Direct Democracy in British Columbia

by

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ABSTRACT

Canadian advocates of more frequent use of the instruments of direct democracy express the opinion that the adoption of these instruments would help to democratise Canada's system of governance. What is really being advocated is a major modification of Canada's parliamentary representative governance system without much consideration being given to the potential ramifications of these modifications. An examination of the past uses of direct democracy will provide a clear understanding of how direct democracy has been used within the present governance system. It will then be possible to draw conclusions as to the potential uses of direct democracy, and the potential ramifications of its uses, within the present governance system.

Politicians in British Columbia have used referenda, one of the instruments of direct democracy, more than any other province in Canada. The record shows that unpopular politicians or unpopular policy has been the impetus for most of the use of referenda. This examination will concentrate on three uses of referenda in British Columbia. There will also be an examination of why, with the exception of legislative measures passed in 1919, British Columbia's politicians have shied away from entrenching any of the instruments of direct democracy. Governments have instead chosen to use referenda in an episodic fashion for their own political purposes. This appeared to have changed with the passage of the Referenda Act in 1990 and the Initiative and Recall Act in 1994.

The possibility that such measures would seriously undermine British Columbia's system of cabinet government is a remote one. The legislation is so hedged with conditions and high thresholds that, with the exception of formal constitutional changes. The one exception relates to proposed changes in the formal constitution.

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Introduction

Is the present direct democracy legislation in British Columbia a major modification of the present system of government and if so what are the potential ramifications of these modifications? By examining past uses of direct democracy in British Columbia it will be possible to answer these questions and come to some conclusions as to the future role of direct democracy in British Columbia. An important issue that needs to be examined is how and why referenda were used in British Columbia. It is instructive to understand the place of direct democracy within the larger sphere of democratic thought. It is necessary to include in any discussion of direct democracy the potential benefits and dangers of the incorporation of direct democracy into a representative system of government.

In British Columbia the referendum has been a part of the political landscape since the early part of this century.[1] Important decisions, such as women gaining the franchise, provincial health insurance, constitutional amendments and the adoption of initiative and recall, have been made through the use of referenda. Yet the role that the referendum has played in British Columbia's political system has never been clarified. The referendum has been a political instrument used by governments for a variety of reasons. The motivation may have been to try to distance a government from a politically uncomfortable situation. Premier Bowser used the referendum in 1916 when his government appeared to be on the wrong side in the debate over giving

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[1] See Margaret Ormsby, *British Columbia: A History*, Vancouver: Macmillan Company of Canada Limited, (1958).

women the franchise.[2] Other governments have used the referendum to try to expand political support for a policy. Premier Pattullo used the referendum in an attempt to broaden support for a provincial health insurance plan during the 1937 provincial election.[3] The government of Rita Johnston was accused of trying to broaden the support for her party by putting the issue of initiative and recall to a referendum vote in the 1991 general election.[4] Local option liquor referenda were an example of where a government did not see merit in having a strong opinion or wished to avoid having to impose a solution on a sensitive issue.

The only instrument of direct democracy to have been used in Canada has been the referendum. There are, however, proponents of incorporating the initiative and the recall into a representative government system. Writers who subscribe to this view believe that the more chances the voters have to participate in the act of governance the more democratic a society will be.[5] Those who write from this perspective tend to approach the subject of direct democracy from a purely philosophical point of view. The main focus for these advocates is that a society maximises their vision of democracy through greater citizen participation. They do not, however, address important issues such as the role of elected representatives in a parliamentary system of government versus the role of elected representatives in a republican form of government. The proponents of 'pure' direct democracy do not address the problem

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2 See George Woodcock, *British Columbia: A History of the Province*, Vancouver: Douglas and McIntyre, (1990).

3 See Robin Fisher, *Duff Pattullo of British Columbia,* Toronto: University of Toronto Press, (1991).

4 See British Columbia Politics and Policy, *Poorly Crafted Referendum Questions will not help Socred Electoral Prospects*, Unsigned Article, 15, 7, (Aug./Sept., 1992), 3.

5 See Marjorie Mowlam, *Popular Access to the Decision Making Process in Switzerland: the role of direct democracy*, Government and Opposition, 14, (1979), 180-197.

of how a modern nation state could be governed without some form of representative government. When writers like Rousseau discuss the idea of governance it is always in terms of the ideal state. To him, the ideal state is one that is small enough, in terms of geography and population, that a direct form of democracy is possible.[6] It would seem that democracy is doomed to be compared to Rousseau's idealised democracy, even though the modern nation state has made Rousseau's model obsolete. Among modern writers, however, there are few, if any, who advocate the replacement of representative government with Rousseau's model state which was tiny in comparison with even a small modern city. There are writers who advocate a role for elected representatives that would make them more of a delegate for their voters than a representative of their voters. [7]

The question of the role of elected officials should be the starting point for any discussion of reforming democracy. There are not, however, universally agreed upon rules of what the role of an elected official should be. On one end of the scale is the Burkean representative; at the other end of the scale is the delegate. What role the elected official adheres to is most often coloured by the definition of government that is used. Some writers who have advocated a delegate role for the elected official express a desire to 'check' the power of the elite in their society.[8] Most writers, however, recognise the impractical nature of turning elected officials into mere delegates. To this last group of writers direct democracy is conceived as a means of

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[6] See Jean-Jacques Rousseau, [1762] *On the Social Contract, with the Geneva Manuscript and Political Economy,* ed. Roger D. Masters and Judith R. Masters, New York: St. Martin's Press, (1978).

[7] See Felix Bonjour, *Real Democracy in Action*, Philadelphia: J.B. Lippincott Company, (1920).

[8] See F.E. Titus, *The Initiative and Referendum: Needed Reforms in Representative Government*, Pamphlet, (16 Nov., 1891).

checking the power of the elected representative by increasing citizen participation.[9] It should be understood that to many of these advocates more citizen participation is unquestionably better.

Through the use of the instruments of direct democracy, the referendum, the initiative and the recall, advocates seek to maximise the influence of the voters and minimise the influences of the elite. This would be accomplished in two ways. First, the elected representative would always be aware of the threat of being recalled or of having government policy changed or replaced by the voters outside of the usual electoral process. Second, the voters would have the ability, by using the initiative, to 'go over the heads' of the elected representatives. Opponents of the initiative and recall cite the above examples as why direct democracy is a threat to good government. Elected officials would, according to opponents, be so preoccupied with avoiding being recalled that they would be unable or unwilling to make the difficult decisions necessary for the good of society. Opponents also express the view that voters, unlike elected officials, would be more likely to vote solely in their self interest. The case of California and the passage of proposition 13, which effectively froze property tax rates in that state, is often cited as an example of the voters' inability or unwillingness to view the 'big picture'.

Proponents of the initiative rarely address the problem of protecting the rights of the minority when the basis of direct democracy is majority rule. In the 1994 mid-term elections in the United States there were several states where initiatives were on the ballot that were seen by civil libertarians as being discriminatory. In Utah, an initiative which would have limited the rights of homosexuals was approved by voters.

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[9] See Preston Manning, *The New Canada*, Toronto: Macmillan Canada, (1992).

Whatever Utah legislators may have personally thought about the amendment they had no choice but to enact the initiative. Had it not been for the federal constitution the Utah amendment would have become law. One could speculate that if it were possible to amend the federal constitution in the United States by means of initiative then the possibility of discriminatory legislation, such as the Utah initiative, would be of even greater concern. Opponents make the case that broader social policy, such as affirmative action programmes, which are seen by some as being good for society as whole, are not a constitutional right in the United States and could be altered or removed in states that have the initiative.

In Canada, proponents of direct democracy can be placed into one of two categories. The first category is those who urge the adoption of one of the instruments of direct democracy. Most of the writers that are in this category tend to be advocates of the referendum. Patrick Boyer, a former MP, is one of the most prolific of such writers. Boyer advocates the increased use of referenda including a binding referendum. He makes the argument that voters should have the right to decide 'major' issues. In presenting his case, Boyer chronicles the use of referenda in Canada and concludes that in most cases the voters have proven the critics wrong. Boyer argues that allowing the voters a more direct role in the governing process cannot help but be more democratic. Not all advocates of the referendum embrace Boyer's view that referenda should be binding or that they should be frequent. The conclusion of several royal commissions, parliamentary committees and some politicians is that referenda should be reserved for major issues such as constitutional amendments. These advocates state that if voters had an ability to express their opinion through a ratification vote on constitutional amendments the proposed amendment would be more legitimate in the eyes of the public.

Other writers see direct democracy not in terms of more citizen participation in decision making but in terms of providing a way for the voters to exercise greater control over elected officials. Peter McCormick, a political scientist, is a strong advocate of the recall for precisely this reason. McCormick expresses the opinion that it is not actual recalling of the elected representative that is important but the threat of being recalled that is important. Just as there are presently laws that deal with the potential criminal behaviour by elected officials the recall would operate in the same manner by providing a mechanism to deal with elected representatives who have run afoul of the voters politically.[10]

Writers in the second category advocate a more radical change of the present system. This group believes that the initiative and the referendum must be adopted together. They express the opinion that adoption of the referendum, because it is government initiated, is open to abuse by government. In order to counter this potential abuse these writers reason that the referendum must be adopted in tandem with the initiative, thus providing a system of checks and balances. The logic appears to be that if a government uses the referendum to 'trick' the voters then there is the option for the voters to counter the government by initiating their own legislation or alternate legislation. Preston Manning has written that the ability to curb an overzealous government through the use of the initiative is a prime reason why the adoption of the referendum is not sufficient in itself.[11]

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[10] See Peter McCormick, "The Recall of Elected Members", *Canadian Parliamentary Review*, 17, 2, (Summer, 1994)

[11] Preston Manning, *The New Canada.*

The majority of the literature on direct democracy focuses on its use in the United States. An obvious reason for this is that many state governments have adopted one or all of the instruments of direct democracy. There are several problems with this comparative approach. The most obvious problem is that the Canadian and American systems of government are so different. The United States has a republican form of government. Sovereign power is vested in the 'people' not in the institutions of government or a sovereign. Elected representatives in the United States are rarely constrained by party discipline to the extent that their counterparts in Canada are constrained. This is due to the nature of the role of the elected representative in the US. The role of 'loyal' opposition does not exist. A great deal of debate takes place between elected representatives—not just between parties. Finally, and this point is most often ignored, direct democracy is only an option at the state and local levels of government. There are no provisions for national referenda and initiatives or for the recalling of representatives elected to office at the federal level in the United States. This makes it any comparison at the national government level impossible. This comparative approach is instructive, however, in identifying potential problems such as protection of minority rights.

There are also problems in trying to extend lessons of direct democracy from local government to provincial government. The nature of municipal government is very different from parliamentary government. In British Columbia, municipal councils are elected at large. They tend to be non-partisan and depend more on decision making through consensus. In order to avoid the problem of comparing 'apples' and 'oranges' this examination will be limited mainly to the use of referendum by the provincial and federal governments.

Delegate or Representative?

The conflict between the delegate and representative roles of elected officials is central to the debate over direct democracy. As mentioned earlier, at one end of the scale there is the 'pure' Burkean role, according to which the individual elected is expected to take decisions in the public interest and independently to make decisions independent of the opinions of the electorate. The 'pure' Burkean model of the elected official has been replaced today by a modified Burkean role. This reflects the nature of modern politics and the diversity of today's voters. If an individual wishes to be re-elected then it is important for them to be seen as listening to the views of their constituents. A slightly different version of this modified role envisions the representative being instructed, through referenda, only on major questions (constitutional amendments for example) or on insignificant local matters (such as Sunday shopping). Further along on the scale is the elected official as delegate. In this view the elected official not as a representative but instead as an instructed delegate. On most matters these delegates would only vote as instructed by their constituents. The elected official would have little decision making power of their own. Juxtaposed to these models is that of 'pure' direct democracy. In this version there would be no elected representatives or delegates. Instead each voter would be able to vote to decide every issue. Although the term direct democracy is used by most advocates what they are really alluding to today is the modification of representative democracy and not its elimination.

An examination of the uses of the referendum will demonstrate that the limited use of this instrument of direct democracy can be an useful addition to the present governance system in British Columbia. It will also demonstrate that further adoption

of other elements of direct democracy, such as the recall and initiative, would produce too radical a change to satisfy our local understandings of meaningful and workable democracy.

