and the Fund for a Feminist Majority. Despite their efforts, such groups have been unable to reverse the historical legacy of underrepresentation of women in U.S. politics.

The most stringent measures and highest proportion of women among elected representatives are found in the Scandinavian countries. Many have attributed the strong showing of women in these countries (see Table 3.8) to their electoral system, which is based on proportional representation. Many advocates of proportional representation claim that it increases women's representation. International comparisons reveal, however, that the relationship is more complex than this.

Although some countries with proportional representation systems, including Sweden, Denmark and Norway, have a higher proportion of women representatives, others, including Italy, Belgium and Spain, have a smaller percentage of women representatives than countries with a plurality system. The evidence shows that proportional representation is neither

a necessary nor a sufficient condition for achieving more equitable representation. The evidence from countries where women are now a strong force in elected politics is that the presence of mandatory requirements within political parties, as an explicit and immediate corrective to the historical underrepresentation of women, has been the principal cause of greater women's representation.

Table 3.8
Female representation in lower houses of legislature, international comparisons, 1988

Country	Percentage
United States	5.3
Australia	6.1
Great Britain	6.3
France	6.4
Spain	6.4
Portugal	7.6
Belgium	8.5
Switzerland	10.2
Italy	12.8
Canada	13.2
New Zealand	14.4
West Germany	15.4
Netherlands	20.0
Denmark	29.0
Sweden	30.9
Finland	30.5
Norway	34.4

Source: Data supplied to the Commission by Janine Brodie.

In Norway, for example, the number of female legislators jumped from 15.5 per cent in 1975 to 34.4 per cent in 1985 after the Norwegian Labour Party adopted a rule in 1983 requiring that at least 40 per cent of each sex be represented in all nominations and all elections. The Swedish Democratic Party followed Norway's example with the adoption of a 40 per cent rule. There, too, the results were immediate. Between 1975 and 1985, the proportion of women in the Swedish lower house increased by 10 per cent.

The social democratic parties of Denmark and Germany adopted mandatory requirements for representation on party electoral lists. Socialist parties in Portugal, Austria and Belgium have adopted a 25 per cent minimum, and their counterparts in France and Italy adhere to a 20 per cent rule. Last

year, the French socialists increased their mandatory requirement for the representation of women to 30 per cent.

These findings suggest that it is the presence of mandatory requirements, rather than a proportional representation system, that has made a discernible difference in female representation in European politics. At the same time, it is also the case that proportional representation systems help national parties ensure women's representation because they can generally exert control over the lists of candidates. If the national parties decide to, they can present a slate of candidates that includes a minimum proportion of women. In other words, proportional representation provides a tool that may facilitate the election of women, but its success requires that a political party be committed to gender equality in representation. The decentralized approach to nomination in Canada makes it more difficult to ensure this objective is realized, because it requires the full commitment and co-operation of local associations. Nominations, moreover, generally result from open conventions; such a competitive process does not lend itself easily to pre-ordained results.

Toward Equitable Representation

Experience in Canada and elsewhere demonstrates that providing equal rights in constitutional law does not in itself secure fair and equitable outcomes, even when the aptitudes of the contenders are comparable. Of course, when individuals of varying aptitude and interests are provided with similar opportunities, disparities will result. In certain domains, such as the economic sphere, liberal societies accept this outcome, although they often adopt policies in the pursuit of equality. In the political sphere, however, the gap that exists between equality on the one hand and fairness and equity on the other must be closed. Formal equality under the law does not automatically erase systemic discrimination. Recognizing this fundamental reality, many countries now adhere to the principle that it may be necessary to treat some groups differently to achieve a greater measure of political equality. As the Supreme Court of Canada noted in an important Charter case, "... the interests of true equality may well require differentiation in treatment". (*R. v. Big M Drug Mart* 1985)

Canada's obligation to pursue political equality stems from at least two sources: our international obligations as a member of the United Nations and a signatory of international rights agreements and our own constitutional provisions in the Charter.

