

**The Right to Effective Representation: Towards  
Indigenous Representation in the British Columbia  
Legislature**

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## **Abstract**

In 2018, BC's NDP government held a referendum on electoral reform, asking residents whether to adopt proportional representation. Prior to this, the Attorney General consulted Indigenous peoples and Indigenous leaders, who made suggestions on how to improve Indigenous representation in the BC Legislature, pointing to the reserved Māori seats in New Zealand as a way forward. Building on the notion of effective representation established by the Supreme Court of Canada's *Carter* decision, this project examines the potential for different models of special representation to be implemented for the Indigenous peoples of British Columbia. It will look at the protected constituencies used in Nova Scotia, the reserved Māori seats, and the minority seats used in Croatia. The project assesses the benefits and drawbacks of each model from the perspective of the effective representation of Indigenous peoples in British Columbia.

**Keywords:** effective representation; Indigenous representation; Nova Scotia; New Zealand; Croatia

*For my grandmother, who has always believed in me*

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# Introduction

While the first-past-the-post electoral system has been used in Canada since before Confederation, it has increasingly been the subject of scrutiny and criticism, largely because the bodies it elects do not properly reflect the support of the electorate. Following promises made during the 2017 provincial election campaign, BC's NDP government held a referendum in 2018 on electoral reform to decide whether future elections would continue to use the first-past-the-post system or change to proportional representation. In the months preceding this referendum, then Attorney General David Eby prepared a comprehensive report based on consultations with the public, which were used to make recommendations about the referendum. Though the referendum was eventually defeated, this report still provides some interesting insight into potential improvements that can be made, especially regarding political representation and ensuring that minority groups are adequately represented in the provincial legislature.

This report included consultations with Indigenous groups and leaders to explore the questions of Indigenous participation and representation in the BC Legislature. This was done through a combination of questionnaires and interviews and found that Indigenous peoples do not feel that they are being adequately represented in the legislature. The leaders who were consulted also suggested that Indigenous peoples of BC receive reserved seats similar to the Māori of New Zealand (Eby 2018, 66). However, the final published recommendation stated

that, regardless of the outcome of the referendum, a legislative committee be appointed to examine ways to improve the representation of Indigenous people in the British Columbia Legislature, including issues of accessibility and inclusion and the issue of creating one or more designated seat for Indigenous people in the Legislative Assembly (Eby 2018, 66).

The BC government has not followed through on this recommendation. Moreover, in the report, Eby explained that “such a change would be significant and a first of its kind in Canada” (Eby 2018, 67). This statement is not entirely accurate, however, as other provinces have taken measures to improve the political representation of minority groups. These measures are distinct from the New Zealand model and draw on the notion of “effective representation.” This notion was developed by the Supreme Court of Canada in the *Carter reference* case (1991) and has since been cited in legislation governing

elections in a few provinces and has been utilized in the courts in New Brunswick and Nova Scotia. In this project, I propose to explore the theoretical and institutional potential of effective representation. The project will document different models of minority representation in use both in Canada and abroad. This will serve to clarify, on the one hand, what the effective representation of minority groups means in practice and, on the other hand, how BC could strengthen the political representation of Indigenous peoples.

It will begin with an overview of the existing literature on political representation, with a focus on how it is interpreted in the Canadian context and the importance of effective representation. Three case studies will then be discussed: Nova Scotia, New Zealand, and Croatia. Nova Scotia implemented “protected constituencies” to increase the voting power of Acadian and Black communities in the province and improve their ability to select a representative who prioritizes their interests. This method has also recently been used for the Indigenous and Franco-Ontarian populations in Northern Ontario. It will also discuss New Zealand’s Māori seats, which are exclusively elected by the Indigenous Māori population. The final case study will look at Croatia, where minority groups elect members based on the population within the country belonging to that group. Finally, the last part will compare these models and explain which could potentially be implemented in British Columbia to improve the political representation of Indigenous peoples.

There are over 290 000 people who identify as Indigenous living in BC from over 200 different communities all over the province. As of 2021, 180 085 people within this group are First Nations, 97 860 people are Métis, and 1 720 are Inuk. After Ontario, BC has the largest Indigenous population of any province in Canada, making up over 5.9% of the total population (Government of British Columbia n.d.; Statistics Canada 2022). While there are many groups for whom special representation could potentially be justified, this paper will focus exclusively on the Indigenous peoples, as they were prioritized by the consultations conducted by the Attorney General. Indigenous peoples have also been subjected to systematic oppression and have historically been excluded from decision-making processes. While there are other minority groups in the province who have also faced a history of oppression and exclusion, many have Members of the Legislative Assembly who belong to their communities, particularly in the Lower Mainland. The Indigenous peoples of the province have not reached the same effective representation. Finally, it is important to note that needs, interests, and priorities are



likely to differ both between and within Indigenous communities in BC. The history and experiences of these different communities are not uniform. Likewise, their views and attitudes towards the different forms of political representation are also likely to differ. This paper makes no claim to speak on behalf of Indigenous peoples in BC. Its goals are theoretical and institutional, and Indigenous leaders and populations will ultimately have to decide whether the models discussed meet their needs and correspond to their aspirations.

## Research Design

The starting point of this research is the report published by the former Attorney General David Eby regarding the 2018 Electoral Reform Referendum. Indigenous populations and leaders were consulted during this process and expressed that they would like more representation in government and suggested some form of special representation like New Zealand's Māori seats (Eby 2018, 66). These consultations also found that while 66% of Indigenous respondents are very interested in politics and 61% vote all the time, 73% stated that Indigenous voices are not being adequately represented in the provincial government (Eby 2018, 93–95). It seems evident that there is an interest in participating in provincial decision-making, but that Indigenous peoples do not see their views accurately reflected in government. This suggests that they are not receiving the effective representation that they are entitled to by their right to vote. This paper will answer the following question: What could the effective representation of Indigenous peoples look like in British Columbia?

My objectives in this paper are twofold: first, to contribute to a reflection on the role and status of Indigenous peoples in the BC Legislature, and second, to contribute to a better definition and understanding of what effective representation means from an institutional perspective. While the Supreme Court underlined the importance of effective representation in 1991, there have been few developments in the intervening years to explain how it may look in Canada. Nova Scotia and Ontario have drawn protected electoral districts for specific populations with geographic concentrations, but this is not the only model that could be used. This paper will provide case studies of three different models that are currently used somewhere in the world: the protected constituencies of Nova Scotia and Northern Ontario, the reserved Māori seats in New Zealand, and the minority seats of Croatia. It will explain the models themselves, the circumstances under which they were implemented, and how they provide representation to their target group. Each section will discuss how the model under study could be implemented in British Columbia and how it could provide effective representation to the Indigenous peoples of the province. I will also discuss the advantages and challenges potentially associated with each of these models if they were used in BC. This includes challenges related to the geography of the province, their ability to include some or all Indigenous peoples, and the potential to expand this representation to other groups. The following section will

explain the concept of effective representation, and how it has thus far been interpreted in Canada.

