



Women's citizenship
the democracies of the Americas

Canada



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the democracies of the Americas**
Canada

Jane Jenson

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Women's citizenship in the democracies of the Americas: Canada

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Chapter **I**

Introduction



1. Introduction

Women have had full suffrage in Canada for almost a century and over the last 50 years have increased their role in representative institutions, including the highest levels of authority. Beginning in the 1960s, second-wave women's movement seeking equality targeted democratic institutions, particularly political parties and elected assemblies at the federal, provincial and local levels. While the institutions of formal representative democracy have seen an increase in women's presence, Canada still ranks low in international comparisons of inclusion of women in democratic institutions. The traditional bar of 30% of elected positions held by women is rarely reached at any of the three levels of government. This report explores the patterns of stagnation in access to democratic politics and the factors that hinder an increase in democratic citizenship.

Beyond political rights and access to the system, the second-wave women's movement also mobilised around claims for greater economic equality via labour force participation, equal pay and access to education. The last 50 years have seen an explosion of women in post-secondary education. There has also been a major increase in female labour force participation, especially by young women with children. Despite such decades-long social change and political mobilisation, however, stubborn economic inequalities continue, and therefore social citizenship continues to display structured gender inequalities. There is an absence of adequate support for the necessary services (especially for social care, for integration of immigrants, and for Aboriginal women) that aid women to achieve economic autonomy and equal citizenship. This report explores the factors that lie behind these patterns of inequality in social citizenship.

A formal right to equality between women and men was enshrined in the Constitution of Canada when it was repatriated from Britain in 1982. These constitutional guarantees have been subject to judicial interpretation over the last 30 years in areas as varied as rights of status Indians, abortion rights, divorce, pay equity, immigration, and so on. The Constitution (and several provincial charters) provide a scaffold of human rights and gender rights on which interpretations of gender equality can be and have been hung. Results have varied, however, and certainly have not always moved towards full citizenship for women.

When analysing citizenship from a gender perspective in Canada, it is essential to consider the intersection of public and private life, and the interaction of women's rights, particularly civil and social rights. This will be done here first by examining three areas in particular – abortion rights, social care, and violence against women. In all three cases we observe that state action, via public policy and the judicial system, hinders women's access to their rights, whether control over reproduction, economic equality, or security. A second dimension of the public-private nexus important in Canada comes from challenges particular to an immigrant society and to one with a substantial population of Aboriginal peoples living in its territory.

The concept of “citizenship regime” is used as an analytic tool for discussing citizenship from a gender perspective (Jenson and Phillips, 1996; Jenson, 2010).

To map both its institutional arrangements and ideas it is helpful to see a citizenship regime as composed of three elements:

- A citizenship regime prescribes governance practices. Among these are democratic rules, including the institutional mechanisms giving access to the state, the modes of participation in civic life and public debates, and the legitimacy of specific types of claims-making. It sketches routes to representation, the ways in which legitimate voices are recognized and actors gain entry into the policy process.
- A definition of rights and duties: through formal recognition by the state of particular rights and duties (civil, political, social, and cultural; individual and collective) a citizenship regime establishes the borders and boundaries of inclusion and exclusion of a polity. When certain needs are met via an extension of rights, the role of the market, family, and community sectors have less responsibility for them. If, however, the state refuses any responsibility, then the other sectors will be pressed to fill the gap.
- A citizenship regime also contributes to the definition of who belongs. This involves identity and membership, in both the narrow passport-holding sense of nationality and the more complicated notions of multiple feelings of belonging to several public communities. These feelings of belonging will set the boundaries of inclusion and exclusion into full citizenship.
- The specific content of each dimension of any citizenship regime is established through political action.

This report uses this concept of the citizenship regime to analyse the status of women citizenship in Canada from a gender perspective.

Chapter **II**

Access in Canada's citizenship regime:
The quality of democracy



2. Access in Canada's citizenship regime: The quality of democracy

The political rights of Canadian women have been formally equal to men's for almost a century. As this section will describe, then, the issue is less one of formal democratic rights or even commitment to democratic participation than it is one of equal access to institutional sites of power. The citizenship regime still fails to provide full and equal access to the institutions whose function is to represent citizens.

2.1. Voting

As Table 1 documents, during or immediately after World War I women gained the right to vote in federal¹ elections and in most provinces.² However, as this Box also notes, it took another 20 years for the province of Quebec to achieve female suffrage.

Table 1: Canadian Women's democratic rights

	Right to vote	Right to stand as a candidate
British Columbia	1917	1917
Alberta	1916	1916
Saskatchewan	1916	1916
Manitoba	1916	1916
Ontario	1917	1919
Quebec	1940	1940
New Brunswick	1919	1934
Prince Edward Island	1922	1922
Nova Scotia	1918	1918
Newfoundland and Labrador	1925	1925
Canada – federal elections	1918	1919

Source: Elections Canada, A History of the Vote in Canada, chapter 2. On line at: <http://www.elections.ca/content.aspx?section=res&dir=his&document=chap2&lang=e#2>

1. Throughout this report the term "federal" refers to the actions of the government of Canada or what is normally termed the "federal government." Canada has a federal system of government composed of 10 provinces, three territorial governments which have most of the constitutional powers of a province, and the central government, here termed "federal." The 10 provinces are named in Box 1. The powers of each level of government were set out in the 1867 law, the *British North America Act*, legislation passed by the government of Britain but treated for more than a century as the "constitution" of Canada. In 1982 this document was replaced by the *Constitution Act*, composed of the 1867 law (and any amendments), a procedure for amending the Constitution, and the *Charter of Rights and Freedoms*, added to the constitutional array also in 1982.

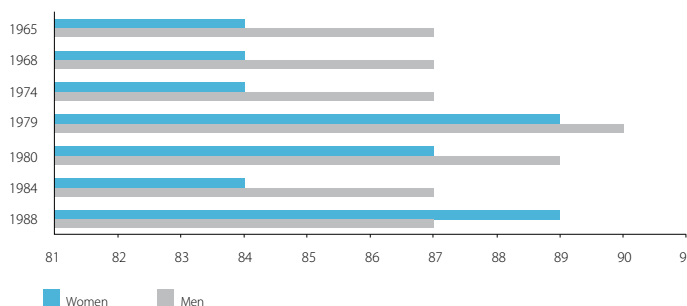
2. Access to these basic political rights came partly as the result of a certain evolution. As early as 1873 women in British Columbia who were property owners could vote in provincial elections and by 1900 that right was available in most provinces.

These basic democratic rights were constitutionally enshrined in the 1982 Charter of Rights and Freedoms whose article 3 affirms that: “Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.”

Of course, granting these rights did not immediately and dramatically alter gender inequalities in political practices and women’s participation in democratic institution. Women’s support for democracy has, however, been on the rise over the last century and that currently they are more supportive of electoral institutions and more active voters than are men.

In the first decades after female suffrage was granted, there was a large gender gap in turnout; men voted at significantly higher rates than women. After World War Two, however, the gap began to narrow. In the 1960s and 1970s the difference in turnout was consistently only three percentage points (87% of men voted compared to 84% of women), until 1979 when the gap was only one point. By 1988 women were voting more than men (Megyery, 1991: 18).

Figure 1. Turnout rate by gender, elections 1965-1988 % voting



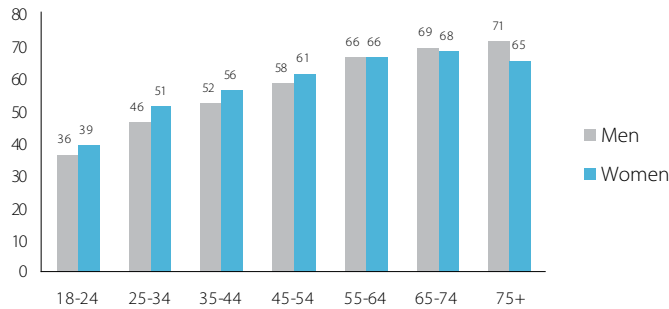
Source: Megyery, 1991: 18

That the gender gap in turnout is still in women’s favour has been confirmed by a recent analysis by Elections Canada (nd: 10). In the 2008 election, and although the overall turnout had fallen enormously, the gender difference was again three percentage points. And, it was women who participated most. Overall only 55% of men but 58% of women made the effort to vote.

More detailed analysis by Elections Canada examined turnout by age and revealed that in some age groups the gender difference in participation is even larger. While young people vote at substantially lower rates than older citizens, young women consistently participate more than do men of the same age. In particular women in the age groups that might be expected to be the most busy balancing work and family are much more likely than their male counterparts to go to the polls in federal elections (Figure 2).

