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THE USE OF THE REFERENDUM ABROAD AND IN CANADA:
IMPLICATIONS FOR QUEBEC

BY

© RICHARD V. THEORET

B.A.

A thesis submitted to the Faculty of Graduate Studies and Research
in partial fulfillment of the requirements for the degree of
Master of Arts, Department of Political Science.

Carleton University

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IMPLICATIONS FOR QUEBEC"

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ABSTRACT

The purpose of this thesis is to examine the use of the referendum as a device for determining Quebec's constitutional future. In order to do this I have looked at two relevant foreign cases where the referendum was used, Western Australia and Great Britain. The use of the referendum in Canada is also examined. From those experiences, I draw implications regarding the use of that mechanism in Quebec. The basic thrust of this paper is that the referendum can be a dangerous tool if not used properly. However, given the context, the referendum appears to be the best available tool to determine Quebec's constitutional future.

ACKNOWLEDGMENTS

I am very grateful to my supervisor Professor Donald C. Rowat for his time, patience and helpful comments. I would also like to thank my parents and my friend Renée Hallée for their encouragement and support throughout this project.

PREFACE

The biggest obstacle I encountered in completing this thesis is that the topic was and still is a current issue. As I was doing the research and the writing, the Quebec National Assembly adopted a referendum law, the Sovereignty-Association debate was in full swing, the federal government twice presented referendum bills, a referendum was held in Quebec, the Parti Quebecois was re-elected and we are presently in the post-referendum period. It would have been almost impossible to complete this thesis if I had kept adding information as events occurred. For this reason the basic historical information stops in June 1979, shortly after the adoption of the referendum law in Quebec. I have tried as best as I could to follow that rule. I have however felt it necessary at times to include some pertinent events since that time, in order to give the reader a better perspective and understanding of the issues.

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CHAPTER ONE - THE REFERENDUM IN GENERAL

1. HISTORY

Democracy, like many concepts in the social sciences, is a very general term, and thus difficult to define. Most theorists would agree with a basic definition along the lines of 'government of the people' or 'popular self-government' but, as Stanley Benn points out: "There remains plenty of room for disagreement, however, about the conditions under which the people can properly be said to rule itself."¹ Ancient Greece is said to be a good example of democracy. Although citizenship was restricted, the citizens actually proposed, discussed and voted on all issues. In our Western democracies, however, democracy is seen as voting for a representative in every election. The referendum is a marriage between the idealistic direct democracy and the necessary representative government,² taking the idea of consulting the people on specific and important issues and leaving other decisions in the hands of the elected representatives.

The plebiscite has its origin in ancient Rome where the Plebes would vote on the leader's actions. Thus, the modern word plebiscite is often used as meaning a vote on a leader's actions rather than on a specific decision.

The referendum, on the other hand, usually refers to a vote on a particular issue. It has its origin as early as the thirteenth century in Switzerland, where the elected representatives would make decisions 'ad referendum', or to be referred to the people for ratification. Thus, in the modern context, the referendum is a

The first chapter is an introduction to the referendum in general, its history, its modern usage, its advantages and disadvantages.

Chapter Two will look at the referendum abroad as a tool in determining sovereignty. According to Butler and Ranney, there have been over one hundred plebiscites on determination of sovereignty.² We have focused our study on the two most relevant cases: Western Australia (1933) and Great Britain (1975). The case of Western Australia is of interest to us because Australia's political structures are similar to those of Canada, both countries being federal states with parliamentary systems. The British referendum of 1975 dealing with Britain's membership in the European Economic Community is also pertinent, not only because we are dealing with the mother of Parliaments but also because the referendum law in Quebec is based on the British law.

Chapter Three deals with Newfoundland's entry into Confederation in 1949. Newfoundlanders were asked twice, in 1948, to express themselves on the constitutional future of the island. It is dealt separately from the other Canadian cases since it is the only example of a constitutional referendum and since Newfoundland was not part of Canada at that time.