# Theory

In 1991, the Supreme Court of Canada underlined the importance of “effective representation” to the proper functioning of Canadian democracy, explaining that it is guaranteed by the right to vote enshrined in Section 3 of the *Canadian Charter of Rights and Freedoms, 1982*. Generally speaking, this notion means that the electoral system should account for other relevant factors, rather than simply giving each vote equal weight (Léger 2021). However, much like other Western democracies, Canada has failed to ensure that the diverse groups residing here are adequately represented by their elected officials (Kymlicka 1995, 132). These concerns were echoed by Indigenous peoples in British Columbia, who do not feel that their interests are being adequately represented by the Legislative Assembly of BC (Eby 2018, 66). This review of existing theory will detail representation in Canada, particularly focussing on how the right to vote has been interpreted in Canada and how it differs from other liberal democracies, the foundations and definition of effective representation, and the differences between substantive and descriptive representation.

## ***Effective Representation***

When it comes to the way in which representation in government is viewed in Canada, there are certain differences when compared to other democracies. While some liberal democracies like the United States of America ascribe to the notion that every person gets a single vote during an election, with every vote theoretically having equal weight, the Supreme Court of Canada has developed a different view of fairness and voting rights. While most liberal democracies espouse values of justice and fair representation, these can be at odds with the idea of one person, one vote (Behrman 2011, 304; Nissen and MacDonald 2017, 156; Rosen 1974, 191). Nissen (2017) argues that to provide adequate and fair representation for certain groups, their presence within government must be increased. This could contradict the standard of each person getting a single, equally weighted vote, but this one-to-one standard already does not reflect the reality of the electoral process. Under existing voting systems, certain groups and their interests may already be over- or under-represented within a district, which affects the weight of their vote, depending on where they live (Rosen 1974, 205). If there are many people from a single group with shared interests within a district, then the

votes of the individuals from that group will have more of an impact, and vice-versa (Rosen 1974, 205).

In contrast to countries like the United States, the right to vote outlined in the *Canadian Charter* does not require “absolute equality” of voting power, but rather a “relative equality” (Courtney 2001, 156). It is a right to effective representation rather than the right to equality of voting power, with the principle itself dating back to Confederation in 1867 (Courtney 2001, 159). Specifically, Sir John A. MacDonald stated that while population and voter parity are important, other factors can also be considered, explaining that “different interests, classes and localities should be fairly represented” (Courtney 2001, 159; Supreme Court of Canada 1991). Justice McLachlin explained in the decision for the Carter reference case that while equity is one aspect of the right to vote, it does not promise equality of voting power. The Canadian system was never intended to have exact voter parity, as it would not be possible to guarantee the same number of voters in each electoral district (Supreme Court of Canada 1991). This case further found that while “relative parity of voting power is a prime condition of effective representation,” it must also consider other things such as “geography, community history, community interests and minority representation” (Supreme Court of Canada 1991). This means that while the strength of one vote should not differ significantly to another, there are certain conditions that can justify a variation. Furthermore, the Nova Scotia Court of Appeal found in 2017 that provincial commissions to establish electoral boundaries must also adhere to the principle of effective representation (Léger 2021, 5). The principle of effective representation could therefore be used to support the creation of special circumstances for Indigenous peoples in British Columbia.

When it comes to geography, many Indigenous communities are in isolated parts of the province, meaning they are often part of the typically large constituencies outside the Lower Mainland. Therefore, their voices and concerns may be overtaken by those of the non-Indigenous voters in their constituencies. Community history is another factor that must be considered for effective representation, so it is important to address the history of the Indigenous peoples of Canada in general as the original inhabitants of this land. Moreover, it is important to consider the devastating impacts of colonization on generations of Indigenous peoples, and the effects of theft of land and the residential school system on First Nations. For British Columbia specifically, it sits on unceded

Indigenous land, which makes considering community interests even more important, as their views on certain matters can be at odds with what the government wants, especially when it comes to how land is being used. Both the community history and interests of the Indigenous peoples, along with them being a minority group, explain why they deserve consideration for effective representation.

In order to preserve voter parity, many of the provinces have passed legislation to limit the degree to which the population of an individual constituency can vary from the others. British Columbia's Electoral Boundaries Commission Act states that when creating an electoral district, the population within the constituency can deviate from the average population by plus or minus 25%. BC previously had legislation to protect 17 electoral districts in three rural regions, where the populations of the constituencies may not meet the requirement: Northern BC, the Kootenays, and the Central Interior. However, this protection was abolished in 2021, while still allowing the boundaries commission to propose smaller districts if it considered them necessary to provide effective representation (*New electoral boundaries bill could unfairly affect rural voters, say B.C. Liberals* 2021). Specifically, the legislation clarifies that some exceptions can be made to allow for effective representation, including for *geographic considerations* and for *demographic reasons* (Government of British Columbia 1996). In the case of the former, this rule could allow for constituencies to have a smaller population in areas where voters are distributed over a large area to keep the created constituency from being too large and difficult to adequately represent. For the latter, this rule allows for the creation of constituencies that deviate to a greater degree to ensure representation of a community of interest. In the case of the Indigenous peoples of BC, this regulation could allow for the creation of exceptional electoral districts to represent them. However, there have also been concerns raised that the creation of electoral districts that go too far above or below this 25% deviation policy could negatively impact the effective representation of someone else, as it could reduce their voting power (Sancton 2022, 32).

### ***Substantive and Descriptive Representation***

When discussing political representation, particularly of minority groups, different models can be described as providing either descriptive or substantive representation. The former describes situations where members identifying with a certain group are

elected, whereas the latter is used when simply the interests of that group are being represented by someone who may not belong to the group (Banducci and Karp 1999, 538). They are not mutually exclusive though, as descriptive representation can also lead to substantive representation when they are furthering their group's interests (Bloemraad 2013, 655). When looking at the Indigenous peoples of BC, this would be the difference between having Indigenous Members of the Legislative Assembly (descriptive representation) and simply having MLAs who are supporting bills that would benefit Indigenous peoples (substantive representation). While the ideas of substantive and descriptive representations are both central to discussions of effective representation, much of the literature focusses on the benefits and trade-offs of descriptive representation.

Descriptive representation is not without its criticisms, with some questioning how it could affect the legitimacy and stability of governments, as well as its effectiveness (Banducci and Karp 1999, 538). One form of descriptive representation employed in the United States has been the drawing of district boundaries that have a majority Black population to improve the chances of a Black representative being elected. However, concerns have emerged that this could then increase the likelihood that Republican candidates are elected in nearby districts, potentially decreasing overall support for their interests (Banducci and Karp 1999, 538). There is also a certain degree of uncertainty on the potential impact of descriptive representation on political participation and trust (Banducci and Karp 1999, 538).