3. http://laws-lois.justice.gc.ca/eng/charter/page-1.html#_tjs_1

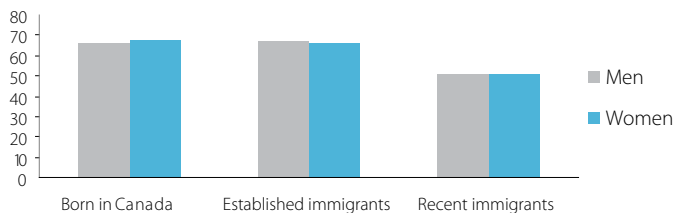
Figure 2. Turnout rates by age & gender, 2008



Source: Elections Canada, nd: 10

In a study of the participation rates in elections in general (that is, not only federal ones), Statistics Canada observed a similar gender gap between women and men's turnout rates. Even more interesting as Figure 3 documents, the data show that women who have immigrated to Canada – both those here for many years and more recent arrivals – are adopting the norms of their new country. As they gain citizenship they are participating at similar rates to their male counterparts.⁴

Figure 3. Citizens' reported voting by birth place % - 2011



Source: Statistics Canada. See <http://www.statcan.gc.ca/pub/75-001-x/2012001/tables-tableaux/11629/tbl01-eng.htm>.

This tendency of women to take their rights to participate as citizens at least as seriously if not more so than men suggests a strong commitment to democracy. Women maintain this commitment despite the fact that their access to office and to positions of authority is still significantly lower than that of men. Nor are political parties doing much to improve that access.

4. To become a citizen, immigrants must have lived in Canada for at least three years, within a period of four years, as well as meeting other requirements with respect to age and language abilities.

2.2. Access to candidacy

It took much longer for women to be accepted as candidates for elected office than it did for them to begin voting in large numbers, and this despite gaining both the right to vote and the right to stand for office at virtually the same time (see Box 1). And, it was even longer before they won any significant number of seats in the 11 legislatures.⁵

In the 1921 federal election – the first in which women could vote – a paltry four women were candidates, and only one of them succeeded in winning a seat. These tiny numbers persisted until the 1980s, when the number of female candidates began to rise and the number of women elected also rose (Matland and Studlar, 1996: 718).⁶ However it was not until 1997 that more than one in five (20.6%) seats was held by a woman. By 2011 that percentage had only reached one in four. Canada is therefore only in 40th place among the 143 countries ranked by the Interparliamentary Union.⁷

There is not space here to recount the success rates of women candidates in all provinces, but some can be reported. In British Columbia the percentage of members of the Legislative Assembly who are women is consistently higher than in House of Commons (the federal legislature); in 2009 it was 29%. In 2011 28% of the Ontario legislature was female. The National Assembly of Quebec has twice reached the 30% mark. In other words, the success rates of women are somewhat higher in provincial than in federal politics. Yet even these rates of success at gaining electoral office are barely the “critical mass” identified by scholars and international organisations as necessary to alter patterns of access and behaviour in legislative bodies.⁸

Nor have women had access to positions in municipal politics at any higher rate, despite a long-standing belief that it is easier for and more likely that women will hold elected office “close to home.” In Canada at least this old chestnut no longer holds, if it ever did (Tolley, 2011).

The Federation of Canadian Municipalities has set a target for 2026 of 30% of elected officials to be women.⁹ Such a modest target is necessary because of the more than 24,000 elected municipal officials in the country in 2012 only 24% are women.¹⁰ Only one province (British Columbia) has surpassed that target, with 32% female mayors and councillors. All the others are well – and some very much – below the 30% bar. It is only the small northern territories, by far more rural than urban and with very few elected municipal officials, which are above the bar (along with British Columbia).

5. Institutions for representing the residents of the three territories are of more recent vintage.

6. For the results from 1921 to the present see: <http://www.parl.gc.ca/About/Parliament/FederalRidingsHistory/hfer.asp?Search=WomenElection&Language=E>.

7. <http://www.ipu.org/wmn-e/classif.htm>.

8. For one of the earliest references to the importance of a critical mass see Dahlerup (1988). She set the bar for achieving a “critical mass” at 30%. The UN also uses this bar, for example in Progress of the World’s Women 2011-12, p. 8.

9 See <http://fcm.ca/home/media/news-releases/2012/fcm-celebrates-international-womens-day-and-recent-successes-in-closing-gender-gap-in-municipal-politics.htm>.

10. http://www.fcm.ca/Documents/reports/Women/Municipal%20Statistics-elected%20Officials%20Gender%20Statistics_EN.pdf.

The conclusion to draw of this overview of women's electoral success – currently stuck around 25% – is that "...women experience nearly equivalent levels of underrepresentation at all three levels of government" (Tolley, 2011: 573).

2.3. Access to leadership and key positions

While access to seats in the legislature at federal, provincial and municipal level remains difficult, we do observe an alternative route to political positions and the exercise of political authority. By a number of different measures it is clear that Canadian women are achieving major positions of authority within the key institutions of government even though their numbers in the legislature are limited. Gender differences are frequently smaller in Cabinets than in legislatures and women are beginning to take leadership roles in political parties.

- In April 2012 in four of the subnational governments (10 provinces and three territories) the head of government was a woman. An additional four have previously held the post of Premier.
- Nine women in total are currently leading provincial political parties. Beyond the four who are Premiers, an additional three are leaders of the Official Opposition.¹¹ The remaining two are leaders of "third parties."
- For a short time (June 25, 1993 to November 4, 1993) Kim Campbell was Prime Minister of Canada and leader of the Progressive Conservative Party.
- Since 1975 the New Democratic Party – now the Official Opposition in the House of Commons – has been led three times by men and three times by women. When Audrey McLaughlin was selected by the party membership in 1989, she was the first woman to be named leader of a major national political party and she served for six years.
- In April 2012 the Prime Minister's Cabinet had 38 members, only 10 of whom were women.¹² But the rate of women's representation in the Cabinet of this Conservative Prime Minister was higher than his party's percentage of women MPs (17%).
- In 2007 the Premier of Quebec announced with fanfare the creation of his "parity Cabinet" composed of only 18 members – nine of each sex. The Deputy Prime Minister was also a woman. Two years later he named a much larger Cabinet but one that no longer respected the parity principle (46% women).¹³ As of 2012 the Cabinet had 27 ministers, 11 of whom

11. In Westminster systems such as Canada's (both at the federal and provincial-territorial level) the status of Official Opposition goes to the party with the second most legislative seats. The status brings certain benefits and privileges that other leaders and political parties in the legislature do not enjoy.

12. <http://www.pm.gc.ca/grfx/docs/cabinet.pdf>.

13. <http://www.radio-canada.ca/nouvelles/Politique/2009/06/23/001-remaniement-quebec.shtml>

14. <http://www.premier-ministre.gouv.qc.ca/equipe/conseil-ministres.pdf>

are women (41%) and one of whom is Deputy Prime Minister.¹⁴ Despite the decline since 2007, however, the Cabinet has always overrepresented elected Liberal women, whose presence in caucus was never more than 30%.

All of these measures indicate that the practice in Canada is for governing parties to name women to high office at a rate that surpasses their presence in the legislature.

Prime Ministers and Premiers have also used their power to name their Cabinets to signal their commitment to representing diversity, both of ethnic origin and Aboriginal persons.¹⁵

- In 2008 PM Stephen Harper named Leona Aglukkaq to be Minister of Health, making her the first Inuk to hold a full Cabinet portfolio. Two Inuk, including one woman, had previously held positions as parliamentary secretaries, named by Liberal governments.
- In 2007 the first Black woman was appointed to a Cabinet post in Quebec. The federal Liberal government of Jean Chrétien had done the same in 1996.
- In this way governments have been able to indicate that they are “representing women” without making waves within the political parties and changing their recruitment practices. These parties and their practices continue to set up major roadblocks to women achieving full citizenship and to righting the gender inequalities in democratic politics.

2.4. Political Parties: slow to include female candidates

“The Beijing Platform for Action called for gender balance in governmental bodies, while CEDAW mandates the use of temporary special measures, including quotas, to amplify women’s voices in political decision-making. Of the 28 countries that have reached or exceeded 30 percent women’s representation in national parliaments, at least 23 have used quotas” (UN Women, 2012: 8).

Canadian political parties are neither among the group of 28, as we have documented, nor among the 23. The parties have been exceedingly reluctant to rely on quotas to increase the probability of electing more women to their caucus in the legislature, whether federal or provincial/territorial.

In the 1980s and early 1990s, under pressure from the women’s movement, political parties made a variety of types of commitments to increasing the representation of women, but none accepted a quota per se (Matland and Studlar, 1996: 718-19 provide a summary).

- In 1991 the federal New Democratic Party (NDP)¹⁶, the third party in federal elections at the time, made a commitment to gender parity in candidacies; in the next election 38% of its

15. In Canada the federal government also names the Supreme Court Justices. Of the nine justices in 2012, four were women, including Madam Chief Justice Beverly McLachlin. See <http://www.scc-csc.gc.ca/court-cour/ju/cju-jua-eng.asp>.

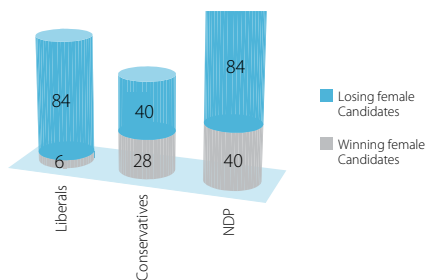
16. The NDP is historically a left-of-centre party that, until 2011, was consistently a “third party” – that is a party with little hope of forming a government – in the House of Commons. It has formed the government in several provinces, however, since the 1940s.

candidates were women. This commitment requires little more, however, than to make a good faith effort to find a woman candidate when a nomination becomes available.

