

Fair Vote Ontario Brief

Bill 155

**An Act to provide for a referendum on
Ontario's electoral system**

**Presented to the
Standing Committee on Legislative Affairs
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1. About Fair Vote Canada / Fair Vote Ontario

On August 1, 2000, a group of concerned citizens formed Fair Vote Canada (FVC) with the aim of building a nationwide campaign for voting system reform. We envisioned FVC as a multi-partisan, citizen-based campaign bringing together people from all parts of the country, all walks of life and all points on the political spectrum to promote fair voting systems for use in elections at all levels across Canada - a fundamental requirement for healthy representative democracy and government accountability. See **Appendix A** for FVC's Statement of Purpose.

Fair Vote Canada has an Advisory Board of prominent Canadians including The Hon. Lincoln Alexander, David Suzuki, Rick Anderson, Lloyd Axworthy and Tom Kent. See **Appendix B** for the full Advisory Board list.

Fair Vote Canada launched the Fair Vote Ontario (FVO) campaign in Fall 2002 to press for a citizen-driven process to reform the Ontario voting system. FVO called for an independent citizens' assembly to propose to Ontario voters a new, fair electoral system - the process we advocated is almost exactly what is happening now. We congratulate the Premier, the Ministers and the rest of the government for following through on their promises in this area. We would also like to congratulate the Select Committee for its report, particularly its recommendation that the threshold for implementation should be set at 50% + 1 of votes case province-wide.

We are quite impressed with the level of dedication and thoroughness displayed by the Ontario Citizens' Assembly (OCA) and remain optimistic that the Assembly will recommend positive changes that will be put to a referendum on October 4, 2007.

Throughout the process, Fair Vote Ontario has provided feedback and made positive contributions in meetings, consultations and discussions with the Select Committee and its members, staff from the Democratic Renewal Secretariat, the Ontario Citizens' Assembly, Minister Marie Bountrogianni and her staff, and the relevant opposition critics and their staff. It is in that spirit that we welcome the opportunity to provide input on various aspects of Bill 155 with the aim of establishing fair rules around the referendum in order to encourage participation of the electorate in this historic initiative.

2. Referendum threshold

We do not know what the Citizen's Assembly is going to propose. The Assembly could propose a voting system that we support or one that we oppose. But in any case, we believe that the will of the people should be measured with a 50% + 1 threshold.

Ontario is only the second jurisdiction ever in which citizens have been empowered by the Government to determine whether to adopt a new voting system.

This initiative was taken to help address the growing cynicism about our political system and political leaders, and to convince citizens to re-engage in our electoral system.

While the Government of Ontario is to be commended for initiating this historic process, whether the Government and the Legislature help reverse the negative image of electoral politics through this exercise or simply reinforce public cynicism remains to be seen.

A decision to manipulate the referendum threshold and ignore democratic norms will be a key determinant.

In British Columbia, the Government first made history by empowering the first citizens assembly, and then made history in another way, by casting aside democratic standards and creating an unprecedented double super-majority referendum threshold. The Government said that “the people” will decide, but then announced it would not automatically accept their decision unless extraordinary conditions were met (see Appendices D and E).

Every legislature in Canada operates by the democratic standard of majority rule – 50 per cent plus one is the threshold to pass legislation. In the B.C. electoral reform referendum, the government cast aside democratic process and raised the bar. The B.C. government stated that electoral reform would only be automatic if sixty per cent voted in favour and if sixty per cent of the ridings indicated majority support for the proposal. The same standards were subsequently applied in an electoral reform plebiscite in PEI.

By that means, the B.C. Government made two extraordinary statements. First, when decisions are made by citizens rather than politicians, they made it much harder to move forward. Second, they allowed 40 per cent plus one of the electorate to veto a democratic reform supported by a strong majority.

The resulting referendum results became a major embarrassment. Nearly 58 per cent voted “yes” for electoral reform, while the B.C. Government was returned to power with only 46 per cent support. The Government said in effect: “46 per cent is good enough for us, but 58 per cent is too low for you.”

Thankfully, the Ontario Select Committee on Electoral Reform reasonably rejected having a 60 percent threshold, and stood in favour of 50 percent plus one across the province.

Prior to the B.C. Government's invention of the double super-majority threshold, there were no precedents for such behaviour in Canadian history for provincial or federal referendum or plebiscite decisions. Simple majority was applied in referendums on the Charlottetown accord, Newfoundland joining Confederation, conscription and a host of other issues.

Last summer, then New Brunswick Premier Bernard Lord announced his planned electoral reform referendum in 2008 and stated it would be decided by simple majority because that is "the traditional number for democratic decisions."

No Government raises the bar for its own legislation, which often has far-reaching effect on the lives of Canadians

No politician has ever refused to accept a seat due to failure to win 60 per cent of the votes – many gladly take their seats despite winning less than 50 per cent or even less than 40 per cent of the votes in their ridings.

Fair Vote Ontario is calling on the Government of Ontario to apply the same democratic standards to the referendum decision that it applies to its own affairs. The Government and opposition parties should all commit to acting on the will of the people, as determined by a simple majority vote.

If more than 50 per cent vote for reform, then reform must be implemented. If more than 50 per cent vote for the status quo, then the status quo should be maintained. There should be no provisions or extra conditions that allow a minority to veto electoral reform.

3. Public Education Campaign

The basis for any informed decision making in a public referendum is an extensive public education campaign. With the public consultation process led by the Citizens' Assembly, the issue of electoral reform is beginning to appear on the public's radar map as the media has finally begun to pay closer attention to the issues.

Your colleagues on the Select Committee on Electoral Reform concluded that the public education program in the British Columbia referendum was widely viewed as inadequate and under-funded. About half of all voters were unaware of the referendum, and two thirds didn't know about the

proposed voting system, in the weeks leading up to the referendum. They had a budget of \$1.2M, equivalent to about \$3.6M in per capita terms for Ontario today. BC also had a much more attentive media market compared to Ontario at similar stages in the process.

In contrast, the 1993 New Zealand referendum process has been assessed much more positively. An independent Electoral Referendum Panel was established to manage the public education process.