However, the literature also shows that there is a lot of value in descriptive representation, not just for the communities affected, but also for the system as a whole. Despite concerns discussed above, empowerment theory explains that by having visible minorities in political positions, participation will actually be improved amongst the groups they represent (Banducci and Karp 1999, 538). This occurs because their presence could signal to other members of the group that they'll be more responsive to their concerns and see more value in voting or could encourage them to also become a candidate (Banducci and Karp 1999, 539; Bloemraad 2013, 654). Further, a lack of diversity amongst elected officials can also result in feelings of exclusion and alienation amongst certain groups, but there is a symbolic value in having visible minorities as representatives (Bloemraad 2013, 652–54; Bloemraad and Schönwälder 2013, 565).

In the Canadian context, achieving substantive representation is made difficult by the nature of the political system, which sees strict party discipline that makes voting the way constituents want more challenging for MLAs and MPs (Bird 2012, 531). For many minority groups, it's important to have representation for the purpose of sharing their cultures and experiences with other Canadians (Bird 2012, 532). Sharing a language is also a factor, as it allows for communication and can remove barriers for those within the group who wish to speak with their representative (Bird 2012, 532). This means that descriptive representation cannot be replaced by substantive representation alone, as the presence of these individuals is important for the groups to which they belong. However, it is important that these representatives are able to convey the interests of these groups during party discussions and are not just there to make the party look inclusive (Bird 2012, 532).

When discussing which groups should receive special group representation in government, Kymlicka (1995) explains that there are arguments that can be made for it to be granted to those who have faced “systemic discrimination” (141) or those with a claim to self-government. He further explains that in Canada, the right to self-government could be applied to the Quebecois and Indigenous peoples; however, it would be far more challenging to assess which groups have suffered from “systemic discrimination,” and could potentially be applied to a majority of the population (Kymlicka 1995, 146). While the principle of effective representation could allow for representation of many different groups in British Columbia, the primary focus here will be the Indigenous peoples, as they have been systematically disadvantaged and excluded from the existing system. Also, they were prioritized in the report prepared by the Attorney General in 2018.

This project proposes to examine specific models of minority political representation. It builds on the constitutional principle of effective representation which holds that “factors like geography, community history, community interests and minority representation” should be considered in the design of political institutions, including electoral districts (Supreme Court of Canada 1991). Furthermore, the principle of effective representation and the potential to create exceptional constituencies in British Columbia mean that special group representation could be justified by existing policies and thus fit into our current system. In Canada, the province of Nova Scotia has spearheaded the institutional development of effective representation, where it has been



used to improve the political representation of Acadians and Black Nova Scotians<sup>1</sup>. More recently, it has been advanced by the Far North Electoral Commission to improve representation of Franco-Ontarians and Indigenous peoples living in Northern Ontario. Outside of Canada, the most cited model is that of New Zealand, which was referenced by Indigenous leaders in BC. Another interesting model is that of Croatia. My objective in surveying these three cases (Canada, particularly Nova Scotia, New Zealand, and Croatia) is to describe and compare how three liberal democracies have ensured the effective political representation of minority groups, and how the systems they have employed may be replicated in British Columbia.

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<sup>1</sup> The Mi'kmaq were offered a "protected constituency" in 1992 when they were established for Acadians and Black Nova Scotians, but the leadership declined (Courtney 2001, 226).

## Nova Scotia

Some Canadian provinces have already taken steps to improve the representation of certain minority groups in their provincial legislatures. They have done this by drawing “protected constituencies” that have a specific group as a significant proportion of the population within it, which increases their voting power when electing a representative (Cardinal, Léger, and Normand 2017, 147). Following the Carter decision in 1991 that established the importance of effective representation to the right to vote in Canada, Nova Scotia tasked an independent commission with the creation of electoral boundaries. Its mandate required the electoral map to promote the effective representation of minority groups in the province, specifically for Acadians, Black Nova Scotians, and the Mi’kmaq First Nations. The commission recommended the creation of four protected constituencies for Acadians and Black Nova Scotians, as they failed to come to an agreement with Mi’kmaq leaders to create a protected constituency for them (Sancton 2022, 6). The constituencies of Argyle, Clare, and Richmond were designed to have a significant proportion of the population who identify as Acadian in an effort to improve their representation in the provincial government; further, the constituency of Preston was designed for the same purpose, but for Black Nova Scotians (Cardinal, Léger, and Normand 2017, 159). These constituencies were designed to increase the voting power of these minority groups by giving them the opportunity to select a representative who supports them. For example, if the Acadians residing in one of the previously mentioned electoral districts largely support a candidate, they would have a greater chance of being elected in one of these constituencies rather than in a non-protected constituency. When they were introduced in Nova Scotia, no other provinces had made a similar effort to ensure the effective representation of minority groups (Léger 2021). While the Nova Scotian government attempted to abolish them in 2012, the Nova Scotia Court of Appeal, to whom it was referred, found that removing the districts of Argyle, Clare, and Richmond violated the effective representation of minority groups guaranteed by section 3 of the *Charter* (Nova Scotia Court of Appeal 2017).

This model does not guarantee that someone from these groups will be elected, as it requires that the group vote together to increase their voting power, meaning that while it is possible that the person elected would provide representation for these groups, this model does not have the same guarantee as the models employed in New

Zealand and Croatia. The model used in Nova Scotia works if the political leanings of the Acadians or Black Nova Scotians in their four constituencies align, but otherwise their vote will be split between candidates. However, adopting this model can still increase the likelihood of an Acadian or Black Nova Scotian being elected, as political parties seeking their support are inclined to nominate a candidate from these populations.

Despite this, it does provide the group of interest with the opportunity to choose representation. Under this model, there is potential to provide both descriptive and substantive representation for the Acadians and Black Nova Scotians living in these ridings in Nova Scotia. It could provide them the former, as it would provide Acadians with the opportunity to elect a representative that is also Acadian. This would likely mean that the representative would provide some form of substantive representation, as they would look to advance the interests of Acadians in Nova Scotia. Likewise, this model also provides them with the opportunity to improve their substantive representation by selecting someone who would defend their interests, even if that individual does not identify with the group. These seats have been successful at improving the representation of their target groups, as the 2021 provincial election saw Acadians winning all three Acadian seats and a Black Nova Scotian winning in the Preston constituency (Edwards 2021; Landry 2022; The Honourable Colton LeBlanc 2021).

As they represent a substantial proportion of voters within the electoral district, whoever is elected in these constituencies would also depend on the support of Acadian voters. Therefore, it's important for those seeking election or re-election to consider the interests of the Acadian community. If not, they risk alienating many potential voters, meaning that these seats could provide some form of substantive representation, even if their elected representatives are not themselves Acadian. This means that even if the group of interest does not vote together, there is still potential for some form of improved representation in government, as it would behoove candidates to support Acadian interests. However, as explained above, there are other factors that make descriptive representation important. While there is potential that a non-Acadian could provide them with substantive representation, there are certain benefits that come from having a member of the community as a candidate or as a representative. For example, having an Acadian represent this community could encourage others to be more politically active or to run themselves. Having an Acadian or Black representative in the case of Nova Scotia or an Indigenous representative in the case of British Columbia is also

important because they can more fully understand the realities of the people or peoples in these minority groups, whereas someone from outside these groups may not, even if they support their interests.

