



## Stakeholder submission on electoral reform; How We Vote

- The Canadian Association to Restore Democracy (CARD)

### Introduction

We are grateful for the opportunity to contribute to this Government's consideration of electoral reforms for British Columbia and the development of objective, legal, and rational approaches for the conduct and conclusion of the referendum.

We are confident that our insights and contributions herein will prove valuable to the process and more importantly to a strengthened democracy for the citizens of British Columbia.

CARD does not directly support or oppose any electoral system per se, but rather seeks to ensure that any proposed changes to electoral democracy, parliamentary procedures, and all other democratic reforms;

- satisfy the minimum legal requirements of the Constitutions of British Columbia and Canada,
- do not derogate from our Democratic Architecture,
- do not create real, potential or perceived advantages favouring some citizens over others in our democratic processes or within our democratic institutions,
- do not undermine the checks and balances against tyranny or abuse of power currently found in our system of democracy,
- serve to protect the primacy of the individual Canadian and their community as the origin of Confidence in the continued peaceful and orderly existence of Canada and her Democratic Institutions.

While we recognize that democratic inequalities, deviations from the Democratic Architecture, and advantages to some citizens over others do already exist in current Acts and Regulations, including the Elections Acts of British Columbia, and, of Canada, we hope here only to prevent the further entrenchment of undemocratic principles and practices into Law.

While our ongoing efforts to redress the existing democratic deficiencies across Canada is beyond the scope of this submission, we offer six core recommendations to enhance the legitimacy of the process and the integrity of the outcome.



### The will of the electorate

Section 9(1) of the enabling legislation establishes the threshold for the result to be binding on the government as “more than 50% of valid votes cast”. While a simple majority may be a reasonable threshold to bind the Government, that majority must reflect the will of the entire electorate, and, in a manner that is consistent with the Democratic Architecture.

Some electors will exercise their liberty by voting in the referendum, others, and potentially a majority of electors, may exercise their liberty by not voting in the referendum. Democracy and our Democratic Architecture demand that all electors have a right to play an equally meaningful role in democracy, and therefore the will of all electors must be counted and reported.

The will of the voting electorate may be easily interpreted and counted through the examination of their valid ballot. The will of the non-voting electorate is more easily interpreted and must be counted as supportive of all choices equally as dictated by Game Theory and logic.

To wit; if the elector has a preference – they will express it by casting a ballot; whereas if an elector has no preference – they will express that by exercising their right to not cast a ballot.

### **Recommendation 1**

*Submit a reference question to the Supreme Court of Canada on the Constitutionality of counting and reporting the will of only a subset of all electors in establishing a threshold to bind the Government, rather than including and counting the non-voting electors' expression as equal support for all outcomes.*

### The Democratic Architecture;

The Canadian and British Columbia Democratic Architecture provide that each community Electoral District shall be represented by one voice equal to the voices from each of the other Electoral Districts.

While this Government has chosen to explore and potentially bind itself through referendum rather than a vote in the Legislature, the same Democratic standard of the latter must apply in the former.

In the Legislature, any question becomes binding through a majority of voices from all of the Electoral District Representatives. Similarly through a referendum the question should become binding only through a majority of voices in a majority of electoral districts; that is, more than 50% of the voices in more than 50% of the Electoral Districts.



## **Recommendation 2**

*Submit a reference question to the Supreme Court of Canada on the Constitutionality of deviating from the Democratic Architecture which provides each Electoral District with one equal voice in binding the Government.*

### **The Referendum Question**

In May of 2017 Premier John Horgan stated that the referendum ballot would have only two choices, he said;

*“A consensus on yes or no is pretty easy. You are going to have 50% say yes or no.”*

We urge the Government to ensure that the referendum question is true to the Premiers’ promise of only two choices in order to protect the integrity of the vote and the public perception of its validity.

While there is a small and very vocal constituency who would like to see some form of proportional representation replace the current electoral system and representative democracy, we strongly believe that there is a large majority of the public who do support electoral and democratic reforms that would serve to improve; the accessibility and accountability of elected members to their constituents, and, the efficiency and effectiveness of the British Columbia Legislature.

## **Recommendation 3**

*That a single referendum ballot question ask electors to choose between;*

- a) Reforming the current electoral system in which each community would continue to return one member with one equal voice to represent them in the Legislature, or,*
- b) Replacing the current democratic system by providing political parties with some, to be determined, degree of Proportional voice in the legislature.*

### **Community Elections**

The Constitution of British Columbia and the Constitution of Canada each provide that; each Electoral Districts’ election of representation is an independent event for and exclusively among the member residents of that Electoral District, and that; the Electoral District Representative shall have one voice in the Legislature equal to the voices of each of the other elected community representatives, at the exclusion of all other voices and influences.

Any deviation from the independence of electoral events in each Electoral District, or from, ‘one Member – one voice’ proscribed by the Democratic Architecture, the Constitution, and the BC Elections Act will require a multitude of amendments and may likely be challenged in Court. We urge the



Government to take the responsible step of clearly identifying the Constitutional validity of enacting such a change to our Democratic Architecture and or the necessary Constitutional and other amendments that would be required to do so, in advance of the referendum.