The NZ Cabinet approved a NZ \$5.085 million budget for public education during that referendum. Translated to current Canadian dollars, the per capita equivalent for an Ontario public education campaign would be approximately \$13 million. However, it is unknown how similar or different various cost factors might be (e.g., media buys) when comparing the New Zealand program with an Ontario public education initiative. One significant difference is that the NZ population was already more aware of the issue having gone through an earlier referendum not long before on voting system reform.

It is our view that a public education campaign should reach into every household in Ontario in a timely manner. We offer the following recommendations:

- 1) Elections Ontario or another independent body should be mandated to manage an objective and neutral public education campaign to ensure that:
 - voters are aware of the referendum
 - o 75% awareness by August 15
 - o 90% awareness by September 15
 - voters are well informed of their choices
- 2) The Government should set a public education budget of at least \$13 million.
- 3) The following elements should be included in an effective public education campaign:
 - several TV and radio commercials, with versions in all necessary languages, informing people about the referendum and sources of information, broadcast frequently in the period leading up to the referendum
 - several half to full page ads in all dailies and mass circulation weeklies, including Chinese and other non-English language papers

- one householder (booklet or newsprint) after the Assembly makes its decision
- another householder for late September
- several posters and a brochure to be widely distributed to libraries, community centres, government officers, local governments, etc.
- readily accessible copies of the Assembly's report
- a brief document summarizing the Assembly process and their recommendation
- a web site with information about the Assembly process, their recommendation and the referendum question
- a 1-800 number for public inquiries
- adequate staff to answer public inquiries by phone or email
- a one-page summary to be posted on the wall of polling stations in an appropriate number of languages so that poll staff can send uninformed voters to read it

4. Drafting of the Referendum Question

How a referendum question is worded has very large impact on what level of support it attains, as polling on variations of questions regarding Quebec sovereignty have amply demonstrated.

It is important that the result of a voting system reform referendum here in Ontario not be skewed by poor or one-sided wording, or be open to criticism on these grounds.

Bill 155 proposes that:

"The referendum question, in both English and French, shall be established by an order of the Lieutenant Governor in Council."
3. (1)

In introducing the legislation, the Minister stated that "This legislation ensures that the question will be clear, concise and impartial."

Fair Vote Ontario shares these objectives. However, we believe that the best approach to achieve these objectives would be for the Citizens' Assembly to draft the question. Having members of only one party determine the question without any formal process for consultation or objection is unlikely to result in a perception of even-handedness.

We don't pre-suppose to know what the Citizens' Assembly will propose. However, we believe that in order not to jeopardize the credibility and integrity of the reform process, the Citizens' Assembly under the leadership of former Judge George Thomson should set the question.

5. Regulations

Section 19 grants Cabinet the power to determine a wide range of regulations associated with the Bill.

19. (1) The Lieutenant Governor in Council may make regulations respecting and governing the referendum campaign and referendum campaign finances, including, ...

These regulations cover issues including campaign financing, balloting and counting procedures and the registration process for “referendum campaign organizers”. While we don’t question Cabinet’s legislative role in drafting regulations, we would hope that there would be an opportunity for Fair Vote Ontario and other interested parties to provide input on the draft regulations before they are proclaimed. Once that is done, the regulations should be enacted with due haste so that campaign organizers or potential campaign organizers understand the ground rules.

We offer the following suggestions:

a) Access to list of electors

If Yes and No campaigns are to effectively communicate with voters and encourage them to participate in this precedent-setting democratic event in Ontario’s history, it is essential that they be provided with complete voters lists in the same manner that riding candidates and central campaigns of registered parties are provided with these lists.

In our view the use of the provincial voters list for a referendum campaign is encompassed in the use of this information for an election of MPPs to Ontario’s Legislature. We do not believe any other matters regarding the authorization of the use of this data is required, for example, when voters authorize the Canada Revenue Agency to make personal information available to Elections Ontario. Following from this, we do not believe that any additional authorization is required from citizens to make this information available to registered referendum campaigns. Either the authorization is sufficient for Elections Ontario AND referendum campaigns to make use of this information, or additional authorization is required for both Elections Ontario and referendum campaigns to use this information.

We believe that the privacy concerns of Ontario voters are adequately protected by the strict provisions regarding the use to which candidates and political parties can put these lists. Similar provisions can and should be put in place to ensure that Yes and No campaigns protect the privacy of Ontarians by not using the lists for anything other than the referendum campaign. There is no reasonable argument to be made for withholding

voters lists from Referendum Campaigns on the grounds that there are legal impediments to it deriving from privacy legislation.

A minor additional point in this regard concerns:

11. Subsection 49 (2) A referendum campaign organizer is not entitled to receive the list of certificates.

As these certificates provide information about changes to the voter lists, registered campaign organizers should have access to them.

b) Referendum campaign organizers

1) The regulations should not prohibit multiple campaign organizers on both the Yes and No side. There will likely be a wide variety of organizations that will be supporting or opposing the proposal. They will be doing so for a number of different reasons. While we don't expect Cabinet to require two large umbrella campaigns, we would like to be on record supporting the idea that a diverse array of campaign organizers would be more effective in getting their message out.

2) Applications for Recount and Determination of Invalidity

Section 71 - An application for a recount relating to the referendum may be made only by the returning officer or by an elector.

Subsection 99 (3) - An action to determine the validity of the referendum vote in an electoral district may be commenced only by an elector in the electoral district or by the Chief Election Officer.

This should be extended to include registered referendum campaign organizers. Just as Candidates and their Official Agents, even if not resident in a riding, are entitled to apply for an election recount, Yes Campaigns through their Official Agent should be allowed. Individual voters may be reluctant to expose themselves to the financial risks associated with having the costs of a recount assessed against them. A referendum campaign is in a better position to use its expertise to determine if a recount is needed, and to afford to mount one.

c) Referendum Campaign Finances

Fair Vote Ontario believes it is important for fair referendum finance rules to be put in place early on. We believe a regime similar to the current Election Finances regime in Ontario could be appropriate. We do not believe there is any good rationale for departing from the contribution limits set out in that system. If it is appropriate to facilitate public discussion and debate in an election by encouraging private contributions

through tax subsidies from donors, then similar arguments would support public subvention to those donating to referendum campaigns.

d) Scrutineering

TABLE 1 - SPECIAL RULES RELATING TO SCRUTINEERS (SECTION 11), states the following:

“A registered referendum campaign organizer may appoint a person who is at least 16 years of age to be a scrutineer for an electoral district by filing a designation in writing with the returning officer at least five days before polling day. The *Election Act* applies to scrutineers appointed by registered referendum campaign organizers in the same way as to scrutineers appointed by candidates. A candidate’s scrutineer is not entitled to act as a registered referendum campaign organizer’s scrutineer, and vice versa. “

While holding the referendum in tandem with the general election will have the positive results of higher voter turnout and reduced costs, there are a number of other considerations which require a careful approach to maintain the integrity of the process.