Chapter Four deals with the use of the referendum in Canada by the provincial and federal governments. Although the Canadian municipalities have made extensive use of the referendum, we will not deal with this topic since information on the subject is scarce³ and the municipal use of the referendum is not very relevant to our discussion. Harlan Hahn studied the municipal referendum in Canada⁴

and has analysed its use in seven main issue-areas: fluoridation, Sunday entertainment, sports or recreational facilities, schools or libraries, city government reforms, hospitals, and water, sewer or street improvement. Other issues frequently appearing on referendum ballots but not studied by Hahn include liquor control, municipal annexation or amalgamation, suffrage expansion, transportation systems, daylight saving time and utilities regulation. Hahn sets out to prove that the results of the referendum are dependent on the issues and the participation rate. He concludes by noting that not enough research has been done on the subject and that it is therefore difficult to develop an effective framework by which to analyse the referendum at the municipal level. A search through the general indexes of learned journals shows that since 1968 no original research has been done on the subject.

The use of the referendum by the Canadian provinces is much more relevant. My research reveals that forty consultations have been held in nine of the ten provinces. (See Appendix 1). Most of the referendums dealt with the liquor question (prohibition, regulation or sale) and were held prior to 1930. They are discussed in detail because information on them has never been gathered together before, and because their early use and recent decline raise the question of compatibility between direct democracy and the parliamentary system.

At the federal level, the plebiscite has been used twice, in 1898 in dealing with prohibition and in 1942 on conscription. In 1898, although the Wilfrid Laurier government was opposed to prohibition, a plebiscite was held due to political expediency.

Laurier dismissed the results of the vote (51 percent in favour) because of the low participation rate (less than a third). Prohibition would come later but without the use of the plebiscite. In 1942, the Liberal government of Mackenzie King used the plebiscite to detach itself from a pledge not to have conscription during the war. The two plebiscites were characterized by a split between English and French Canada. The plebiscites at the federal level raise the question of the desirability of a pan-Canadian referendum, particularly on an issue as potentially divisive as the constitution. The federal Liberal government, prior to its defeat of May 1979, tabled a referendum law and although it was never adopted then, Prime Minister Trudeau has suggested a few times since February 1980, that the referendum might be used to settle the constitutional question.

Chapter Five will deal with the history of the referendum in Quebec, and provides an analysis of Bill 92, the law permitting and regulating the use of the referendum in Quebec.

Our conclusion will attempt to bring forth, from the experience we have studied, the implications regarding the use of the referendum in determining Quebec's constitutional future. Among the points discussed will be the desirability of its use as a mechanism in dealing with the constitutional aims of the Parti Québécois government, the binding and non-binding aspect of the consultation, the type and importance of the question(s) asked, the institutionalisation of the process and the potential use of the device at the national level.

ENDNOTES - INTRODUCTION

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- 2 - Butler, David and Austin Ranney, eds., Referendums, Washington, D.C., American Enterprise for Public Research, 1978, Appendix B, pages 239-246.
- 3 - A spokesman at the Canadian Federation of Municipalities' office in Ottawa said that such information is not gathered.
- 4 - Hahn, Harlan, 'Voting in Canadian Communities: A Taxonomy of Referendum Issues' in Canadian Journal of Political Science, volume 1, 1968, pages 462-479, reprinted in Feldman and Goldrick, Politics and Government of Urban Canada, (first edition) 1969, pages 161-168.

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1. HISTORY

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popular consultation on a specific issue.

This raises a question as to whether there is a clear distinction between a plebiscite and a referendum. Sometimes, as in the case of President de Gaulle in France, votes are held on issues but are dominated by the personality of a man. Stanley Alderson thinks a distinction should be made. He conceives the referendum as being a generic term with two parts, the 'constitutional referendum' and the 'plebiscite':

A constitutional referendum is provided for before the occasion of holding it arises, and is held on a Bill (or constitutional amendment) which has been debated in the legislature.... A plebiscite must be held on something other than a Bill that has been debated in Parliament.³

Alderson also discussed the consultative or binding aspect of popular consultations:

It is customary for the constitutional referenda to be binding. A plebiscite conducted within a country by its own government is likely to be consultative.⁴

In the French political culture, the terms referendum and plebiscite are used synonymously:

Le referendum et le plebiscite sont deux procédés de consultation directe qui, aux yeux du droit international, ne comportent pas de différence substantielle. Ils consistent à demander au peuple son avis sur la politique à suivre ou déjà suivie.⁵

In the Canadian debate the two terms are used synonymously. Bill 92 adopted by the Quebec National Assembly in 1977 and the Bills presented by the Liberal government in Ottawa, but which never reached third reading, provide for non-binding popular consultations on specific topics.