Chapter One:
Direct Democracy versus Representative Government

Advocates of more frequent use of the instruments of direct democracy are advocating a major modification to parliamentary representative government. What they do not address is the potential ramifications of these modifications for the present governance system. Before any conclusions can be reached on the potential ramifications of such changes it is important to understand why the present system has evolved and what advocates hope to achieve by modifying it. It is also important to understand what the instruments of direct democracy are and how the use of these instruments, according to advocates, will enhance the governance system. Examples of previous uses of the instruments of direct democracy in Canada and elsewhere will provide examples of the influences that shaped the present legislation in British Columbia.

Direct democracy can be defined as a process by which the governed take an active and continuing role in the decision making process of governance. It is argued that modifying the present governance system by incorporating the instruments of direct democracy into the system will 'return' decision making power to the 'people'. Advocates of direct democracy strongly believe that the people are best suited for making decisions on major issues facing their society. Proponents believe that the more chances for citizen participation in a political system and the decision making process, the more democratic that political system. Marjorie Mowlam, for example, sees citizen participation as a "key to the nature of democracy in a society: the more participation, the more democratic the political life of a country becomes."[12] To these

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[12] Marjorie Mowlam, "Popular access to the decision making process in Switzerland: the role of direct democracy". *Government and Opposition*, 14, (1979), 180.

advocates, representative government in its present forms limits the democratic potential of a country. Representative government should therefore be modified in order to maximise its democratic potential.

With parliamentary and republican forms of government firmly entrenched in most western states, incorporating direct democracy into these systems, according to its' advocates, would provide the electorate with a means of checking the power of both elites and elected representatives. Opponents disagree. For some, like Peter McCormick, the enthusiasm of proponents for direct democracy is merely a way for those who have "lost hope for representative democracy" to "bypass our humble elected representatives altogether, end-running their institutional significance and reducing them to passive bystanders." [13]

The advocates of direct democracy often claim that more citizen control would take democracy back to its roots. Is it realistic to think that this old form of democracy could be practised in a modern nation state? Democracy as it was practised in the Ekklesia in Athens, or at the town hall meeting that is still used in New England, has been called "face to face" or "primary democracy" by some theorists.[14] The reason for these terms is that democracy as it was practised in New England and Athens was conducted face to face and by all citizens. An important factor in these examples is the size of these communities and the criteria used to determine who participated. In both Greece and New England the definition of citizen was very narrow. Origin of birth, gender, ownership of land and class membership seriously restricted the number

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[13] Peter McCormick, "The Recall of elected members"., *Canadian Parliamentary Review*, 17, 2, (Summer, 1994), 11.

[14] Robert Dahl, *Democracy and its Critics*, New Haven: Yale University Press, 1989, .

of people who could participate in the governing process. The limited number of full citizens provided for the second ingredient necessary for direct democracy to work: a small and relatively homogeneous community of participants. Rousseau concluded that "the ideal community is small enough that its citizens can make laws reflecting the general will through face to face discussions." [15] While this form of democracy does not necessarily have all eligible citizens participating at once, the small size of the citizen community makes it possible for all those wishing to participate to do so. During the nineteenth century the expanding definitions of citizen increased the number of those eligible to participate. The developing thrust toward nation states' led as well to increases in the geographical size of communities. The net effect was that communities became too large to accommodate direct democracy. Vincent Lemieux describes the problem succinctly:

> The constraints of space and time that limit the operation of primary democracy when there are too many participants justify the move to **representative** democracy. If there are 20,000 people at a meeting that lasts six hours, and each speaker is allotted two minutes to speak, fewer than one percent of the citizens will have the opportunity to be heard. Some type of representative system must be adopted: drawing lots to choose speakers; assigning positions beforehand, with the assurance that each position may be defended by one or more spokesperson; or electing representatives. These problems transform direct democracy into representative democracy.[16]

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[15] Thomas E. Cronin, *Direct Democracy: The Politics of Initiative, Referendum and Recall.*, Cambridge: Harvard University Press, 1984, 39.

[16] Vincent Lemieux, "The Referendum and Canadian Democracy". *Institutional Reforms for Representative Government, Royal Commission on the Economic Union and Development Prospects for Canada*, Ministry of Supply and Services Canada, (1985), 112.

As the size of the state grew, and society became more complex, some form of a *representative* system became necessary. The result was a slow evolution to the present systems of representative government.

If one accepts that modern states are generally much too large and complex for face-to-face democracy, then the question turns on the appropriate role of elected representatives. There are two main theories of the role of elected officials: The first theory, the Independent theory, is represented in the traditional Canadian system. The elected officials are representatives of their constituents to the governing body. The elected representative makes decisions on behalf of their constituents as matters arise. This view is expressed by Edmund Burke in his *Address to the Electors of Bristol:*

> [The constituents'] wishes ought to have great weight with [the representative]; their opinions high respect; their business unremitted attention...But his unbiased opinion, his mature judgement, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living.[17]

In the second theory —that of the delegate— the representatives are elected as agents who cast votes only as their constituents have instructed them to vote in advance of going to the governing body. In the Burkean view, deliberation and decision making takes place at the meeting of the governing body. In the delegate system all the deliberation and decision making takes place between the constituents prior to the

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[17] Edmund Burke, "Address to the Electors of Bristol." in *Works, Volume II*, Boston: Little, Brown & Company, (1871), 95 - 96.

meeting of the governing body. To the advocate of the delegate view, the role of the governing body is essentially that of counting the votes of the various delegates. The democratic value of a system is therefore measured by where and how a constituent participates in the decision making process. To advocates of the delegate system the more direct the influence of the voter, the more democratic the system. Democratic participation is not, however, limited to decision making. People may influence the decision making process in many ways: a letter to the editor, participation in a 'town hall' meeting or working for a political party or interest group. To advocates of direct democracy, however, anything less than direct decision making power for the voters is seen as less than democratic.

What many advocates of direct democracy fail to acknowledge is that many aspects of it continue to exist within the confines of representative democracy. As democracy has evolved some of direct democracy's mechanisms have been incorporated into a larger system. It is just that the electorate's most obvious participation is, in most cases, limited to the selection of representatives. Even as the number of people eligible to participate has actually increased over time rather than decreased the proportion of people who actually participate in the decision making process has changed very little in Canada since Confederation. It is also true, however, that most peoples' participation, especially at the federal and provincial level, is limited to the act of voting.

If the decision making power is still limited to a relatively small group of people is the average person further ahead? One has to take into account the increases in the number of influences on the decision making process, and by extension on those

making decisions. The process of reaching a decision has become more complex and it would be wrong to conclude ,as many do, that the vast majority of citizens have no influence on how or why decisions are made. The political reality is that any politician, or party, wishing to remain in power must consider the opinions of the larger community. At the end of the day, however, a decision must be taken and this responsibility rests with the elected representatives.

In Canada it is the responsibility of our elected representatives to gauge the general will of the people. This is at best an inexact science. A politician who misinterprets the general will or fails to recognise shifts in the general will most likely face electoral defeat in the subsequent election. The onus then is on the elected representative to balance the popular idea of the moment with the common good. An elected MP or MLA takes a decision knowing that the ultimate power to punish or reward is in the hands of the electorate.

Another barrier to the practice of direct democracy is the geographical size of the modern state. Canada has a huge land mass in comparison to the city states of Greece or Italy. Canada's geographical size, its large population and diverse population make extensive direct citizen participation impossible. Unless there is some form of representative system in place government cannot function. The result is a form of government in Canada that technically gives elected representatives absolute decision making powers. As noted above, the political reality is an exercise in power that is geared more to compromise than to absolutes.

The idea that the majority shall command the minority is seen by some as being the most pure democracy. In its simplest form the meaning of majority rule rests in the

idea that fifty plus one should be sufficient to command the direction of a government. Why is it important to understand this position? This question is at the heart of some of the discontent with parliamentary government. According to some advocates of direct democracy, a government that has a majority of seats in the House of Commons has a four to five year 'dictatorship'. As long as the government continues to have the support of a majority of MPs or MLAs it can follow almost any course of action that it wishes. To proponents of direct democracy this dictatorship can only be checked by adopting measures that would give the electorate a means to overturn, or block, decisions by the governing body.

Proponents often use the example of the Goods and Services Tax (GST) as an example of why the people need a veto power. The government of Brian Mulroney in 1990 imposed a national sales tax that was very unpopular and even took the unprecedented step of appointing extra senators in order to have the bill passed. There was no way that the electorate could stop the government from its course of action. The only option, as proponents explain it, was for the electorate to simmer until the next election. At that time they could 'throw the bums out', and they did so in spectacular fashion in 1993. Governments, however, need to have the ability to take necessary courses of action for the good of all. Just because a course of action is unpopular does not mean that it is necessarily wrong.

The Instruments of direct democracy

Mainstream direct democracy can be divided into three categories of instruments, each with its distinctive function. The referendum is usually a government-initiated process with an opinion gathering function. The initiative is usually a citizen-initiated process

with a direct decision making function. The recall is citizen-initiated but has a punitive rather than a decision function.

A referendum is a question that the government poses to the electorate. Referenda can be divided into three categories: the arbitration referendum, ratification referendum and consultative referendum. The arbitration referendum, in essence, makes the electorate the arbiters between the legislative and executive branches of government. This type of referendum was used in the Weimar Republic in Germany but has seen very limited use elsewhere and will not be discussed further here. In a ratification referendum the electorate's approval is sought for a piece of proposed legislation. The result of such a referendum is usually binding on a government. The ratification referendum is used most frequently in the area of constitutional change. The constitutions of Switzerland and Australia, for example, require that any constitutional changes go to referendum.

In a consultative referendum, the government asks the electorate for its opinion on a piece of legislation or an issue. The consultative referendum is solely advisory in nature. It should be noted, however, that political reality makes it very difficult for a government to ignore the outcome of such a vote. In Canada the term referendum and plebiscite refer to a consultative referendum. The term plebiscite has generally fallen into disuse in Canada. The term plebiscite has generally fallen into disuse in Canada and for purposes of this paper the term referendum will be used.

Referenda in Canada

There have been only three national referenda in Canada since confederation, those held in 1898, 1942, 1991. The subjects of all three referendums were highly

politically sensitive. The first national referendum was held by the Laurier government in 1898 on the question of local option prohibition. The prohibition movement had become very strong in English Canada but no so in Quebec. For Laurier any decision one way, or the other, had the potential of opening rifts in his government. The solution was a national referendum on prohibition. The referendum showed Quebec sharply divided from the rest of Canada. Laurier dealt with the problem by adopting 'local option' legislation that allowed each province to hold its own referendum to determine liquor policy.

The next national referendum was held forty-four years later by the King government on the issue of conscription. Again there was a significant difference of opinion on the issue. The King government had received substantial electoral support from Quebec by promising that there would be no conscription. The Prime Minister decided on a national referendum seeking release from his election promise. The result of the 1942 referendum was much the same as the 1898 referendum. It showed a great difference of opinion between English and French Canadians. Although the Anglophone majority agreed to free King from the promise -which had been made essentially to Quebec- the Francophones did not, and King's problem in this area continued to fester despite the referendum result.

In 1992 the Mulroney government held consultative referenda in nine provinces seeking approval for the Charlottetown Accord on constitutional changes. This was in response both to legal requirements in two provinces and a growing general demand for more public involvement in the constitutional process. This referendum was much more conclusive than the previous two. Although there were some regional

differences, the country as a whole rejected the Accord. The results were not technically binding on the governments but in political terms the result was the same.

Provincial Referenda

At the provincial level the use of referenda has been more frequent. The subject matters of all province-wide referenda have been narrow in scope and have never concerned money matters. The author Patrick Boyer notes that referenda have traditionally been seen as equal, in most cases, to a Private Member's Bill. The questions asked have mainly concerned prohibition and the use of daylight savings time. Acceptance of the use of referenda can be seen in a geographical context. British Columbia and the Prairie provinces have held the most referenda. As one moves east, the use of referendum has been less prevalent with New Brunswick alone being the only province that has never held a referendum. The use of the referendum was most frequent prior to the Second World War. After the war the enthusiasm for using the referendum diminished until the 1980s.