- 1) The practical effect of excluding cross-appointment of scrutineers between election campaigns and referendum campaigns and preventing election scrutineers from observing the count of referendum ballots will be that the counting of the vast majority of referendum ballots will not be scrutinized. Citizen scrutineering of ballots is an important part of our tradition, ensuring transparency of the process and confidence in the result. We’ve seen extremely close results in provincial referenda before, and it would be a shame if sloppy work by officials tired at the end of long days were to impact on the results.
- 2) Since Bill 155 establishes that counting will take place sequentially – first the general election results, then the referendum results – there is not a conflict or perceived conflict of interest in allowing cross-appointed scrutineers to participate in both counts.
- 3) Citizens should be free to choose if they want to scrutineer for the general election, referendum or both.
- 4) There is not a tradition of holding referenda in Ontario. Our last provincial referendum was in the Prohibition Era. Our political culture is such that those who become engaged in electoral politics generally do so by supporting and working for candidates and parties.
- 5) Multi-partisan organizations like Fair Vote Canada rely on activists from all parties as well as non-partisans to act as volunteers.

- 6) Yes and No campaigners will be hampered in their efforts to find a sufficient number of scrutineers who are not already tied in with a particular election campaign if this provision is enacted. Yes and no campaigns will recruit more of those who would not otherwise be scrutineers, leading to more congested voting booths.
- 7) Cross-appointed scrutineers should be allowed. In those rare cases where a scrutineer challenges the right of an elector to vote or requests a statutory declaration or makes an objection (32(2), 47(3)(b) and (5)(d)), the same criteria will be used for both the general election and the referendum. The mechanisms for ensuring these matters are handled fairly now will still apply to those of referendum scrutineers.
- 8) Five-day advance registration of scrutineers is onerous and unnecessary. The same rules that apply for candidate scrutineers should apply for referendum scrutineers.

e) Advertising

19. (k) governing advertising to promote a particular result in the referendum, including,
 - 1 – “prescribing information to be included in advertisements”

This provision is unnecessary and could be viewed as an attempt to manipulate what campaign organizers may or may not say. If the intent is for campaign organizers to identify themselves on their advertising, we would agree with that. The regulation should spell that out specifically so that there's no perception that campaign organizers are being censored.

6. Scope of the Chief Election Officer's Role

"12. (2) If, in the Chief Election Officer's opinion, a situation exists for which this Act and the regulations do not make provision, the Chief Election Officer may make appointments or give directions as he or she considers proper and anything done in compliance with such a direction is not open to question."

This seems to provide arbitrary powers beyond review. Section 4 (7) of the Elections Act allows for this power to be limited to "unusual or unforeseen circumstances". As a matter of good administrative law drafting and practice, and to ensure the referendum is governed according to an appropriate rule of law rather than arbitrary orders, this should be in the Referendum Act as well.

Appendix A

Fair Vote Canada Statement of Purpose

The purpose of Fair Vote Canada is to gain broad, multi-partisan support for an independent, citizen-driven process to allow Canadians to choose a fair voting system based on the principles that all voters are equal, and that every vote must count.

Fair Vote Canada believes that, in order to provide a fair and equal voice for every citizen, and to accurately reflect the will of the voters, our voting system must be designed to achieve the following objectives:

Proportional representation: The supporters of all political parties should be fairly represented in proportion to the votes they cast. Parties should have no more and no fewer seats than their popular support warrants. There should be no phony majority governments.

Fair representation for women, and for minorities and Aboriginals: Our legislatures should reflect the diversity of our society. To enable this, voting systems must be designed to remove barriers to the nomination and election of those who are under-represented.

Accountable government: Our voting system should give us governance which is stable but responsive, flexible but principled, which reflects the will of the majority, but which respects the rights of all.

Geographic representation: Rural and urban voters must be fairly represented. Provinces and regions must have effective and accountable representation in parliaments and governments, reflecting real geographic communities.

Real voter choice: Our voting system must promote real competition among candidates and political parties. No voter should be disenfranchised for living in a safe riding. No voter should feel compelled to vote strategically for the lesser of evils because the preferred candidate or party has no chance of winning the riding.

Appendix B

Fair Vote Canada National Advisory Board

The National Advisory Board is comprised of prominent Canadians from a wide variety of backgrounds and political viewpoints. Appointed by the National Council, the members of the Advisory Board provide advice, assist with strategy and contacts, and publicly support Fair Vote Canada. The members of the Advisory Board are:

The Hon. Lincoln Alexander
Rick Anderson
Dr. Lloyd Axworthy
Dr. Patricia Baird
Maude Barlow
Dr. Sylvia Bashevkin
Robert Bateman
Patrick Boyer
The Hon. Ed Broadbent
June Callwood
Nathalie Des Rosiers
Linda Silver Dranoff
Max Ferguson
Dr. Margaret Fulton
Dr. Phyllis Grosskurth
Mel Hurtig
Tom Kent
Dr. Vincent Lemieux
Rafe Mair
Robin Mathews
Dr. Henry Milner
The Hon. Lorne Nystrom
Dr. Sylvia Ostry
Walter Pitman
Judy Rebick
Walter Robinson
Dr. Norman Ruff
Rick Salutin
Hugh Segal
David Suzuki
John Trent
Ted White
The Hon. Lois Wilson

Several members have passed away in recent years – Pierre Berton, Bernard Ostry and Claude Ryan – whose support was greatly appreciated.