When looking at how to provide Acadians and Black Nova Scotians with effective representation, these protected constituencies were the chosen approach. In theory, the same could be done in British Columbia to improve the effective representation of Indigenous peoples in the province. This model would align with the principle of effective representation enshrined in the *Canadian Charter*. As explained above, some countries place the focus on every individual having a vote that is equally weighted. However, Canada emphasizes relative equality rather than absolute equality, viewing effective representation as a paramount concern.

For these protected constituencies to work, they would need to be small enough to ensure that a large portion of the voters are Indigenous and therefore increase their voting power. To make this happen, it may be necessary to deviate from the 25% threshold, meaning that the weight of the votes within them might be different from those outside of the electoral district. While there may only be a few of these seats in the province, they would still be able to put Indigenous concerns on the agenda of the government, especially if the candidates elected are part of the governing party. Having these seats could also improve descriptive representation and minority representation if the people elected are Indigenous, as they will have a better understanding of community interests and the realities facing Indigenous peoples in the province. All this will contribute to improving the effective representation of BC's Indigenous peoples by giving them voice in government.

While these seats ideally further the interests of the group or groups they seek to improve representation for, the strength of party solidarity in Canadian politics could potentially have an effect on this (Bird 2012, 531). Rather than voting in the interests of the community, representatives typically vote along with their party. However, these representatives could still be a voice in party caucuses to help get the concerns of the community of interest on the agenda and ensure that their voices are heard in some capacity. In the case of the Indigenous peoples of BC, the experiences and opinions of these representatives could be invaluable for the provincial parties. Not only could they make the opinions of Indigenous peoples clear, but given the focus placed by many

Canadian governments, both provincial and federal, on reconciliation, the input of these representatives would be invaluable. It is very unlikely that there would be consensus amongst all Indigenous peoples, but the insight of these MLAs would still be important for both practical and symbolic reasons.

This same model was more recently used for the Indigenous peoples residing in Northern Ontario through the creation of the riding of Kiiwetinoong, which is 68% Indigenous. Ontario also created the riding of Mushkegowuk, which is 27% Indigenous and 60% francophone, looking to improve representation for both groups in the Legislature (Pellier 2017). They were successful, as in the 2022 election, Kiiwetinoong was won by Sol Mamakwa from the Kingfisher Lake First Nation, and Mushkegowuk was won by Guy Bourgouin, who is francophone and Métis (Aelick 2022; Bourgouin 2022; Mamakwa 2022; NDP's Sol Mamakwa wins 2nd term in Kiiwetinoong riding 2022). However, the districts had to be made smaller population-wise than normal to have these groups as the majority, meaning it is an exception to a law that requires constituencies to have similar populations (Pellier 2017). Ontario has also been able to defend their creation of smaller ridings, especially up North, because of its geographical size which would make representing expansive constituencies difficult (Sancton 2022, 14). In the case of British Columbia, constituencies can deviate from the provincial average by 25%, meaning they can be 25% larger or smaller. However, there is a provision that allows for the creation of electoral districts that deviate from the average population beyond this 25% to provide effective representation to certain groups (Government of British Columbia 1996). This could allow for the creation of electoral districts that are smaller population-wise in order to improve representation of the Indigenous peoples of British Columbia. Given that many Indigenous communities in BC are located in remote parts of the province where there is little population density, the drawing of ridings that are smaller than average may be necessary to ensure that Indigenous peoples make up a significant proportion of the constituency's population.

However, there is some debate around how small an electoral district can be. Recently, this issue has been put before the court in Nova Scotia, as the question has been raised as to whether a fourth Acadian electoral district should be introduced to represent the region of Chéticamp. This fourth special constituency would ensure that Acadians in the four principal Acadian regions of Nova Scotia are adequately represented (Léger 2021, 5). There are four Acadian homelands that represent the four

places that Acadians returned to after the Grand Dérangement took away their lands, and three of them are already represented by special constituencies, with Chéticamp being the fourth (Léger 2022, 2). However, depending on how this district is drawn, Chéticamp could become a constituency that is significantly smaller than average (Sancton 2022, 30). Sancton estimates that creating the electoral district of Chéticamp could result in a constituency whose population would be about 70% below the provincial average. This is potentially problematic because it could have undue negative impact on the effective representation of those living outside of Chéticamp, as the weight of their votes would be less compared to those living within it (Sancton 2022, 32). While effective representation allows for votes to be of unequal weight under certain circumstances, voter parity is still considered paramount. Thus, Sancton argues that the creation of Chéticamp is not justified by the principle of effective representation, as it would have undue impact on voter parity. However, it is important to note that there are electoral districts in other provinces that deviate from the average by a considerable margin. The constituencies created in Northern Ontario are over 70% below the provincial average (Sancton 2022, 27). In Quebec, the electoral district for the Îles-de-la-Madeleine is 77.7% below the province's average and is protected by provincial legislation (Sancton 2022, 21). In Labrador, the constituencies of Cartwright-L'Anse au Clair and Torngat Mountains are 70.1% and 72.4% below the average, respectively (Sancton 2022, 24).

Special group representation has already been provided to certain groups in Nova Scotia and Ontario, including Indigenous peoples in the latter case. These two provinces set a precedent for how effective representation could be introduced in British Columbia or elsewhere in Canada. As it has been successfully implemented elsewhere in the country, it would be within the power and ability of the BC Legislature to introduce them. It requires little to no adaptations to the existing voting system, as it would only ask that constituencies be created within the existing model rather than creating a secondary map like New Zealand. While the seats would be drawn to have a large Indigenous population, they would function the same as every other constituency in British Columbia. It is also important to note that while the Mi'kmaq were offered special group representation of this form, they ultimately declined (Sancton 2022, 6). This could mean that other Indigenous peoples may also decline this form of representation, especially given the diverse groups identifying as Indigenous in British Columbia who

may disagree on how their representation should look. However, it has been used to represent certain Indigenous communities in Northern Ontario, though it is limited to a few constituencies (Pellier 2017). Also, the Indigenous peoples of British Columbia have previously stated that they want some form of special representation (Eby 2018, 66). While they did not request this system, they could be amenable to a different form of representation.

However, there are certain geographic considerations that could make this model impractical if BC is looking to improve Indigenous representation. This model depends somewhat on the group of interest being geographically concentrated, as electoral districts in Canada are typically contiguous. In the case of Nova Scotia, the three existing constituencies represent three of the Acadian homelands where there is an existing community that is sizable enough to make this system work (Léger 2021, 7). For British Columbia, many Indigenous communities are widely dispersed, with some small First Nations located in isolated areas, making it harder to provide them with this form of representation. While it may be possible to draw them around larger communities or in areas where Indigenous peoples make up a large proportion of the population, it likely would not work for all of BC. It would also be difficult to draw ridings for Indigenous communities in the Lower Mainland or other large population centres without having non-Indigenous voters as a large majority.