Most referendum votes have required special or ad hoc legislation. Of all the provinces Quebec has the most comprehensive referendum legislation. The Parti Québécois (PQ) government of René Leveque in the late seventies enacted carefully designed legislation for the purpose of holding a referendum on separation. Most of the legislation in the other provinces, if they have such legislation, is vague and refers the running of a referendum to the elections act and/or the cabinet. British Columbia's legislation, for example, does not cover spending and campaigning. At the federal level there has never been any permanent referendum legislation, although there have been many suggestions for such legislation. Patrick Boyer, a one time MP, and

Deborah Grey, of the Reform party, have introduced several Private Member's Bills on referendum and recall.

The acceptance and use of referenda has been greatest at the municipal level in Canada. In some provinces, such as British Columbia, municipalities have been required to go to referenda in order to borrow money or to allow Sunday shopping. In most cases the results of these referenda were not binding. This is in keeping with the practice at the federal and provincial level where, as noted above, referenda have been seen as purely consultative. There is a strong belief, however, that at the local government level voters deserve a more direct say in the decision making process. For the most part, elected officials in local governments have been very willing to allow the voters to vote on a great number of issues. When local officials have been reluctant to go the voters provincial governments have at times forced them to do so. An example of this was the issue of abolishing wards in Vancouver in 1935. Perhaps the willingness to use referenda is due, in part, to the non-partisan nature of most local governments. Whatever the reason, referenda remains an important part of local governance in British Columbia.

The Initiative

The initiative is a citizen-initiated referendum. At its most basic the initiative "represents a power vested in the people to propose bills and laws, and to enact them at the polls, independent of the legislative assembly or the municipal council."[18] Typically, an initiative starts out as a petition. Once the requisite number of electors has signed the petition, typically 10 per cent of registered voters, it is submitted for

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[18] Patrick Boyer, *The Peoples' Mandate: Referendums and a more Democratic Canada,* Toronto: Dundurn Press, (1992) 28.

consideration to the electorate in the form of a question. This question can be general, of the form "would you like the government to enact a law on X?", or specific, such as "do you endorse the following law?" In most jurisdictions outside of Canada that have initiative legislation, the results of this kind of vote are binding. Where that is the case it is the ability of the electorate to create laws and bind law makers to certain actions that makes the initiative so popular with direct democracy proponents.

In Canada, the binding initiative has never been used at the provincial or federal level. The main stumbling block to the use of binding initiative in Canada has been constitutional. In 1919 the Judicial Committee of the Privy Council (JCPC) of the United Kingdom ruled that any legislation that encroaches on the rights of the sovereign was ultra vires. The JCPC made its ruling in regard to the direct democracy bill approved by the Manitoba legislature in 1916. The specifics of the 1919 ruling will be discussed in a later chapter. The effect was to forestall any and all binding initiative and binding referendum in Canada. Although passed several months earlier in British Columbia a Direct Legislation bill was never proclaimed into law because of the JCPC ruling. All of the other provinces that had approved such legislation eventually repealed it. Some cynics may suggest that politicians have used this ruling as a means to block all direct democracy legislation ever since.

One local government in British Columbia is experimenting with the initiative. The small town of Rossland adopted a by-law in 1991 providing for citizen initiative referenda. The by-law is not recognised by the provincial government although it has not intervened to stop its being put into practice. The only initiative that has made it to the ballot so far has been one to reduce the salaries of the city councillors. As all aspects of local governance are subject to the Municipal Act, and the tools adopted by

Rossland are not mentioned in it, the by-law may well be technically illegal. At this time the initiative has not been adopted by another municipality in British Columbia. There no indication that the provincial government would contemplate approving such a move.

The Recall

The recall is the removal of an elected representative by means of a ballot. With the exceptions of the Legislative Assembly (Recall) Act passed in Alberta in 1936 and the British Columbia Initiative and Recall Act of 1994, the recall has been absent from Canada. The 1936 Alberta legislation brought in by the Social Credit government of William Aberhart resulted in an experiment that was quite short-lived. In 1937 Aberhart became the first member of the Legislative Assembly targeted by his government's recall legislation. The Social Credit government quickly introduced resolutions repealing the Legislative Assembly (Recall) legislation. The legislation was made retroactive to the day before royal assent was given (April 3, 1936). The results were two-fold. The premier was rescued from his own legislation and the recall lost whatever favour it might have had among most elected politicians in Canada.

In the 1920s, the federal Progressive party had tried to pressure the King government to bring in recall legislation.[19] To increase the pressure on the government, and to show their commitment to recall, Members of Parliament elected under the Progressive banner signed recall 'contracts' with their constituents. The King government countered by making it illegal under section 106 of the Dominion

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[19] See W.L. Morton, The Progressive party in Canada, Toronto: University of Toronto Press, (1950).

Elections Act for any MP to sign such contracts. It remains illegal today for Member of Parliament to sign such contracts under the Elections Act.

Why is it that recall is an accepted practice in many parts of the United States and yet is almost non-existent in Canada? The most prominent reason is the difference in the role of elected officials. In Canada, a person elected to the House of Commons or to a provincial legislature is not just an elected representative but a member of the house or legislative assembly. As noted earlier, it is a 'modified' version of the Burkean model, coupled with strong party discipline, that dictates the role of an elected representative in the Canadian parliamentary system. The recall is seen as a threat to the status quo and in particular to the party leadership. Recognition of this threat goes a long way in explaining why the leaders of major political parties lack enthusiasm for the recall.

Many factors have contributed to the present shape of representative democracy in Canada. Geographical size, a diverse population and the influence of the British parliamentary system. Advocates of direct democracy rarely address how, or whether, adopting the instruments of direct democracy would overcome the difficulties of governing a large and diverse state such as Canada. Nowhere do any of these advocates address the potential ramifications that their proposed changes would have on our governance system. In the next two chapters, through an examination of the historical uses of, and influences on, direct democracy in British Columbia, it will be possible to reach conclusions on the ramifications of the past uses of direct democracy. By studying the historical record it will be possible to come to some conclusions about the present legislation in British Columbia and to predict the implications of the legislation for the present governance system.

CHAPTER TWO:

Direct Democracy Comes to British Columbia

Politicians in British Columbia have long been receptive to the use of referenda. This may be because the people of British Columbia have been more open to the concept of 'grassroots' democracy and influenced by populist politics. On the other hand, it may be that British Columbia's politicians recognise the value of referenda as a political 'tool'. Whatever the motive, British Columbia, like most of the other 'western' provinces, embraced many of the core concepts of the direct democracy that came north with the progressive movement from the United States at the turn of the century.

Although the use of the referendum has been more frequent in British Columbia than in the rest of Canada, the fact remains that the inspiration for its use has more often been that of populist politicians than of the 'grassroots'. It interesting that the early embracing of direct democracy in British Columbia paralleled the development of party politics. The desire for meaningful participation by voters is often cited as the driving force behind adoption of direct democracy in British Columbia. Dissatisfaction with the elected and non-elected elite is also an important factor in the debate. The latter provides the connection between the early era of direct democracy with the present. In this chapter, an examination of referenda from 1916 and 1937 will provide an understanding of each government's motivation. Of equal importance is the finding of ultra vires in the case of the Manitoba direct democracy legislation which had a significant influence on limiting direct democracy in British Columbia to non-binding

referenda. These historical experiences have helped to frame the debate over direct democracy today.

The nine province-wide referenda held in British Columbia dealt with eleven questions on such diverse issues as prohibition, women's suffrage, provincial health insurance, recall and initiative. A regional referendum was held in five electoral districts in 1972 on the question of Daylight Savings.

The history of direct democracy in British Columbia can be divided into three periods. The first, and most active period, covers from 1916 to 1937. Nine referenda questions were presented to voters in this period. The peak period for the direct democracy movement in British Columbia was marked by the passage of the 1919 Direct Legislation Act. The second and least active period, was from 1938 to 1971. The final period covers from 1971 to the present. This chapter will review the history of direct democracy through its first and most active period.

With the exception of the Direct Legislation Act of 1919 British Columbia did not have any permanent referenda legislation for referenda until 1990. The Referenda Act of 1990 relies heavily on the Cabinet to set the rules and will be discussed in more detail in Chapter Three. The initiative, while entrenched in legislation such as the 1919 Direct Legislation Act, has never been used. The recall had no legislative backing until 1994 and has never been used in this province.

Referenda have been held at the municipal level since the early 1880s and continues today.[20] The Municipal Act at one time required that municipal governments submit to

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[20] See Paul Tennant, "Vancouver Civic Politics, 1920 - 1980", *British Columbia Studies, 46, (Summer, 1980)*

referenda for voter consideration issues of borrowing or the composition of the council. The Vancouver Charter required, until recently, that a referendum be held before the city council could introduce a ward system. Specific groups, such as the dairy producers, are required to consult their members by way of referendum. The above mentioned groups, however, are not, in most cases, bound by the results of the referenda. Although the use of referenda at the local level has been more frequent the differences between provincial and local governance is so significant that only provincial uses of referenda will be examined here. At the provincial level only proposed amendments to the federal constitution are required by law to be put to referenda.

Populist influences and Direct Democracy

Among reformers and populists in the early part of this century there seems to have been a genuine belief that the voters, if not the best judges of the direction of government, then at least were worthy of having their opinion sought more than once every four to five years. Members of the Progressive movement in the United States were the standard bearers of direct democracy in that country. In western Canada it was populist politicians in the United Farmers, Progressive and provincial Liberal parties that promoted the cause of direct democracy[21]. All of the early direct democracy legislation was passed or proposed, under Liberal administrations.

The first provincial legislature in western Canada to pass direct democracy legislation was Saskatchewan. The Liberal government of Walter Scott introduced a direct democracy bill in 1913. Prior to the bill receiving royal assent the Liberals presented

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[21] Patrick Boyer, *Direct Democracy in Canada: The History and Future of Referendums,* Toronto: Dundurn Press, (1992), 159 - 164.

the legislation to the people for their approval by way of a referendum. In keeping with the populist theme of the legislation the government required that a certain proportion of the electorate cast ballots on the referendum question. An insufficient number of the electorate cast their ballots and, by virtue of there having been too few votes, the bill was withdrawn.[22]

The Alberta government of A. L. Sifton passed direct democracy legislation in March 1913 but there is no record of the legislation having ever been used. An abortive attempt to use it in 1958 led the government of the day to repeal the Act. The Liberals in Manitoba passed the Initiative and Referendum Act in 1916. In 1919 the Judicial Committee of the Privy Council (JCPC) upheld a ruling by the Manitoba Court of Appeal, declaring the bill to be ultra vires the legislature. This ruling, which will be described in greater detail later in this chapter, effectively put an end to binding referenda and initiative legislation in Canada for the next seventy years.

Contrary to popular myth, the direct democracy legislation passed by these governments was not that wide-ranging. Most of the legislation prohibited the public from voting on initiatives or referenda that involved the spending of public money. The recall was not included in any of this legislation, nor is there any evidence that it was contemplated except for that on Alberta's books for a brief time in the 1930s.

Interest groups have often advocated the use of referenda as a means of furthering their cause. The prohibition movement used the referendum as one of its main strategies to circumvent the politicians and powerful liquor interests. Prohibitionists contended that the 'people' really wanted prohibition but the politicians were all 'beholden to the

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22 *Ibid.*, 79 - 80.

liquor interests'. Elected officials were seen as unable to do the right thing and comply with the people's wishes.[23] Ironically, the British Columbia government used the referendum to help it do away with prohibition in the 1920s.

The 1916 referendum

The 1916 British Columbia referendum on women's suffrage is an example of the referendum being used to deal with a politically sensitive issue. In 1916 the Conservative government, under its new leader, William Bowser, was under growing pressure from suffragette groups to extend the franchise and the right to sit in the provincial legislature. Until 1916, women in British Columbia had been allowed to vote and hold office only at the local government level. In addition to the usual impediments that women faced in trying to gain the vote there was a uniquely British Columbia problem. Until the election of 1903, the province had no formal political parties in the modern sense[24]. In essence each MLA was for the most part 'unfettered' by party discipline and not bothered by a party platform that may have been designed to appeal to provincial voters as a whole.