Appendix C

Select Committee on Electoral Reform Recommendations – November 2005

The Committee recommends that

1. The terms of reference for an Ontario citizens' assembly should:
 - (a) invite the use of a broad set of criteria that focus not simply on the electoral system, but also recognize the possible impacts of electoral reform on the party system, the functioning of parliament, the nature of government, the representation of various components or dimensions of Ontario society, and the administration of elections, including responsibility for the determination of Ontario's electoral boundaries;
 - (b) require the assembly to recommend maintaining the current FPP system or propose an alternative electoral system (or systems); and
 - (c) provide the assembly with the latitude necessary to recommend whatever electoral system is consistent with Ontario's (and Canada's) constitution. (p. 2)
2. Any ineligibility of elected officials for membership in the citizens' assembly should be limited to incumbent office holders. (p. 3)
3. Any proposal(s) from a citizens' assembly should be as complete as possible in the essential details, in order to provide the Legislative Assembly and voters with all the information they need to make their decisions. (p. 43)
4. The referendum should be binding upon a vote of 50% + 1, and the support of 50% + 1 in at least two-thirds (i.e., 71) of the ridings, or any other formula that ensures the result has support from Northern, rural, and urban areas of the Province. (p. 46)
5. Any referendum on electoral reform should be held in conjunction with a provincial general election. (p. 46)
6. Responsibility for the referendum question(s) – including the wording and number of questions to be asked, *and* the number of referendums to be held – rest ultimately with the Legislature, acting on the advice of the citizens' assembly, the Select Committee on Electoral Reform, and if required, Elections Ontario. (p. 46)
7. Elections Ontario (or another appropriate and neutral body) should be charged with the responsibility for ensuring that every voter receives adequate information

about the arguments for and against each side of any question that is put to the people. Elections Ontario (or another appropriate and neutral body) should also be asked at the earliest opportunity to prepare a plan for an effective, participatory, pro-active public education campaign, with an emphasis on enabling voters to participate in town hall meetings or other community forums. (p. 47)

8. Members from either side of the House should not be constrained by their party leadership from taking part in any public debate and discussion of electoral reform, and be encouraged to play a role in fostering public dialogue in their own ridings. (p. 47)

9. The Association of Former Parliamentarians should be asked to nominate one former Member from each of Ontario's three legislative parties to serve in an ex officio capacity on the citizens' assembly. (p. 48)

10. Reform of the electoral system should contain provisions guaranteeing a review (if not also a referendum) on the suitability of the new system, to take place not before the third and not after the fourth election held under this system. One of the criteria for this review should be a measure of the acceptance of the new system by the public. (p. 5)

Appendix D

Who Invented the 'Double-Sixty' Rule for British Columbia Ballot Questions?

by J. Patrick Boyer, Q.C.

Article for Common Ground
June 22, 2005

Since 1898, on 15 separate occasions, British Columbians have gone to the polls to vote on ballot questions, each time approving or rejecting a proposal by a 'simple' majority -- half the votes cast, plus one or more. This year, British Columbians voted on a question about the system for electing MLAs, but for the very first time, somebody had changed the rule.

On May 17, 57% of electors affirmed the proposal for BC-STV -- a clear win under the rule that until this year had governed referendums on everything from enfranchising women, conscripting soldiers, changing the Constitution and adopting public health insurance. But the law had been changed require double-sixty percent approval: more than 60% of all voters had to approve, and more than 60% of all constituencies had to approve.

So who invented this new legal definition for democratic approval in a referendum? Why was this Double-Sixty Rule only to apply to the referendum on how MLAs get elected? The rule is still 50% + 1 on any other ballot question, according to the Referendum Act of British Columbia.

The answer is a trick. It's not what you'd expect. The someone who invented the Double-Sixty Rule which goes against the established democratic norm in British Columbia and Canada, a norm so deeply embedded in our history and democratic practice as to be one of the rules of our 'unwritten Constitution' as well as one of the written rules in British Columbia statutes that governed all ballot questions in the past and will govern them all in the future according to present law, is the very same person who after May 17's endorsement of STV by a clear majority of British Columbians said he "didn't want to change the rules".

Not only that, but the correct answer to the Double-Sixty question is a double trick: the person who invented the Double-Sixty Rule, a new threshold for approval that is unprecedented and arguably unconstitutional, is the very same person who sponsored the whole enterprise that took voters into the May 17 referendum to make provincial elections more democratic in the first place.

While Premier Gordon Campbell enjoys the summer figuring out how to extricate his Government from its self-created conundrum over the May 17 referendum, British Columbians know they have approved the proportional electoral system and can figure out what to do to help their government implement their democratically approved right to STV.

Seen in light of history, it's no big deal. The premier could just get on with it. After Premier W.A.C. Bennett came to power with his Social Credit plus Progressive Conservative alliance in 1953 under a single transferable vote electoral system, he introduced legislation to repeal that electoral system and replace it with the simple plurality or 'first-past-the-post' system. He didn't hold a referendum on changing the province's electoral system. He didn't think a change in the Election Act about the way ballots get counted on election night to determine who becomes an MLA required 60% approval, or double 60%. Nor did anyone else. The rule is that in a constitutional democracy a government can introduce legislation and if it is given three readings and debated and approved by 50% +1 of the members it becomes law and gets royal assent. That was the rule half a century ago under which Premier Bennett brought about changes in the electoral system. It's still the rule today. It has not been changed.

Premier Campbell isn't the first British Columbia leader to struggle translating direct democracy into legislative action. From the province's first referendum on November 25, 1909, on a 'local option' policy for liquor control, down to last month's vote on a revised electoral system, British Columbia holds the record for the most ballot questions in Canada. And since the issues that get referred to citizens for resolution in ballot box democracy are invariably controversial, more than one premier has grabbed this democratic bull by the horns only to get skewered by not understanding the art of democratic statesmanship involved.

