

New Brunswick Human Rights Commission
Submission to the
Commission on Electoral Reform

January 30, 2017

Introduction

Thank you for providing the New Brunswick Human Rights Commission with the opportunity to provide its comments on electoral reform in New Brunswick. The Commission is established by the *Human Rights Act*, and it is New Brunswick's provincial human rights institution. The electoral process intersects with a number of fundamental human rights, and we appreciate the Commission on Electoral Reform's willingness to consider human rights issues when evaluating possible reforms.

As you know, the *Human Rights Act* serves to protect the rights of dignity and equality, and it recognizes that everyone has the right to be free from discrimination based on the enumerated grounds. The *Act* is considered "fundamental law" that supersedes all other provincial legislation in the event of a conflict. The Commission, through its administration of the *Act*, provides a simplified process for people to enforce their rights, and educates the public on their rights and obligations.

In light of the *Act*'s fundamental role in New Brunswick society, governmental decision makers always need to consider potential human rights implications during the policy development process. Doing so helps to ensure that the government's legislation and its policies, guidelines and other instruments do not discriminate against or create disadvantages for certain individuals or groups based on the prohibited grounds of discrimination. Even the most well-intentioned government initiatives can have discriminatory consequences if proper attention is not given to human rights matters.

When evaluating New Brunswick's electoral process, it is essential to consider ways to improve compliance with the *Act* and ensure that any reforms recognize the inherent rights of dignity and equality of every New Brunswicker. While the electoral process can impact human rights in a variety of ways, we wish to draw the Commission on Electoral Reform's attention to three areas in particular: accessibility, equality, and inclusiveness.

Accessibility

Ensuring full participation in the electoral process is one of Canada's commitments under international agreements on human rights. The right of everyone to participate in government is enshrined in Article 21 of the *Universal Declaration of Human Rights*. Further, the right of persons with disabilities to participate in the electoral process on an equal basis with others is recognized in Article 29 of the *Convention on the Rights of Persons with Disabilities*. However, in order to achieve these objectives, the electoral process must first be accessible to everyone.



NEW BRUNSWICK
HUMAN RIGHTS COMMISSION

COMMISSION DES DROITS
DE LA PERSONNE DU NOUVEAU-BRUNSWICK

While we commend Elections NB for taking steps to ensure that all polling stations are wheelchair accessible, there remains room for improvement. Some polling stations may still lack access for persons with mobility issues, requiring the use of curbside voting. The practice of curbside voting should be avoided, as persons with a disability should not be required to cast their vote outside where they may be exposed to inclement weather or lack the level of privacy the polling station provides. Ultimately persons with disabilities do get to cast their vote, but the manner in which they do so substantially differs from how those without a disability are able to vote, and some could find this differential treatment embarrassing or degrading.

If a particular area does not have a suitable site for an accessible polling station, temporary measures to make a site accessible must be considered. These measures could include the temporary installation of ramps and designating parking spaces for disabled persons. The ability to remediate an inaccessible site should be incorporated into the evaluation criteria for possible polling stations. Unless a person asks to be accommodated through curbside voting due to the nature of the disability, we would encourage exploring the feasibility of more respectful forms of accommodation in situations where there are no suitable accessible sites in an area and the costs associated with remediating an inaccessible site would amount to undue hardship.

We support exploring the feasibility of remote internet voting as a means of increasing access to voting for all New Brunswickers. Even with fully accessible polling stations, some may still have difficulty getting out to the polls due to a disability or other circumstances. That being said, the ability to vote via computer or mobile device should not result in reduced access to in-person voting, as there are many in this province who are unable to afford such devices or internet access. The *Act* protects people who experience social or economic disadvantage due to their source of income, occupation or level of education, and in-person voting may be the only viable option for those individuals to vote on election day.

It is important to remember that the electoral process does not begin and end at the ballot box. The process includes meeting and interacting with candidates, becoming informed on the candidates' positions, and having voter issues and concerns communicated to candidates. Debate sites, campaign offices, and offices for district associations and political parties must be accessible, and information provided by parties and candidates needs to be available in accessible formats. Steps should be taken to ensure that all voters have the same access to campaign information and literature, and the same opportunities to have their voice heard.

We share the view of the Premier's Council on the Status of Disabled Persons that it would be helpful to explore who in New Brunswick is not currently voting and the reasons for not participating. If there are particular groups of individuals, such as persons with disabilities, who choose not to vote or cannot vote, that information could prove valuable in determining what accommodations or other measures should be implemented.

The electoral process must also be accessible to candidates, and not just voters. Candidates with disabilities may need to incur additional expenses in order to effectively run for office, but the *Political Process Financing Act* does not currently contain any provisions specifically addressing disability-related expenses. Such expenses could include the hiring of a sign language interpreter, converting materials into an accessible format, or purchasing assistive devices. Consideration of these expenses in the campaign financing framework would help to reduce some of the barriers that potential candidates with disabilities face.