In 1912, few groups saw any advantage in courting the potentially large block of women voters. Up until the First World War the trade union movement had been one of the few groups to endorse women's suffrage. As the war progressed, however, and more women entered the work force, the trade unionists began to see women as a threat. "The British Columbia Federationist on April 14, 1916, asserted editorially that the capitalist, anxious to exploit cheap labour, would see that women got the vote to

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[23] See F.E. Titus, *The Initiative and Referendum: Needed Reforms in Representative Government*, Pamphlet, (16 Nov. 1891)

[24] George Woodcock, *British Columbia: A History of the Province*, Vancouver: Douglas & McIntyre, (1990) 175.

keep men from getting back their jobs". Giving women the vote was also seen as having the potential of turning women away from their 'domestic' duties.

The most ardent, and consistent, supporters of women's suffrage had been the socialist Members of the Legislative Assembly. They had tried in vain to put the issue on successive legislative agendas through the only avenue open to them, the Private Member's Bill. These Private Member's Bills were as close as the issue of women's suffrage ever came to some formal recognition by the governments of the day. Of the dozen or so Private Member's Bills that had been introduced between 1886 and 1916 all failed – not an uncommon fate for a Private Member's Bill. Three of these bills had been introduced by J. U. W. Place in the 1916 session alone[25].

For a time the suffrage movement put aside its quest for the franchise in the interest of furthering the war effort in British Columbia. This inadvertently had a strong positive effect on their cause. Their contribution to the war effort put women in general in a more positive light[26] as the public came to accept the idea that everyone contributing to that effort should have a vote in selecting the people running the war.[27] The federal government used the same logic to extend the federal franchise to women in 1916.

Perhaps seeing the inevitability of women having the vote, and wanting to be seen in a positive light by this large untapped voting block, the provincial Liberal party added a plank to its election platform supporting a woman's right to the vote. The liberals and the socialists also pressed the conservatives to introduce legislation giving women the

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25 Boyer, *Direct Democracy in Canada,* 107.

26 Boyer, *Direct Democracy in Canada,* 107.

27 *Ibid.,*

right to vote *prior* to the 1916 election. The Tories realised, perhaps too late, that momentum was on the side of the suffragettes. In what can only be seen as a calculated political move, the government introduced a bill that would allow for a referendum question on women's suffragette. As if to muddy the water a little more, a second referendum question on prohibition was added. The reaction was predictable. If the government was going to go so far as to hold a referendum on the issue why not go the whole way and give women the right to vote? The premier, however, "stood his ground on the questions of prohibition and women's votes; a good drinking man and a male supremacist at heart, he insisted the question must go to popular vote, and so he assured that both militant women and the militant temperance propagandists would work against him."[28] To women's groups, and surely to many others, it must have seemed odd that the conservatives would exclude the very people most directly affected by the referendum from voting on it. It was not just women and the prohibitionists who were annoyed with the premier:"...old-time Tories who were opposed to the principle of direct legislation..."[29] were also not enamoured of the premier's referendum idea.

The campaign itself was uneventful. If it is to be remembered for anything besides the outcome it would be the mid-campaign conversion of the Tories from opponents to supporters of the vote for women. By the end of the campaign even the Tories appeared to be strong supporters. The Liberals complained that the conservatives had "...stolen the referendum principles from the Liberal platform"[30] but the Tories'

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[28] George Woodcock, *British Columbia: A History of the Province*, Vancouver: Douglas & McIntyre Press, (1990) 196.

[29] Margaret A. Ormsby, *British Columbia: A History*, Vancouver: The Macmillan Company of Canada Limited, (1958) 393.

[30] Vancouver *Sun*, *Kerrisdale Accords Splendid Reception to Liberals*, Thursday, 4 July, 1916, 4.

campaign conversion was not enough to save the Premier and his colleagues from a trip to the opposition benches.

In the 1916 election there were two different groups of voters: the civilian voters and the military voters. The main difference between these groups was voter eligibility. The civilian vote was held under the rules of the Election Act. Males serving in the military were covered by a special Act. The rationale for the separate rules for male military personnel was that anyone who could give up their life for their country had the right to a say in who governed it. To the opposition parties the creation of two classes of voters was just a chance for the Conservatives to tamper with the vote.[31] The resident voters approved the referenda by a two to one margin, 51,892 Yes and 24,606 No.[32] The military voters rejected both referenda questions. The civilian males, it seems, were much more accepting of women gaining the vote than were their counterparts in the military. Or perhaps the worries of the opposition were justified.

The 1916 referendum on women's suffragette is an example of direct democracy being used, although unsuccessfully, as a political tool. In this case, the government appears to have tried to use the referendum on women's suffrage to accomplish two tasks. First, the referendum allowed the government to appear to be dealing with the franchise issue without having to give it legal standing. This leads into the second issue; the government had stalled for so long on granting women the vote that if it had given them the vote prior to the election there would potentially have been another group which would not have been predisposed to voting Conservative. It is fair to say that the government of the day was not using the referendum in order to be more

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31 Vancouver *Sun*, *May Tamper With Vote and Escape Detection*, Friday, 15 Sept., 1916, 2.

32 Boyer, 112.

democratic. Premier Bowser and the Conservative party were in serious political trouble and were caught short on a sensitive political issue. The 1916 referendum also has the unique distinction of being the only example in Canada of women receiving the franchise through the use of the referendum.

The Direct Legislation Act of 1919

As mentioned above, the provincial Liberal parties in the four western provinces were the architects of all the early direct democracy legislation in Canada. British Columbia was the last of these provinces to introduce such legislation. The bill introduced in 1919 was, it is true, the fulfilment of an election promise in the 1916 campaign, but it was more than that. It was evidence as well of a clear ideological belief in the merits of direct democracy. Canadian Liberalism, especially in western Canada, in this period was strongly influenced by American populism. Western Canadian Liberalism seems to have mixed with collective populist sentiments to produce a populist liberalism. In this context it is perhaps not that unusual that these Liberal governments would bring in measures that were seen as enhancing the role of the individual *and* allowed for the expression of collective will. As is the case when any attempts at incorporating direct democracy in a parliamentary system, there is a conflict between the traditional role of the elected representative and the role of the voter. The British Columbia legislation reflects this conflict.

The Direct Legislation bill of 1919 contained provisions for the voter initiative, government sponsored referenda on legislation, and a mechanism for a limited voter veto on some types of legislation[33]. Voters could not initiate, or veto, any spending legislation. The expansion of the decision making role of the voter was modest indeed

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[33] British Columbia, *Direct Legislation Act*, 1919, section 3 (3).

and the Legislative Assembly was, for the most part, still supreme. The elector would have been given fewer rights and powers than an individual Member of the Legislative Assembly. In a system that traditionally saw the elected representative in the Burkean model this legislation was rather revolutionary for, among other things, it would have made the results of referendum or initiative binding on the government.

An initiative could be put into place by a petition signed by "no less than twenty-five per centum of the total electors of the province"[34]. The signatures had to come from "seventy-five per cent of the electoral districts" with each district being represented by no less than ten per cent of the electors. The speaker would then rule, with the option of referring the proposed legislation to the Supreme Court, whether the signatures were valid and that the proposed legislation was constitutional. The government then had until the end of that legislative session to pass its own legislation or the initiative would be sent to referenda. The government did have the option of submitting its own referendum question to the voters at the same time. If the voters were presented with a citizen initiated question and a government sponsored question the process became rather complex:

> When competing proposed laws are submitted to a vote of the electors under this section, the ballots shall be so printed that each elector may express separately two preferences: First, on the issue as between either proposed law and neither: and, secondly, on the issue as between one proposed law and the other. If the votes polled on the first issue in favour of either proposed law fall short of the required majority, both proposed laws fail of approval; but in that case the votes on the second issue shall nevertheless be carefully polled on the first issue in favour of either proposed law, then the measure receiving the required majority of the votes polled on the second issue shall be deemed

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34 British Columbia, *Direct Legislation Act* ,1919, section 3 (1).

> approved, and shall become law in accordance with the provisions of this Act. [35]

If the initiative referendum was held during a general election the required majority was fifty per cent. If, however, the initiative was a 'special initiative', one to be put to electors between elections, then the required majority jumped to fifty-five per cent. An Initiative that was "approved by the required majority pursuant to the provisions of [the] Act...[must] be enacted by the Legislature at the next session without amendment."[36]

The Legislation also contained a type of citizen initiated veto. The veto initiative could only be initiated against legislation that the government had identified as being subject to the Direct Legislation Act. In such a case the legislation that had been passed by the legislature would not come into operation until "the ninetieth day after the termination of the session at which the Act was passed."[37] In order to send one of these matters to the voters for consideration, a petition had to be signed by:

> not less in number than twenty-five per centum of the total electors...within sixty days after the termination of the session at which any Act coming into operation [and] which is subject to the provisions of this section was passed...The electors by whom the petition is signed shall include, as to seventy-five per centum of the electoral districts, electors in each electoral district not less in number than ten per centum of the electors in that electoral district. [38]

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35 *Ibid.*, section 9 (2).

36 *Ibid.* section 11.

37 *Ibid.*, section 13 (1).

38 *Ibid.* section 13 (2), (3).

This legislation limited the scope of the voters' direct influence on the legislature. The voters were also limited in the types of legislation that could be initiated. The legislature would, however, have been bound by a successful initiative. The citizen initiated veto could be seen as a bit of political 'flimflam' in that the legislature could have, and presumably would have, protected any piece of legislation that it wanted to enact from the voters' veto.

The British Columbia Direct Legislation Act was in many ways a copy of similar legislation that had been passed earlier in the prairie provinces. When the British Columbia Direct Legislation Act is compared to the Manitoba Initiative and Referendum Act of 1916, it becomes evident that the two Acts look almost like peas from the same pod.

The JCPC and Direct Democracy

In a ruling that was later upheld by the JCPC, the Manitoba Court of Appeal found that there were three main faults with the Manitoba legislation.[39] First, a provincial legislature did not have the power to delegate its responsibilities. The power to make provincial laws was vested in the legislature and only the legislature. Second, the court ruled that ultimate sovereign power rests with Parliament and not with the people. The Manitoba legislation specified that initiatives that had been approved by popular vote had to be passed unamended. This in essence gave sovereign power to the people. Finally, the powers of the Lieutenant Governor could neither be added to, nor diminished by, a provincial legislature. It is very clear that the Manitoba legislation attempted to do both. It can be argued that the objection to the legislation on the grounds that it interferes with the power of the Lieutenant Governor *may* be a

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[39] Dominion Law Reports, *Re: Initiative and Referendum Act,* (Manitoba Stat. 1916)

moot point today. Patrick Boyer notes that, "while perhaps true in a legalistic sense, the Judicial Committee's interpretation ignored the reality that, under our evolving nature as a constitutional monarchy, even in 1919 the royal assent given to legislation to make it law was a formality."[40] In making their objections, advocates of direct democracy tend to focus on the court's rulings as they pertain to the Lieutenant Governor and ignore the valid questions of the rights, duties and role of the MLAs.

The similarity of the British Columbia and Manitoba bills is probably one of the reasons why the British Columbia bill was not proclaimed. Given that the Manitoba legislative effort was initially found to be ultra vires by the Manitoba Court of Appeal in 1916, it raises the question as to why the British Columbia house passed similar measures three years later. We may never know. Whatever the reason, the JCPC ruling in 1919 was not the end of direct democracy measures in British Columbia even though it quashed attempts to adopt the recall and initiative. It was also the end of attempts to bind the legislature to decisions by the voters. When politically expedient, however, the politicians did find ways that allowed the people to decide or at least enjoy the illusion of having the power to decide through referenda. The use of referenda continued to be the only option of which politicians availed themselves. Premier 'Duff' Pattullo found himself in need of such an option in 1937.