Even before the 1909 B.C. vote on local option, the liquor issue had been on a ballot in British Columbia as elsewhere across Canada in 1898, when the national government of Liberal Prime Minister Wilfrid Laurier presented the first country-wide vote on the question of prohibiting liquor. A majority of British Columbians voted for prohibition, as did majorities in other provinces – except Quebec, which strongly rejected what was seen as a Protestant puritanical campaign. Laurier grappled with the outcome, then realized no 'national standard' was possible, so declared Ottawa out of the field, leaving implementation of prohibition to individual provinces who so wished, which is what happened. A large number of provincial ballot questions ensued, including in British Columbia, over bringing in the prohibition of alcohol, and after the Dry years of legal hypocrisy when organized crime supplied booze to all manner of law-abiding citizens, other plebiscites to repeal Prohibition. In British Columbia the first such provincial ballot question after the 1898 Canadian plebiscite on prohibition of liquor, came to a vote on November 25, 1909, on whether to adopt a 'local option' policy for liquor control. Then, on September 14, 1916, voters across the province went against the polls to vote on prohibition of liquor. How greatly alcohol and all the business going with it dominated the first half of the twentieth century public affairs is demonstrated by the fact that British Columbians went to the polls three more times to address the government's policy in the matter. On October 20, 1920, the ballot question was on temperance. On June 20, 1924, the issue was sale of beer-by-the-glass. On June 12, 1952, yet another ballot question asked citizens of the province for further direction on regulating the sale of liquor. Including the vote in the

Canadian plebiscite of 1898, that's six times British Columbians marked ballots to help decide public policy in relation to alcohol. In every single case, the ballot question would carry or be defeated by a vote of 50% +1.

This pattern was similar in most parts of the country, with only New Brunswick never having a provincial vote on liquor. Alberta, Saskatchewan, Manitoba, Ontario, and P.E.I. were balloting on booze just as much, as their premiers sought to engage the people in an issue that was dividing their cabinets, splitting their parties, and turning their legislatures into turmoil. The politics of alcohol was a major component of public life for 70 years. In other provinces, too, the rule was that a simple majority – not 60%, and certainly not double 60% -- would determine the issue.

In British Columbia, this democratic device of ballot questions was applied to other major issues as well -- and generally ahead of most other jurisdictions in Canada. Extending the right to vote to women is an example. In September 1916, B.C. conducted the only referendum ever held in Canada on women's suffrage. Ironically, it was a vote in which only men could participate -- a double irony, in fact, because as early as 1873 B.C. had enfranchised women for municipal elections. While it may have had this double irony, the 1916 Women's Suffrage Referendum did not require double-sixty. It seemed only natural to all concerned that a democratic verdict would mean 50% +1.

More than that, the 1916 referendum provided interesting entertainment for voters who saw their Premier twist and turn in a conundrum of his own making. As the dynamics of this public consultation process developed, and popular opinion grew to favour changing the electoral system to add women as voters so the legislature would be more reflective of the province, they overrode the calculations of the government. Conservative Premier William J. Bowser, who had decided on the plebiscite as a means of delaying and ultimately defeating the drive for women's suffrage, could see the strength of popular opinion and did not foolishly try to defy it, so in a classic B.C. finale, ended up campaigning in favour of the very measure he had sought to avoid. Women in British Columbia had won the vote.

Public Health Insurance was another substantive subject on which British Columbians expressed their judgment in a referendum held June 1, 1937 – a time when there was no system of state health insurance anywhere on the North American continent. The high-stakes drama of medical politics in Saskatchewan in the 1960s when Tommy Douglas' socialist government battled to bring in public health insurance while defiant doctors went on strike had already been acted out in British Columbia in the 1930s. The intense contests between the Liberals, Conservatives, citizens, the medical community and insurance companies over who would pay for medical services, and how, is a big and revealing chapter in B.C.'s political history. The controversy over health care (with which we are still embroiled) was embraced by the 1937 B.C. referendum. It took place in the depths of the Depression, and was an integral part in the decades-long process of clarifying the issue and establishing public policy on paying the costs of people's medical services. When the ballots were tallied on June 1, 1937, some 116,223 British Columbians had voted for the Health

Insurance Act, while 80,982 opposed it. A large majority had approved the health plan proposal, far in excess of the going rule that it only took 50% +1 to carry. At the same time, the Liberal Government whose own legislation on health insurance had initiated the public debate was re-elected. This meant it had a double mandate to deal with the health insurance question, because the Liberals had explicitly pledged to honour the outcome of the balloting. Yet the re-elected Government of Premier T. Dufferin Pattullo chose instead to wait – neither enforcing nor replacing the 1936 act for the public health insurance program. The overwhelming mandate the people had given the government to proceed was ignored. The Liberal premier of the day had changed his self-imposed rule. Citizens felt they had been used and abused.

By 1952 another issue British Columbians share with others across this vast northern transcontinental country – the problems of time zones and time systems – had generated so much controversy it could only be resolved at the ballot box. The choice between shifting to Daylight Saving or ‘Fast Time’ for part of the year, or staying on Standard Time for all 12 months, pitted urban dwellers who liked Daylight Saving against rural folk who did not. Farmers claimed Fast Time caused them to lose two hours working time per day. Desiring to resolve the controversy once and for all, the British Columbia Government submitted a ballot question on the subject to voters, along with another ballot question on the still controversial liquor question, in conjunction with the provincial general election on June 12, 1952. Some 290,353 people voted in favour of Daylight Saving, and 231,008 voted against. Even as they reached the polling stations many citizens could still not make up their minds, evidenced by 20,828 voters rejecting their time question ballot. With a favourable vote, and the farmers having had their day in an open contest over the best public policy for the province as a whole, Fast Time was proclaimed to apply throughout British Columbia. In this, British Columbia pointed the way again, and the provinces of Alberta and Saskatchewan subsequently held direct votes on a common plan for setting the clock. In all three provinces, the rule to determine the outcome was 50% +1.