- In 1993 the Liberal¹⁷ leader attempted to improve the number of viable women candidates by parachuting them into winnable ridings. With a goal of 25%, the final result was 21%. This top-down approach provoked a backlash, however, particularly among male candidates who had spent years preparing to replace an incumbent.
- The Conservatives¹⁸ tended to follow a strategy of concentrating on the success rate of their female candidates, even if they are fewer in number overall. The party nominated fewer candidates but in “safe” seats.

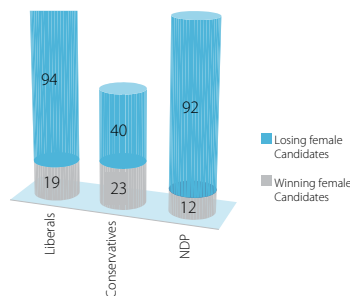
The results of these varied strategies are also varied rates of success of candidate cohorts as Figure 4 shows.

Figure 4. Success of women candidates by party, 2011



Source: Parliament of Canada, History of Federal Ridings since 1867, <http://www.parl.gc.ca/About/Parliament/FederalRidingsHistory/hfer.asp?Search=WomenElection&Language=E>

Success of women candidates by party 2008

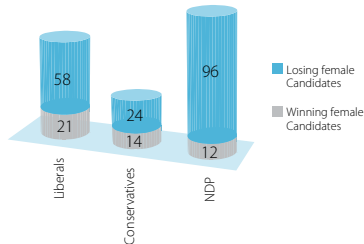


Source: Parliament of Canada, History of Federal Ridings since 1867, <http://www.parl.gc.ca/About/Parliament/FederalRidingsHistory/hfer.asp?Search=WomenElection&Language=E>

17. The Liberal party is historically a centrist party which formed the government for much of the 20th century. It last formed the government, with a minority of the seats, in 2004.

18. The Conservative Party had several forms, and throughout the 20th century was a centrist party competing with the Liberals. For the last decade, however, it has become staunchly a right-wing party, drawing much of its inspiration from right-wing populists in the United States. It formed minority governments in 2006 and 2008 and won its current majority in 2011.

Success of women candidates by party, 2006



Source: Parliament of Canada, History of Federal Ridings since 1867, <http://www.parl.gc.ca/About/Parliament/FederalRidingsHistory/hfer.asp?Search=WomenElection&Language=E>

While the number of women elected in each contest depends on the party's fortunes Figure 4 also indicates that the NDP are most likely to nominate candidates in one of the 308 federal ridings but the Liberals are not too far behind. In both cases, however, the success rates of these candidates remain low. Only in the very unusual election of 2011 when the NDP went from one seat in Quebec to 59 (27 of whom were women) did the NDP achieve a success rate over 30%.¹⁹

By adding the two portions of the cylinders in Figure 4, we note that over the last elections the proportion of any party's 308 candidates who are female never rises very high.

In order to control for the fact that the electoral fortunes of the three parties are not equal and that therefore neither male nor female candidates may have much chance of success, Table 1 compares success rates by gender and by party.

This table shows that the almost two decade-long commitment to nominating women by the NDP means that the party gives women almost an equal chance with male candidates of winning. The gender gap in electoral success has been eliminated and women are no longer overwhelmingly relegated to lost-cause ridings. In other words, men as much as women in this party must be willing to be sacrificial lambs for the NDP, and the party's caucus has the greatest gender balance at 61% male and 39% women after the 2011 election.²⁰

As their fortunes declined from 2006 through 2008 to the catastrophic result of only 34 seats in 2011, the Liberals became much less able to elect women. Indeed the 2008 result shows that men were more likely to be in a safe riding. Therefore, as the party's fortunes declined they held on to their seats. By 2011 the caucus was 82% male, up from 75% in 2008.

19. Most of the candidates – male and female – who ran in Quebec for the NDP in 2011 had no expectation of winning and found themselves catapulted into office on a very surprising election night.

20. After the 2008 election the caucus was 68% male and 61% after 2006.

Table 2. Success rate by gender and by party Three federal elections

	Conservatives		Liberals		NDP	
	Male candidates who won	Women candidates who won	Male candidates who won	Women candidates who won	Male candidates who won	Women candidates who won
2006		Women candidates who won	Male candidates who won	27%	9%	11%
2008		Women candidates who won	Male candidates who won	17%	12%	12%
2011		Women candidates who won	13%	7%	34%	32%

Source: Calculated from <http://www.parl.gc.ca/About/Parliament/FederalRidingsHistory/hfer.asp?Search=WomenElection&Language=E>

The Conservatives' caucus is also 84% male. The party manages, however, to place the few women candidates that it chooses to run in ridings where they have the best chance of winning. In other words, a woman who manages to gain the nomination for the Conservatives has a much higher probability than women in the other two parties of winning the seat. They are simply many fewer than in the Liberal Party or NDP to get the nod to run. Thus, when the party finally won its majority in 2011, the gender gap in the success rate widened rather than narrowed.

These analyses document that the gender imbalances observed in legislative outcomes is the fruit of party strategies with respect to nominating candidates. No Canadian party has eliminated the imbalance in caucus, although the NDP's strategy over 20 years is moving in direction. For a time Liberals tried to handpick winners and parachute them into winnable ridings, but over time this voluntaristic strategy has not worked. More than four of every five members of caucus are men. While many women stand for the Liberals, they have significantly less chance of winning than do men in their party or Conservative women. The Conservatives nominate few women, and not surprisingly, as a result their caucus contains few women's voices.

2.5. Political culture and political action: why political women win and why they “fail”

There is little evidence that voters are reluctant to support female candidates and they do not “consider leadership a masculine trait” (Bashevkin, 2009a: 199). Indeed the detailed study in *Opening Doors* (Bashevkin, 2009a: chapter 10) found little evidence of gender-trait stereotyping in Canadian electoral politics or that it was hindering women's political success.

More important by far for women's access to electoral success were the competitive situation of their political party and the structuring effects of the electoral system. The closer to power a party, the less likely it has been to nominate women candidates or choose female leaders. For its part, a first-past-the-post system does not rule out increasing gender balance, but it does make it

more difficult in large part because of the low rates of turnover in ridings and the decentralised procedures for choosing candidates.

The academic literature on women's access to political rights of citizenship and particularly access to democratic institutions has emphasised the gate-keeping role of political parties in opening or closing access. In a first-past-the-post electoral system, the task is particularly arduous because the tool of list management, available in proportional representation systems, is not available. This report thus far has documented that Canadian political parties can and have sometimes developed strategies to open the gates to women. The example of the federal New Democrats teaches that it is possible to shift the gender balance, but that this is a long-term process that demands continuing commitment within the party. In large part the timeframe is long because Canada's selection process for candidates is one of the most decentralised (Bashevkin, 2009a: 65).

There is also evidence that political parties with commitments to equality and feminist goals are more likely to promote women's access to office than are those hostile to equality (Young, 2000: 169). While this observation may seem a truism it is relevant to examine further in two situations. One is when the legitimacy of feminism and equality-claiming is under attack. The second is when feminists themselves make decisions to deemphasise the importance of elections, winning electoral office and legislative activity. Both are occurring in Canada.

The Canadian women's movement in the 1970s was concerned with improving women's situation in electoral politics but by the mid-1980s the major organisation of the movement experienced a rift, between a wing in which many women with party experience were active and more radical wing with strategies other than electoral for achieving their gender goals (Young, 1996: 235ff.). Organisations targeting an increase of women's participation in elected institutions do exist but they are relatively small. At the same time the federal government, beginning in the 1990s under the Liberals and continuing after 2006 with the Conservatives, has systematically reduced its funding of civil society organisations representing women and making equality claims in their name (Dobrowolsky, 2009).

Quebec, however, provides another example and evidence that the strategic choices of the women's movement is primary importance for accounting for success in increasing access to the formal institutions of democracy. As mentioned already, the number of women in the National Assembly hovers around 30% and women hold a large number of Cabinet positions. The leader of one of the two main parties is also a woman. This higher success rate can be attributed to party interest – women are a relevant constituency for both main parties (Bashevkin, 2009a: 65) – but also to the ongoing pressure from Quebec's women's movement to ensure a slate of female candidates in winnable seats. The major explanatory factor, however, seems to be a high level of turnover of candidates, whether by defeat or retirement, which gives party leaders and riding associations the option of choosing a woman to carry the banner (Bashevkin, 2009a: chapter 4).

The absence of turnover and conversely the stability of their winning constituencies, in large part explain why the NDP has taken so long to move towards its goal of gender parity for its candidates for the House of Commons and provincial legislatures. The surprising result of the “orange wave” of NDP candidates elected in 2011, especially in Quebec where the party jumped from one to 59 MPs, meant that it also dramatically increased its percentage of female MPs in the House of Commons from 32% to 39%.

As noted above, Canada has seen a number of women chosen to lead their party. The first campaign by a woman to lead a party was initiated by Rosemary Brown who ran for the NDP leadership in 1975. One important observation can be made about these efforts: “... while women have participated actively as federal leadership candidates since 1975, not one has yet won the post in a competitive party” (Bashevkin, 2009a: 123).