The 1937 Health Insurance Referendum

The Pattullo Liberals came to power in 1933 promising 'work and wages'. Premier 'Duff' Pattullo promised to adopt a platform of 'socialised' capitalism. Part of this platform was a promise to implement a provincial health insurance plan. Following the recommendations of the Provincial Royal Commission on Health Insurance and

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[40] Boyer, 90.

after much internal debate, the Liberals introduced and passed Canada's first Health Insurance Act. The opposition to the proposed legislation was fierce. "There were two major sources of opposition to the (health insurance) bill. The first was within Pattullo's own cabinet and caucus where there was serious disagreement on the issue."[41] The more public and vocal opposition came from the medical profession. It was only with the "additional support of most of the CCF" that the Health Insurance Act was passed. Opposition to the measures continued to mount even after legislative passage. By the spring of 1937 the Act had become a potential political liability for the premier. Faced with what looked like a no-win situation "Pattullo did the political, the sensible thing"[42]; the government announced "that the operation of the health insurance plan would be deferred indefinitely"[43] and the bill was never proclaimed into law.

In an attempt to salvage health insurance Pattullo decided to take the question directly to the voters. In announcing a general election to be held June 1, 1937, Pattullo also announced that a referendum on health insurance would be held at the same time. The premier clearly hoped that a strong show of support for health insurance by the electorate would silence its critics both in the public and within his own party.

The referendum question put to the electorate was simple: "Are you in favour of a comprehensive health insurance plan progressively applied?"[44] Although the question

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41 Robin Fisher, *Duff Pattullo of British Columbia*, Toronto: University of Toronto Press, (1991) 276.

42 Martin Robin, *Pillars of Profit: The Company Province 1934-1972*, Toronto: McClelland and Stewart Limited, (1973) 29.

43 *Ibid.*

44 Boyer, *Direct Democracy in Canada*, 116.

seems simple enough to answer with a 'yes' or 'no' it was in reality a philosophical question that lacked a concrete meaning or indication of what course of action the government would take if the vote was affirmative. The question made no reference to the Health Insurance Act of 1936. Dr. Weir, the minister responsible for health insurance, went out of his way to make sure that the electorate knew that they were not voting on the previously passed health insurance bill. "In a radio broadcast, Dr. Weir stated 'I want to make it emphatically clear that in the plebiscite you are not being asked to vote upon the present Act but rather the principle of health insurance being applied to our whole population..."[45] When asked what the Liberals would do if the referendum passed Pattullo replied, "I'm not going to tell you now what we are going to do about health insurance...I don't know. But we are not going to ram it down everyone's throat. We will iron out all difficulties."[46] A similar line of reasoning would be taken more than fifty years later by Quebec separatists.

The referendum campaign was split along party lines. The Conservatives noted that the government had not provided a concrete proposal by which the voters could judge the question, and that the result of the vote would have had "no binding effect."[47] The referendum passed by a vote of 116,223 to 80,982. In the end, however, re-election of the Liberals and 59 per cent support for the health insurance referendum was not enough to save Pattullo's 'reform liberalism'. The Liberals, although having pledged during the election to be bound by the results, decided to ignore them. The Premier claimed that it would have been imprudent to act before the completion of the work of the Royal Commission on Dominion-Provincial Relations. The cynicism that had been

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45 *Ibid.*

46 Martin Robin, *Pillars of Profit*, Toronto: McClelland and Stewart Limited, (1973) 30.

47 *Ibid.*, 117.

expressed about the referendum by the press and opposition politicians turned out to have been justified.

The health insurance referendum marked the end of an era in another way. After two decades of frequent use of the referenda the sheen had come off direct democracy - at least from the political perspective. If the newspaper accounts of 1937 are to be believed, the public had become suspicious of politicians' use of the referenda. In part it could be that the decline in popularity of direct democracy was symptomatic of the public's desire for more direction and answers from their elected officials. After the massive upheavals of the depression, and with war looming once again in Europe, the public looked to its leaders for answers, not questions. In British Columbia it was almost another fifty years before a provincial government again used a referendum. When direct democracy once again became a popular issue it was politicians who resurrected it. Important theoretical issues such as what is the desirable role of the elected representative would once again be ignored.

CHAPTER THREE:

Contemporary uses of Direct Democracy

The 'modern' era of direct democracy in British Columbia may be said to have come to a climax in 1994 with the passage of the Initiative and Recall Act. The beginning of the road back for direct democracy had its roots that were at lest twenty years old. To understand why direct democracy once again became a 'hot' political topic in British Columbia it will be necessary to understand the wider influences that contributed to its resurrection. Like many influences on the political system in Canada, the constitution, and constitutional politics, played an important role in the revival of interest in direct democracy. Starting with the failure of the Victoria Charter, through to the Charlottetown Accord, the federal constitution provided the springboard for the resurgence of voter interest in direct democracy, specifically the referendum. The policies of the federal Reform party, the provincial Social Credit, New Democratic and Liberal parties of British Columbia will require examination. Finally, the expansion of popular demands for direct democracy from a consultative referendum to include the initiative and the recall will be examined.

The referendum on health insurance in 1937 was the last referendum to be held on a substantial topic for over fifty years. There were many reasons for direct democracy going out of vogue. One of the most important was the way in which the depression of the thirties relegated issues of representation and democracy to a back seat in favour of efficiency, activism and demands for 'leadership' at all levels of government in Canada. Only at the municipal level of government has there been a continuous use of, and separate legislation for, referenda. The 1919 Direct Legislation Act in British Columbia languished on the books, unproclaimed, for seventy years. The referenda

that were held at the provincial level in British Columbia, after the JCPC decision of 1919, were held under special "one time" legislation. The Election Act was changed in 1953 to permit cabinet to "conduct a 'plebiscite' regarding 'any matters of public concern' and to do so 'whenever an expression of public opinion is desirable.' "[48] Since only a regional referendum on daylight savings time was conducted under this legislation in 1972[49], one can only conclude that an expression of public opinion was rarely desirable[50].

Separatists and the Constitution Resurrect the Referendum

Constitutional negotiations and the rise of Quebec separatism in the 1970s helped to breathe new life into the long dormant issue of direct democracy. After the election of the Parti Québécois in Quebec in 1976, Pierre Trudeau announced on October 19, 1977 that the federal government would "introduce its own legislation to permit and control national referendums."[51] On April 2, 1978 the government introduced "An Act Respecting Public Referendums in Canada on Questions Relating to the Constitution of Canada (the Canadian Referendum Act)."[52] Given the timing of this proposal, one could come to the conclusion that its introduction had more to do with gaining an electoral advantage than any interest in public participation. Vincent Lemieux, in his chapter on *The Referendum and Canadian Democracy* for the MacDonald Commission, went so far as to call the introduction of Bill C-9 "opportunistic." The bill

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48 Graham Leslie, *Breach of Promise: Socred Ethics Under Vander Zalm*, Madeira Park: Harbour Publishing, Revised Edition, (1991) 190.

49 Boyer, *Direct Democracy in Canada*, 93.

50 *Ibid.*, 259.

51 *Ibid.* 42.

52 *Ibid.*, 43.

died on the order papers when the House was dissolved for the general election of 1979.

At the same time that the government introduced Bill C-9, the Pépin-Robarts Task Force on Canadian Unity proposed using a national referendum *as part* of the approval process for constitutional amendments. The demand for a ratification referendum became a recurring theme in the constitutional debate of the 1980s. In its search for an acceptable constitutional amending formula the "Trudeau government's initial 1980-81 constitutional reform package included provisions for the use of national referendums to approve constitutional amendments. The measures were withdrawn as a result of opposition from several provincial premiers."[53] The idea of adopting a national ratification referendum on constitutional amendments was proposed in 1991 by the Beaudoin-Edwards Special Joint Committee on the Process for Amending the Constitution of Canada.[54]

In British Columbia, direct democracy resurfaced as an election issue during the 1975 provincial election. The leader of the Social Credit party, William Bennett, promised that introduction of citizens' initiative legislation would be a "first step" if he were elected premier.[55] Bennett won the election, but did not follow through on that promise. His proposal for citizen-initiated referenda would have been a marked departure from the limitation of direct democracy to government-initiated referenda. Gordon Gibson, the leader of the provincial Liberal party at the time, reminded the

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53 Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy*, 2, Chairman, Pierre Lortie, Ottawa: Supply and Services Canada, (1991) 235.

54 *Ibid.*

55 Times-Colonist, 20 June, 1978, 20.

premier of his promise in question period on June 19, 1978. Gibson suggested that the government give royal assent to the 1919 Direct Legislation Act. Gibson was a lone voice endorsing direct democracy legislation in the British Columbia Legislature. Once back in power the Social Credit party lost its appetite for referenda. Until the election of William Vander Zalm in 1986, direct democracy remained in the domain of electoral rhetoric.

As noted above, it was constitutional politics and Quebec separatism that helped to fuel the public's, and the politicians', interest in direct democracy. The Canadian constitutional morass, as well as several highly unpopular pieces of federal legislation, most notable the GST, acted as lightning rods for direct democracy advocates. One of the loudest and most sustained advocates of direct democracy was a new federal political party, the Reform Party of Canada. The growth of the Reform party, with its citizen-centred platform gave direct democracy a party 'voice' and helped to legitimise direct democracy.

Populist Reform and Direct Democracy

In his book, *Preston Manning and the Reform Party*, Murray Dobbin quotes from the Reform Party's statement of principles:

> We believe in the common sense of the common people, their right to be consulted on public policy matters before major decisions are made...and to govern themselves through truly representative and responsive institutions, and their right to directly initiate legislation for which substantial public support is demonstrated.[56]

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[56] Murray Dobbin, *Preston Manning and the Reform Party*, Toronto: James Lorimer & Company, (1991) 192.

Anyone familiar with the populist rhetoric of the 1920s will recognise the tone of that statement. In keeping with its populist leanings, the Reform party also advocated the Recall and Citizen Initiative[57]. The major problem with Reform's statement of principles was that the Party's policy contained few details of how direct democracy would be implemented. It made no mention of what reforms, or constitutional changes, would be necessary to implement such measures. Unlike the party policy, Preston Manning, in his book *The New Canada,* did expand on many of these questions with respect to his personal opinions on direct democracy.

Manning's concept of direct democracy was perhaps more moderate than his electoral rhetoric suggested.[58] He wrote that a Reform government would introduce a "National Referendum and Citizens' Initiative Act (and constitutional amendments)."[59] This Act would "make it legally and administratively possible for the Parliament of Canada to ask the people of Canada to vote on a matter of public policy or legislation."[60] To be successful a referendum would have to receive a 'double majority'. This means that "a referendum should be decided in favour of the position receiving 50 percent plus one of the vote cast overall, a majority in more than half of the jurisdictions affected."[61] This double majority is more rigorous than the 'majority wins' position that some direct democracy proponents advocated. It recognised the federalist nature of Canada and was along the lines of other propositions for deciding what kind of majority would be required to pass a national referendum. Still, the

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57 *Ibid.,* 196.

58 Preston Manning, *The New Canada*, Toronto: Macmillan Canada, (1992).

59 *Ibid.,* 124.

60 *Ibid.,* 324.

61 *Ibid.*

wisdom of deciding public policy by way referenda is open to question. Proposing an education campaign that is not propaganda is also progressive. One must wonder, in light of the Charlottetown Accord referendum, and the past history of referendums in Canada whether it would be possible, or desirable, for a government that introduced a referendum to be neutral on the subject of that referendum.

Manning noted that governments might "abuse referendum legislation" and advocated "citizens' initiatives" as a counter to potential government abuse. How citizen initiative would counter 'referendum abuse' was unclear. The Manning initiative required a petition signed by a minimum of three per cent of Canadians. In 1991 that would have meant approximately 780,000 names to be collected. There was no mention of how or where these names could be collected. Could they all be collected in Quebec and Ontario? Or would there have to be a representative number from a majority of electoral districts? Would legislation passed by initiative be binding on the government? Would citizens be limited in the types of legislation that they would be able to initiate? These are just a few the questions that need to be asked whenever major changes to our present system of governance are proposed. Mr. Manning could be proposing a major reshaping of Canadian governance but his main focus was on change with little thought to the possible ramifications of that change.