The *International Covenant on Civil and Political Rights*, a document drawn up under the auspices of the United Nations, has been in force for Canada since 19 August 1976, when Canada became a signatory after unanimous agreement of the provinces and the federal government. Article 3 of the Covenant provides that:

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

And article 25 provides that:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 [race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status] and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections....

A second United Nations document is the *Convention on the Elimination of All Forms of Discrimination Against Women*, to which Canada became a signatory on 9 January 1982. The Convention provides in article 7 that:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure, on equal terms with men, the right:

- ...(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.

Special measures are an acceptable means of achieving equity in representation. Section 15 of the Charter provides that:

1. Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
2. Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Section 15 of the Charter provides for the possibility of special measures to address problems of systemic discrimination, and the Supreme Court of Canada has approved employment equity remedies to redress historical inequities resulting from systemic discrimination.

Parliament has also enacted legislation such as the *Employment Equity Act*, whose purpose is to promote equity in the workplace. The Act states that the principle of employment equity "means more than treating persons in the same way but also requires special measures and the accommodation of differences". Further, at the federal level and in some provinces, companies with a certain number of employees must implement an employment equity program to bid on government contracts.

The Supreme Court of Canada has also linked equality principles to the idea of representation in the legislature. (Carter 1991) The Court has recognized that the values and principles animating a free and democratic society – including equality – place effective representation at the heart of the guarantees in section 3 of the Charter.

The Court stressed that respect for individual dignity and social equality, and the need to recognize cultural and group identity and enhance the participation of individuals in the electoral process, all have a bearing on the interpretation of the section 3 guarantees. All of these concerns support measures that would enhance the participation of women in elected assemblies.

These precedents, the understanding of equality on which they are based, and the substantial body of evidence on the underrepresentation of certain groups in Canada's legislatures require that we consider positive steps for the right to candidacy. The persistent underrepresentation of certain groups can be positively linked to the practices of national political parties, particularly their local constituency associations, which function as gatekeepers of access to candidacy for most Canadians who belong to or share the values of these parties. Despite efforts in good faith by people in these parties to correct representational imbalances, the results have come up short; we are thus left to conclude that other forces must be at work. The absence of effective provisions for the nomination of candidates is a regrettable shortcoming of the current electoral law.

In Chapter 5, we consider the role of political parties in greater detail. We consider their status under the law and their public responsibilities for the health of our democratic system. It is our objective to strengthen the role of political parties as the primary political organizations of democratic representative government. In pursuing this objective, we recognize their essentially volunteer character. At the same time, as organizations registered under electoral law that receive substantial public financial support, political parties have public responsibilities in some critical respects. They are not state institutions, but neither are they purely private.

One of the most critical functions of political parties is to recruit, select and nominate candidates. This process has a major impact on the extent to which Canadians' equal right to candidacy is realized. To secure a meaningful right to candidacy, electoral law must address certain critical aspects of candidacy, including the cost of seeking a nomination and the selection process itself. These include the following matters.

The Financing of Nomination Contests

The cost of seeking a nomination is considered a barrier to candidacy for those underrepresented in the electoral process. Political parties are not equally competitive in all federal constituencies across Canada; each party has a reasonable chance of electoral success in only some constituencies. Party nominations in these constituencies are naturally more appealing, and therefore more competitive, than in constituencies where a party is

weak. If the selection process is to ensure better representativeness among candidates, there must be reasonable opportunities to secure nominations in competitive constituencies. In other words, steps are required to ensure that nomination is accessible in constituencies where there is a chance of being elected.

Research shows that in constituencies where a party is competitive, substantial sums of money and other resources are often needed to win a nomination. Other things being equal, individuals who do not have access to a network of contributors have less capacity to wage a competitive nomination campaign. (Carty and Erickson 1991 RC) In these instances, the candidate selection process cannot be said to be fair to all prospective contenders.

