

POLITICAL SPACE, GUARANTEED: UTILIZING NEW ZEALAND'S 'RESERVED SEATS' SYSTEM TO HELP ABORIGINAL CANADIANS REALIZE THEIR GUARANTEED DEMOCRATIC RIGHTS

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abstract

Despite having formally recognized the distinctiveness and importance of Aboriginal Rights with the enactment of section 35 of the 1982 Constitution, Aboriginal persons continue to be under-represented in Canadian political institutions. This article will argue that the solution to this problem does not lie in section 35. Instead, this article will demonstrate this historic lack of political space constitutes an infringement of rights guaranteed to Aboriginal Canadians under section 3 of the Charter of Rights and Freedom. The most effective method to remedy this breach is through the implementation of a 'reserved-seat' system similar to that in New Zealand.

This article begins with a brief historical summary of the relationship held between Canada and its Aboriginal people, moving to compare this with the association linking the New Zealand crown and the indigenous people of New Zealand – the Maori. New Zealand did not initially incorporate rights for the Maori in constitutional documents, but instead chose to allocate reserved parliamentary seats to the Maori people – a method that has proven quite successful. The article then moves to analyze the Canadian jurisprudence under section 3 of the Charter, demonstrating that our current electoral system and under-representation of Aboriginal persons constitutes a breach of this right. Due to the inherent inequalities existent in the political sphere, only a method as assertive and direct as reserving seats will begin to remedy this breach. This argument can withstand

justification – under both the Canadian liberalized view of rights and section 1 of the Charter.