While this model has certain trade-offs, as it can rely on the group voting together for a representative or the political parties choosing to nominate candidates from the under-represented groups, it still provides the Acadian and Black minorities in Nova Scotia, and the Indigenous and Francophone populations in Northern Ontario, with the ability to have representation in the provincial government. While they do not ensure that someone who will fight for their interests is elected, it increases the odds. It is also a model that could be easily implemented in other provinces, including to improve representation of Indigenous peoples in British Columbia. It would require little change to the electoral system, and it is within the capabilities of the provinces to implement them, as both Nova Scotia and Ontario have introduced them to improve representation. Nova Scotia's Court of Appeal also provides a judicial precedent in Canada for this model, which could provide support for its implementation to improve Indigenous representation in British Columbia. For British Columbia specifically, there also exists a provision that allows for the creation of smaller electoral districts to ensure the effective representation

of communities of interest. Therefore, it is entirely possible that BC could create constituencies following this model to improve representation of minority groups, including the Indigenous peoples.



## New Zealand

Indigenous representation in New Zealand's House of Representatives comes in the form of specific seats that are elected to represent the Māori, the only Indigenous group in New Zealand. It represents a unique case in the world, not just because of the model, but because of the history behind it. These seats were first implemented in 1867 by the British colonial power to allow Māori men the right to vote, with the understanding that the Māori population would eventually be assimilated, rendering the seats unnecessary (Fleras 1985, 555; Xanthaki and O'Sullivan 2009, 191). The creation of these seats was necessary because British colonial law required men to independently own property, which was at odds with the Māori view of property ownership. The Māori viewed property as collectively owned, rather than individually, making them ineligible to vote on the common roll with other men (Xanthaki and O'Sullivan 2009, 191). Instead, a separate electoral map with four Māori ridings was implemented and these Members of Parliament were elected from an all-Māori roll (Fleras 1985, 557; Xanthaki and O'Sullivan 2009, 191). Despite the intention to remove them, they have since become an important part of the Māori identity and seats have been added to more accurately reflect the proportion of Māori population (Fleras 1985, 552; Xanthaki and O'Sullivan 2009, 192).

Anyone in New Zealand who is Māori can choose to vote on either the common roll along with the rest of the population, or on the Māori roll that elects the MPs to fill the seven Māori seats (Xanthaki and O'Sullivan 2009, 185). While those who are elected to these seats are not required to be Māori themselves, they typically are, providing a certain level of representation to the Māori (Kymlicka 1995, 148). To elect them, the country is divided into seven electoral districts, effectively creating a second electoral map that overlaps the one used for the common roll. While these seats have existed for over 150 years, New Zealand introduced proportional representation in 1993 for electing representatives from the common roll (Xanthaki and O'Sullivan 2009, 198). This prompted some politicians to suggest removing the Māori seats because they believed they were a redundancy. These suggestions were met with resistance from the Indigenous population, as the seats have become an integral part of Māori culture and political participation in New Zealand (Nissen and MacDonald 2017, 156).

As these seats are exclusively elected by the Māori, they are an important way to provide substantive representation to the Indigenous population. Similar to the protected constituencies in Nova Scotia, those elected in these ridings depend on the support of the group being represented. However, this model pushes it even further because they are being chosen exclusively by the Māori, whereas the Acadians and the Black Nova Scotians in the protected constituencies only make up a portion of the voters. Therefore, those seeking election to the Māori seats are essentially required to represent and fight for their interests if they want to be re-elected. Moreover, the fact that the Māori are the only people within these ridings means the representatives do not have to consider any other groups within the district they represent. This contrasts with Nova Scotia, where those elected to protected constituencies represent more than just the group receiving special representation, meaning they would have to consider and represent their views as well. If implemented in British Columbia, this could provide effective representation to the Indigenous peoples by guaranteeing their interests are heard.

While there is no guarantee that the person elected to the Māori seats will be Māori, they help to increase the likelihood of the MP being Indigenous, improving the potential for descriptive representation in the House of Representatives. Recently, the Māori seats and the change to proportional representation have meant that the proportion of representatives who identify as Māori is close to the proportion of people in New Zealand who identify as Māori, with 21% of the House of Representatives compared with 17% of the country as of 2020 (Hollingsworth et al. 2020). This demonstrates the success of this style of electoral district at ensuring representation of the Māori, meaning that it could potentially do the same in British Columbia. However, given that British Columbia continues to use first past the post to elect MLAs, the seats alone likely would not produce this same result. Even so, by having guaranteed representation, it could help to make certain that Indigenous voices are being heard in the Legislature. Having more descriptive representation for Indigenous peoples in British Columbia could also encourage others to participate more in provincial politics, and potentially decide to run themselves.

When looking at these seats in the context of New Zealand, it is clear they are providing the Māori with effective representation. Despite introducing proportional representation, these seats were left in place to ensure Māori voices in the House of Representatives. Mixed member proportional representation, which is used to elect

representatives in New Zealand, increases the chances of the final elected body more closely resembling the population electing them. However, by leaving the reserved seats in place, they are making an exception for the Māori to ensure that they have representation. While they remained in place because of Māori efforts to protect them, they still provide an additional guarantee of representation (Nissen and MacDonald 2017, 156). In British Columbia, these seats would make the Indigenous peoples an exception, as they would also have a greater guarantee of representation than others living in the province. The Canadian definition of effective representation explains that certain considerations need to be made to account for “geography, community history, community interests and minority representation” (Supreme Court of Canada 1991). Thus, putting these seats in place could be justified for all these reasons, as, in the case of geography, there are Indigenous peoples who live in very small and remote communities, and this model would create constituencies that cover the entire province. In terms of community history and minority representation, this model would allow multiple representatives to be elected to adequately represent the population residing in BC. The government could also choose to give these representatives certain veto powers on matters concerning the Indigenous peoples. When it comes to community interests, those of the Indigenous peoples can be at odds with the provincial government, so having multiple representatives to speak up for their concerns is important to strengthen their case.

This model can also be considered to use non-contiguous ridings, as New Zealand has two electoral maps overlapped: one for the common roll and one for the Māori roll. Most countries using a British Parliamentary system employ contiguous ridings, meaning that the riding is contained within a single border that completely surrounds it. In theory, it is possible to get from one point in the electoral district to another without leaving it (Forest and Medeiros 2021, 3). A non-contiguous electoral district can mean that a single riding or constituency exists in two separate areas that do not touch (Forest and Medeiros 2021). For example, you could have two separate smaller ridings that are represented by the same person rather than a single larger one. This model can be used to represent populations that are geographically spread out, as the electoral district can be drawn around multiple smaller communities (Forest and Medeiros 2021, 11). While the federal ridings and provincial constituencies in Canada follow the logic of contiguity, making it seem like the standard, there is nothing outlined in the *British North America Act, 1867* that requires the electoral districts in Canada to be

contiguous, it is more a convention that has continued over time (Forest and Medeiros 2021, 7). In fact, the terms of reference of the most recent electoral boundaries commission in Nova Scotia stipulated that “Electoral districts may be non-contiguous” (J. C. Dodds 2019, 5). Therefore, there is no constitutional obligation to draw contiguous ridings or constituencies, meaning there is potential to implement them.