Candidate selection thus stands in contrast to the electoral process. The Canadian experience since 1974 has demonstrated that costs can be checked effectively by electoral law through limits on campaign expenditures by candidates and political parties. Equally important, as discussed in Volume 1, Chapter 6, this experience has also shown that the competitive character of the electoral process is not diminished by such limits; if anything, competition has been stronger since 1974. Our experience with tax credits for political contributions demonstrates further that fair and reasonable access to the financial resources necessary to mount an effective campaign can be enhanced while the responsibility of candidates to secure the funding necessary to conduct a campaign is maintained.

The lessons of this experience, together with evidence from provinces with similar provisions, are instructive as we consider how to attack systemic discrimination in the political process. To date, Canada's electoral law has not drawn on these lessons to enhance fairness in nomination contests, and the political parties and their local associations have been slow to respond to pressure from within. Only 15 per cent of local associations in the 1988 survey had set spending limits on nomination races. The *Canada Elections Act* does not apply to nomination contests;² no spending limits are imposed, and those seeking a nomination cannot issue tax receipts to their contributors.

Competition has a dramatic effect on the level of expenditure. Commission research shows that in constituencies that were highly competitive or when competition intensified, the level of expenditure was much higher than in less competitive constituencies. (Heintzman 1991 RC) Further, the absence of spending limits means that an individual seeking a nomination cannot estimate precisely, or even approximately, how much money will be needed to wage a competitive campaign. This uncertainty is a deterrent to many who might wish to seek nomination. As MP John Manley told the Commission, the possibility that they will have to spend large amounts of money to contest a campaign is a "deterrent factor to people ... who are not in a position to raise a lot of money.... I think [the selection process] is too important just to be left to the parties and that limits should be imposed and disclosure of contributors should be part of that as well." (Ottawa, 13 June 1990) One other function of spending limits during general elections is to

ensure that the search for funds is not the dominant concern of the candidate during the campaign; the same holds true for nomination contests.

The financial obstacles to candidacy prevent many from seeking nomination. As a result, the principle of fairness is compromised. In addition, only a few individuals from certain segments of Canadian society have the necessary resources, or access to them, to offer themselves as nominees for candidacy. Canadians therefore have less opportunity to choose their representatives from among individuals who are more broadly representative of society; their choices are limited unnecessarily.

To remove the financial barriers to effective representation, reform is required on four fronts: (1) expenditure limits in nomination contests; (2) public financial support; (3) specific financial barriers to candidacy, that is, child care costs and the cost of assistive devices for persons with physical disabilities; and (4) party mechanisms to achieve broader representation in the recruitment process.

Expenditure Limits Limits should be set on expenditures incurred by those seeking the nomination of a registered local party association. These limits should allow for competitive campaigns but at the same time ensure that access to financial resources not be the principal determinant of a successful nomination bid. Precisely how the law should be designed and administered, including disclosure provisions, is outlined in other parts of our report. Here we simply state our basic policy objective of promoting effective representation by securing fairness in the nomination contests of registered constituency associations.

Recommendation 1.3.19

We recommend that limits be set on spending by all persons seeking the nomination of a registered constituency association during the nomination period.

Public Financial Support Especially for people underrepresented in the electoral process, fairness requires that there be public financial support for seeking the nomination of a registered constituency association. This can be achieved by one or both of two basic measures. The most direct method is to reimburse the campaign expenditures of those seeking a nomination. Electoral candidates are reimbursed a percentage of their expenditures if they achieve a certain threshold of electoral support. The indirect method is to give those seeking a nomination of a registered constituency association the right to issue tax receipts for financial contributions to their campaigns. Under current law, contributions to electoral candidates benefit from this provision.

On the basis of Canadian experience with these two methods of public funding for elections, we conclude that the first method would be much more

costly to the public treasury than the second method, assuming that the general features of both applied as an extension of the current system. Equally important, the cost of reimbursing expenditures would be driven largely by the expenditure decisions of those seeking nomination in light of their access to resources. In other words, the ability to spend would be rewarded. Although reimbursement is essential in general elections, because of the costs of campaigning in constituencies that average 60 000 constituents, the need to reimburse nomination expenses is less pressing and less important from the perspective of fairness.

