The Harms That Men Do Live After Them

by Beverley Baines

I had not realized how harmful the current constitutional accord is for women until I attended a constitutional briefing session at Queen's Park recently. While there, I heard ten good reasons for women to vote "no" in a constitutional referendum.

FIRST Although violence against women is escalating, the new accord makes no reference whatsoever to woman abuse, nor to ways of halting it. But women see violence as a fundamental, or constitutional, issue.

SECOND There will be only two references to women (or, more accurately, "female persons") in the new accord. One appears in the Canada Clause that will give women and men equality rights again. However, the Canada Clause contains other fundamental values as well, and the most recent draft differentiates among them such that some appear to be constitutive (parliamentary democracy, aboriginal rights, and Quebec's distinct society), while others are merely commitments. Among the latter a further distinction is made between the official-language minorities to whom Canadians and their governments are committed and racial, ethnic, and gender equality seekers to whom Canadians — but not our governments — are committed. These distinctions create a hierarchy of rights that not only devalues gender equality but also jeopardizes existing Charter-based sex equality rights.

THIRD The only other reference to women is contained in the aboriginal rights provisions, which state that aboriginal women will retain their present guarantee of equality rights in section 35(4) of the 1982 Constitution Act. However, this guarantee applies only to their existing aboriginal and treaty rights. In a significant omission, aboriginal women were not guaranteed equality rights in the context of the inherent right to aboriginal self-government. Instead, they were told to negotiate these rights at one of the constitutional conferences on aboriginal issues to be held no later than 1996 and every two years thereafter. That said, the Native Women's Association of Canada, which had argued for subjecting the inherent right of aboriginal self-government to the sex equality rights provisions in the Charter, has not been assured of attendance at any such conference, despite a Federal Court decision declaring their entitlement to participate.

"There is no guarantee that the courts will be able to protect our equality rights. Nor is there any basis for believing that women will have a say in future constitutional negotiations."

FOURTH There is no reference to the disabled in the Canada Clause, an omission that could have consequences for the Charter-based rights of disabled women.

FIFTH While Nova Scotia, British Columbia, and Ontario each have promised that three of their six senators will be women, they refuse to entrench this commitment in the constitution. Further, these nine women senators will constitute 14 percent of the new sixty-two member Senate, precisely the same percentage as women constitute today in the present 112-member Senate. In numerical terms, however, this is likely to translate into fewer women in Parliament.

SIXTH There was not even the remotest hint of a promise — neither for today, nor for the foreseeable future — that women should constitute at least half of the members elected to the considerably enlarged House of Commons.

SEVENTH While Quebec received a constitutional guarantee that three of the nine Supreme Court of Canada judges will be drawn form the civil law tradition, there is no mention of the need for women judges, let alone a guarantee that they constitute fifty percent of the court. Yet as recently as eighteen months ago, the Prime Minister treated the retirement of the first woman appointed to the court, Madame Justice Bertha Wilson, as the occasion to replace her with a male judge.

EIGHTH The Social Charter for which Premier Rae takes credit is not justiciable, which — if upheld — means that it gives us empty rights and unremediable responsibilities.

NINTH While existing national social programs may be protected, future national social programs are not. The only social program currently on the national agenda (and it has been there forever) is daycare, which therefore will be vulnerable not only to funding considerations but also to any individual province's political wisdom, such as it is.

TENTH Although the present Senate has not had any occasion in recent memory to veto legislation imposing new taxes on natural resources, that — along with french language and cultural rights — will be the only kind of legislation over which the newly constructed Senate will have an absolute veto. But the

only government bill that the Senate actually vetoed in the past thirty years — the abortion bill — will no longer be subject to an absolute veto by the new Senate. In depriving the Senate of the power to defeat any future attempts at re-criminalizing abortion, the message is clear: when the democratic process works for women, the first ministers will intervene to prevent it from happening again.

In the face of this lengthy and quite possibly incomplete list of the harms that the new constitutional accord holds for women, Mr. Rae wants Ontario women to forgive and forget. We should forgive his failures on our behalf because he tried his best to persuade the other first ministers to support gender equity. It is not his fault that they refused to cooperate, is it?

Of course the word "forget" did not actually cross Mr. Rae's lips but the words "unity" and "Canada" did, with some frequency. Despite the palpable anger in the room, the Premier nevertheless persisted in urging women to put their own concerns aside in order to support the accord.

To what end? There is no guarantee that the courts will be able to protect our equality rights. Nor is there any basis for believing that women will have a say in future constitutional negotiations. Put simply, these risks are unacceptable.

Perhaps it is time to demand that the Premier of Ontario and the other first ministers give us a women's province — one in which at least 52 percent of the legislators and judges must be women. Then we could vote "yes" in their constitutional referendum.

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WESTERN REPORT

Something Not So Funny Happened on the Way to Senate Reform

by Roger Gibbins

If you strip away the details from past proposals for Senate reform, the basic objective has been to create an effective regional counterweight to the demographic dominance of Ontario and Quebec in the House of Commons. Thus, it is bitterly ironic that the new agreement on Senate reform will strengthen central Canadian dominance, and more specifically Quebec's dominance, of the national political process.

It has always been assumed that there would have to be compromise if Senate reform were to be achieved, but it was also assumed that some of the compromising would be done by opponents of reform. A reformed Senate was seen as the bitter pill that Quebec might be prepared to swallow in return for more powers, constitutional recognition as a distinct society, a veto on constitutional amendments, guaranteed representation on the Supreme Court, and so forth. As it turned out, Senate reform was a sweetener for Quebec, and a bitter pill for the west.

Effectiveness Gutted

The constitutional package has trivialized the Senate. It will only be able to delay money bills temporarily and, in the case of virtually all other legislation, a Senate "veto" will result in a joint sitting of the combined Parliament in which M.P.s will outnumber senators by a margin of greater than five to one.

The Senate has an absolute veto in only two cases. The first and insignificant case is with respect to *new* federal taxation on natural resources, something that might come along once in a generation. Even here, it is worth noting that a new national energy program would likely be passed by an equal Senate with the support of Ontario, Quebec, New Brunswick, Nova Scotia, PEI and one Senator picked up from elsewhere. The new Senate is not "NEP-proof," but then neither should it be.

Quebec's Power Is Enhanced

The second, non-trivial case is the need for a double-majority with respect to legislation touching on matters of language and culture. Here, the six Senators likely to be appointed by the Quebec government, who will dominate any francophone contingent, will have an absolute veto, the extent of which depends on how broadly "culture" is defined. If we adopt the definition suggested by Marcel Masse, who once said that culture included "anything touched by the human intellect," then the powers of the Quebec cabinet *in the Parliament of Canada* could be extensive.

"... the Senate reform package can only be seen as a humiliation for the west, but one that will be presented as a response to western Canadian concerns and as a compromise by Quebec. It is neither."

Power Shift in the House of Commons

If the new Senate has been trivialized, the size and the power of the House of Commons have been increased. How does the west fare in this shift? Before the deal, the four