The ability of the electorate to recall their elected representatives continued to be a central theme of the Reform party's populist platform. The public's perception of what recall means and what the Reform party meant by recall were perhaps two different things. A Private Member's Bill, C-210, introduced by Debra Grey, a Reform MP from Alberta, outlined the party's concept of recall. An MP could be recalled if a formal recall petition is signed by a majority of those who voted in the last election. Manning

noted that "the threshold levels on recall petitions must be quite high, so as not to result in recall being used simply as a partisan device for unseating political opponents."[62] Requiring a majority of the voters to sign presented two problems. First, in most cases more voters would be needed to sign a recall petition than had been required to vote the MP into office. Second, the time limit of sixty days would make it hard to collect the number of signatures necessary. As Manning himself admitted, "Reformers have some work to do to develop a recall procedure that will not be subject to abuse."[63]

"A Great Day for Democracy"

Although direct democracy has most often been discussed. In terms of a national constitutional ratification referendums, it is at the provincial level where direct democracy has taken root. Initial provincial direct democracy legislation was limited to government initiated referenda and some form of constitutional amendment ratification referenda. Some provinces have gone further and adopted the more populist concepts championed by the federal Reform Party and passed Initiative and Recall Legislation. British Columbia was one of the provinces that seemed to have embraced direct democracy. The impetus for this legislation had, perhaps, more to do with partisan politics than a commitment to expand citizen participation.

In British Columbia, the Social Credit government of William Vander Zalm said it was committed to a process of decentralisation. Part of the process included a series of direct democracy measures. In the area of school taxation the provincial government gave local School Boards the power to increase the school tax rate but only after the

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62 Manning, 326.

63 *Ibid.*, 236.

ratepayers had approved any proposed rate increases by a referendum. Of greater consequence was the government's adoption of referenda legislation.

In 1990 the legislature unanimously passed the Referendum Act.[64] Premier Vander Zalm called it "a great day for democracy". Graham Leslie, author of *Breach of Promise; Socred Ethics Under Vander Zalm,* took issue with this statement. "Even a cursory inspection, however, showed that British Columbians were not likely to have much input into the decision-making process as a result of Bill 55."[65] The Referendum Act was short, just seven sections long and provided for the Lieutenant Governor in Council (the cabinet) to have sole decision-making power over the calling of a referendum, phrasing of the question and setting the date for the referendum. The cabinet also had the power to "make regulations that the Lieutenant Governor in Council considers necessary or advisable respecting the manner by which a referendum under this Act is to be conducted."[66] Leslie noted that the original version of Bill 55 gave the Lieutenant Governor in Council the power to determine who was eligible to vote on the referendum, and "to determine the percentage of votes required to pass any referendum."[67] Bowing to intense pressure from the media and the opposition party the government dropped these two proposals.

Under the section heading *Some referendums are binding on the government* the Act states that "[i]f more than 50% of the validly cast ballots vote the same way on a question stated, that result is binding on the government that initiated the

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64 British Columbia, *Referendum British Columbia: The Decision is Yours*, (1991) 4.

65 *Ibid.*

66 British Columbia, *Referendum Act, 1990*, section 5 (1)

67 Graham Leslie, 189.

referendum."[68] It could be assumed that the rationale for the outcome of a vote to be binding only on the government that initiated the referendum is the principle that no government may bind future governments. If one were to split hairs, one could say that if a referendum were held in conjunction with a general election, *any* government dealing with the results of a referendum would be a new government. Mr. Leslie made the point that if the government wanted to hold a referendum there were already provisions in the Election Act permitting the government to do so[69]. The Election Act, does not, however, provide for a referendum to be binding. The vagueness of the 1990 Referendum Act stimulates the question of whether the provisions for making it binding would be truly binding on a government anyway. In the end, a government is only required to introduce a bill to the legislature, it is not required to see that the legislation be passed. Finally, would a government initiate a referendum on a question when it was not prepared to live with the answer? Populist politics seems to have been more the rationale for the Referendum Act than a desire for direct democracy.

Constitutional Ratification and the Referendum

After the 'death' of the Meech lake Accord in June of 1990 most of the eleven governments involved looked for a means to make the constitutional amending regime more acceptable to a sceptical electorate. As noted above, the Beaudoin-Edwards Commission proposed the idea of a national ratification referendum. Although the federal government did not adopt this idea three provincial governments did. It was in this spirit of inclusiveness that the British Columbia government introduced the Constitutional Amendment Approval Act of 1991. The essence of this Act requires the government to "hold a referendum on any proposed amendment to the Constitution of

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68 British Columbia, *Referendum Act, 1990*, section 3.

69 Leslie, 190.

Canada before introducing it to the Legislature."[70] The Act stipulates that any constitutional referendum would be "conducted according to the Referendum Act."[71] This being the case, the results of such a vote would be binding if fifty per cent of those casting ballots voted "the same way on a question stated". The same problems with the Referendum Act apply to this Act. The constitutionality of binding referenda, spending limits, the formation of the question and the action required of the government if a referenda were approved remain open to question. The Constitutional Amendment Approval Act was the last of the Vander Zalm direct democracy actions. Shortly after this legislation was passed, in the spring of 1991, the premier resigned. It was not, however, Social Credit's last attempt at embracing populist politics. Under the new premier, the party went on to take direct democracy in British Columbia beyond even the ambitious 1919 Direct Legislation Act.

In the summer of 1991, Social Credit party of British Columbia had been in power for most of the previous three decades. The party was afflicted with the many of the problems faced by many other parties that had held power for so long. In addition to those stemming from longevity, the Social Credit party had some unique problems. The former leader, William Vander Zalm, had been forced to resign under a cloud of suspicion involving a conflict of interest. It was desperation in the face of these problems, some might say,[72] that the Socreds decided to embrace the other tools of direct democracy. On September 5, 1991 Premier Rita Johnston unveiled two referendum questions to be held in conjunction with the October provincial election.

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70 British Columbia, *Referendum British Columbia: The Decision is Yours*, 1994, 4.

71 *Ibid.*

72 British Columbia Politics and Policy, "Poorly Crafted Referendum Questions will not help Socred Electoral prospects", Unsigned Article, 4, 6, (March, 1990)

The opposition promptly accused the government of trying to divert attention from the Vander Zalm scandals. Liberal Leader Gordon Wilson called it a "...smoke screen to blind the people to the past of this government..."[73]. NDP leader Mike Harcourt pointed out that if there had been Recall over the past term the Social Credit would have been "decimated".[74]

The opposition leaders could be forgiven for their cynicism. Premier Johnston, in a move reminiscent of the Pattullo's health insurance referendum in 1937, did not provide the electorate with any specific legislative proposals, only a promise that the government would seek the public's 'opinion' on whether they wanted initiative and recall legislation to be introduced[75]. If the electorate answered the referendum questions in the affirmative the government would "work out the details later."

With the exception of the 1975 election promise by then leader William Bennett , the Social Credit party had not previously embraced direct democracy. Nor had the party been opposed to such a concept. The position of the party seems to have been one of benign indifference. The initiative for the 1990 Referendum Act and the 1991 Constitutional Amendment Approval Act came from the cabinet. The same was true of the proposal for the 1991 referenda on Recall and Initiative. In the absence of party policy one can only surmise that these initiatives were government policy rather than party policy.

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73 The Province, Questions Unveiled, Friday, 6 September, 1991.

74 *Ibid.*

The position of the New Democrats was harder to surmise. Traditionally, socialist parties have been leery of direct democracy. Fabian writers have expressed the view that philosophically government and society are a whole. They have taken the position that if elected, one part of a government's platform could not separated from another.[76] More recently, the former leader of the federal NDP remarked that the NDP did not, as a matter of party policy, support the use of referenda.[77] The provincial NDP in 1991, however, saw the initiatives of the Social Credit as a political manoeuvre. They could not help but be aware of the populist sentiments of the electorate. Perhaps it was fear of a political 'trap' that prompted Mike Harcourt and his party to support the referenda. Harcourt, when asked about the referenda questions, was quoted as saying that "he will not only accept the results if his party wins the election, (something he would not have been required to do under the Referendum Act), he will vote yes...on both (questions)."[78] This strong endorsement of Initiative and Recall later came back to haunt Mr. Harcourt.

Liberal Leader Gordon Wilson and his followers were the only party to campaign actively against the Recall and Initiative referenda. Like the other parties, the Liberals did not have an official party policy concerning direct democracy legislation. Gordon Gibson, the provincial Liberal leader in the late 1970s, had been (and remains) a strong advocate of direct democracy. Gibson's opinion could not, however, be equated to 'official' party policy. This lack of official party policy on the part of all the provincial parties allowed their respective leaderships to dictate their party's positions, unfettered by meaningful internal party debate or policy. Given the vagueness of the

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[76] Clifford D. Sharp, *The Case Against Referendum*, Pamphlet by the Fabian Society, Fabian Tract no. 155, London: Fabian Society, (1911)

[77] Alan Whitehorn, *Canadian Socialism: Essays on the CCF-NDP,* Don Mills: Oxford Press, (1992).

[78] Justine Hunter, *Will votes open a can of worms?,* Vancouver *Sun*, Tuesday, 24 Sept., (1991).

questions, and the voters' populist sentiments at the time, it is perhaps appropriate that the party leaders made up their party's position and interpreted the meaning of the referenda questions as they went along.

The two questions put the voters in October of 1991 were:

> 1) Should the voters be given the right, by legislation, to vote between elections for the removal of their Members of the Legislative Assembly?
>
> 2) Should voters be given the right, by legislation, to propose questions that the Government of British Columbia must submit to voters by referendum?

The referendum questions are a good example of a significant problem with government-initiated referenda. The actual meaning of the question must be easily interpreted. If a question is not clear then it may be easy to manipulate the outcome of the referendum. One only has to look at the complexities, and controversy, surrounding the two 'sovereignty' referenda that have been held in Quebec to understand the importance of the wording of referendum questions. If the referendum is about a complex matter, such as separation or recall and initiative, then questions about the question must be clarified in advance of the vote. How a referendum is 'sold' by politicians and how it is covered by the media can potentially have a great influence on the voters. In the case of the 1991 British Columbia referenda the media coverage was minimal.

In 1991, the government produced information pamphlets to answer some of the questions about the meaning of the terms in the referenda questions. These pamphlets provided definitions, and outlined strengths and weaknesses of initiative and recall. A history of recall and initiative was also presented. What the pamphlet did not, and

could not, cover were the possible implications of such legislation on the present system of governance. What was clear, however, was that in the case of further development of recall and initiative "...it would ultimately be up to the Legislative Assembly to devise and implement (recall and initiative) procedures by way of legislation."[79]

The voters approved the initiative and recall questions, giving them substantial support.

The results were:

Recall		**Initiative**	
Yes	73.75%	Yes	74.0%
No	17.3%	No	15.1%
Spoiled	8.9%	Spoiled	10.7%

The new NDP government was now faced with the difficult question of how to proceed with the initiative and recall. The premier had made his position very clear—as had the voters. After the election there were still some question of whether the new premier would be bound by the results of the referenda and by his election promises.

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[79] British Columbia, *Referendum British Columbia: Background Paper: Recall (question one)*, 1991, 2, and *Referendum B.C: Background Paper: Initiative (question two)*, 1991, 2.

CHAPTER FOUR:

The Initiative and Recall Act

The new government of Michael Harcourt was not enthusiastic about the commitment made by the previous (Social Credit) government on initiative and recall. With the overwhelming support of the voters for the referenda questions, and sustained media pressure, however, it became politically impossible for the new government to ignore the referenda results. Keeping with the grand Canadian tradition of governments buying some time on a politically charged issue, the Harcourt government empowered a legislative committee to examine the whole issue of incorporating initiative and recall into a parliamentary system. Between sending the issue to committee and the final report the debate over direct democracy took on a new dimension with the October 1992 national referendum on the Charlottetown Accord. Analysis of the Initiative and Recall Act will show that the provincial government carefully crafted an act that lived up to the letter of its commitment if not to the expectations of the voters.

Although Michael Harcourt, now Premier Harcourt, had supported the concept of recall and initiative during the 1991 provincial election campaign his government was in a quandary about what to do in light of the referenda results. The electorate had overwhelmingly voted in favour of the referenda questions. The NDP originally took the position that other legislative initiatives were more important than initiative and recall. Consequently initiative and recall was not on the agenda of the government for the first legislative sitting.