Although the referendum had been used prior to the American revolution, it was not until then that the referendum was used as mechanism to adopt (or reject) constitutions:

America's main contributions to the development of the referendum have been in connection with the ratification, revision and amendments of Constitutions.

Massachusetts was the first state to adopt a new constitution. In 1776 the Assembly began to prepare a new constitution. In 1778 the new constitution was printed and distributed and was put to a popular vote. It was rejected by a majority of five to one because "it had been drawn up by the Assembly and not by a special constitutional convention, because it lacked a Bill of Rights and for other reasons..."⁷ The Assembly acted differently after that. In 1779 a vote was held to elect a constitutional convention. The 1780 constitution was adopted in a referendum by a two thirds majority. "After the revolutionary period, it became customary to hold referenda on new State Constitutions."⁸

The American practice had no doubt been influenced by French thinkers like Rousseau, but the American experience, in turn, served as an inspiration to the French:

After the overthrow of the Girondins in 1793, the national convention adopted a Jacobin constitution....It provided for universal suffrage and the constitutional referendum on all Bills (but not decrees)...The French Revolution's assertion of popular sovereignty, not only established in Europe the principle that a new constitution should be approved by the people, but led to a spate of plebiscites on self-determination.

There have been over 500 nationwide referendums since 1860.¹⁰ Some countries make more use of the referendum than others. By 1978, Switzerland, the only truly 'addicted' country, had had 297 popular consultations, Australia 39, France 20 and Denmark 13. A large number of countries have used the referendum once. Its occasional use is the rule rather than the exception:

In fact, the United States and the Netherlands are the only countries that have an uninterrupted democratic history reaching back to the nineteenth century that have never held a nationwide referendum.¹¹

If the referendum has not been used at the national level in the United States, it has been used in one form or another in all States of the Union except Delaware. Between 1778 and 1978 there were 3,698 statewide consultations. The State of California had more than any other State, with 737 referendums since 1912.¹²

It should be noted at this stage that a referendum on sovereignty is not necessarily conclusive in international law. In 1952 and 1953 the United Nations attempted to establish the referendum as a legal means to attain sovereignty but failed due to the lack of Anglo-American support.¹³

On the whole, then, one is impressed with the reluctance to have recourse to plebiscites, though it would seem, at least in theory, that there can be no better means of securing genuine self-determination.¹⁴

Sarah Wambough, an authority on the subject, writes:

It is not that democracy considers the plebiscite a perfect tool: on the contrary it appears at present to be very critical of it...The problem is one of alternatives, a choice between methods varying in imperfection.¹⁵

2. THE POSITIVE AND NEGATIVE ASPECTS OF THE REFERENDUM

A- ARGUMENTS IN FAVOUR

The first argument in favour of the referendum is that it is a very democratic tool. It is a means by which the 'will of the people' can be expressed. Jean Jacques Rousseau, the intellectual father of modern democracy, explains in The Social Contract that since laws affect everyone in society, everyone should have the right to express his or her opinion without the intermediary of elected representatives.

A second advantage of the referendum is that only a single question is asked. In an election the voter is faced with many factors: the parties, the local candidates, the leaders and the different issues. Isolating the question makes it easier for the voter to decide rationally on the issue.

Another argument is that the voter can decide on an issue, regardless of his party's stand and without threatening the party itself. Opinion polls show that this is the case in Quebec where some people who voted for the Parti Quebecois in 1976 voted NO in the May referendum.¹⁶ Sometimes also, as was the case in Britain in 1975, the parties themselves are divided internally on the issue.

The referendum can be a tool of education of the masses. If the voter knows that his or her opinion is not important in the decision-making process, he or she is less likely to take an interest in the debate. On the other hand, if the voter knows that his or her voice will be heard, he or she will not feel alienated, and participation in the debate is likely to increase.