By 1991, British Columbia voters again went to the polls to cast ballots on issues that set them ahead of and apart from other parts of Canada – initiative and recall. The ‘initiative’ is the legislated right of citizens to cause or initiate a referendum on an issue for which they can generate enough public support as shown by a petition signed by the required number of voters. The ‘recall’, which is in effect a de-election proceeding of an MLA, is also triggered when a requisite number of voters sign a petition on a stated reason as to why their elected representative in the British Columbia Legislature should be recalled and a by-election take place for a replacement MLA. Both measures had been intrinsic parts of the populist direct democracy movements in Canada and the United States a century ago, and were revived in the early 1990s as a manifestation of citizen disillusionment with politics and disengagement from established party political processes. When Social Credit Premier Rita Johnston announced the two-question referendum, NDP Opposition Leader Michael Harcourt said it was unnecessary because the government could simply introduce the legislation and

get on with it. “Citizen initiatives and recall should have been incorporated in the Referendum Act that the Social Credit Government passed last year,” said Harcourt in September 1991. The NDP supported direct use of the legislature to enact changes to the provincial democratic system, according to the rule of a constitutional legislative democracy. The vote took place, however, and the governing rule in that arena, of course, was 50% +1. Although the government itself was defeated, British Columbians were unequivocal about enhancing the democratic infrastructure of the province. In favour of recall were 1,058,137, against were 248,432, with 128,171 rejected ballots. Counting only the valid votes cast, 80.99% of the citizens approved recall. Of the valid votes cast for initiative, the second question, the number was even higher – 83%. During the election, Harcourt had indicated he would follow the results of the mandate from the people – not a radical idea for a party leader in a democratic society – and he did not change the rule. Following his election as Premier, a committee of the legislature was given the mandate in 1992 to study the details and recommend specific legislative measures for initiative and recall. The provisions were duly enacted and are law today.

By 2002, another major ballot question, this time on aboriginal treaty rights in land claim negotiations, brought with it a lot of controversy and even a court challenge. (I remember it well because I was called by the Crown to give expert testimony about referendum law and British Columbia democratic practices and norms.) That referendum is still fresh in most people’s memory, so we can skip the details – except to note that as exceptional as the whole matter was, nobody thought to change the 50% +1 rule because it was so deeply established.

So, why did B.C. face a new rule for a ballot question on modifying the way the electoral system works? The rule was changed by the Campbell Government sponsoring an amendment to the Referendum Act and passing it into law in the legislature with its majority who are all members elected under a different electoral system than the one being proposed. Under the Charter in our Constitution, a law that curtails the rights and freedoms of citizens can only subject “to such reasonable limits prescribed by law [in this case, the amendment to the B.C. Referendum Act to change the 50% +1 rule to the Double-Sixty Rule] as can be demonstrably justified in a free and democratic society.” When the courts interpret this, they look to the laws and norms of “a free and democratic society”. British Columbia as a free and democratic society for more than a century has conducted referendums on the legal requirement of 50% +1 being the threshold for approval. The democratic right of British Columbians to vote in referendums is granted by statute enacted by the legislature in accordance with the constitution of the province. Once that right is granted by law, even though it is not one of the explicitly enumerated democratic rights in the Charter, it does exist as a right that can only be subject to “such reasonable limits as can be demonstrably justified in a free and democratic society.” To argue otherwise is to change the rule about changing the rules. A court ruling in response to a citizen-based challenge to the Double-Sixty Rule is not the next thing Premier Campbell would hope to see, but the prospect is not unimaginable.

It needn't be this way. In British Columbia the process involving the Citizens' Assembly deliberately studying voting methods followed by the May 17 ballot question on the 'single transferable vote' it recommended was launched by Gordon Campbell. His commitment given in the prior election was duly honoured during his first mandate. As Nick Loenen, a persistent British Columbia advocate for proportional representation, noted more than a year ago, "Campbell was not pushed from behind. On this issue he led his party, cabinet and caucus. His achievement is remarkable."

That's an understatement. Across Canada other premiers and provinces have been following Premier Campbell's example and British Columbia's lead. In Ontario, Premier Dalton McGuinty's plan for 'democratic renewal' includes a citizens' assembly on electoral system change followed with a referendum. This is a direct copy from Premier Campbell, and on June 14 Ontario's legislature enacted a law to set this process in operation. In Prince Edward Island, Premier Pat Binns initiated a process for electoral reform that will culminate in a referendum this year. In New Brunswick, Premier Bernard Lord is following suit. Ottawa and Quebec are also on the move, in the same direction. All eyes have been on B.C. They still are – especially because the province that initiated the current Canada-wide surge in democratic renewal is also, oddly, home of the Double-Sixty Rule

On June 6, Fair Vote Canada president Wayne Smith urged New Brunswick's Premier Bernard Lord, who'd followed Gordon Campbell's lead and is proceeding with a referendum on a mixed-member proportional voting system, to let 50% +1 decide the outcome. Said Smith: "The Government of British Columbia has put itself in an embarrassing position by having an unprecedented double super-majority threshold for their recent referendum on electoral reform." The 'double' refers to the need for a majority of constituencies to also approve, which overwhelmingly happened. BC-STV was endorsed by a majority of voters in all regions of the province, 77 of the 79 ridings.

The "B.C. mistake" of the Double-Sixty Rule required to carry the referendum will almost certainly be avoided elsewhere. Nobody else has ever run a referendum except on 50% +1, and why would they change?

Why, indeed, did Gordon Campbell change the rule? The premier had to strike a deal with his cabinet and caucus to get support originally for his electoral reform proposal – amendment of the province's Referendum Act to require Double-Sixty approval for simply changing an electoral system. Last month's voting perversely showed that while 47% of the popular vote was enough to form a government, 57% was not enough to approve a change in the way the ballots get counted – at least once you've changed the rule about changing the rules. By all other standards, including the still operational provisions of the B.C. Referendum Act on any question other than the electoral system for MLAs, the unchanged rule remains 50% +1.

To repeat, the May 17 vote needing 60% voter approval is a sharp contrast to earlier B.C. referendums on allowing women the right to vote (1916), a government health insurance plan (1937), prohibition (1909, 1916, 1920, 1924 and 1952), daylight saving time (1952), recall and initiative (1991) and aboriginal

treaty rights in land claim negotiations (2002). Those ballot questions only needed 50% +1 for approval. It's the norm, both in B.C. and elsewhere. Newfoundland's referendum in 1948 on joining Canada, or Quebec's referendums in 1980 and 1995 on separating from Canada, needed only 50% +1 approval. The Canada-wide referendums on prohibition of liquor (1898), military conscription in wartime (1942), and the Charlottetown Accord constitutional package (1992), were each determined with simple majorities, not a 60% threshold, although the questions posed to voters were of profound consequence.

