parti égalité
equality party

Office of the Leader — Bureau du Chef
CP/Box 21, Station NDG,
Montreal, QC, H4A 3P4
Tel: [514] 939-3990 — Fax: [514] 939-0569
E-Mail: keithh@videotron.ca

EQUALITY PARTY
SUBMISSION TO THE COMMISSION ON ELECTORAL LAW

MONTREAL, NOVEMBER 8, 2005

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First, ladies and gentlemen, let me thank you for this opportunity to express the views of the Equality Party on the important matter before you, reform of Quebec's electoral law.

Two smaller matters before I address one large one in the time I have. We're pleased to note that the project before you seems to have dropped the provision making it necessary for a party to field 20 candidates in the next provincial election in order for it to retain its status as an authorized political party. I suspect this change (if I'm right) came as a result of the 2004 Supreme Court decision striking down Canadian electoral law's 50-candidate requirement for federal parties to retain their authorized status. Whatever the reason, we commend the change as a significant enhancement to our province's democracy.

We'd also like to see a little less punctilious bureaucracy when Chief Returning Officers examine candidates' 100 signatures supporting their candidacy. Our experience in the last election tested the bounds of credulity. Officers rejected names because electors had used the English equivalent of their street name, i.e. Church Street instead of rue de l'Eglise. Other names were stricken because the elector had used her married name, i.e. Mrs. John Smith instead of her maiden name, or the one that appeared on the electoral list, even though her name appeared right after her husband's at the same address. Some candidates' photos were rejected because the "background was not the right shade of gray." It is difficult enough for small parties to mount their candidates in an election without having them harassed, often just before expiry dates, with such pettiness and bureaucratic buffoonery.

But to larger matters. The Equality Party supports the project's move toward proportional representation in Quebec. I have lived through two elections in my lifetime where the party that received *fewer* popular votes actually got to form the government. If the proposed system prevents that situation from ever recurring, it will have been a godsend.

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However, there are serious flaws in the system as proposed, ones I would like to address. The first is the lack of an endorsement mechanism in the law itself. Such a major change to Quebec's democratic system ought to be put before the people in the form of a referendum, as the New Brunswick Commission on Legislative Democracy, also in favour of proportional representation, has proposed there. A second related oversight consists of the terms of reference of the Quebec Commission themselves. In New Brunswick, those terms were wide enough to include the question of Referendum Law. This should have been the case here in Quebec, whose referendum law, tied inevitably to electoral law, in our view excessively restricts freedom of political expression and impoverishes the political debate that smaller parties are meant to enhance. Given the penchant of certain Commission members for referendums in general, we'd have thought such a wider mandate might have been both *à propos* and relatively easy to secure.

The chief concern of the Equality Party *vis-à-vis* the move toward proportional representation lies in the redefinition of riding or "division" boundaries such a change inevitably entails. We note with a certain alarm paragraph 167 of the project:

> An electoral division is a natural community established on the basis of demographic, geographical and sociological considerations such as population density, the foreseeable rate of population growth, the accessibility, area and shape of the region, the natural local boundaries and the territories of municipalities and school boards.

Nowhere in this important clause defining the scope of a "natural community" and therefore the boundaries of future electoral divisions, does the word "language" or the qualifier "linguistic" ever occur, even though linguistic minority communities form an integral part of Canadian (and Quebec) history, traditions, and law. The language question lies at the heart of our national problems, and could be said to inspire, in part, the desire of some Commission members here today to have another Referendum, different from the one

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I have just suggested. And yet, in this important law on electoral reform, it is as though the question of language never existed. How can it be ignored? Why is it being ignored?

I point out to you that in the two concurrent re-examinations of electoral law in our sister provinces, Ontario and New Brunswick, the impact of language on electoral divisions has not been ignored. Recommendation 2.3 (3) of The Commission on Legislative Democracy in New Brunswick instructs a future Commission on boundary re-definition in that province to:

> Take the following into consideration when drawing boundaries: communities of interest; representation of New Brunswick's two official linguistic communities; geographic considerations, including the accessibility, size and shape of a region of the province; existing municipal and other administrative boundaries; rate of population growth of any part of the province; and the challenges of representing rural areas.

Why is it New Brunswick can take language explicitly into consideration when defining electoral divisions for its population and Quebec, with a much *larger* linguistic community, can't?

Ontario has tied its re-definition of boundaries to those the federal government conducts on a decadal basis. As federal boundaries go, so go Ontario's, at least since 1996. One of the principles guiding commissions dealing with federal redistribution is the following: "Commissions will consider the community of interest or community of identity in, or the historical pattern of an electoral district." "Community of interest or community of identity" — telling words and telling phrases, present in Canadian law, present in New Brunswick law, present (by implication) in Ontario law, but noticeably absent from the terms of reference of the Quebec Commission, as proposed. Why? Why is the vague and amorphous term "sociological considerations" used in this project for Quebec law and not the far more generous and meaningful term "linguistic communities" or even the term "communities of interest?"

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In September 2003, individuals and organizations of the Bathurst region of New Brunswick opposed the transfer of certain francophone areas (parts of the parishes of Bathurst and Allardville) from the primarily francophone riding of Acadie-Bathurst to the primarily Anglophone riding of Miramichi. On May 11, 2004, the Court granted the application, but suspended its ruling for one year so that corrective measures could be taken (before May 11, 2005). The Court held that the New Brunswick electoral boundaries commission had erred in transferring certain parishes from the riding of Acadie-Bathurst to that of Miramichi. The Court found that the commission had not properly taken into consideration the relevant "community of interest", particularly with respect to the linguistic profile of the two parishes.

The French linguistic community in Canada is extremely jealous and protective of its rights and institutions. So, too, should the English linguistic community of Quebec be, because the Equality Party believes that the same problem that arose in New Brunswick two years ago could very easily arise here. Indeed, it already has. I recall very vividly the fact that the provincial riding of Westmount voted for the Equality Party in 1989. Very soon thereafter, before the next election, the boundaries of that riding were redrawn in such a way that the "community of interest," once extant, was severely diluted and the "linguistic profile" of the riding substantially altered. Given this history, and the precedents cited, why have the framers of this project deliberately excluded wording that could potentially be of such significance to the English-speaking linguistic minority of Quebec?

I hope this exclusion of the phrases "linguistic communities" and "communities of interest" from the law, as proposed, is merely a matter of reparable oversight. But perhaps it is not. Perhaps the framers of this project know already that the Supreme Court has ruled that the term "communities of interest" includes a language dimension. Perhaps they simply don't want to take language matters into consideration when it comes to the inevitable boundary re-definition proportional representation will provoke and have worded the law in such a way that they might not have to. If that is the case, then we are at a worse pass than I care to think. The mandate of this Commission is, in part, "to encourage fair representation of ... ethno-cultural minorities in the National Assembly that mirrors their demographic representation in Québec society " I conclude by saying that if we in Quebec

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can't even do what our sister provinces do, if we can't explicitly protect our decreasing linguistic minority's political representation, then we should abandon all pretence at widening democratic fairness in this province or of encouraging the participation of cultural minorities.