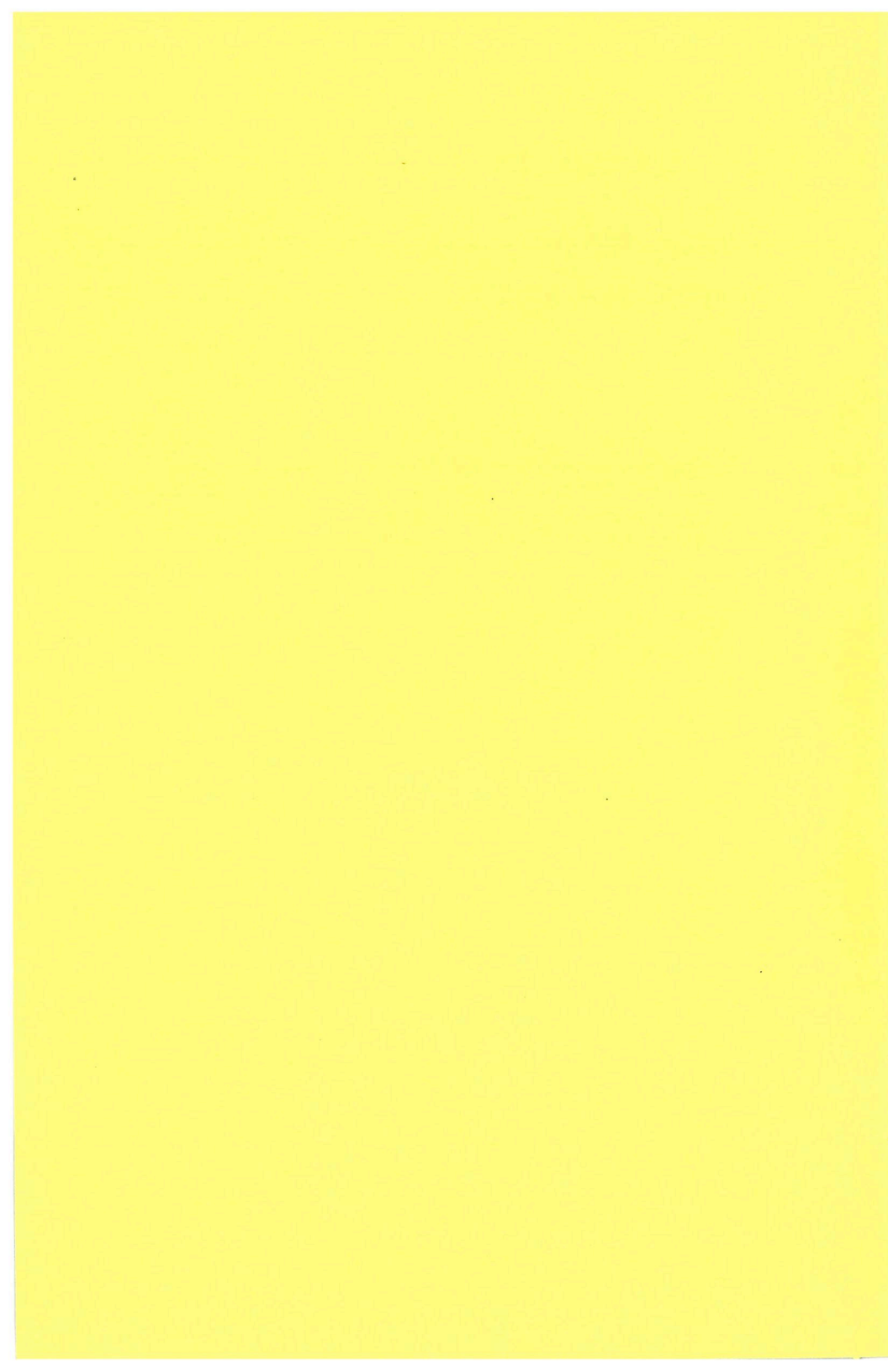


**WHY YOU  
NEED TO BE  
AT THE  
CONSTITUTIONAL  
TABLE**





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## CONSTITUTIONS ARE ONLY FOR EXPERTS. RIGHT?