By contrast, the cost of a tax receipt approach would be driven primarily by the number of persons contributing to nomination campaigns. Assuming a ceiling on the amount credited for tax purposes, the incentive would be to obtain relatively small contributions from many supporters. Those who are now underrepresented, especially women, would clearly benefit from such a measure. This could also raise the number of Canadians who make political contributions and thus take part in the electoral process.

On the basis of these considerations, presented in greater detail in Volume 1, Chapter 6, we conclude that extending the tax credit system for political contributions to nomination campaigns is the best method to promote equitable representation at a reasonable cost to the public treasury.

Recommendation 1.3.20

We recommend that contributors to the campaigns of those seeking the nomination of a registered constituency association be eligible for tax receipts issued by an authorized officer of the association.

Tax Measures

(a) **Child Care Expenses:** A major cost facing many candidates seeking election, and one that imposes an unequal burden on women seeking elected office, is the cost of child care. At present, a taxpayer is permitted to deduct child care expenses, subject to certain restrictions and maximum amounts, from income earned from employment, from carrying on a business, or from scholarships, research grants or training allowances. A person is not permitted to claim a tax deduction for child care expenses incurred to seek nomination or to be a candidate. For those who are responsible for the care of their children, child care is a necessary expense while they seek nomination or election as a candidate. As we have noted previously, the activity of seeking nomination and election are civic undertakings of the highest order in an electoral democracy. This should be recognized by acknowledging in the *Income Tax Act* that child care expenses incurred to seek nomination or election are a legitimate tax deduction.

Recommendation 1.3.21

We recommend that the *Income Tax Act* be amended to include, in the list of activities for which such expenses are tax deductible, child care expenses incurred by the primary caregiver when she or he is seeking the nomination of a registered constituency association during the nomination period or election as a candidate during the writ period.

(b) **Expenses Incurred for Assistive Devices:** Many disabled Canadians face major expenses for medical technical devices. The Canadian Association of the Deaf "estimates that a deaf Canadian could expect to pay \$10 000 for assistive devices in one year". (Brief 1990, 3) To ensure that disabled people have equal access to the electoral process and are not unfairly constrained by the additional expenses they must incur, some changes are necessary.

Money paid to an attendant who assists a disabled person, enabling him or her to perform employment duties, carry on a business or conduct research, is deductible (subject to certain limits) or eligible for the medical expense credit when no income is earned during the period for which the tax relief is claimed. These provisions for attendant care should be broadened to include the services of an attendant for a disabled person seeking candidacy or elected office.

The *Income Tax Act* also allows transportation services as a medical expense credit but only if the travel is for medical reasons. Travelling expenses incurred in seeking a nomination or during the writ period do not qualify for this credit.

If persons with disabilities are to be able to contest nominations and elections equally, some form of financial assistance is required to help with the cost of assistive devices. Although we are proposing a vote-based reimbursement, we recognize that disabled persons may have to incur major expenses for technical assistive devices to enable them to carry out campaign activities.

We therefore propose that candidates who obtain at least 1 per cent of the vote be reimbursed 75 per cent of their expenses incurred during the election period for assistive devices related to their specific needs in conducting an election campaign (such as special vehicles for candidates with mobility impairments), for expenses totalling a maximum of 30 per cent of their spending limit.

Recommendation 1.3.22

We recommend that

(a) the *Income Tax Act* be amended to broaden the definition of attendant care to include the services of a person required

- to assist a disabled person to perform the functions necessary to seek the nomination of a registered constituency association during the nomination period or to be a candidate during the writ period; and
- (b) candidates who have obtained at least 1 per cent of the vote be reimbursed 75 per cent of their expenses incurred during the election period for assistive devices related to their specific needs in conducting an election campaign, for expenses totalling a maximum of 30 per cent of their overall spending limit.