In the case of New Zealand, while when looking at the map of Māori ridings, they appear contiguous, the nature of the separate Māori and common rolls means that not everyone in the same area is voting for the same representative. Voters on the common roll would be electing their representative based solely on where they live, whereas voters on the Māori roll will be voting for different candidates running in the larger, Māori ridings. Therefore, if the voters who choose to be on the Māori roll were mapped, it would appear as a non-contiguous riding. For British Columbia, this model would help to ensure that all Indigenous peoples in the province have the option to vote for a representative who would be primarily concerned with their interests. As explained above, one of the potential challenges with the protected ridings is the small size of some Indigenous communities, especially in relation to the larger non-Indigenous populations nearby. Under this model, the whole province could be divided into a proportionate number of constituencies (about five based on the Indigenous population), and British Columbia’s Indigenous peoples could choose whether they wish to vote for these seats. That way, even those who may not live within an Indigenous community can vote for them.

Despite certain differences in the demographics and experiences of the Māori compared to the Indigenous peoples of BC, there are also similarities that mean this model could be justified and applied in Canada. Both groups have historically been oppressed by a colonial power and suffer from higher rates of undereducation and incarceration than the non-Indigenous population. The Māori of New Zealand and the Indigenous peoples of British Columbia are also often excluded from the decision-making processes, including those that directly affect them (Fleras 1985, 573). Therefore, implementing Indigenous seats in British Columbia could help to guarantee that Indigenous voices are being heard, especially on matters concerning them. Additionally, Indigenous peoples and leaders have previously suggested reserved seats as a way to increase their representation in government (Eby 2018, 66). This suggestion from the group of interest means that we must consider and assess this model, to see if

it could be used to improve Indigenous representation in the Legislature. However, it has also been suggested that the seats do not do enough to give the Māori adequate input, as their consent is not required when making decisions concerning them (Fleras 1985, 574). Given that BC is largely unceded Indigenous land, this could be a meaningful change and an important step towards reconciliation.

However, given certain geographic and demographic differences between British Columbia and New Zealand, there are also certain challenges associated with this model. For the former, BC is larger than New Zealand with certain areas, particularly up North, that are isolated and can be difficult to visit. This raises a practical concern for whoever is running and eventually elected in these constituencies, as they would likely end up covering a large part of the province, as most British Columbians live in Metro Vancouver and the surrounding areas. This could potentially mean making frequent trips between the Legislature in Victoria and remote Northern communities. If they are not able to visit often and speak with members of their constituency, including Indigenous leaders, it could affect their ability to adequately understand and represent their constituents. However, this challenge is not insurmountable, as the representatives would ideally be from one of the communities they represent, meaning they would not be unfamiliar with the area and the interests of those living there.

One of the concerns addressed above regarding the protected constituencies was that party solidarity would mean that representatives would vote with their party, even if it is not necessarily in the interests of the group being represented. This could also be a concern with designated seats, as New Zealand saw the members who held the seats when they were dominated by the Labour Party toed the party line (Fleras 1985, 574). However, the Māori Party was established in 2004 to further Māori interests in Parliament, as they could potentially be at odds with the views of the larger parties. Specifically, it came about after a Labour minister refused to vote with his party on a matter relating to the Māori (Xanthaki and O'Sullivan 2009, 203). By having a party that is specifically interested in promoting the opinions of the Māori, it could help to avoid having the representatives holding these seats vote in direct opposition to Indigenous interests because of party solidarity. Also, there is potential to have candidates from the Māori party seek election in seats that use the common roll, and as these seats are elected using proportional representation, there is increased potential for smaller parties to win seats.

One of the main challenges this party faces is the diverse opinions that exist within the Māori, who will not always share a common viewpoint. In fact, it is likely that on most issues, members of the community will have a variety of priorities and opinions (Xanthaki and O'Sullivan 2009, 204). These conflicting opinions could present even more of a challenge if these seats are implemented in British Columbia. While the Māori are the primary Indigenous group in New Zealand, British Columbia has over 200 different Indigenous communities that these would need to represent. Therefore, there would likely be many different Indigenous groups who are being represented by a single MLA.

## Croatia

Special group representation in the form of reserved seats exists in many Balkan states, including Croatia, Bosnia and Herzegovina, Montenegro, and Kosovo, with the goal of providing representation to minority groups that may not otherwise have it (Bieber 2009, 68). However, this paper will focus on Croatia, as its single electoral district approach to minority seats is more distinct from the other models already discussed. The availability of information in English is also an important consideration for this project. In Croatia, representation of minority groups has been approached more broadly than in Nova Scotia and New Zealand. Under pressure from the European Union while it was seeking membership, Croatia developed policies to provide more rights to the different minority groups living within the country. Specifically, these rights apply to any citizens “who identify themselves as members of ethnically, linguistically, culturally or religiously defined traditional minorities” (Agarin and Čermák 2019, 52). One of these policies is the creation of reserved seats for national minorities within the Sabor, the Croatian Parliament. There are eight of these seats, with each assigned to specific minority groups based on the group’s population. Three seats are given to Serbs, one each are given to the Italians and Hungarians, one is shared by the Slovaks and Czechs, and two are reserved for smaller and newer minority groups that have emerged in Croatia since the breakup of Yugoslavia, including the Bosniaks and the Roma (Agarin and Čermák 2019, 53).

These seats are filled by representatives selected by voters who have chosen to register as a minority, and who can then choose between voting in the electoral district where they live or for the appropriate minority seat (Agarin and Čermák 2019, 53). This is not unlike New Zealand, where the Māori vote on a separate electoral roll to other voters. To elect the national parliament, Croatia is divided into ten electoral districts, with fourteen representatives being elected from each using proportional representation. Two additional electoral districts are reserved for Croatians living abroad and for national minorities (Antić and Gruičić 2008, 752). Unlike the other models investigated here, the minority seats in Croatia are not geographically linked, as they are elected by all of the people who identify with the group, no matter where they live in the country (Agarin and Čermák 2019, 53). As they are elected in a separate minority electoral district, they are

not assigned a specific area, including those minority groups that are large enough to receive multiple seats.