No other province or country imposes a 60% approval requirement for a referendum on electoral reform. PEI's coming referendum on electoral reform will entail a simple majority, which will be the case in Ontario and New Brunswick as their premiers learn from Mr. Campbell's predicament and seek to avoid the B.C. 'mistake'. New Zealand adopted electoral reform when its referendum passed with 54%. Ireland and Italy twice conducted electoral reform referendums requiring only the norm of a simple majority. The list is long.

Just how perverse the British Columbia Mistake is comes across in the numbers: while 47% of the popular vote was enough to form a government, 57% was not enough to approve a change in the way the ballots get counted.

Political conditions today have changed from the time Gordon Campbell first exercised leadership, stepping out in front on this issue and having to bring along a reluctant caucus. The B.C. experience, copied elsewhere, has shown in the intervening years just how ripe electoral reform is for the picking. This was less evident to most politicians a few years ago when caution gave birth to the unprecedented Double-Sixty Rule.

Politically, the Double-Sixty Rule has become a python tightening around the government. It squeezes legitimacy from the very Campbell Government, ensconced in Victoria with a significantly lower popular vote, that sponsored it. It chokes off the electoral reform process which was the child of that same government. The art of politics practised by leaders involves knowing when to change with changed times. The political risk faced now by Premier Campbell comes not from making a change in the electoral system, but rather from failing to make it.

Clearly Gordon Campbell understood the antiquated nature of the first-past-the-post system by launching the process that considered alternatives and gave British Columbians a ballot choice to retain the present system or move to more proportional representation in the legislature. Electors in British Columbia last month became the envy of other Canadians who feel frustrated by an electoral system that produces legislatures unreflective of the way we vote.

Just as French and Dutch voters in recent referendums on a new European Constitution sent a broad signal by voting to reject the proposal, British Columbians sent a clear (but in this case positive) signal to the rest of Canada where referendums are pending or proposed for revamping the electoral system. The strong popular support of B.C. voters for electoral reform has impact far beyond the province's borders.

The present paradox is that the process started by the Campbell Government has hit this odd snag of its own creation – the Double-Sixty Rule. That provision is no barrier to action, however. While the Referendum Act would have made it mandatory for the government to bring in legislation creating the single transferable voting system if just 3% more had voted for the measure, absolutely nothing prevents the government from doing so now on its own volition.

Gordon Campbell started this current phase of democratic renewal with his speech to the Liberal policy convention in Kelowna on April 17, 1999. He will likely wish to see this long-needed reform through to completion. He certainly has solid arguments and impressive historical precedents on his side, bolstered by his own prior leadership on the issue. As with any non-binding plebiscite (which in law is what most Canadian events of direct democracy have been, rather than legally binding referendums) the premier can be guided by the results of May 17, even though he is not directed by them.

Perhaps what is strongly felt in British Columbia, even more than an affinity to BC-STV or any other particular model, is the desire to move to a voting system that will see the membership in the legislature more closely mirror the way voters actually supported candidates and parties at the ballot boxes. That, as Gordon Campbell grasped from the start, would bring us Canadians closer – whether in British Columbia or other parts of Canada following the inspired West Coast lead – to requalifying ourselves as a self-governing democracy.

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J. Patrick Boyer, former Member of Parliament, lawyer and university professor, is author of three books on direct democracy in Canada: *Law-Making by the People*, *Direct Democracy in Canada*, and *The People's Mandate*. His new book on this subject, *Forcing Choice*, to be published this fall by Canadian Shield Books, will explore British Columbia's rich experience with referendums and political choice. He can be reached at patrickboyer@sympatico.ca.

Appendix E

Political Realism Meets Premier Campbell's Electoral Reform Vancouver Sun, June 9/05

by J. Patrick Boyer, Q.C.

Last month's referendum on a more proportionate electoral system now sees Premier Gordon Campbell nestling in a rare position for a political leader: he can solidify his reputation as a democratic reformer with little cost to his political capital and almost no effort. Or he could forfeit his mantle by doing absolutely nothing at all.

The reputation is certainly his to claim. The entire process with the Citizens' Assembly, the deliberate study of alternative voting methods, and the ballot question on the 'single transferable vote' was launched by his commitment given in the prior election and duly honoured during his first mandate. As Nick Loenen, tireless British Columbia advocate for proportional representation, noted more than a year ago, "Campbell was not pushed from behind. On this issue he led his party, cabinet and caucus. His achievement is remarkable."

Across Canada other premiers and provinces have since been following his example and British Columbia's lead. Although B.C. is often different from the rest of Canada, in this case that difference is called leadership. Premier Dalton McGuinty's plan for a citizens' assembly on electoral system change followed with a referendum is a direct steal from Premier Campbell. Premier Pat Binns in PEI initiated a process for electoral reform that will culminate in a referendum this year. Premier Bernard Lord in New Brunswick is following suit. Ottawa and Quebec are also on the move, in the same direction. Premier Campbell, take a bow!

The next act is tricky. In other parts of Canada, the premier's favourable reputation on this score is now suddenly on a teeter-totter. While praise for British Columbia's leadership in democratic reform has been genuine, so is a new concern about not making "the B.C. mistake" with the high threshold (60%) required to carry the referendum. Last month's balloting freshly demonstrated that while 47% of the popular vote is enough to decide who will form a government, 57% was not enough to green-light a change in the way the ballots get counted. Someone might wonder, since wielding the powers of state is clearly more significant, why not 60% to form a government?

This weekend in Ottawa a conference organized by Fair Vote Canada will ask 'What did we learn from the BC Referendum?' Until the premier has himself sorted out the course ahead it's probably too early to say what has been learned, but it's a sure bet a lot of attention in the Ottawa session will be paid to the 60% rule. Already on June 6, Fair Vote Canada president Wayne Smith urged New Brunswick's Premier Bernard Lord, who'd borrowed a page from Gordon Campbell's portfolio and is proceeding with a referendum on a mixed-member

proportional voting system, to let a simple majority (50% plus one) decide the outcome. Said Smith: "The Government of British Columbia has put itself in an embarrassing position by having an unprecedented double super-majority threshold for their recent referendum on electoral reform." The 'double' refers to the need for a majority of constituencies to also approve, which overwhelmingly happened. BC-STV was endorsed by a majority of voters in all regions of the province, 77 of the 79 ridings.