Advocates of direct democracy, and the news media, were not about to let the government forget its commitment to introduce legislation.[80] As shown in the last chapter, the Referendum Act, under which the recall and initiative referenda were held, did not technically bind the Harcourt government to the results of the referendum. As a 'new' government the NDP could have been legally correct in refusing to move on the results. Politicians, however, do not always depend on legalisms to rationalise their actions. In June of 1992 the premier mused that he was not interested in following through with recall and initiative legislation[81]. The media-led outcry was enough to persuade the premier that his government should at least appear to be addressing the issue. The solution to Mr. Harcourt's problem was to instruct the Select Committee on Parliamentary Reform (hereafter the Select Committee) to explore the issues and to make recommendations. The committee was not required to suggest legislation, only to examine the question, and the possible ramifications of adopting recall and initiative legislation. If the committee had in the end found that adoption of recall and initiative was unworkable, it had the authority to recommend that no further action be taken by the government. Constitutional politics, however, influenced the Select Committee in the direction of suggesting legislation. Pressure groups and opposition politicians kept up the political pressure on the government to craft legislation at the earliest opportunity.

Constitutional Failure, Initiative and Recall

The October 1992 national referendum on the Charlottetown Accord was a great inducement for the provincial government to bring in recall and initiative legislation. Prior to the controversy that surrounded the question of whether a referendum would

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80 The magazine *British Columbia Reports* was one of the main media advocates for recall and initiative.

81 *British Columbia Reports*, "A Cure for an 80% Memory Loss", 28 September, 1992, 9-10.

be held to 'ratify' the Charlottetown Accord, some of the members of the provincial government had thought that direct democracy was a fad that would eventually run its course. From the perspective of 1996, however, the topic of direct democracy seemed to be an issue chiefly for populist politicians, a few pressure groups, and a few academics. In the heat of the constitutional 'crisis' of 1992 the topic of direct democracy was still a burning issue.

The primary complaint that had been made about the Meech Lake Accord was that it had been negotiated by an exclusive group of individuals behind closed doors. For the 'Canada round' of negotiations the federal government had tried to placate the public by holding a series of national forums and sending forth travelling panels. For all of their efforts, the federal and provincial governments did not succeed in removing the public perception of constitutional amendments as being an exercise in elite accommodation. The process was complicated by the fact that the prime minister, Brian Mulroney, was very unpopular, and the 'something for everyone' approach that marked the Charlottetown round produced a complicated set of amendments. Some have observed that the 'system' in general, and politicians in particular, had reached a new low in public esteem. A parliamentary committee had recommended the use of a national ratification referendum as a means of overcoming the public's lack of faith. The prime minister had originally rejected the concept of a national referendum on constitutional changes. Several provinces, including British Columbia, had in place legislation that required those governments to consult their constituents through referenda. Many interest groups, including the Reform Party of Canada, mounted a very effective media campaign to pressure the federal government to hold a 'ratification' referendum on the Accord. Faced with the possibility of several referenda being held at different times and seeing their perceived political rivals 'scoring points'

playing the direct democracy card, the federal government opted to hold a national referendum in conjunction with the statutory referenda in Quebec and British Columbia.

In British Columbia the uproar over Premier Harcourt's performance during the Charlottetown negotiations seemed to have taken the government by surprise. This perceived mishandling by the premier earned him the unflattering moniker of 'premier bonehead' from one newspaper columnist.[82] The government responded by reminding the public and the media that any constitutional amendment would first require voter approval. If the province had not agreed to the federal government's offer to run the referendum it would have been governed by the Constitutional Ratification Referendum Act of 1991. This Act takes much of its enabling legislation from the Referendum Act of 1990, which would have made any option with 50 per cent or more support binding on the provincial government. As it turned out the percentage required was a moot point. Having embraced referenda in the case of the Charlottetown Accord, it was a slippery slope toward initiative and recall for the provincial government. Some would point to the 80 per cent rejection by British Columbia voters as of a strong indicator of just how out of touch the government was with the voters and a perfect example of why there was a need for initiative and recall legislation.

The constitution was not the only issue driving the government to bring in recall and initiative legislation. Politicians, pressure groups and sometime academics were doing their part to keep up the pressure. Gunter Rieger, mayor of Spallumcheen, sent an open letter to civic officials supporting initiative and recall at the municipal

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82 Vaughan Palmer of the Vancouver *Sun* is credited with the moniker.

government level. Kathleen Toth of the British Columbia Family Coalition Party presented the government with a 5,000 signature petition demanding that the government bring in 'meaningful' initiative and recall legislation. Patrick Boyer, then the MP for Etobicoke-Lakeshore, and an outspoken supporter of referenda, wrote an editorial in the Vancouver *Sun* supporting the concept of recall.[83] During the fall session of the provincial legislature the leader of the Social Credit Party, Jack Weisgerber, introduced several Private Member's Bills on initiative and recall. The Canadian Taxpayers Federation was another well-organised pressure group that took a leading role in lobbying for recall and initiative legislation. Its Director of Research, Robin Richardson, presented a well publicised brief to the Select Committee on the federation's vision of initiative and recall. With the looming fiasco over the Charlottetown Accord, and the well organised lobbying for initiative and recall, it would have been political suicide for the government to do anything less than bring in recall and initiative legislation. Even the chair of the Select Committee started to express the opinion publicly that the Select Committee had been mandated to recommend legislation.

The Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills (the select committee) was authorised by the Legislative Assembly, on June 23, 1992, to "examine the two referenda questions placed before the voters in the 1991 provincial election."[84] The committee made its first interim report during the fall 1993 session of the Legislative Assembly—two years after the voters had supported the referenda. The committee held twenty-five public meetings

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83 Patrick Boyer, *Recall: Unpopular Politicians are Reviving Discontent*, Vancouver *Sun*, Thursday, 1 Oct., 1992.

84 British Columbia, *Report on Recall and Initiative*, 23 Nov., 1993, 7.

and heard over 261 witnesses. There were also 172 written submissions to the committee. Most of the submissions supported recall and initiative to varying degrees. The cautious approach of the committee continued, however, and is reflected in the introduction to the committee's final report. In outlining the concerns expressed to the committee, the drafters of the report included few of the supportive expressions. Instead, the select committee expressed concern about the individualist nature of direct democracy and observed that the concept was "indicative of the increasing Americanisation of Canada."[85] This apparent bias is not surprising since the committee's membership was made up of MLAs from parties that expressed suspicion and even disagreed with the entire concept of direct democracy.

An examination of the committee's final recommendations shows that it took many of its assumptions and recommendations from a paper written by Graeme Bowbrick (a UBC law student at the time and later a NDP MLA). His paper, *Revisiting the implications of recall and initiative and the their potential implementation in British Columbia*, made it very clear from the beginning that the author believed that the whole concept of direct democracy runs contrary to parliamentary democracy. Mr. Bowbrick also expressed the opinion that direct democracy was 'dangerous' and 'anti-democratic'. Mr. Bowbrick raised some important questions about the potential ramifications of direct democracy on parliamentary government and the role of elected officials. In his conclusion Mr. Bowbrick suggested ways in which the potential effects of direct democracy legislation on the parliamentary system might be limited[86].

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[85] *Ibid*. 11.

[86] Graeme Bowbrick, *Revisiting the implications of recall and initiative and their potential implementation in British Columbia*, Law 351, Public Law Term, 24 April, 1992.

The Select Committee made its final report to the legislature on 16 March, 1994, almost two years after being established. The consultation process was extensive and the committee, at least publicly, appeared to accept the fact that it would have to recommend legislation. There were other changes during this time. The Liberals had purged themselves of Gordon Wilson in favour of a former Vancouver mayor, Gordon Campbell. With this leadership change came a change of party policy on the issue of direct democracy. Where Wilson had been staunchly against the concept of direct democracy Campbell was just as staunchly in favour. This proved to be a little uncomfortable for the Liberal MLAs sitting on the Select Committee. Perhaps unaware of their new leader's position the Liberal members are reported to have voted in committee in favour of the report and its recommendations. When the committee report came up for a vote in the House, however, the Liberals voted against the report. They also voted against the subsequent legislation. The Social Credit party, which was decimated in the 1991 election, saw most of its remaining MLAs abandon the party in favour of the new British Columbia Reform Party. The British Columbia Reform Party adopted a position similar to that of the federal Reform Party's policy on direct democracy. In the two years that the committee had been studying the question of recall and initiative the opposition parties had coalesced in favour of adopting recall and initiative.

On June 16 1992 the government finally introduced the Initiative and Recall Act. In studying the Act it becomes clear that the government opted for 'control'. The government appears to have followed Mr. Bowbrick's suggestion to limit the possible effects that such legislation would have on the parliamentary process. Unlike the Referendum Act of 1990 and the Constitutional Amendment Approval Act of 1991, which are notable for their brevity, the Initiative and Recall Act left very little to

chance. As will be shown later, the Initiative and Recall Act displayed one disturbing similarity to the Vander Zalm direct democracy legislation.

Unlike the 1919 Direct Legislation Act, the Initiative and Recall Act allows voters to make proposals "with respect to any matter within the jurisdiction of the Legislature."[87] A person wishing to introduce an initiative would first have to apply to the Chief Electoral Officer (CEO) for the right to circulate an initiative petition. Once permission was granted the petitioner would have 90 days to collect the total number of signatures necessary for a petition to be successful. A petitioner would have to collect signatures from 10% of the registered voters in each electoral district in the province. Each signature would have to be on an official petition form and witnessed by an official petition collector. Unlike the process in California, people collecting petition signatures in British Columbia cannot be paid or reimbursed for their efforts. If a petition were successful, the CEO would have 42 days in which to determine the validity of the signatures. If the petition passed this hurdle it would then go to a standing committee on initiatives. This committee would have 90 days to recommend whether the "draft bill be introduced at next session of the Legislative Assembly or that it be referred back to the CEO". In the latter case the initiative would go to referendum. A special initiative voting day would be held every three years. (The first possible voting was September 28 1996, with the next possible day set for the last Saturday of September 1999.) The timing of the votes is in response to the recommendation that initiative referenda not be held in conjunction with general elections.

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87 British Columbia, *Recall and Initiative Act*, 1994, section 2.

The recall legislation is just as onerous. The same application procedure applies to recall as was outlined for initiative. A recall application would not be possible in the 18 months following an election. Petition collectors would have 60 days after a successful recall application to collect "40% of (the) total number of individuals who are authorised to sign."[88] To be eligible to sign a recall petition a person must have been a registered voter in that electoral district on the date of the last election. The rationale here is that only people who would have been eligible to vote for the MLA being recalled would have the right to recall that person. If a recall were successful the "member ceases to hold office and the seat of the member will become vacant."[89] A by-election will be held under the usual rules of the Election Act. Only one attempt to recall a MLA is allowed during their term in office.

The similarity of the Initiative and Recall Act to the other two direct democracy Acts is that the Lieutenant Governor in Council (the Cabinet) has the right to amend any section of the Act. The cabinet could also impose any rule that it felt necessary. The cabinet therefore has the right to change the rules of the game at any time. If the MLA being recalled were a government member this could put the cabinet in a potential conflict of interest.

Reaction to the legislation was swift and damning from the media, opposition politicians and academics. In its lead editorial of 18 June, 1992 the Vancouver *Sun* accused the provincial government of trying to "weasel out of an ill-conceived promise to give British Columbians the right to recall members of the legislature and initiative

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88 *Ibid.*, section 23.

89 *Ibid.*, section 25.

referendums..."[90] Reform leader Jack Weisgerber is reported to have called the bill an "illusion" because it was intended "not to work".[91] Kelly Kimball, an initiative and recall organiser in California, commented that "there is no such thing as recall in British Columbia still." [92]

Is this criticism justified? Is this legislation really unworkable? The simple answer is that technically it would be possible for a MLA to be recalled and perhaps there is a chance to get an initiative on the table. Two problems make it very unlikely that this legislation will ever be used. First, the legislation provides for very high requirements for the number of signatures for recall or initiative petitions. Jurisdictions in the United States that have recall legislation typically require only a five to eight per cent of the voters to sign a recall petition. In observing that there are few successful recalls in the United States, Gordon Wilson, now leader of the Progressive Democratic Alliance, replied to a reporter's question there was no possibility of success for an attempted recall of MLA Judy Tyabji. It would take the signatures of approximately 12,180 voters, or about 4,000 more than those who had voted for her originally, to make a recall successful.[93] Two years after the initial demand was made, Tyabji was still the MLA for Okanagan East.