#### **Recommendation 4**

*Submit a reference question to the Supreme Court of Canada requesting a determination of the legality of deviating from;*

- a) The exclusive independence of each Electoral Districts' election of representation,*
- b) The exclusive equality of each representative Members' voice in the Legislature,*

*And, if appropriate, to identify the Constitutional and other Amendments required to the various Acts and Regulations that would be necessary to permit such deviation from, and or change to, the Democratic Architecture and our system of Democracy.*

#### **Financial Support**

We are delighted to see that the Government recognises in the Referendums' enabling legislation the value and contribution to the debate on electoral reform that will be provided by both sides of the question, in providing for some measure of financial support to each campaign.

We trust that the Government will ensure that each side; for and against replacing our current system of Democracy with a Party-based proportional model, will each be allocated an equal amount of financial support and or other resources.

In consideration of the Governments' intention to ensure a fair and balanced debate on electoral reform, and, in consideration of the Governments' concurrent commitment to actively support some form of Political Party based Proportionality to replace the community-based representative model to some greater or lesser degree, we feel that in order to ensure that the debate and campaign leading up to the referendum remain fair and honest, that all of the resources and money expended by the Government in support of their position be counted as against the total allocation available to the proportional system side of the debate.



## **Recommendation 5**

*That a fixed maximum dollar value be allocated to support the referendum debate and Campaigns, and that, 50% of that amount be available to each of the pro-proportional, and, anti-proportional sides, and further that, all government expenditures whether direct or indirect in support of any party-proportional system be counted and deducted from the funds available to the pro-proportional sides' allocation of funds.*

### **Effective Democracy**

In consideration of electoral, Parliamentary and Constitutional reforms in British Columbia, we believe that this is an important opportunity to consider reforms that serve to improve the equality of each community's "Effective Democracy".

Whereas the Supreme Court of Canada has defined Democratic Charter Rights as the "right to play a meaningful role in Democracy", and, whereas the inherent equality of Rights as available to all citizens is the foundation of any democracy, the Supreme Courts' definition may be more accurately read as the 'right to play an *equally* meaningful role in Democracy'.

The electoral process is one of communication between candidates and electors, and, among electors, in an effort to inform and be informed, persuade and be persuaded, and to guide compromise among the community of electors in electing their representation.

We believe that the Government should give due consideration and weight to reforms that could serve to improve the equality of these electoral processes in rural and sparsely populated communities thereby improving the equality in the Effective Democracy for all citizens.

While electoral population parity in each electoral district is perhaps ideal for comparable and homogenous communities, the equality of opportunity to communicate within a community suggests that densely populated urban electoral districts may have a larger electoral population than the sparse rural districts without derogating from the equality of an Effective Democracy.

## **Recommendation 6**

*That the Government review deviation from Population Parity for Electoral Districts with caution, but in consideration of the cultural, geographic, and, population realities in each electoral district, that improves the equality of opportunity for candidates and electors to effectively communicate during an election campaign for a more effective democracy, and between elections for more effective representation.*



### In the Alternative

Where the Government embraces an optimistic approach to the Referendum by including multiple questions, and or multiple choices, in conjunction with any success metric that deviates from one elector, one vote, each counted equally in weight and or frequency, we make the following continuing and or alternate recommendations.

1. That the non-voting elector be counted rationally as equality of support for all outcomes, and that where the sum of 'non-voters' and 'votes supporting' any result enjoy the most support above 50% of electors, that result be binding on the Government and no further questions or counting ensue unless proscribed specifically by that result.
2. That the Referendum threshold to bind the Government be 50%+ of electors from 50%+ of Electoral Districts in order to comply with the Constitutions and the Democratic Architecture of British Columbia and of Canada.
3. That the non-proportional side of the ballot be so worded as to reflect support for the pursuit of electoral and democratic reforms that are consistent with and do not derogate from the Democratic Architecture of one community electing representation with one equal voice among others in the Legislature.
4. That regardless of the number or variants of proportional models of democracy represented in the ballot question, the Governments' campaign finance support remain divided in half or 50/50 between; the pro-proportional campaign inclusive of all her subsets, and, the pro-community representative democracy campaign inclusive of all her subsets.
5. That the question and issue of greater equality in an effective democracy for all communities of British Columbia be considered and pursued, independent of these endeavours.

### Final Considerations

The use of a colloquialism like FPTP is disingenuous and we urge the Government to update its website and ensure that our current electoral model is referred to accurately and clearly as Single Member Plurality (SMP) and further that it be clearly explained to the public that the current SMP system provides for a "Single Member" to be returned to the Legislature from each Electoral District with one voice equal to the voices from each of the other community Electoral Districts, and further that, "Plurality" refers only to the current counting threshold for electoral success in each community.

The Canadian Democratic Architecture is designed around the simple construct that each community shall be entitled to return one member with one voice through fair democratic elections.