The phenomenon of the “sacrificial lamb” or “lost-cause candidate” has been displaced towards the leadership of parties. As leaders, women are often set up to “fail.”

Those who have become party leader have either been in the NDP, which until recently has little chance of even forming the Official Opposition in the House or in provincial legislatures, also often in minority positions.²¹

- Audrey McLaughlin (leader of the federal NDP 1989-95). In the election (1993) after she was named leader, the NDP won only 9 seats, the lowest score since the 1950s.
- Alexa McDonough (leader of the federal NDP 1995-2003). In the 1997 election the NDP won 21 seats but was in fourth place and far behind the third party, which had 40 seats.
- Provincial New Democrats have been led by women but they have third-party status, for example as in Ontario currently. Before becoming leader of the federal party, Alexa McDonough led the Nova Scotia NDP for 14 years and in all that time the party never counted more than three members of the Legislative Assembly.
- Where provincial New Democrats have a good chance of forming or are already in government, men are the leaders. In the March 2012 campaign for national leader of the NDP, currently the Official Opposition, two women ran. The highest score received by either of them was 16% of the vote.

Other political parties follow a similar pattern:

- Pauline Marois ran for the leadership of the Parti québécois three times and was twice defeated. She was finally chosen in 2007 to lead her party following the resignation of André Boisclair, who had led the PQ to its worst electoral result in two decades. The party was on the ropes, and no other candidates sought the leadership.

21. The first female leader of a national party was Kathryn Cholette of the Green Party (1988-90). The Green Party won its first seat at the federal level in 2011, when its current leader won her riding.

- Alison Redford became the first woman to lead the Alberta Progressive Conservatives in 2011, when the party that had in power for 40 years was bleeding support to its right and to the Wildrose Party (also led by a woman). The party was divided at the leadership convention. On the first ballot Redford received less than half as many votes as the front-runner (19% as compared to 41%) and was a distant second. But the electoral rule distributing second choices of those who supported the candidates eliminated on the first round made her the winner. She became leader of a party in which over four of every five members had wanted someone else. In April 2012 she led her party to victory, but only after a campaign in which she seemed headed for defeat.

The federal Conservatives have a similar history. In 1993 the convention chose Kim Campbell to lead the party and thereby become Prime Minister. The party was at one of the lowest points in its history. In the subsequent election the Progressive Conservative Party, that had always been one of Canada's two "governing parties," since 1867 was reduced to two seats. When the Right finally reconstituted itself at the beginning of this decade, after a series of mergers²² and it again became the leading opposition to the governing Liberals, the sole female leadership candidate received 4% of the vote at the convention.

The Liberals, until recently Canada's self-styled governing party, has never had a woman close to winning the party leadership. When Sheila Copps ran at the 1990 convention, she placed a distant third (11%), with less than half the votes of the second-place candidate who was himself far behind the winner. Subsequent leadership conventions provided even less support for female candidates.

In other words, the closer to power, the smaller the likelihood the party will call on a woman to lead. This inverse relationship between a party's electoral success and women's presence in elite positions has been observed for years (Bashevkin, 1994: 150-51). Parties are willing to accept a female leader only when they are in serious electoral difficulty or decline; a party whose fortunes are rising will always choose a man.

Democratic institutions continue to exhibit large gender imbalances, at the same time that there has been a significant decline in the legitimacy of formal politics. Voting rates have declined precipitously, even if as Figure 2 shows young women are less distanced from participation than young men. Female politicians are subject to gender-specific scrutiny focused on their physical attributes, style and sexual preferences more than their qualifications and policy (Bashevkin, 2009b: chapters 3-4). And advocates of progressive and/or rights-based policies are sidelined in a debate that has treated them as "special interests" for almost two decades (Jenson and Philips, 1996; Dobrowolsky and Jenson, 2004). The consequences for the rights dimension of the citizenship regime are major.

22. In 1993 the other right-wing party, the Reform Party, became the Official Opposition. That party then merged with another to become the Canadian Alliance. The Conservative Party was finally created in 2003 via a merger of the Alliance and the Progressive Conservatives, with Stephen Harper as leader.

Chapter

III

Rights in Canada's citizenship regime:
The quality of social
and economic democracy



3. Rights in Canada's citizenship regime: The quality of social and economic democracy

Since 1982 the Charter of Rights and Freedoms guarantees both to Canadian citizens democratic rights and mobility rights and to every individual fundamental freedoms, legal (civil) rights, equality rights and so on. The equality rights of section 15 are formulated in this way:²³

(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.

In other words, the possibility of affirmative programmes is built into the Constitution. And, mobilisation by feminist legal activists has resulted via several important court decisions, feminist in the entrenchment of the principle of equality as substantive rather than simply formal (Lépinard, 2010: 1764). Nonetheless, despite such successes in advancing the principles of gender equality, Canadian society still fails to provide equal civil and social rights.

3.1. A civil right to control reproduction: a right but too little access

The Charter of Rights and Freedoms has proven a helpful but insufficient ally for the protection of women's civil right to reproductive freedom. Legally women have a well-protected right to an abortion with no legal restriction, but the capacity to find a medical practitioner willing to perform the abortion remains far too limited.

As in many countries, the 1970s and 1980s in Canada were years of mobilisation by women's groups and other allies in order to ensure access to safe and affordable abortions. In 1969 abortion was decriminalized and therapeutic abortions were possible after approval by a committee of three doctors and if performed in a hospital. This restrictive compromise was contested from the start, first in Quebec and then in other regions.²⁴

23. Following mobilisation by the women's movement at the time the Charter was being adopted, gender equality rights were further strengthened by the addition of Section 28 which states: "Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons." This was done so as to prevent governments from invoking an override clause, termed the "notwithstanding clause." Section 15 but not section 28 can, under certain circumstances, be overridden. This victory is an indication of the strength of the women's movement 30 years ago.

24 For the story until 1990 see Brodie, Gavigan and Jenson (1992).

In the 1970s in Quebec, Dr. Henry Morgentaler performed abortions in his clinic. Three times a jury acquitted him of the charge of performing illegal abortions, despite him admitting that he had in fact performed many thousands without the approval of a hospital Therapeutic Abortion Committee (TAC) and in a clinic rather than a hospital. After these acquittals, prosecutors in Quebec stopped trying to charge him. He then moved his campaign, with the support of prochoice groups, to other provinces. Finally in 1988 on appeal to the Supreme Court the 1969 law was struck down as an unconstitutional interference with the guarantee of “security of the person,” and the “right to liberty [that] guarantees every individual a degree of personal autonomy over important decisions affecting their private lives” (quoted in Palley, 2006: 572).

Subsequent decisions confirmed this right to security of the person enjoyed by the pregnant woman. Attempts to affirm the rights of the father or to charge the women with mistreatment of the foetus have been rejected by the courts. The Supreme Court insists that identification of foetal rights is a normative – and therefore political matter – and not a legal one. Therefore it has refused to rule (Richer, 2008: 14).

The 1988 decision essentially left abortion unregulated by the Criminal Code and no government has passed legislation to limit the time frame or conditions under which abortions may be performed. In 2012 a Conservative Member of Parliament introduced a Private Members Bill that would have reopened the debate about foetal rights and abortion more generally. The leader of his own party, Prime Minister Harper, announced he would vote against the proposal that threatened to reopen a debate that has been closed for years.²⁵

Thus Canadian women have a civil right to seek a legal abortion. *They do not have, however, a social right to obtain an abortion when needed, within the universal health care system.* Effective and affordable access is widely variable, as provinces – which have responsibility for health care – dispute the federal government’s definition of abortion as a “medically necessary service” and therefore to be provided and paid for within the public health care system (Palley, 2006).

The result is a wide diversity in access to services. The province of Prince Edward Island has no doctor who performs abortion and the provincial health ministry sets weighty conditions for covering the cost if a woman travels to another province for the procedure.²⁶ A 2006 report found that only one hospital in six in the whole country provided abortion services, and these were regionally concentrated. Five of the 13 provincial-territorial health systems had no clinics performing abortion.²⁷ This is the case despite the consensus that early-term abortions are cheaper and easier to provide in clinics. Thus women faced serious barriers to service based on cost, location, travel possibilities and wait-times (Richer, 2008: 11ff).

25. http://www.huffingtonpost.ca/2012/04/26/abortion-canada-stephen-harper-conservatives_n_1456339.html

26. An out-of-province medically necessary service is covered if the recipient must seek it in another province. For example, an Ontario resident being treated for a heart attack in Alberta would be covered by Ontario’s health care system. However provinces can also set limits on what they will reimburse. Thus the province of Prince Edward Island will cover the cost of a woman’s out-of-province abortion only if she meets the strict conditions it sets with respect to referral by a doctor certifying her health is in danger, and so on (Richer, 2008: 12).