Wrong. What happens in the next few months in the re-structuring of Canada directly concerns you. A constitution is, after all, only a set of rules about the relationship between we, the people, and the government we elect. It's about the powers and obligations of the government and the rights and responsibilities of the people. A constitution is also a blueprint for the future, a vision of who we are as a people and what we would like to become.

For all these reasons the constitution affects you profoundly. For example, changes that could come about in the present constitutional talks could threaten medicare and other social programs as we know them.

If Quebec should separate from the rest of Canada, according to a recent report from the Economic Council, it would mean we would all experience grave economic consequences. It would almost certainly result in a drop in the standard of living for most Canadians, both in Quebec and in the rest of Canada. According to the Economic Council it would cost the average Quebecker \$1800 a year in lost income. But it would be a costly exercise for everyone, particularly the less advantaged provinces. There also would be many transitional costs, not to mention years of legal costs in the courts while border disputes were settled.

Canada would be regarded as a much less important nation on the world stage. In the changing world of global trade, we would be more fragmented and weaker. In our negotiations with other countries, as well as in such bodies as GATT, the Group of Seven and the present Mexican-U.S. free trade deal, both Canada and Quebec would have less clout.



### **AND IF YOU ARE A WOMAN OR A MEMBER OF ANY MINORITY GROUP YOU SHOULD BE EVEN MORE CONCERNED:**

In 1864 when the Fathers of Confederation first met to discuss uniting the various provinces, the "Mothers" of Confederation were nowhere to be seen – nor could they even vote! Women have been left out of constitutional agreements ever since, even though they are more than half the population. Women have had to work on the outside of established constitutional decision-making through lobbying, ad hoc conferences and other grassroots action, just to make sure our interests are not completely ignored or overridden. That's how we got the vote, were legally declared

"persons" in 1930, and are still struggling to take part in constitutional talks today.

As an example, just before the Charter of Rights was introduced in 1980, the government almost bargained away federal authority for divorce to the provinces. This could have resulted in a patchwork of divorce acts all over the country. Enforcing child support would have been a nightmare. Women had to fight hard to stop that.

Again, in 1980-81, women from all over Canada worked hard to ensure that the equality clauses in the Canadian Charter of Rights and Freedoms were the strongest we could get. But at the last stage in the Charter negotiations, a deal by federal and provincial politicians – all male – subjected those hard won equality guarantees to an "override" clause. This meant any provincial legislature – mostly male – could pass a statute overriding those guarantees. And that legislation could be renewed again every five years. In effect it meant equality for women could be put off indefinitely.

Under the Meech Lake Accord, the Charter itself was in danger of being weakened, and social programs would have been put at risk. As well, provincial governments might have been able to make agreements with the federal government for quotas and qualifications for immigrants under a checkerboard set of regulations and a much more secret process. (After Meech Lake Quebec did take over its own immigration. It's quite possible under any future arrangement other provinces might demand the same right.) As well, the Accord did nothing to ensure more women would be appointed to the Supreme Court – there have been only three women appointed in its whole history. Women fought to change these negative aspects of the Accord, as well as the secret way it had been negotiated.

It's one of the responsibilities of government to protect disadvantaged groups and see that they are treated equally under the law. But that has never been a priority for either level of government, partly because those elected rarely come from disadvantaged groups.

Aboriginal people, for example, have been left out of the entire constitutional process. In the present constitutional talks there can be no satisfactory solution without recognizing that aboriginal rights are as important as Quebec's rights.

Today 55% of immigrants and refugees come from the Third World. Being an immigrant and a woman of colour is a multiple disadvantage in a society that systematically discriminates against non-whites. Because women themselves are a disadvantaged group, they want to use the Charter and the constitution as a means of overcoming marginalization, and as a shield for those who are abused. For anyone who is female, non white or a member of a disadvantaged group, any weakening of the Charter would be a great loss.