The Commission has seen encouraging developments with respect to the hiring of people with disabilities. For example, a major banking institution recently announced an initiative to hire 500 people with disabilities in 2017. We feel that it would be a positive step if persons with disabilities similarly had more opportunities to serve in elected offices.

Equality

New Brunswick and the other Canadian provinces and territories have made significant progress with respect to equality for women. However, the low number of women MLAs in New Brunswick shows that this province still has work to do in order to achieve true equality. Women account for 51% of New Brunswick's population, yet our province currently has one of the lowest percentages of women representatives in its Legislative Assembly in Canada. The 2014 provincial election sent just eight women to the Legislative Assembly out of forty-nine seats, and at no point in New Brunswick's history has the number of women elected to be MLAs reached the 20% mark in a general election. Of particular concern is the fact that New Brunswick's percentage of women representatives has been largely stagnant, as our province's high water mark for women representatives was set back in 1999.

The underrepresentation of women in the Legislative Assembly raises a number of equality issues. As legislation and government initiatives can sometimes have a disproportionate effect on one gender, a lack of women representatives may result in some perspectives and possible consequences not being fully considered. Further, the underrepresentation of women may result in new legislation or initiatives intended to benefit women not being put forward at all.

In light of the unacceptably low number of women MLAs in New Brunswick, we support exploring measures to increase the number of women standing for election. Gender parity in the Legislative Assembly is an attainable goal. In the near-term, in addition to looking at electoral systems that may result in an increase in the number of women MLAs, it is also necessary to look at whether there are specific barriers to seeking office that disproportionately affect women. Some of these barriers, such as the personal and financial sacrifices of running for office, may exist regardless of the electoral system that happens to be in place. If changes are not made to the manner in which MLAs are elected, there may be other measures that could be taken to address the current disparities. If steps are taken to address inequalities in the electoral process, the Human Rights Commission's approval of programs under Section 14 "designed to promote the welfare of any class of persons" may be available to help ensure that those initiatives follow the spirit of the *Human Rights Act*.

There may also be long-term measures that would be beneficial. In particular, increasing the involvement of young people in the electoral process should be encouraged. One possible way to do this is by working with the political parties to facilitate mentorship opportunities. Current and former elected office holders are some of the most prominent and admired people in New Brunswick society, and they have a tremendous amount of knowledge that could be shared with future generations. While all young people could benefit from such initiatives, they may be particularly helpful for young people from underrepresented groups as finding a mentor on their own could prove more challenging due to the relatively small number of women, indigenous persons, persons with disabilities, and members of other groups in New Brunswick with extensive experience seeking and holding elected office. Good mentors can convey the positives of standing for election to young people, while also helping them to prepare for the challenges it inevitably entails.

Inclusiveness

New Brunswick's demographics are changing significantly. Our population is getting older, but new Canadians are also arriving and calling New Brunswick home. Moving forward, the increased diversity in New Brunswick's population will mean that there is increased diversity in needs and viewpoints. These perspectives need to be considered by government in order to ensure that legislation, programs and other initiatives are truly inclusive and reflect the needs of residents. As such, it is important that all New Brunswickers feel that they have an equal voice in the electoral process. We support exploring ways to make sure that the electoral process is an inclusive one where no identifiable groups feel marginalized or excluded.

When evaluating reforms to the electoral process, it is important to avoid stereotyping about certain individuals or groups, such as making assumptions on the level of knowledge potential voters or candidates possess or the viewpoints they hold. One of the most important aspects of participation in the electoral process is that it provides the opportunity for dialogue. People involved in the electoral process have the opportunity to become informed about the important issues in their community and exchange their views on the best ways of addressing those issues. Reliance on stereotypical assumptions hinders this dialogue, and ultimately all New Brunswickers miss out on the full benefits it can provide.

Conclusion

This year marks the 50th anniversary of the *Human Rights Act* and the Human Rights Commission. While great strides have been made in New Brunswick on human rights over the last fifty years, there is still insufficient consideration of possible human rights implications when developing new government policies. It is preferable to design new legislation, programs and initiatives in ways that comply with the government's human rights obligations from the start, as modifying them later in order to comply with those obligations can be both costly and time-consuming, as well as violating the rights of those who were adversely affected from the outset.

Electoral reform has potentially far-reaching consequences, and the significance of this initiative makes it vitally important to consider human rights when evaluating possible reforms. Ensuring that the electoral process is inclusive, accessible to everyone, and promoting equality is essential. We thank the Commission on Electoral Reform for considering our perspective, and we look forward to reading your final report.

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