27. http://www.cihi.ca/CIHI-ext-portal/pdf/Internet/TA_09_ALLDATATABLES20111028_EN

Women are in this difficult position despite wide public support for abortion rights. A 2011 poll found that 52% of the population polled agreed with the statement “I support the right of women to make choices about their own body” and a further 18% stated that while they were personally opposed to abortion they “recognize the right of individuals to make their own choices.” Only 8% would make abortion illegal.²⁸ These findings confirm those of a 2008 poll which found 49% of respondents agreed abortion should be legal under any circumstances and a further 42% were willing to see it performed under some circumstances. Only 5% thought it should be illegal.²⁹

It is not popular opinion that is hindering women’s access to such a basic civil right of citizenship, therefore. Rather, provincial governments have adopted their positions and the federal government has ceased insisting on the requirement of providing services³⁰ under pressure from a small number of pro-choice activists (Palley, 2006: 568-69).

Only one political party officially fully supports women’s right to choose; that is the NDP. The Liberal caucus is divided over the issue and the vast majority of Conservative MPs support pro-life positions, and gain support from such groups in their constituencies (Palley, 2006: 579). Because of this, the capacity of Canadian citizens and residents to attain the right to reproductive choice is significantly curtailed despite having constitutional guarantees.

3.2. Social rights of citizenship: Gendered inequalities in employment and income

The Charter of Rights and Freedoms is silent on social rights. Canada has a liberal welfare regime which means that, with the exception of universal health care and education through secondary school, social benefits are provided on the basis of demonstrated need and at a low level or on the basis of previous payroll contributions. Gender-based economic inequalities are large.

The Conference Board of Canada reported in 2009 that Canada ranked 12th of 17 peer countries (northern and continental European for the most part) on a measure of the gender income gap.³¹ It is fully 21%, although it had declined in recent decades; in the 1980s it was almost twice as large. As the Conference Board put it, this gap is a symptom of non-respect for human rights: “The principle of equality of opportunity is one of the basic tenets of human development. ... research shows that, despite decades of anti-discrimination legislation and equal rights provisions ... there is still a significant income gap between men and women.”³²

28. April 2011 poll by Abacus Data for Sun News Network. Available at <http://abacusdata.ca/2011/05/11/canadian-public-opinion-on-abortion/>.

29. An Angus Reid Poll, June 2008. Available at http://www.angus-reid.com/polls/32518/half_of_canadians_want_abortion_to_remain_legal/.

30. In principle, under the Canada Health Act (federal legislation) the federal government can withhold transferring funds to a province to pay for its health care system if that province does not respect the federal definition of medically necessary services. However, it is politically difficult to do so.

31. <http://www.conferenceboard.ca/hcp/details/society/gender-income-gap.aspx>.

32. For the report and this citation see: <http://www.conferenceboard.ca/HCP/Details/Society/gender-income-gap.aspx?pf=true>.

a. The gender income gap among retired Canadians

One important reason that this gender income gap exists follows from historic differences in the earnings of women and men, differences that are now translated into significantly lower incomes available to women and men of retirement age.

This gender gap persists despite the very significant increase in retirement income that all Canadians have enjoyed as reforms made in the 1960s have matured. Between 1980 and 2003, the average total after-tax income of senior couples increased by 18%. For those couples at the mid-point of the income distribution (the median) their after-tax income increased 31%, reflecting the significant improvement in the situation of middle and low-income seniors. The same upward trends were evident among seniors who lived alone. Between 1980 and 2003, the median after-tax income of senior men not living with other family members increased by 43%, while that of unattached senior women rose 42% (Statistics Canada, 2006: 64).

Such important improvements have not reduced the differences between genders, however. Overall male retirees have higher average retirement income than women. Men 70 and over in the top 90th percentile of retirement income can count on almost \$60,000 a year, whereas women in the same percentile – that is the best-off women – have an income that is \$20,000 lower. In addition the median (50th percentile) of women's retirement income is both significantly lower and closer to the bottom 10th percentile than are male median incomes.³³

Canadians have multiple sources of retirement income, some of which is strictly private and some of which is provided through public pensions, both basic and contributory. There are significant gender differences in the reliance on each of these sources.

Indeed, the large income gap in retirement income is a function of the sources of retirement income on which each gender relies.³⁴ Men benefit much more than women from the contributory pillar of pension income as well as private pension plans. Fully 96% of men and only 86% of women receive some retirement income from the contributory Canada/Quebec public pension plans. Moreover the average amount they receive is significantly larger (\$7,000 as compared to \$5,500 received by women), reflecting their longer contribution time and their higher earnings. A similar gap exists for the private pension plans which provide much retirement income to some individuals. Almost three-quarters of men (72%) receive some retirement income from such a plan and less than two-thirds of women do (63%), reflecting lower employment rates during their prime working years and/or jobs that did not provide such benefits. In addition, these plans provide on average a higher income to men than to the women who have them (\$16,200 as compared to \$13,900).

33. From Figures 8 and 9 in http://www.fin.gc.ca/activty/pubs/pension/ref-bib/baker-eng.asp#section4_1.

34. This analysis of income sources, for 2007, is from Human Resources and Skill Development Canada, "Financial Security – Retirement Income," available at: <http://www4.hrsdc.gc.ca/3ndic.1t.4r@-eng.jsp?iid=27>

The only part of the retirement income menu which “favours” women is the basic Old Age Security (OAS) component which goes to more women than men and provides a higher amount to women than men, primarily because they are eligible for the low-income supplements that are part of this pension pillar. In other words, because so many more women than men have very low pension incomes, they are eligible to receive benefits from the programme supporting the poorest retirees.

Here is one clear source of the gender income gap of 21% identified by the Conference Board.

b. The gender income gap among working-age women and men

The gender income gap is not confined to those who are now retired, or course. A good part of it follows from gender differences in earning power among women and men of working age. Women make up 48% of the Canadian labour force and 58% of women over the age of 15 are employed, as compared to 65% of men.³⁵ But the way women work – the kind of jobs, the hours of work and the working conditions – is not the same and not as well paid as men’s. Thus a gender gap in earnings exists.

The earnings gap has stopped narrowing. After contracting in the 1970s and 1980s as women increased their educational qualifications, the difference in earnings between full-time, full-year workers has stuck at .72 since the early 1990s (Drolet, 2011: 3). This is despite the fact that the proportion of female workers aged 25 to 54 with a university degree doubled between 1990 and 2008, and at 29% outstrips the corresponding rate for men (25%).³⁶ The unionisation rate of women is still several points higher than men and has not suffered the precipitous decline seen among male workers (Drolet, 2011: 4).

If the way of measuring earnings is modified – and the full-year, full-time standard is abandoned – there has been a narrowing of the earnings gap. The gender difference in real wages became smaller, as women’s salaries rose and men’s stagnated or declined, particularly among younger cohorts. Nonetheless, the wage gap is still large between older female and male workers, suggesting that earnings-based retirement incomes will be differentiated by gender for years to come.

Moreover, the troubling stability of the .72 statistic suggests that while wages may be becoming more equal, the amount of time worked remains a gender-sensitive factor for overall income.

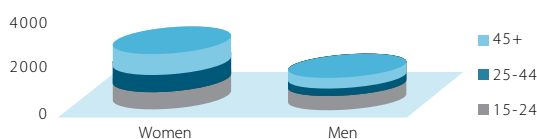
The working conditions and wages of part-time workers have improved over time. Nonetheless, part-time employment remains a form of “women’s work” that usually provides less income. Only 12% of men worked part-time while 27% of women did in 2011. Moreover, the age distribution of this part-time employment is gendered in an important way. Of the men employed part-time, fully

35. <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11387/tbl/tbl001-eng.htm>

36. Women’s investment in their human capital has increased dramatically in Canada such that in 2008 62% of undergraduate degrees and 54% of graduate degrees were awarded to women in 2008 (Drolet, 2011: 4).

two-thirds of them were aged 15 to 24, and therefore likely still in school. While many female part-timers were young women likely combining a job with their studies, almost one-third of them were women aged 24 to 44 (31%) who were likely mingling part-time work with family responsibilities. An additional 38% of women working part-time were 45 or older, perhaps combining employment with care responsibilities for an elderly relative. This means that in their prime working age, many women earn a smaller salary than do prime working age men.

Figure 5. Women and Men's employment part-time, by age



Source: Statistics Canada³⁷

We see in Figure 5 a major part of the reason why the gender income gap in Canada remains high. Behind these “choices” women make about employment is the treatment of social care in Canadian public policy, a treatment that makes it daunting for many women to combine family and employment responsibilities, and leaving even less time for democratic citizenship.

3.3. Social care is a social citizenship right

In order for women to participate in the labour force and to achieve their full earning potential mothers must have affordable, accessible and reliable care for their young children and women in general must have support to meet their family care responsibilities. Despite this imperative, childcare is not treated as a social citizenship right in Canada, with the exception of Quebec where the promise was made in 1997 to provide universal childcare to all parents who wished to avail themselves of it (Jenson, 2002). And those caring for dependent relatives receive very little in the way of public support.

35. <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11387/tbl/tbl001-eng.htm>

36. Women's investment in their human capital has increased dramatically in Canada such that in 2008 62% of undergraduate degrees and 54% of graduate degrees were awarded to women in 2008 (Drolet, 2011: 4).