## **WHY YOU ARE PARTICULARLY QUALIFIED TO TALK ABOUT THE CONSTITUTION**

The question at the centre of the present discussion is an issue women and minority groups have had a lot of experience with – equality. In the Meech Lake Accord the premiers agreed upon the principle of "equality of all the provinces" as well as Quebec's distinct society. Women believed this combination put at risk the equality guarantees for women and other disadvantaged persons in the Charter, as well as standards for national social programs.

Ask yourself: Should equality for provinces take priority over equality for people? Do principles of equality mean that all persons – or provinces – must be treated exactly the same, regardless of their unique history or current needs? Canadian women have been saying "no" to similar questions for many years in briefs and presentations to law-makers and in court.

Our own experience as women has helped to shape this view. We know that women can't be treated exactly the same as men in all respects. For example, to say women shouldn't have pregnancy leave because men don't get it, will cause inequality for women because of their different circumstances. The Supreme Court of Canada now agrees with us on this. The Supreme Court also agrees that repairing the effects of past disadvantage and discrimination may require, not the same treatment for all, but different treatment.

## **HOW CANADA HAS WORKED IN THE PAST**

Canada was established by the Constitution Act of 1867, passed by the British Parliament to unite the original four partners in confederation: Quebec, Ontario, New Brunswick and Nova Scotia. Power was divided between the government in Ottawa and the provincial governments. As other provinces joined they adopted, for the most part, the same conditions.

Originally Canada was a centralized federal state with a majority of the powers with the government in Ottawa. The system worked fairly well until the Great Depression in the 1930s when some provincial governments, teetering on the brink of bankruptcy, found themselves unable to provide for the basic needs of their people. Because some provinces are richer than others, the federal government equalized the financial burden so that all Canadians enjoyed similar standards of living. During the 1950s and 1960s the federal government agreed to help finance

a number of social welfare policies as long as the provinces adhered to national standards. Our national health care system grew out of this kind of partnership.

But over the years pressure to shift more power to the provinces continued to grow, and strains began to appear. For example, the federal government has a lot more power to tax than the provinces. Yet the provinces are responsible for health, education and welfare, all of which are expensive to provide.

Other areas of responsibility like caring for the environment, were not thought of in 1867, which meant neither level of government was clearly charged with looking after them. The federal government was responsible for "Indian and lands reserved for Indians," and over the years it has come under increasingly severe political and ethical criticism. Equality rights, which we value today, were not valued enough in 1867 to be included in the constitution at all.

There have been many attempts to make the constitution fit the changing reality.

Sometimes the constitution was amended, for example, to allow the federal government to establish Unemployment Insurance or to introduce the Charter of Rights. Sometimes change came through court decisions interpreting the constitution – such as aboriginal land claims, minority rights and women's rights.

Sometimes the changes were dealt with through inter-governmental agreements like those setting up the Canada and Quebec Pension Plans, the Canada Assistance Plan, medicare and funding for post-secondary education.

Attached to these agreements are often national standards and federal funding. They have come to play an important part in our national life, but the provinces can't count on them continuing. In 1991 the Supreme Court ruled that the federal government can pull its money out if it wants to.

## HOW DID WE GET TO OUR PRESENT CONSTITUTIONAL IMPASSE?

Changes to the constitution take place in federal-provincial meetings attended by the Prime Minister, the premiers and a retinue of officials and bureaucrats. These meetings are mostly behind closed doors although occasionally there will be an open or even televised conference. "Executive federalism" is used to describe this system of decision-making – "executive" because it's in the hands of the top politicians and mandarins,

federalism because it deals with arrangements between the members of our federated country.

The people who attend are influential, mainstream, males. There are few women even among the officials and bureaucrats, and few if any aboriginal peoples. The Territories which are home to a large number of aboriginal people don't have provincial status, which gives them a limited role in executive federalism.

In recent years there have been several high-profile rounds of federal-provincial talks. One round from 1980 to 1981 produced the Charter of Rights and resulted in the constitution being "patriated" – brought home to Canada from the British Parliament. Another produced the Meech Lake Accord in 1987 followed by its eventual death in 1990. Another round is currently underway as a result of the failure of the Accord.