This model could potentially be implemented in British Columbia in two different ways: exclusively for Indigenous peoples or for multiple minority groups. Under the former, the reserved seats would only represent those in the province who identify as Indigenous, no matter where they live. As there are many different Indigenous groups within British Columbia, these seats could be divided amongst them. While it would not be feasible to give each of them a seat, Croatia has certain seats that are reserved for representing smaller minority groups. British Columbia could also use these seats the same way as Croatia, providing representation to multiple minority groups residing in British Columbia. However, under this model, the voices and opinions of Indigenous peoples could potentially be overtaken by larger minority groups residing in the province, meaning they would no longer be ensuring their effective representation. The primary focus of this section is going to look at implementing this model exclusively for Indigenous peoples, as ensuring they receive effective representation is the focus of this paper.

This model would use reserved seats to provide special representation to the group of interest, in this case the Indigenous peoples of British Columbia. While other MLAs must find a way to represent the diverse groups residing in their constituencies, these elected officials would be solely concerned with ensuring that Indigenous views are being heard in the Legislature. This means that this model could be employed in British Columbia to improve the effective representation of Indigenous peoples. As the candidates specifically run for these seats, this ensures that they will defend their interests, as they rely on Indigenous peoples for re-election, meaning they will look to hear and accurately represent their views. Following the Carter decision by the Canadian Supreme Court in 1991, it was explained that effective representation should consider “community history” and “community interests” (Supreme Court of Canada 1991). Both of these would be highlighted using this model, as the Indigenous peoples have historically been excluded from decisions being made in Canada that concern them. Ensuring their views are being heard, especially when it comes to how land is being used, is crucial, especially since a large proportion of the province sits on the unceded territories of the Indigenous peoples. These seats could also help to highlight the interests of Indigenous peoples, by giving them specific voices in the Legislature.



Another important aspect of effective representation is voter parity, as one group should not have an outsized amount of power. Under this model, there is still the ability to keep the constituencies a similar population as the others in the province. However, effective representation could also justify smaller populations in these electoral districts that could result from some choosing to continue to vote in their normal constituencies. To ensure effective representation, more seats could also be added beyond what the Indigenous peoples would be entitled to based on population. This could be justified, as it would lend more weight to the views and interests of the Indigenous peoples of British Columbia, ensuring their representation.

While this model has similarities with New Zealand, as it ensures that the Indigenous peoples are guaranteed seats in government, it also has distinctions. Mainly, they are not geographically linked through the creation of a second electoral map, meaning that someone who is part of one First Nation could choose to still vote with their community, even if they move away from it. These seats would theoretically be assigned to specific Indigenous groups, so members of these groups who choose to vote for these representatives would still be able to vote together even if individuals move. For example, many people from smaller communities, including those who identify as Indigenous, choose to move to larger cities, but this model would allow them to continue choosing representation. Also, some Nations that may have communities spread around the province who can still vote for their representative. By allowing all the members of the group to vote together, it could help to achieve cohesion, making it easier for the MLAs that would be selected to represent their voters. However, as each representative would likely be elected by many different Indigenous groups who all have diverse interests, there would still be some disagreement. Despite this, being able to continue to vote with the community they identify with could still be an important detail, even if they would be voting with other communities, too. This could potentially be an issue when incorporated into the larger electoral model that we use in British Columbia, as the existing seats are all geographically linked. In Croatia they have resolved this by creating an additional electoral district that does not have a specifically assigned area, and instead covers the entire country. This would be like the New Zealand model, except instead of having a second electoral map with multiple electoral districts, there would only be one. However, Croatia uses proportional representation, which allows for the

creation of a country-wide district, whereas the current first-past-the-post system employed in BC would be incompatible with this model.

There have been certain issues that have arisen in Croatia and aspects of this model that would likely need to be considered in the British Columbian context. They have found that while this option exists, many who identify with the groups being represented still choose to vote on the regular electoral roll at the national level (Agarin and Čermák 2019, 57). Part of this could be that those who vote for these seats vote along with everyone else, but they have to specifically request a special ballot at the polling place, which could potentially make them uncomfortable (Agarin and Čermák 2019, 58). If this were to be implemented in British Columbia, it would be important to consider how voters for these special seats could more comfortably vote. For example, they could have special polling places, voting could be done by mail, or they could simply have a note on the voter list that designates which ballot they should receive. In Croatia, they have also seen that in the seats shared by multiple minority groups, the candidates from different groups have to run against each other (Agarin and Čermák 2019, 65; Bieber 2009, 69). This could mean that different groups are competing against each other and prevent the chosen candidate from representing everyone. Given that many of the seats in BC would be this way, this potential competition between groups could be a problem.

One of the main challenges that would be associated with using this model in British Columbia is deciding how Indigenous groups would be grouped together to elect their representatives. There are many unique Indigenous peoples in BC of varying sizes, making it unrealistic to have each elect their own representative to the legislature. The best way to determine how to group them together would be through consultations with Indigenous leaders, as they are the best equipped to make the decision, though it would likely still be challenging. Certain groups could be large enough to have their own seats, such as those in British Columbia who identify as Métis.<sup>2</sup> Based on the 2021 Census, there are 290 210 people in British Columbia who identify as Indigenous, with 97 860 of them identifying as Métis (Statistics Canada 2022). There are currently 87 Members of

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<sup>2</sup> It is important to note that there is some debate around who is Métis, particularly for those who do not come from the Prairie provinces. This data on the number of Métis living in BC could potentially be contested.

the Legislative Assembly in British Columbia representing the province's 87 electoral districts. Given the population of the province, about five of these seats would be designated to represent the Indigenous peoples of British Columbia. The proportion of the Indigenous population that is Métis would theoretically then be entitled to one or two of the seats under this model. Another potential challenge associated with assigning specific groups to a seat is people who may hold multiple Indigenous identities. In the event that they would be eligible to vote for two different seats, they would likely be able to choose which one to vote for, though some may not want to make that decision.

Much like the constituencies outlined in the section on New Zealand, this model would also involve the creation of non-contiguous electoral districts. This lack of contiguity takes two different forms in this case, the secondary electoral district and a more typical example of non-contiguity. To elect these Indigenous representatives, a secondary voter list would need to be created for those that identify as Indigenous and wish to elect these representatives. While it may not be linked to geography, there would still be some designation of who would vote for which representative that would replace the electoral map. However, the standard electoral map would still exist and cover the entirety of the province. While some live in Indigenous communities, many do not, and many live in or near larger cities. Therefore, while large sections of these constituencies would be in one place, there would also be voters who live elsewhere that would still be considered part of the same constituency, making it non-contiguous. However, as discussed previously, there is no requirement for constituencies to be contiguous, so this does not necessarily disqualify this model from being used.

However, much like the New Zealand model, the geography of British Columbia could make it incredibly difficult for these representatives to be present in their communities. Their constituents would be spread out all over the province, making it even more difficult to represent them than the large electoral districts that would result from implementing reserved seats tied to a physical constituency. The different Indigenous communities in British Columbia could potentially be grouped together somewhat based on geography for the smaller communities, but this would still raise the same problem that the secondary electoral map does, with the ridings being large and difficult to navigate. Another challenge related to geography would be the more day to day functions of an MLA. Each constituency in British Columbia has a constituency office and staff who assist people with questions and anything concerning provincial

jurisdiction. These MLAs would likely be the same or similar, as their constituents would still need assistance with things like Housing, Public Health, and any other matters that the province handles. While much of their business can be handled using email, phone, and letters, being able to physically visit the office would not be possible or convenient for many of the electors represented by these officials. However, the MLA whose constituency they reside in could also provide these services.