Improving Candidate Selection The three measures just proposed affect individuals seeking nomination. The first two would affect political parties administratively, but none would promote different behaviour by the parties themselves. To remedy the underrepresentation of certain groups, particularly that of women, the behaviour of party and constituency association executives must be altered to achieve more equitable representation through the recruitment process.

As a general policy, the three largest parties encourage the use of search committees in constituencies where there is no incumbent. Information supplied by these three parties indicates that the composition of search committees differs from one party to another: in the Progressive Conservative Party a search committee can consist of between three and 30 members, with no specific requirements as to its composition; in the Liberal Party, search committees consist of five or six members, including at least one woman; and in the NDP, they consist of an unspecified number of members, but, whatever their number, they must respect gender parity. The process for identifying the ideal candidate is relatively unstructured in all three parties, relying for the most part on the executive committee's knowledge of the community. In selected constituencies, opinion surveys may be conducted to develop a profile of the candidate with the best chance of electoral success.

The three parties rely to some extent on centralized information to identify potential female candidates. Both the Progressive Conservatives and the NDP keep a central registry of potential women candidates, and the Liberals have a resource directory containing the names of persons who can help identify candidates at the local level.

By comparison with other countries, recruitment by our parties, including the identification of prospective candidates, is neither rigorous nor systematic. The parties also fall short of the best private sector practices for executive searches. Effective search processes, in which the characteristics of the ideal candidate are identified in advance and potential candidates gauged against this standard, generally lead to the identification of more individuals who would qualify as representative candidates.

At present, close to 50 per cent of constituency associations say they use a search committee. (Carty and Erickson 1991 RC) Further, about 7 per cent

of local associations without an incumbent asked the national or provincial level of the party to assist in identifying potential candidates. We do not have definitive evidence that local associations with search committees always identified the best candidates, but the evidence does indicate that search committees are a powerful tool in encouraging women to run for nomination. In constituencies with a search committee, women contested 43 per cent of the nominations and won 30 per cent of them; in the absence of a search committee, women contested 27 per cent of the nominations and won 16 per cent of them. Equally important, most of the women who were encouraged to run did so in constituencies where they had a good chance of winning. (Carty and Erickson 1991 RC)

In cases in which the constituency association received help from the party in identifying candidates, women candidates were more likely to be selected. Carty and Erickson report that 40 per cent of the Liberal and NDP associations that received help in identifying potential candidates nominated women, compared with 22 per cent that sought no outside assistance. (1991 RC)

The evidence suggests that the presence of formal search committees and assistance from national parties in identifying prospective candidates broaden the recruitment process. Compared with the traditional approach, the use of these mechanisms, especially in combination, is more likely to lead to nomination contests and candidates that represent a broader range of the Canadian mosaic.

Recommendation 1.3.23

We recommend that the by-laws and constitutions of registered political parties require the establishment of formal search committees and commit the parties to processes that demonstrably promote the identification and nomination of broadly representative candidates.

NOTES

1. The *Canada Elections Act* renders ineligible for candidacy sheriffs, clerks of the peace and judicial district Crown attorneys while they hold office. This provision is an anachronism and has been for more than a century. The ineligibility of these officials dates from the time in the early years of Confederation when election administration was largely under provincial government management and these officials were used as returning officers and election officials. Given their roles in election administration, these officials were rendered ineligible for candidacy by federal electoral law. Once the appointment of returning officers was vested with the federal government in 1882, this provision became obsolete. It has been overlooked each time federal legislation was revised, however. There is no reason for its continued inclusion in the Act.

2. There is one exception. Under section 214(1), the *Canada Elections Act* limits the amount that can be spent on notices of nomination meetings: 1 per cent of the amount the candidate was entitled to spend on 'election expenses' for the immediately preceding general election. This applies only to nominations that take place during the writ period.