## THE MEECH LAKE ACCORD

In 1980 a referendum was held in Quebec on the issue of separation. The "no" vote won, but the highly charged campaigns of both sides convinced the federal government to promise that the constitution would be amended to answer Quebec's concerns. Quebec did not endorse the 1980-81 round of discussions. The constitution was patriated on the strength of only nine provinces and the federal government signing the agreement. The government of Quebec then formulated certain minimum conditions in the constitution which formed the basis for the Meech Lake round:

1. Recognition of Quebec as a distinct society.
2. A veto on constitutional amendments affecting its status.
3. A formal voice in Supreme Court appointments.
4. Limits on federal spending powers in areas of provincial jurisdiction.
5. A formal voice on immigration policy.

The Meech Lake Accord also specified that if it did not achieve unanimous consent of all provinces and the federal government within three years of its signing, it would not come into effect. Although most governments had ratified it by the end of this period, Newfoundland was threatening to withdraw its approval. The Manitoba government had given a commitment to hold public hearings and debate the Accord in the provincial legislature. The debate was still going on when the three year deadline expired in June of 1990.

Quebec has announced that it will hold a referendum in the fall of 1992 on its continued participation in Canada. Two Quebec reports, the Allaire Report and the Belanger-Campeau Report, have proposed a considerable restructuring of Canada. The federal government's Spicer Commission and several provincial legislative committees, have sought out the public's

views on the future of the country.

## PROBLEMS WITH THE PROCESS

Although Quebec's requirements for participation in the constitution were made clear several years before the Meech Lake Accord, the Accord itself was drafted in closed door sessions.

Women's groups in many parts of the country had serious problems with the Accord, although women's groups in Quebec for the most part, supported it. Women outside of Quebec generally agreed with the symbolic message of the Accord – that Quebec is recognized as a distinct society and welcome in Canada.

But other parts affecting the Charter and social programs posed serious problems. Women energetically worked to get some simple amendments to the Accord to clarify what politicians assured them was there – namely, that their equality rights would not be overridden by the Accord. But governments refused to make these amendments. All of the Accord's provisions and its language were non-negotiable, which meant that the public hearings held by many governments was an exercise in cynicism.

At least in 1980-81, after public hearings, the government had been willing to make some amendments to its proposals on the Charter, although the government had a very limited view of what was an acceptable change.

## HOW IT'S BEING DONE THIS TIME:

The idea of a Constituent Assembly where ordinary Canadians might take part in the constitutional discussion has been rejected by the federal and the Quebec governments. But even if it could come about it's questionable whether many women or other minorities would be selected to participate in it if the choices are made by politicians or government, or if elections were held. We are all too familiar with the problems women have securing nominations and funding for election campaigns.

Constitutional Affairs Minister Joe Clark adopted the "ambassadorial" approach to the development of a set of federal proposals revealed in the fall of 1991. He met with the premiers and other Canadians to "try out" various suggestions developed by the government and its advisors. Some of these suggestions were "leaked" to the press or hinted at in speeches by the Minister. A Committee appointed from the House of Commons and the Senate is now travelling the country to hear comments on the proposals. The government has expressed its willingness to respond to public comments about them.

## SOME QUESTIONS FOR CANADIANS TO ASK THEMSELVES

- Do we want Quebec to remain a part of confederation?
- What part should aboriginal people play in these discussions and in a renewed Canada?
- What steps can be taken to ensure truly representative government and national institutions which will include women disabled persons, members of visible minority groups in fair proportion to their numbers in the country instead of leaving them on the margin?
- If the new constitution has a preamble affirming basic characteristics of Canada, should it affirm our basic commitment to equality of people, not just provinces?
- What is the future of the territories, home to a large proportion of the aboriginal population?
- Should all provinces/territories be treated equally in a renewed confederation, or is there a place for "asymmetry" – that is, different arrangements for one or more provinces?
- Do we want a more centralized country with the federal government having more power and responsibility – or less?
- What institutions or powers are so basic and essential to our collective well being that they should be enshrined in the constitution?
- Acknowledging how much so many Canadians in so many regions depend on them for their basic requirements, how can we ensure that acceptable standards be maintained for social programs and social spending?
- How can we ensure that the benefits we struggled to achieve in our constitution will not be bargained away in international trade discussions?