37. <http://www.statcan.gc.ca/tables-tableaux/sum-som/l01/cst01/labor12-eng.htm>

a. Caring for young children

By 2009, 64% of mothers of children aged 2 or under and 70% of mothers with children aged 3 to 5 were employed, although not necessarily full-time. The labour force participation rate of mothers with children under 6 had more than doubled since 1976.³⁸

As the labour force participation of mothers of young children climbed, families struggled to find a “childcare solution” to meet their needs. There is now a patchwork of programmes that vary from province to province and from parental situation to parental situation. Participation in some form of nonparental care has become the norm for older pre-school children, whether kindergarten, a childcare centre or unregulated care by a neighbour or family member. But for many parents these forms of care are inadequate. Kindergarten in most provinces remains half-day and many childcare centres do not provide the level of quality that parents seek. Indeed, in international comparisons, “Canada has fallen farther and farther behind most other affluent countries, ranking – according to UNICEF’s 10 benchmarks – at the very bottom” (CRRU, 2009: xi).

Care for children is a parental and not simply maternal responsibility. Nonetheless and despite changes in social norms, finding the time to care falls to mothers more than fathers,³⁹ and in the case of lone-parent families (still overwhelmingly headed by women) there is no one else available. Therefore, the lack of services affects women particularly hard.

In this context the higher rates of part-time employment by women aged 25-45 in Figure 5 is understandable. When asked, 73% of women of prime working age explained their part-time status in terms of “personal reasons” (family responsibilities or other) whereas 45% of men the same age said they worked part-time because nothing was available. In addition, as Statistics Canada reported: “although both spouses are working in most families today, data on time use from the 2006 Census showed that adult women are still more likely to put in longer unpaid hours around the home.”⁴⁰

In the absence of support within the citizenship regime for social care, there are long-term consequences of such choices about how to care for children. These arrive both as gender differences in retirement and also the vulnerability that women face if they find themselves facing divorce and the loss of a male income in the family.

38. <http://www.statcan.gc.ca/pub/89-503-x/2010001/article/11387-eng.htm#a4>

39. Statistics Canada has, however, observed a three-fold increase in stay-at-home fathers, and one in eight stay-at-home parents is a man. *Globe and Mail*, 17 June 2011, at <http://www.theglobeandmail.com/report-on-business/economy/economy-lab/daily-mix/number-of-stay-at-home-dads-on-the-rise/article2065381/>.

40. <http://www.statcan.gc.ca/pub/71-222-x/2008001/section/g-reason-raison-eng.htm>

b. Caring for the vulnerable elderly: a gendered story

Societal ageing is rapidly taking place, as the share of the population aged 65 and older rises quickly. The first wave of baby-boomers reached age 65 in 2011. But another long-term trend is even more important. Life expectancy at 65 has shot up. In a single decade in Canada it has gone from 16.1 years for men in 1995-97 to 18.1 in 2004-06 and from 20.0 to 21.3 for women (The Daily, 23-02-10).⁴¹ This means that retired men can expect to live – on average – to age 83 and women to age 86.

Even more relevant for thinking about social care are analyses that reveal the gap between life expectancy and the expected number of years of good health.⁴² For example, whereas men's life expectancy was 76.9 in 2001, only 68.3 of those years were likely to be in good health, while for women, with a life expectancy of 82 years, only 70.8 were probably in good health. The result is obvious. Both elderly women and men will likely need some form of care, and most likely in forms that supplement or complement standard medical care.

But women on average need such care for significantly more years. Because women have, on average, more years with health problems, the need for care in old age is greatest among women. In every age group, women are more likely to receive care than men (Statistics Canada, 2006: 161). Among those aged 65 to 74, almost one in five women received help, compared to 13% of men. The gap was larger for those aged 75 to 84. Almost two-thirds of those elderly women received care compared to 53% of men.

Nonetheless, the gender differences were not the same when couples were examined. Among seniors living with a spouse, men were almost as likely as women to receive help (19% for men and 22% for women).

An additional factor of gendered difference is that a much higher proportion of all age categories of elderly women are likely to be living alone than are men of the same age. For example, twice as many women over 85 are living alone in a private household than are men of the same age (Carrière, et al., 2008: 13). Elderly men are, in other words, likely to be living with someone – most likely a spouse – while women of the same age have to rely on formal as well informal carers, because so many of them live alone.

Where does this help come from?

A 2006 study provides information about how seniors received help because of a long-term health problem (Statistics Canada, 2006: 166). Formal sources include government services, personal paid

41. For 2010 figures and projections see Montambeault (2011: 17 and *passim*). For males, Canada has the third highest life expectancy in Europe and North America and for women the ranking is sixth (*ibid*: 21-22).

42. This is a measure of healthy life expectancy promoted by the World Health Organization, a measure that underpins its approach to healthy and active ageing.

employees, or non-governmental organisations while informal sources are family (usually spouse or children) and friends.

About three-quarters of seniors over 65 received their help in part or in total from an informal source (family or friends). Only a little less than half (45%), however, received their help exclusively from informal sources. This pattern varied with age, reflecting the availability of a spouse to care as well as the severity of the health problem. Over half (53%) of those aged between 65 and 74 who received care had it from informal sources only, compared to 40% of the elderly aged 85 and over.

Canadian public policy relies heavily on informal care provided by family and friends to meet the needs of seniors living with health vulnerabilities. A large portion of care is provided by spouses and the rest by other family members or friends. Formal services are, of course, available but home care services and others supports are often available only in limited supply. The policy focus is often on providing incentives for those caring informally more than to increase formal services, whether in the public or voluntary sector.

The threats to women's well-being – carers as well as those needing care – are multiple. Women are taking on new and extra work, even when they are elderly themselves, providing nursing and other care to their elderly spouse. Daughters and daughters-in-law are often juggling paid work and elder care, sometimes with child care responsibilities as well. Absence of respite services as well as inadequate supplies of home care and services is taking a toll on many women's health and well-being as well as their current earnings and future income.

3.4. Violence within the family and in public: A gendered problem

All forms of gender-based violence render more problematic women's access to full citizenship (Johnson, Ollis and Nevala, 2007: chapter 1). For decades, international conventions and instruments have called for an elimination of gender-based violence as a major route to achieving human rights and development. The 1994 *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* is one of the first regional treaties to advocate against such violence. And yet, the problem remains, and may even be expanding as technology permits new forms such as sex-based termination of a pregnancy. No country provides full security to women, thus leaving a fundamental gap in their citizenship.

Canadians are not immune to gender-based forms of violence. Recently, for example, a major controversy arose when the editor-in-chief of the *Canadian Medical Association Journal* dedicated his editorial to advocating non-disclosure of the sex of a foetus before 30 weeks, in order to discourage foeticide, which he argued was being practised in certain ethnic communities. This call both followed from and revealed more information about advertisements in the ethnic press

offering early sex determination and termination in the United States.⁴³ Although the proposal was generally dismissed as impractical, ineffective and failing to respect other medical norms, it nonetheless did serve to reveal the presence of a practice which is not confined to “foreign countries” but exists within the borders of Canada as well.⁴⁴

Another high-profile dispute erupted when a father, son and second wife of Afghani origin were tried and found guilty of killing the first wife and three young daughters. The dispute turned less on their guilt than whether these were honour killings and a form of gender-based violence being imported into the country by immigrants. Canadians of Muslim origin argued against this position, calling the murders straight-forward domestic violence.⁴⁵

Such examples reveal the extent to which gender-based violence remains a fact of Canadian society and one that requires further intervention to eliminate.

Canadian women suffer from intimate partner violence as well as that perpetrated by strangers. Most recent data on self-reported spousal violence (emotional as well as physical) finds little differences between women and men (Statistics Canada, 2011a: 16). Fully 92% of women as well as men reported no incident of spousal violence within the last five years, and that statistic was virtually the same as in the previous survey five years earlier.

However, when the forms of violence are considered a gender gap emerges. Just as in earlier surveys, women were more than three times (34% as compared to the 10%) more likely to report suffering from the most serious forms of violence - sexual assault, beating, choking or threats with a gun or a knife (Statistics Canada 2011a: 10).

Following directly from this kind of threatening behaviour is the fact that women are much more likely than men to be victims of family-related killings, and especially by their spouse.⁴⁶ Over the last three decades the spousal homicide rate among women has been consistently three to four times higher than that of men (Statistics Canada, 2011a: 33). Although the rate of homicide is relatively low among seniors, women over 65 who are killed are more likely to be the victim of a family member than are male homicide victims.

Nonetheless, it is also important to note that homicide rates for females have declined substantially over the last 30 years, and much of this can be attributed to the declining rate of spousal homicide, which is itself attributed to increasing labour force participation of women and norms of gender equality (Statistics Canada, 2011b: chapter 7).

43. See “Selective abortions prompt call for ultrasound rules,” CBC News, at <http://www.cbc.ca/news/health/story/2012/01/13/female-feticide-editorial.html>. Gender selection is prohibited under the Assisted Reproduction Act since 2004.

44. See André Picard, “Sex selection is a complex issue with many nuances,” <http://www.theglobeandmail.com/news/national/sex-selection-is-a-complex-issue-with-many-nuances/article2306066/>.