The addition of political affiliation to the election ballot in the early 70's marked the beginning of the deviation from our democratic architecture. From that seemingly innocuous convenience for the elector, laws and regulations have since been enacted that entrench and empower political parties as if legitimate entities to a democracy.



A simple examination of our constitutional and historic documents reveal the simple truth of our democratic architecture, that;

- Each community shall have the right to elect a “trustee” representative to speak on their behalf, and that,
- Each representative shall have one voice in the committee of the whole equal to the voices of each of the other members of that legislature, and that,
- Those representatives shall not be committed, contracted or beholden to any parties, entities, or others, but shall remain independent in thought and choice in the representation of their community; in the use of their voice, and in the assignment of their confidence in the Legislature.

Each election in each Electoral District is an independent electoral event which includes legitimate entities to that event and excludes all others as illegitimate entities. The legitimate entities to each election have the legal characteristic of being either; a registered candidate for that electoral district, and or, an eligible elector in that electoral district.

The Elections Acts of British Columbia and of Canada restrict the inclusion of honours and titles on the ballot, and yet in conflict with itself, the Elections Acts cleverly make exception for Political Affiliation, which by any reasonable measure is both an honour and a title.

Unfortunately, Political Parties are not legitimate entities to any election; they are neither candidates nor electors. Political Parties are merely pragmatic organisational expedients.

The Elections Acts have evolved to include and provide financial and other advantages to Political Party affiliated candidates at the expense of other candidates, and therefore to the detriment of the community’s independence in electing their representative, and in derogation of every Citizens’ right to play an equally meaningful role in Democracy, and or enjoy the benefits derived therefrom.

Proportional Representation models seek to further entrench the Political Party, as if legitimate, between the electorate and their representatives’ voice in the Legislature. It is a violation of the Elections Act and in violation of our Democratic Architecture to count votes from electors who are not resident in the electoral district and are therefore not a legitimate entity to that electoral event, in that communities election.

In British Columbia and across Canada we are in dire need of electoral, Parliamentary and other democratic reforms. These reforms must be in the service of the people, and not to the benefit of the private club oligarchies that we refer to as political parties.

To restore our democratic architecture and the accountability of our representatives to their constituents, we need first to simply remove political affiliation from the ballot, and then amend the Elections Act to eliminate all Political Party and Party-affiliated candidate advantages during and between elections.



Once this fundamental model of our democracy has been restored, we can and should explore other reforms to our system that may serve to further entrench the accountable relationship between the people and their governments through their directly-elected representatives.

#### Other Reform examples

Single Member Majority; while maintaining the integrity of community representation, we can establish the threshold for victory as Majority support from constituent electors and failing that hold a by-election with new candidates.

Multiple Equal Vote; permit electors to vote equally for as many candidates on the ballot who have their confidence to represent their community and the candidate with the most support wins.

Add 'None' and 'Any' to the ballot; permit electors to express their confidence accurately and exhaustively.

Count and Report on the will of all electors; counting the non-voter as support for any outcome in conjunction with an education campaign to inform the electorate that if they choose to not vote – they are supporting the winner.

#### Reform or Replace

By way of example and for clarity we offer some examples of the changes that would be categorized as either changes to, or, changes from, our current electoral and democratic system.

Changes **to** our current electoral and democratic system would preserve the independence of each community election and their elected representatives' equal voice in the Legislature, but may include changes to;

- i. how we count and determine a winner:
  - o Ranked ballots
  - o Multiple equal voting
  - o Single Member Majority
- ii. how ballot information is presented:
  - o Removal of political affiliation
  - o Addition of "none of the above" and "any of the above"
- iii. how democratic equality is preserved:
  - o Changes to the number of representatives elected by each community
  - o Amendments to the Elections Act et al. that would eliminate actual, potential, and, perceived advantages in our Democracy, democratic processes, and, Democratic Institutions, which accrue to only some of our citizens

Changes **from** our current electoral and democratic system would introduce, entrench, and or legitimize non-citizen and non-resident entities between the electors, their representative, and their government which may include;



- i. replacement or reduction of the one voice per Electoral District Representative with some degree of political party representative voice;
  - Pure Proportional
  - Single Transferable Vote
  - Mixed Member Proportional (open or closed list)
- ii. re-allocating voices and votes in the legislature;
  - Adding Political Party representatives' Voices to the Legislature
  - Leader Weighted Proportional Vote, whereby the Leader of the Party enjoys the right to exercise more than one vote (thereby eliminating the extraneous salaries and office expense of additional puppet Members under other PR models)
- iii. Extending influence into and or transferring electoral expression out of the electoral district;
  - Mixed Member Proportional
  - Providing Foreign Governments, Corporations, and or other entities legal standing in our electoral and democratic processes.

Thank you for allowing us to contribute to your efforts to improving Democracy and Government in British Columbia. We trust that our efforts herein will guide and support you in achieving this noble goal.

The Canadian Association to Restore Democracy