The intent of a double majority was to ensure the referendum would enjoy clear and solid majority support overall and in each region of the province. By any standard both conditions have been met. As Fair Vote BC has argued, "The massive surplus support for the second condition more than makes up for the tiny shortfall of the first condition."

How Gordon Campbell emerges from this 'embarrassing position' will make all the difference in his legacy as a democratic reformer -- the one who started a chain reaction across Canada only to see others claim his mantle because they followed through when he did not. It is improbable that he'll let this opportunity slide away, especially given the confidence that comes to a re-elected premier.

Only government insiders know for sure what deal the premier had to strike with his caucus to get support originally for his electoral reform proposal -- a deal that involved an astonishing amendment of the province's Referendum Act to require 60% approval for simply changing an electoral system. The 60% rule is exceedingly rare. About the only other Canadian example I can think of was driven by pure pragmatism in parts of the Maritimes more than a century ago when 'local option' votes on alcohol repeatedly swung towns and villages between 'dry' then 'wet' then 'dry' status because only the smallest handful of voters in electorates of several hundred needed to change their mind from one plebiscite to the next. The costs to tavern owners forced to close businesses they'd started just months before resulted in the 60% threshold, simply to check the erratic short swings of the electoral pendulum.

The May 17 vote needing 60% voter approval is a sharp contrast to earlier B.C. referendums on allowing women the right to vote (1916), a government health insurance plan (1937), prohibition (1909, 1916, 1920, 1924 and 1952), daylight saving time (1952), recall and initiative (1991) and aboriginal treaty rights in land claim negotiations (2002). Those ballot questions only needed 50% plus one for approval. It's the norm, both in B.C. and elsewhere. Newfoundland's referendum in 1948 on joining Canada, or Quebec's referendums in 1980 and 1995 on separating from Canada, needed only 50% approval. The Canada-wide referendums on prohibition of liquor (1898), military conscription in wartime (1942), and the Charlottetown Accord constitutional package (1992), were each determined with simple majorities, not a 60% threshold, although the questions posed to voters were of profound consequence.

No other province or country imposes a 60% approval requirement for a referendum on electoral reform. PEI's coming referendum on electoral reform will entail a simple majority, which will be the case in Ontario and New Brunswick as their premiers learn from Mr. Campbell's predicament and seek to avoid the

B.C. 'mistake'. New Zealand adopted electoral reform when its referendum passed with 54%. Ireland and Italy twice conducted electoral reform referendums requiring only the norm of a simple majority. The list is long. Even closer to home, the BC Referendum Act -- except as uniquely amended for last month's vote -- stipulates a simple majority for any provincial referendum.

Political conditions today have changed from the time Gordon Campbell first stepped out in front on this issue and had to bring along a reluctant caucus. The B.C. experience, copied elsewhere, has shown in the intervening years just how ripe electoral reform is for the picking. This was less evident to most politicians a few years ago when caution bequeathed the rare 60% stipulation.

Politically, the 60% rule has become a python tightening around the government. It squeezes legitimacy from the very Campbell Government, ensconced in Victoria with a significantly lower popular vote, that sponsored it. It chokes off the electoral reform process which was the child of that same government. The art of politics practised by leaders involves knowing when to change with changed times. In ironic nemesis, the political risk faced now by Premier Campbell comes not from making a change in the electoral system, but rather from failing to make it.

Clearly Gordon Campbell understood the antiquated nature of the first-past-the-post system by launching the process that considered alternatives and gave British Columbians a ballot choice to retain the present system or move to more proportional representation in the legislature. Electors in British Columbia last month became the envy of other Canadians who feel frustrated by an electoral system that produces legislatures unreflective of the way we vote.

Just as French and Dutch voters in recent referendums on a new European Constitution sent a broad signal by voting to reject the proposal, British Columbians sent a clear (but in this case positive) signal to the rest of Canada where referendums are pending or proposed for revamping the electoral system. The strong popular support of B.C. voters for electoral reform has impact far beyond the province's borders. The demonstrated public will for change makes this roadmap easy to read. When Prof. Murray Rankin from Victoria was in Toronto last week, he expressed amazement that people in Ontario had been closely following these developments in B.C. Such amazement is itself amazing, suggesting that British Columbians may not realize how significant their quest for electoral reform is in national terms, and why it is closely monitored by those of us outside the province.

The present paradox is that the process started by the Campbell Government has hit this odd snag of its own creation -- the alteration to the Referendum Act stipulating that the May 17 balloting would only bind the Government if the vote topped 60% rather than the normal 50% approval. The Act's provision is not a real barrier to action, however. While the law would have made it mandatory for the government to bring in legislation to create the single transferable voting system if just 3% more had voted for the measure, absolutely nothing prevents the government from doing so now on its own volition.

Gordon Campbell started this current phase of democratic renewal with his speech to the Liberal policy convention in Kelowna on April 17, 1999. He will

likely wish to see this long-needed reform through to completion. He certainly has solid arguments and impressive historical precedents on his side, bolstered by his own prior leadership on the issue. As with any non-binding plebiscite (which in law is what most Canadian events of direct democracy have been, rather than legally binding referendums) the premier can be guided by the results, even though he is not directed by them.

Both Premier Campbell and Opposition Leader James have understandably promised a review of the present B.C. impasse. Fair Voting BC, one of the citizens groups supportive of a Yes vote in the referendum, applauded this openness but urged that the Citizens' Assembly's carefully considered recommendation of a single transferable vote system not be "tampered with by politicians". Time will tell if the way out of this conundrum entails modification or not.

The larger Canadian picture shows that other methods of tallying votes to elect our representatives (such as the 'mixed-member proportional' electoral system) have also been recommended following careful study and long deliberation by Royal Commissions, Law Commissions and non-party advisory bodies. It's not quite the case that the B.C. Citizens' Assembly discovered the Holy Grail.

The larger view also suggests that what is strongly felt in British Columbia, perhaps even more than an affinity to BC-STV or any other particular model, is a desire to move to a voting system that will see the membership in the legislature more closely mirror the way voters actually supported candidates and parties at the ballot boxes. That, as Gordon Campbell grasped from the start, would bring us Canadians closer – whether in British Columbia or other parts of Canada following the inspired West Coast lead – to requalifying ourselves as a self-governing democracy.

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