45. “Muslim community grapples with Shafia verdict,” <http://www.cbc.ca/news/canada/story/2012/01/30/shafia-trial-verdict-reaction.html>

46. Canada’s homicide rate is relatively low in general and spousal homicides are about 16% of solved homicides (Statistics Canada, 2011a: 32).

The violence against women that continues to be perpetrated is overwhelming physical and sexual assault. Fully 87% of all sexual assaults and 80% of other sexual violations were committed against women and more than half of common assaults were directed towards women (Statistics Canada, 2011b: chapter 7, p. 7).

These rates suggest that Canadian women continue to suffer from threats and experiences of violence. The problem is chronic even as it changes in form somewhat.

Moreover, some population groups are even more likely to experience gender-based violence. One of these is Aboriginal women, who are much more likely to be a victim of violence than is the general population. Self-reported violent victimisation among Aboriginal women was almost three times higher than the rate of violence reported by non-Aboriginal women (Statistics Canada, 2011c: 5). This holds true both for violence between spouses and between strangers. Most victims were young.

A particular dimension of the violence from which Aboriginal women suffer is that much of it may not even be visible because there are so many “missing” Aboriginal women, many of whom are feared murdered. Indeed, an analysis of missing women found that being Aboriginal created the greatest risk for being among the murdered or missing, and other forms of marginalisation (poverty, sex work, etc) only magnified the risk (FPT, 2010).

Such analyses as well as several high-profile media cases point to the on-going victimisation of Aboriginal women linked directly to their continued high rates of social exclusion based both on their gender and their identity.

If we know that “the perpetration of violence against women and the inadequacy of responses to it are a direct result of women’s lower social and economic status” (Johnson, Ollus and Nevala, 2008: 3), then Aboriginal women living in Canada are doubly disadvantaged. As women they experience gender-based victimisation, but beyond that is the continued failure of Canada to provide basic social and economic equality to Aboriginal peoples. While they enjoy certain collective constitutional rights these are necessary but insufficient to fully include them in the Canadian citizenship regime.

Chapter

IV

The belonging dimension of the Canadian citizenship regime: Intercultural relations



4. The belonging dimension of the Canadian citizenship regime: Intercultural relations

This third dimension of the citizenship regime delineates the ways in which belonging and identity is construed in a particular country. Canada is a country with both a significant indigenous population and a country of continuous immigration. These two characteristics of its population mean that Aboriginal women and recent female immigrants may face particular challenges to achieving full citizenship rights.

4.1. Aboriginal women: Doubly disadvantaged

Canada's citizenship regime is one that recognises the collective rights of founding groups. In 1982 the Constitution recognised the standing of Aboriginal peoples⁴⁷ living in Canada as derived from their pre-contact presence, and therefore being "nation-to-nation." Nonetheless this distinct status has never translated into real inclusion into diverse and asymmetrical citizenship regimes. Legacies of colonial law and practice as well as inadequate service provision for more than a century have left Aboriginal peoples marginalised in Canadian society and at threat of cultural decline.

In the 19th century government policy was to establish reserves and limit access to social and economic rights to the territory of the reserve. The expectation – and hope on the part of public authorities – was that with time Aboriginal peoples would assimilate to mainstream society. The law was designed to encourage this extinguishment of Aboriginal rights. Before 1960, for example, in order to vote an individual would have to renounce any claim to status under the Indian Act. But having "status" was the only way to live on reserve lands and receive services (Lawrence, 2003: 6).

The 1876 Indian Act gave the federal government authority to legislate in relation to "Indians and Lands Reserved for Indians."⁴⁸ This meant in essence that the federal government, in a colonial relationship to First Nations, provided services, decided who had access to them, and what they would be. It also institutionalized a form of government based on government-sanctioned band councils rather than any existing or traditional governing forms and practices.

Over time, the operation of the Indian Act with respect to First Nations as well as entrenched racism in white society structured the forms of marginalisation seen today. Aboriginal peoples were denied the right to belong to Canadian society unless they did so on the terms dictated by white society.

47. There are three groups of Aboriginal peoples generally recognised in Canada – Indians, Inuit and Métis. The first group, usually referred to as First Nations, is composed of over 600 national groups.

48. For one overview see Lawrence (2003: 6ff).

For Aboriginal women the workings of the Indian Act were particularly pernicious. By 1985 there were “twice as many nonstatus Indians and Metis [sic] as status Indians in Canada” (Lawrence, 2003: 6), most of whom had lost status because of a “break” in the paternal line. Women with status could not pass it on to their children. Therefore, a child born of an Indian mother and non-status father⁴⁹ was automatically stripped of her rights within the community and even to live on reserve. Also in line with the patriarchal nature of the Act, women who married men from another band had her rights and membership automatically transferred to his community.

This refusal of recognition and exclusion from democratic, social and economic rights was contested in by Aboriginal women. A first court case was mounted in 1971 by Jeannette Corbière Lavell and Yvonne Bédard, two women who lost status under the Indian Act by marrying white men. The Supreme Court ruled against them arguing that their loss was minimal because they had gained all the rights of white women (Lawrence, 2003: 13). A second claim was taken to the United Nations Human Rights Committee by Sandra Lovelace, and that committee found Canada in violation of the International Covenant on Political and Civil Rights. The government finally acted, over opposition coming from male-dominated institutions, to pass Bill C-31 in 1985.

This legislation created a new category within the Aboriginal community of persons who regained Indian status because their mother was a status Indian. It also removed the automatic transfer of a woman’s band membership to her husband’s. Estimates are that in the decade after 1985 approximately 100,000 women and their children reclaimed their right to participate fully in their community.

Important as this change was for the identity and rights of Indian women, it was by no means sufficient to end the marginalisation of Aboriginal women in Canadian society. The legal change simply allowed women and their children to return to the abysmal conditions of reserves, summarised this way in 2009 on the *Aboriginal Portal*:

Besides poverty, First Nation people on reserves face tainted water not suitable for drinking or bathing (affecting more than 60 communities at any given time), a major housing crisis, the loss of their language, the quality of education (40 reserves have no schools), extreme crime rates, rampant health epidemics, and youth suicide rates eight times the national average.⁵⁰

Nor did affect the situation of the thousands of self-identified Métis women and Inuit women. They too face severe challenges within the citizenship regime, following from high poverty rates and inadequate services. The call issued by the Royal Commission on Aboriginal Peoples for recognition

49. This exclusion applied whether the parents were legally married or not and could be applied to children of lone mothers if the father was unknown but suspected to be non-status. It also applied to children of unions in which the father was Indian but without status, for example from the United States. By the same Act, non-Indian women married to status Indians became “Indian” with all the rights associated with it, including passing status to their children.

50. Article by Robert Laboucane <http://www.indigenouportal.com/Education/End-isolation-marginalization-of-Aboriginals.html>

of the destructive effects of centuries of assimilationist policies and unequal treatment provoked more formal answers than social and economic improvements. The report recommended policies to address social, education, health and housing needs, the establishment of an Aboriginal peoples⁵¹ university, and recognition of Aboriginal nations' authority over child welfare. It also called for new legislation and institutions to set the relationship between Aboriginal peoples living in Canada and other citizens on a more solid footing of recognition of a nation-to-nation relationship.⁵²

These sweeping recommendations have not been implemented, while the Government of Canada took three years before finally endorsing the UN Declaration on the Rights of Indigenous Peoples in 2010.⁵³

This slow and reluctant movement on redefining the ways that Aboriginal peoples living in Canada belong and the intersection of citizenship regimes has allowed marginalisation to continue, a process that particularly touches the lives of young women.

4.2. Diversity and belonging: The meeting of interculturalism and gender equality in Canada's citizenship regime

One in every five Canadian women was born outside the country.⁵⁴ While this statistic includes those who may have immigrated more than 60 years ago, in the post-World War Two wave of Europeans, many of these women are recent immigrants. Over the past years Canada has accepted approximately 250,000 to 290,000 new immigrants per year, with half of them at least being women. The result has been an increase in cultural diversity, as patterns of immigration have changed over time. These modifications have put some strain on the belonging dimension of the citizenship regime. There is growing uncertainty about how to combine respect for diversity arising from the multicultural nature of the country with promotion of gender equality.

In 1971, Europe was the birthplace of 61% of recent immigrant women, reflecting the postwar exodus from Eastern Europe as well as Italy and the United Kingdom. But by the mid-2000s, three of every five recent immigrant women came from Asia (primarily China and India) or the Middle East. Latin America and Africa also provided significant numbers.

As a result of the shifting sources of recent arrivals to regions other than Europe, the proportion of immigrant women who belong to a "visible minority" is increasing.⁵⁵ In 1981, 55% of recent

51. The Royal Commission on Aboriginal Peoples was a large inquiry that between 1991 and 1996 conducted wide-ranging research and hearings. It recommended major institutional reforms as well as improvements in social citizenship.

52. See <http://www.aadnc-aandc.gc.ca/eng/1307458586498>.

53. See <http://www.aadnc-aandc.gc.ca/eng/1309374239861>.

54. This portrait is from Statistics Canada (2011b).

55. Visible minority is a term used in Canada since the 1970s by Statistics Canada and in policy initiatives such as employment equity. Members of visible minorities are defined by the Canadian Employment Equity Act as "persons, other than Aboriginal people, who are non-Caucasian in race or non-white in colour." See <http://laws-lois.justice.gc.ca/eng/acts/E-5.401/page-1.html#h-2>

immigrant women were members of visible minorities but by the mid-2000s that proportion was more than three in four.