## A CLOSER LOOK AT SOME OF THESE ISSUES:

### CENTRALIZATION VS DE-CENTRALIZATION

Provincial governments are always quick to say they will protect their own citizens. Today Quebec women, on the whole, look to the Quebec government rather than the federal government, while women in other provinces tend to look more to the federal government. But even in Quebec where women tend to look to the provincial government for protection for rights and culture, women are more likely than men to prefer shared federal and provincial control.

Canadians as a whole should not be too impressed by provincial promises. In the past under provincial laws, religious groups such as the Jehovah's Witnesses and Doukabours have been jailed, freedom of the press was threatened under the William Aberhart government in Alberta in the 1930s. In almost every province there are still discriminatory laws against minorities and women on the province's own statute books. A University of Calgary study shows that it has been provincial laws that have had to be struck down under the Charter more frequently than federal laws.

### WHO PAYS AND WHO DELIVERS ON SOCIAL PROGRAMS?

We all pay, through our taxes, for social programs. Over the years, the federal government (which has greater capacity to raise taxes) has made payments to the provinces for many important areas of social programming: the Canada Assistance Plan, the Canada Health Act, funding for post-secondary education. The provinces, however are responsible for carrying out these programs.

Often the payment carries with it minimum conditions for national standards for these programs. For example, all provincial welfare systems have to have an appeal procedure for anyone cut off benefits. In provincial health insurance plans there is a no "extra-billing" requirement.

Having both levels of government involved in these programs has created a tension that has occasionally resulted in gains for women – one level of government may be played off against another to get funding for new programs. But it also allows each level of government to duck responsibility or blame the other for inaction. Business and academics have also criticized this multiple involvement as economically inefficient.

### DANGERS TO CANADA'S SAFETY NET

Any constitutional change that results in a reduced federal role in social and economic support would pose a serious threat to the survival of the safety net so valued by Canadians, and so greatly needed now in time of widespread social and economic change.

It's unlikely that a constitutional process that virtually excludes women will strengthen the social net. The absence of women is especially unfortunate

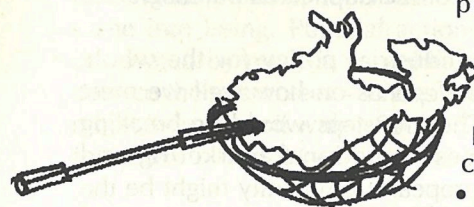


since women through their voluntary organizations have special expertise in these areas.

Indeed the undermining of the social net was happening even before specific constitutional proposals were on the table.

In fact under the present government, quite aside from constitutional discussions, a lot of de-centralization is already taking place. In spite of its assurances that social programs are a "sacred trust" the government has been dismantling them:

- Family allowances have been partially de-indexed.
- Old age pensions have been taxed back from retirees.
- Under the free trade agreement there is constant pressure to dismantle assistance to Canadian cultural industries, our unemployment insurance system, medicare etc. At the same time federal politicians are promising Quebec greater control over culture.



By capping transfers to rich provinces the federal government will no longer be funding medicare by the turn of the century. Quebec is already charging user fees for medicare and Alberta won't cover some services. But the federal government hasn't forced them to adhere to national standards. Yet it claims it will be able to in the future, even though it will no longer have the financial clout it has now.

### DO ALL PROVINCES HAVE TO BE EQUAL?

In a continent of English-speaking people, French-speaking Quebecers are already outnumbered forty to one. Moreover, Quebec's low birth rate means that the present population can't possibly be replaced. Quebecers feel that both their language and culture are severely threatened. As a result they want control over such areas as culture and immigration among other powers.

In many areas Quebec is quite different already, as we have seen. It has its own civil law, its own education, its own pension plan, control over its immigration and collects its own income tax. Would it be such a big step to grant to Quebec some of those other powers it feels it needs to preserve its culture and language?

This is the crucial question that now faces the rest of Canada.