The possibility that an unpaid group of volunteers would be able to collect the signatures required for an initiative petition is also very unlikely. The successful initiative petition would require approximately 200,000 signatures province-wide.

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[90] Sun, *Recall Legislation a law of Hypocrites*, Saturday, 18 June, 1992.

[91] Vaughan Palmer, *NDP doesn't seem to recall its promise*, *Sun*, 17 June, 1992, A16.

[92] Justine Hunter, *British Columbia 'people-power' proposal called unworkable by Californian*, *Sun*, 20 June, 1994, B2.

[93] Les Leyne, *Calculators out in recall game*, Times-Colonist, Saturday, 18 June, 1994, A3.

These signatures would have to be collected from all 75 ridings. In the case of Prince George-Mount Robson, a petition collector would have to collect the signatures of 10 per cent of the registered voters in a riding that stretches from the centre of the province to the Alberta border, a distance of approximately 700 km. During the 'tax revolt' of 1995, the Canadian Taxpayers Federation managed to collect fewer signatures on their anti-tax petition than would be required for a successful initiative petition. Most of these signatures were collected on the lower mainland and Vancouver Island. If an issue like taxes could not achieve the threshold how could an initiative on a less popular issue be expected to pass muster? In the case of initiative one could also ask the question; why bother? If an initiative campaign were successful the only action that the government would be required to take is to introduce the initiative bill for first reading.

Chapter Five:
The Future Role of Direct Democracy

Will direct democracy play a significant role in British Columbia's political system in the future? If the answer were dependant on the use of the Initiative and Recall Act then the answer would be no. Direct democracy is, however, far more resilient than any government Act. As has been demonstrated in this examination, there are many reasons why direct democracy has a sustained appeal. The use of the referendum has a great appeal to politicians who wish to appear as populists. Politicians have used referenda in attempting to broaden support for policy issues. It has also been useful in cases where decisions by provincial governments are not necessary or where the issue is bigger than any one government's immediate interests. With technological innovations that are said to make citizen participation easier there will be increased pressure to consult with the 'people' more often. What should not be lost in the rush to embrace direct democracy is that British Columbia is a diverse society.

The Initiative and Recall Act will most likely suffer a similar fate as the Direct Legislation Act of 1919. In the case of the former it will not be the courts or lack of political will that will relegate it to the dust bin. It will be the inescapable fact that the Initiative and Recall Act is impossible to use. The high numbers of signatures required by the petition process are too much of a barrier to those wishing to use the recall or

initiative. It is fair to speculate that if the public sentiment was sufficient to achieve the necessary signatures governments would respond to that sentiment with, or without, initiative and recall. A major consideration in assessing direct democracy legislation is whether voters see it as legitimate. To be legitimate there has to be a credible chance that those wishing to use the legislation can be successful in their attempt to use it. The Initiative and Recall Act does not pass that test.

If the Initiative and Recall Act is not credible then what about direct democracy as a whole? The initiative, although conceptually appealing, has too many potential problems to be of much use at present. How does the concept of citizen-initiated laws, passed by a simple majority mesh with liberal democracy? The role of the modern liberal democracy is to respect majority rule while providing some protection for the minority. It is the absence of any consideration for the minority that is perhaps the most troubling of the problems of the initiative. The example, cited earlier, of discriminatory initiatives being passed in the United States serves to underscore this problem. The Initiative and Recall Act in British Columbia does include a formal vetting process for all potential initiative questions. It is impossible to specify, however, just what effect merely circulating a discriminatory initiative petition would have. Many government programmes would not, however, be protected by the constitution. They could be open to 'modification' or elimination through an initiative. The issue of capital punishment is an example of legislation that has withstood bouts of political pressure that would certainly be a target if American-style

initiative legislation were in place. Anti-tax and anti-government zealots would certainly attempt to impose their views through the use of the initiative.

Would voters really be able to create legislation of superior quality? A common complaint is that politicians in Canada have become captives of the public opinion poll; they are said to be less able, or willing, to engage in long term thinking and instead bend with the political winds. Would voters be any better equipped to resist buffeting by the winds of current opinion? It is unlikely. Take the case of child murders. Most people would find child murder to be a very emotional issue. In the case of Clifford Olson, for example, it is very likely an initiative referendum would approve capital punishment. In an emotionally-charged state of mind it is very unlikely that voters would be willing to entertain any discussion from opponents of capital punishment. Initiative, as it presently understood, is an instrument whose time has either passed or is yet to come. In a society as diverse as British Columbia's strict majoritarian rule, which is at the heart of initiative, would not be an enhancement of the democratic system.

The recall is not likely to be an important part of the British Columbia governance system. The present law, as configured, is unworkable. If the accepted view of recall is similar to Peter McCormick's—that it best serves the voters as a threat to elected officials—then the British Columbia legislation does not fit this model. No writer has addressed the question of whether the recall is a necessary instrument in the

parliamentary system. The recall in British Columbia would be a purely partisan instrument. The legal regime affecting politicians differs from that of the United States. Unlike many American states that have recall, elected officials in British Columbia must step down if they have been convicted of a serious crime. So too under the present conflict of interest legislation; MLAs must step down if they have been found to be in a conflict of interest. What then would be the purpose of recall? The simple answer is that it would be of the most use for people who have a different or contrary political view. This raises the question of what should be the standard for recalling an MLA? Dislike of the party leader? Dislike of some government policy? Dislike of the MLA? If these are the standards then there is already a forum that is open to voters and that is the general election. The threat of not being returned to office is as great, or greater a threat to a politician in British Columbia than recall has ever been to an elected official in the United States where electoral turnover of incumbents is generally lower.

The referendum has been, and will continue to be, the instrument of direct democracy that will be used in British Columbia. The constitutional ratification referendum has the greatest potential to play an important role in the political system. During a forum on the constitution in Vancouver, sponsored by the Canadian Bar Association, the question of British Columbia's present constitutional amendment legislation was raised. Former prime minister Joe Clark spoke strongly against the referendum, blaming it for the demise of the Charlottetown Accord. Technically Clark was correct;

the Accord did not survive after the large 'NO' vote of October 1992. The question that Clark did not address is whether a constitutional amendment that could not gain public support would be seen as legitimate if it had been passed by governments. With the amendment ratification 'genie' out of the bottle it would be, to paraphrase British Columbia's constitutional affairs minister, political suicide to try and amend the constitution without first going to the voters.

The problem of province-based ratification legislation was identified by the federal government prior to the referendum of 1992. Any ratification referendum vote must be held simultaneously across the country. This concentrates voters' attention on the constitutional amendment and not on how other parts of the country may have voted. Given the east versus west, English versus French mentality in all matters constitutional, this is potentially a serious problem. This problem could best be addressed by having national ratification legislation. This would prevent the problem suggested above and would, perhaps, help politicians overcome the procedural problem in amending the present constitution. A cynic might note that politicians might not be willing to relinquish control of the constitutional process to the 'great unwashed'. The reality is that even with a ratification referendum in place, the negotiations, agenda and even control of the question would most likely remain in the domain of elected officials.

The question of who controls the process is one that is seldom addressed in the debate over referendum. As was described earlier, all referenda are initiated by governments. The timing, funding, phrasing of the question and the ability to define who is eligible to participate, is controlled by the government. While this can be a serious problem with referenda there is no simple remedy. A partial solution would be the adoption of permanent legislation that was clear and fair. This would require legislation similar to the legislation that Quebec adopted. Although the problem of phrasing the referendum question is an obvious deficiency of the Quebec legislation, the rules governing the referendum process have been proven to be fairly workable in the course of the two referenda that have been held in that province. One problem that has plagued the Quebec legislation and could be a potential problem for a constitutional ratification referendum is the question of how much majority support should be considered sufficient? Strict direct democracy adherents would say that a simple majority of fifty plus one would be enough. In the United States some legislation requires a 'super majority' of sixty per cent support on questions that are concerned with taxation, borrowing, spending or constitutional amendments. It is impossible to resolve the question here but it is critical if a referendum result is to be seen as legitimate.

The key component of any argument in favour of direct democracy is that of citizen participation in public decisions. The debate is most often centred on whether citizen participation is increased through the use of direct democracy. The debate should be

centred on what levels of participation are sufficient in order to be legitimate. If, for example, a referendum vote is held at the local government level should there be a minimum participation rate for the referendum to be considered valid? Voter turnout at the local government level is notoriously low compared to participation in provincial and federal elections. If the participation rate in a local referendum were fifteen per cent and the required majority were fifty per cent would that result be more democratic? The argument has been made that non-participation by voters is an expression of their democratic choice. Whether that is a legitimate argument is open to debate. What is important is that there should be some discussion on the levels of participation.

One avenue that has been suggested to increase participation is to use some of the new technology in order to make participation easier. Advocates of direct democracy cite the development of the computer and the World Wide Web (Web) as possible innovations that could be used to increase participation. The same arguments were made, however, when the telephone and television became widely accessible. There have been several attempts to use the telephone and television in direct democracy. The Liberal parties in Nova Scotia, British Columbia and Alberta have used a telephone voting system in their leadership selection process. Participants were required to pay for a personal identification number (PIN) which allowed them to use their touch tone phones to register their votes. With the exception of technical problems in the first Nova Scotia exercise the technology has proved usable. There

was an increase in the number of party members that were able to vote directly for the party leader. Whether the process was more democratic, or desirable, is open to question. A participant in the British Columbia Liberal leadership contest noted that the dependence on money and organisation appeared to have increased with tele-democracy. Although the practice of "stacking meetings" for delegate selection may have been avoided by using tele-democracy a new practice—collecting PINs—seems to have replaced it.

The Reform party has experimented with tele-democracy as a means of polling the 'grassroots'. They quickly learned that issues of who participates can be just as important. It is rumoured that when the Reform party put a question on euthanasia to constituents in a British Columbia riding party officials were taken aback by the results. The party suspected, perhaps correctly, that a pro-euthanasia lobby group organised a phone campaign that 'skewed' the results. While the issuing of PINs makes such skewing more difficult there is not the guarantee of one person, one vote that has become the standard in government elections. It does not deal with the possibility of an interest group hijacking the issue. When a political party sponsors an unofficial 'referendum', the party is under no obligation to release the results of a question process that produced results contrary to party policy. The Reform party has also experimented with using the World Wide Web to seek voter opinion. This method is fraught with the same problems as the tele-voting and has the added problem of class limitations on participation. Access to the World Wide Web is increasing but in terms

of the wider society only a privileged few have access to the 'web'. The question of how many would be motivated to participate is also important.

New communications technologies may well play an ever-increasing role in referenda. Experimentation has demonstrated that it is possible to use present technology for direct participation and that it can work. The question that has not been answered is whether the use of such technologies is more democratic? At one time the secret ballot was seen by some as being undemocratic; now it is seen as one of the major hallmarks of a democratic system. Perhaps the same may be said about the use the new technologies some day. For the present, however, the use of the new electronic technologies will most likely remain outside of the democratic mainstream.

Our experience in the referendum instrument shows that it has been, and will most likely remain, a tool for government use. The frequency of the use of referenda has not been that great and every indication is that governments will not be rushing to use referenda in the near future. Does this mean that the question of direct democracy has been resolved? The simple answer is no. Whenever the public becomes exasperated with elected officials the demand for direct democracy will once again reach the political agenda. This serves to underscore the claim that much of the interest in direct democracy is driven more by political agendas than democratic concerns.

Politicians' willingness to embrace direct democracy has been proven to be as ephemeral as the public's interest in the subject. In many ways direct democracy has provided a screen behind which are hidden more important questions, such as the role of parties and the role of elected officials. All of the calls for changing the democratic structure that were such a part of the political landscape in the late 1980s and early 1990s have failed to produce one substantial reform in British Columbia's parliamentary system. Although legislation has been passed to allow for more direct citizen participation, except for the Constitutional Amendment Ratification Act, there have been no attempts by politicians, or the public, to use this legislation. In the 1996 provincial election, the voters were able to vote for their local MLA but not for or against a referendum or initiative question. The record of experience in this province suggests it will probably be a long time before the voters will be asked to express their opinions directly through any of the instruments of direct democracy.

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