Another challenge for these representatives would be to stay adequately apprised of the concerns within the riding. Specifically, MLAs have to familiarize themselves with the things happening in their constituency and their constituents' opinions. For the Indigenous MLAs, they may focus more on issues that are more specific to the groups they look to represent, though in British Columbia, the Indigenous peoples often have opinions regarding different energy and infrastructure projects, including pipelines. If MLAs are representing people who live all over the province, they would need to have intimate knowledge of these projects happening all over the province and not just in a specific constituency. While these types of projects tend to be more contentious, this concern could be expanded to other local based issues that the representatives may not be able to fully understand if they are constantly travelling around the province. Ideally, these MLAs would be from one of the communities they represent, so they would have some existing understanding of their interests.

While the other models under study in this paper look to provide representation for one or two groups, Croatia has attempted to include more based on the population of their minority groups. Croatia's reserved seats are also different because they are not linked to a specific electoral district like the other cases studied in this project. In British Columbia, they could be used to provide representation to specific Indigenous groups, with those that do not live in the same area still able to vote with their community. Also, providing these reserved seats ensures the effective representation of these groups. However, there remain similar challenges as the Māori seats, as it would be difficult for the representatives to meet with Indigenous peoples given the geography of the province. There would also be a challenge with grouping the different Nations together, as few Indigenous groups would be large enough to have their own seats. This could potentially lead to competition between the groups represented by the same elected official, as they may look to have their own representative elected. However, this would guarantee Indigenous representation by giving them the option of voting for their own

representative, who would ideally be from one of the communities they represent, but it could still be difficult to remain apprised of all the details.

## Conclusion

This paper has explored three different models of minority representation employed in the world, looking at how they work and how they could be implemented in British Columbia. It also looked at how each model could be used to provide effective representation to the province's Indigenous peoples and outlined their strengths and potential weaknesses. In Nova Scotia, protected constituencies were drawn around Acadian and Black populations to increase their voting power and increase the likelihood that their representatives would also be Acadian or Black. This has already been replicated in Northern Ontario for the Indigenous and Francophone populations living there. It can increase representation, as parties will be incentivized to run minority candidates and the elected MLAs will advance their interests to gain the group's support. However, the increase in voting power relies largely on the community voting together, so there is not the same guarantee as other models discussed. New Zealand has reserved seats for the Māori, whose representatives are elected from the separate Māori roll in electoral districts separate from those elected by the common roll. It guarantees representation, as they are the only ones electing the representatives, and provides all Māori citizens the opportunity to vote for these seats. The trade-off for employing this model in British Columbia is that some of the resulting constituencies will be incredibly large, as many communities outside of the Lower Mainland and Vancouver Island are small and widely dispersed. In Croatia, the different minority groups can choose to vote for a specific representative in the Sabor, meaning that they have sought to provide representation to a larger portion of the population. It allows them to give a voice to many different groups, and similar to New Zealand, people from all over the country who identify as a minority can choose to vote for them. However, if it was used to elect representatives for different Indigenous groups, there would be challenges grouping them together. It could also be difficult for the representatives because, as is the case with the New Zealand model, the size of the area they represent could make it difficult to visit voters.

When looking at which could be implemented in British Columbia, it is important to look at the advantages but also the potential challenges associated with each model. When the Indigenous peoples of BC were consulted prior to the 2018 Electoral Reform Referendum, they stated that they wanted representation similar to the reserved seats

for the Māori in New Zealand (Eby 2018, 66). It presents a real-world example of Indigenous representation, where seats are specifically designated for a certain group. Implementing them would give every Indigenous person in the province the option of voting on a separate Indigenous roll and electing their own representatives. It would also guarantee that there are MLAs solely concerned with the interests of Indigenous peoples, since they would be the only ones voting for them.

It is important to consider this model, as it was the suggestion put forth by Indigenous peoples and leaders to improve their representation in government, and it would undoubtedly improve the effective representation of Indigenous peoples. However, this would be unique in Canada, as no other province currently uses two separate electoral maps to elect their Legislative Assembly, which could present a challenge when implementing it. It would also require large changes to our current system, as a second electoral map would have to be established, so there are challenges associated with this model. That being said, as the original peoples of British Columbia, it is important to ensure that Indigenous voices are being heard. Under this model, they would be guaranteed approximately five seats based on BC's Indigenous population, and these MLAs would be committed to defending their interests.

Of the three models discussed here, the protected constituencies used in Nova Scotia are the most likely to be implemented in British Columbia, as there are already examples of them being used elsewhere in the country. They would ensure that Indigenous peoples represent a large portion of the population within the constituency, increasing their voting power. Also, given that it does not require a complete overhaul of the electoral system and would fit into the existing one, this model is most likely to be used in British Columbia compared to the others described in this paper. While this would limit the number of voters to those living in areas with a larger Indigenous community, it would only require drawing new electoral districts rather than creating a second electoral map. Also, it would still increase the number of representatives for Indigenous peoples in government, especially since political parties would likely nominate Indigenous peoples to run for these seats, as we have seen in Nova Scotia and Northern Ontario. When creating these constituencies, it may be necessary to have their populations be smaller than the average, but BC's *Electoral Boundaries Commission Act* allows for this to ensure effective representation. Additionally, the decision from the Nova Scotia Court of Appeal would provide judicial precedent for this

form of representation in Canada, whereas replicating the system used in New Zealand could potentially lead to legal challenges, as it would establish special seats based on Indigenous identity. However, section 15.2 of the *Charter* allows for the implementation of a policy that “has as its object the amelioration of conditions of disadvantaged individuals or groups” (Government of Canada 1982).

In Canada, the notion of effective representation means that certain factors are considered as a part of the right to vote, including minority representation and community interests. One of the objectives of this paper was to present different models for how this could be achieved in British Columbia, looking at ways to improve representation in the Legislature. Providing this representation for Indigenous peoples is important, not just because they are a minority group but also because of their history and their interests, as the latter does not always align with what politicians are supporting. Thus, in order to ensure effective representation for them, these models guarantee or at least increase the opportunity for their interests to be heard in government. These models also typically see someone from the minority groups they represent being elected, which means they could increase the number of Indigenous voices in government. The right to vote in Canada looks more at relative equality of voting power rather than absolute equality, justifying the introduction of special circumstances for minority groups. In this case, the electoral system would grant greater voting power to Indigenous peoples, as they would be the only group to have some form of special representation. By implementing one of the models explained in this paper, they would improve the effective representation of the Indigenous peoples of British Columbia by giving more weight to their voices and having MLAs to defend their interests.



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