Does this mean other provinces must also have the same powers, for example, over their own immigration and culture even though they are not threatened, as Quebec is because of its separate language? Will it mean

rich provinces will opt for the same powers as Quebec and the poorer provinces look to help from a much weakened federal government?

### **ARE THERE ANY ADVANTAGES IN AN "ASYMMETRICAL" CANADA?**

An asymmetrical Canada means a Canada where all provinces are not exactly equal. Quebec, which already has several distinct characteristics and powers, might also get more control over areas such as culture. But the other provinces would not necessarily get these same powers.

In fact, for English Canada, a new arrangement might mean more not less federal power with a dismantling of some of the duplicated bureaucracies that now exist. For example:

- it might be possible to agree on an industrial policy for the whole country. The future prosperity of Canada depends on how well we meet the demands of international markets. The first steps would be breaking down trade barriers between provinces. A national marketing and industrial policy along the lines of the European Community might be the next step.
- It might be possible to standardize education in English speaking Canada so that when families move, the children don't encounter a completely different curriculum and school system.
- It might be possible to have a shared parliament much like the European community where Quebec and the rest of the provinces send representatives to make laws and reach decisions on those areas they share together. In other areas that concern only English Canada (Quebec having control over, for example, education or culture) only the English-speaking provinces will meet.

### **IS A SOCIAL CHARTER THE ANSWER?**

Several proposals for a Canadian Social Charter similar to the European Social Charter have emerged including one from the government of Ontario. This is an interesting new initiative but requires much more work so that common understandings and values can be agreed upon and detailed. Enforcement of such a Charter would also raise other issues. Most of these proposals would depend on political enforcement of such a charter.

Our experience with the Canada Health Act may sound a warning note here: Governments have been reluctant to use the Act to make sure women have access to abortion services under provincial health care systems, even though women's groups have been pressing for such access.

Again, women's experience under the Charter of Rights shows us how important enforcement can be. The courts' narrow approach to enforcement has caused great difficulty in dealing with systemic discrimination under the Charter's equality guarantees. Given the court's conservative approach to remedies and a growing conservatism about the Charter itself, we have to ask: If the Social Charter's guarantees of basic social services, or a basic standard of living can't themselves be enforced through the courts, will governments argue – and the courts accept – that court actions under the Charter of Rights shouldn't be used to secure these important basics?

That would leave political action as the only route for women to enforce their rights – exactly the situation we were in before the Charter of Rights came into being. Political action for women, as long as legislatures are dominated by men, is an uphill battle. In the absence of political will to enforce the guarantees – as has been the case so often in the past – women might be worse off with a Social Charter. These are the important questions that need to be put to proponents of a social charter.

### **STILL TO BE ACHIEVED: EQUALITY IN ANY NEW CONSTITUTION**

In an attempt to salvage the Meech Lake accord, some provincial premiers put forward the idea of a "Parallel Accord" with a preamble laying out certain fundamental characteristics of Canada. Not one of these proposals included any reference to the equality of women and men, although Canada's aboriginal peoples and Canada's multicultural nature were both affirmed.

At the 1981 Ad Hoc Conference of Canadian women on the constitution, a resolution was passed proposing that a fundamental statement of principle of sex equality be included in the charter. The negotiations which followed produced a new section stating that all the Charter's guarantees were equally available to men and women. However, we still have not achieved the statement we sought of a fundamental principle. This should be included in any further constitutional changes.

### **EQUALITY IN CANADIAN INSTITUTIONS**

Many proposals have been made about an elected Senate. Research shows that the process itself, of running for a nomination in an electoral riding in Canada, discriminates against women and favors men. Will an elected Senate simply reproduce these old inequalities?



And what about the Supreme Court? In the 1980-81 round, leading to the Charter, thousands of women supported the Canadian Advisory Council on the Status of Women in its demand for proportional representation of women on the Supreme Court of Canada. Only three women have ever been appointed to the Court, and one of them is now retired. Women are under-represented at all levels in the court system. This has a direct effect on their rights to child support, property rights and for legal redress for sexual violence.