These adjustments in immigration experience have sometimes generated a perception of confrontation between two fundamental values. On the one hand is the commitment to gender equality set out, as mentioned above, in sections 15 and 28 of the Charter of Rights and Freedoms. The other is found in another article of the Charter, section 27 that reads, "This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."⁵⁶ Multiculturalism is the term used in English-language discussions to express what in other countries and in Quebec is most often termed "interculturalism."

The issue sometimes – and not infrequently – turns on the extent to which respect for diversity of beliefs (particularly religious) can be aligned with a commitment to gender equality. The courts have developed the concept of "reasonable accommodation" as measuring rod by which public officials – in schools, hospitals, the public service and so on – can decide whether to accept a religious practice that contravenes an existing rule. These decisions are often required in schools where children may require an exemption for clothing or meals as well as holidays, or in health services, where female patients may request a female health professional.

As in several European countries, the increase in "visible" Muslims,⁵⁷ including women who wear headscarves and even burkas, has promoted several complicated political debates.

Between 2006 and 2008 Quebec was rocked by a debate about reasonable accommodation and interculturalism. The dispute directly pitted the value of gender equality, enshrined in Quebec's charter of rights as well as the Canadian one, against perceptions that Muslim women were not treated with equality by their own community. Ultra-orthodox Jews were also caught up in this debate, but because their vestimentary practices are somewhat less different than mainstream society (longer dresses) or somewhat less visible (wigs that resemble common hair styles), they came in for less vitriol than did Muslims.

Defenders of "Quebec's values" attacked Muslims, and Muslim women, whose decision to wear a headscarf or other expression of religious values and identity was portrayed as clear evidence of gender inequality in the community, and they argued Muslim women were in need of protection from male members of their own community. Muslim women mobilized, of course, to argue the contrary,

55. Visible minority is a term used in Canada since the 1970s by Statistics Canada and in policy initiatives such as employment equity. Members of visible minorities are defined by the Canadian Employment Equity Act as "persons, other than Aboriginal people, who are non-Caucasian in race or non-white in colour." See <http://laws-lois.justice.gc.ca/eng/acts/E-5.401/page-1.html#h-2>

56. See <http://laws-lois.justice.gc.ca/eng/charter/page-2.html>.

57. There have always been Muslim immigrants and a mosque was built in Edmonton in 1938, where the community was large enough to sustain it. Many early immigrants came from Bosnia. When immigration reform removed the European preference, immigration increased from the Middle East, South Asia and Africa. Somalian refugees also became an important component of the community. Because of the variety of origins, only some Muslims – depending on national origin – qualify as visible minorities, according to the official definition. By far the majority of Muslims live in Ontario, also the province that receives the greatest number of immigrants annually.

stating that they were sufficiently autonomous to hold their own in gender relations. There was little space in this debate for this position, however. The debate often exhibited lack of understanding more often than the contrary. A disturbing aspect of the dispute was that the staunchest opponents of accommodation often resided in parts of Quebec where they were very unlikely to encounter either an ultra-Orthodox Jew or a woman wearing a burka, let alone a headscarf.

The provincial government named a commission of inquiry, headed by two of Quebec's academic experts on diversity and multiculturalism – Gérard Bouchard and Charles Taylor. Their report reaffirmed the necessity for reasonable accommodation while seeking to calm critics of religious expression.⁵⁸ The very need for the commission, however, illustrates the extent to which gender relations have become a flashpoint in relations between immigrant communities and long-time residents.

A similar debate took place in Ontario at about the same time. This time the conflict was between feminists who accused the government of allowing "Sharia law" to be instituted and defenders of diverse institutional approaches to family law (Lépinard, 2010). The province had been allowing families to choose arbitration about some decisions related to divorce, custody and other family law matters by religious leaders rather than judges. In addition to permitting some religious principles to be respected, the delegation helped to reduce the long backlogs in family courts.

In 2003, however, this quiet practice moved to the front of public debate when a Muslim leader called on "good Muslims" to make use of his "Sharia law" arbitration services. A controversy flared up pitting feminists and their allies against practising Muslims and Jews.⁵⁹ Again a commission was established, headed by a well-known advocate of women's rights. After hearings and research into the question of religious arbitration, she recommended putting some safeguards in place, but concurred that religious arbitration was not in conflict with Charter rights (Lépinard, 2010: 1773). Despite the commissioner's findings, controversy continued, with feminists expressing fear about the vulnerability of women practising Orthodox Judaism or Islam. Eventually the government decided to revoke the option, in the name of protecting women.

Both these examples exhibit a tendency to see women in communities of religious practice as vulnerable to anti egalitarianism and their need for protection in order to be equal.

This is a fault line in the debate about gender relations in Canada that touches all immigrant communities as well as Aboriginal ones. Canadians are still working out the best way to recognise diversity and ensure equality, even if this may require some forms of equality in difference.

58. <http://www.cbc.ca/news/canada/montreal/story/2008/05/22/qc-accommodation.html>

59. Orthodox Jews had been primary users of this option, preferring rabbinical arbitration to the secular courts.

Chapter V

Recommendations



5. Recommendations

The following list of recommendations is drawn from the analysis presented in this report, and in recognition that any proposal for a “citizen’s democracy” needs to place at its centre the dimensions of gender and interculturalism, as well as the demands that have been put forth by the women of the region over the last four decades in terms of the operation of the democratic system, its results and institutions.

5.1. The quality of democracy and access to full citizenship

- Political parties should develop viable strategies to overcome the underrepresentation of women in office, in both federal and provincial-territorial legislatures by:
 - a.** adopting a principle of parity or at least a quota for candidacies as a commitment of the party;
 - b.** combining practices of guidance from the centre with the historical tradition of very decentralised selection of candidates locally.

- Political parties should avoid reserving their leadership for men when the party is in a strong position and develop strategies for encouraging viable female candidacies by:
 - a.** setting limits on spending in the leadership campaign;
 - b.** ensuring gender equality in party governance, so that women will become known and gain support internally.

- Municipal leaders and local political formations should adopt a principle of parity or at least a quota for candidacies as an expression of a commitment to gender equality.
 - a.** The women’s movement across the country should reconfirm its commitment and attention to ensuring gender quality in democratic politics.

5.2. The quality of social and economic rights of citizenship

- Access to the civil right to bodily integrity and abortion services
 - a.** The provinces should ensure rather than hinder access to abortion as a “medically necessary service” under the Canada Health Act.
 - b.** The federal government should oversee conformity with this principle.
 - c.** All governments should respect public opinion, which favours access, rather than succumbing to the financial power and political pressure of groups that represent a small number of Canadians opposed to reproductive rights.
- Overcoming gendered inequalities in employment and income
 - a.** Governments should commit to overseeing the reduction of the unacceptably large gender income gap by:
 - i. enforcing existing anti-discrimination and pay equity laws;
 - ii. providing services for balancing work and family that enable women to seek and maintain good quality employment (well-paid and full hours) so that they can build up their pension entitlements across their working lives, thereby helping to avoid low-income in retirement;
 - iii. avoiding public policies that actually encourage withdrawal from the labour force to care for pre-school children and vulnerable elderly or other relatives, because over the life course such policies contribute to maintaining the gender income gap.
- Recognising social care as a social citizenship right by:
 - a.** Investing in affordable and accessible high-quality early childhood education and care so that parents may choose the forms of non-parental care that will benefit their children;
 - b.** Providing adequate home care supports for the vulnerable elderly – still primarily women – so that they can live autonomously as long as they are able and wish to do so.
 - c.** Supporting relatives (often female) so that they can provide care to their elderly relatives if they choose to do so, without mortgaging their own economic future.

- Providing the conditions for physical and emotional security
 - a.** Because forms of family violence are gendered, governments and civil society agencies should provide services to protect women from the serious harm resulting from the fact that the most serious forms of violence affect women more than men;
 - b.** Because both family violence and violence in public touch Aboriginal women much more than non-Aboriginal women, a full range of educational, police and social services is needed to protect them in particular. These should be developed in collaboration with Aboriginal communities and associations, both off-reserve and on reserve.

5.3. Ensuring belonging and full citizenship

- Overcoming the double disadvantage of Aboriginal women.
 - a.** As members of Aboriginal nations, women suffer from the historical legacies and on-going policies associated with colonialist practices by Canadian governments. Their marginalisation should be eliminated through provision of adequate services and supports whether they live on reserve or off.
 - b.** As women they have particular needs both for achieving full participation in their own communities and the broader society. These include attention to gender equality in the institutions of governance within Aboriginal communities and associations.
- Commitment to multiculturalism should not become an excuse for accepting practices of gender discrimination.
 - a.** Courts, public services and civil society should continue to seek reasonable accommodation of religious, ethnic and cultural difference, but at the same time should promote practices that respect fundamental values of Canadian citizenship.
 - b.** Media and other opinion leaders should become better informed about cultural diversity in order to report correctly on diverse approaches to and practices of gender equality.

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