The constitution process itself is another good example of under-representative institutions. The top civil servants who attend the negotiating sessions, or prepare the strategy papers, are rarely women. The public service, like other public institutions, employs women mainly at the lowest levels, in clerical and administrative jobs – not the key policy positions where men predominate.

As we head into the twenty-first century why shouldn't our basic constitutional documents provide a statement against this pervasive structural discrimination with practical means to remedy it?

### **OTHER PROPOSALS WE SHOULD BE CONSIDERING...**

There are a number of proposals now emerging concerning the constitution. Women will need to become familiar with these options if they become part of the constitutional discussion. In many of the academic proposals for Canada's future which have emerged since June 1990 a division of Canada into different regions with fewer provinces has been proposed. Many of those proposals aim at reducing government and its inefficiencies. Some of them argue that this will result in reduced federal spending on social programs.

- Parliamentary institutions might be reformed. For example, one national political party has recently adopted measures for increasing the number of women candidates it runs. Other strategies for increasing the number of women and other disadvantaged groups include goals and timetables like affirmative action and proportional representation.
- Most modern western European democracies now operate under a system of Proportional Representation. Under this system, instead of the country being divided up into electoral districts where candidates compete against one another to represent their party, as in Canada, the United States, and the United Kingdom, each party puts up a list of candidates for regions. The number of candidates elected in each region depends on the number of votes the party garners. Under such a system parties can be pressured to include a quota of women on its lists. This has been especially useful for women in many European countries. In Norway and Denmark

one third of the parliament is made up of women. Norway has a woman prime minister and half the cabinet women.

In spite of a lot of effort women have made little progress in countries that don't have proportional representation. The U.K. has only 6% women parliamentarians, the U.S. 5% women, and Canada 13% women. Not surprising, in every country where women make up from one quarter to one third of the parliament women also have better child care, maternity leave, and there is a smaller gap in wages between the salaries of men and women.

Another advantage under Proportional Representation is its flexibility. Under our system there are only two or at the most three, parties and the "winner takes all" in elections. Between elections, backed by rigid party discipline, the government is almost impossible to change no matter what legislation it may bring in or how unpopular that legislation may be. Under proportional representation governments are often made up of coalitions and if a government tries to bring in a measure that is massively opposed by the public, it generally falls.

### **FINALLY, WHY YOU MUST GET INVOLVED**

Don't listen to anyone who says the job of re-constructing Canada is only for the "elites," and that the concerns of ordinary Canadians are irrelevant because they can't possibly understand the process.

Canada is a democracy and what we're doing in this constitutional round will affect how we live for generations. Participation by women – all women – in a powerful grassroots movement is the only means of access women have to a process that the men still consider their own.

#### **HERE ARE SOME SUGGESTIONS:**

- Discuss this leaflet with friends and neighbors. Give them a copy and encourage them to respond to us too.
- organize a meeting, a dinner, a discussion group at work, at home or in your local organizations
- Write to your member of parliament and your provincial member of the legislature and let them know what you think, and how you feel about these issues. (You can write to your member in Ottawa at: "House of Commons, Ottawa, Canada." No stamp is required.)
- Find out when the Constitutional Committee will be holding hearings in your area and make sure your concerns are represented by some group. If not, get a group together to make sure your concerns are heard. You can write to: Constitution Committee, The Wellington Building, Room 608 180 Wellington Street, Ottawa, K1A 0A6. Or phone: 613-943-2233. You

can also fax what you have to say to: 613-943-2196.

• Support Canada's Future: the Women's Agenda. Send us the coupon below indicating your interest in having women's voices and women's concerns represented "at the table" in the constitutional discussion.

IF YOU CAN, SEND A  
CONTRIBUTION TO OUR WORK!



- Yes, I believe that women's voices should be heard in these constitutional discussions, to ensure at least that:
- a statement of our equality is included in the constitution
- the important guarantees of the Charter of Rights are not weakened by any new deal
- national social programs of value to women and other disadvantaged groups are not endangered
- government institutions like Parliament and the Supreme Court will be more representative of women and other minority groups
- And..... (fill in)

Name: \_\_\_\_\_

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Phone: \_\_\_\_\_

Group you belong to, if any: \_\_\_\_\_

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