Another advantage of the referendum is that it is part of a 'checks and balance' system when the power of the elected representatives has grown too strong or fails to reflect the wish of the people.

Proposition 13 in California is an example of this case. The elected representatives are less likely to abuse their powers when they know that the people have a way to stop or prevent 'bad' legislation. This was the idea behind the Direct Legislation Movement in Western Canada at the turn of the century. It is also believed that direct legislation helps to put a halt to the corruption of elected representatives.

B. ARGUMENTS AGAINST

One of the most telling arguments against the use of the referendum is that the decision-making process in contemporary society is too complex for the layman. Before arriving at the best decision, any problem requires expert analysis and good background knowledge, something that is lacking in the masses.

... elected representatives are better qualified to make such decisions, not because they are necessarily more intelligent or more public spirited, but because they are paid to spend full time on government affairs.

The referendum, it is also argued, also threatens representative government. Michael Stewart, in Modern Forms of Government, makes an analogy between the plane traveller who is unsatisfied with his trip and the voter. The traveller can complain but he cannot tell the pilot how to fly his plane. This analogy should not however be

pressed too closely, not only because one can always vote the government out of office at the next election, but also because the citizen can influence the decision-making process (Royal Commissions, lobby groups, appeals, letters to representatives, appeals to the Courts etc.).

To assert that a group of elected persons is permanently, and on main issues, wiser than the whole people is to move from democracy towards party dictatorship; but to deny them, at every stage, the power of decision on particular laws, is to move towards anarchy.¹⁸

Another tradition that is threatened by the use of the referendum is that of responsible government. What would happen if a measure, adopted by Parliament, is rejected by the people? Should the government resign or should it continue to govern, incapable of implementing its policies? Australia is one of the only countries that has both responsible government and a tradition of referendum. P. Ernest Joske argues however that in Australia the use of the referendum is not incompatible with parliamentary government since a referendum is held only after Parliament has passed the necessary legislation¹⁹ and is used only as a method of amending the constitution. Evidence of the incompatibility of direct democracy and responsible government is given by the fact that two other forms of popular consultations, the initiative and recall, after employment in the nineteenth century, were discarded.

One of the major arguments against the referendum is that it is essentially a conservative device. There is no doubt that if the people of Canada would vote in a plebiscite on capital punishment, the vote would be overwhelmingly in favour. Compulsory education is another case; had it been submitted to a popular vote before its

introduction, it would have been rejected.

It is also argued that the referendum is nothing more than the rule of the majority over the minority. C.D. Sharp, in The Case Against the Referendum, argues that if issues are settled on a majority-minority basis, it can be unfair to the minorities. Governments, he suggests, do not reach a decision by simply following the line of the majority, but by listening to both sides and reaching a compromise:

Under a system of majority rule the only right possessed by a minority is that of complete submission. A system of government by consent, on the other hand, recognizes the claim of any minority to be granted all such rights as do not seriously conflict with rights of an equally important nature of the majority.²⁰

Sharp's point can be illustrated by an imaginary example. A group of people are in a room and a minority of them are smokers while the majority is opposed to smoking. Under a 'majority rule' system the majority would impose its will on the minority, thus depriving the smokers of their pleasure. In the long run, it may be that the minority loses its respect for justice. If, however, the decision is reached by 'government by consent', the results could be different. After listening to both sides, a third party might arrive at a compromise; the division of the room into two sections or the imposition of a limit on the amount smoked. The point is that although both solutions are in a sense democratic one is superior to the other since the rights of the minority are respected. If one applies this example to ethnic, religious, territorial or other minorities, one can see the flaws of 'too much' direct democracy.

A closely related point concerning minority rights is that of 'relative intensities'. It may happen that a majority is mildly in favour of a measure while a minority is strongly opposed to it. In this case, the intensity of the feeling should come before numerical votes. It is also argued that the referendum is a potentially divisive mechanism in countries that are not homogeneous. The 1942 plebiscite on conscription is a good example where popular consultation, instead of giving the government a mandate, served to divide the country.

Opponents of the plebiscite point out that popular consultation is a very expensive method to find out the opinion of the people, especially when it is clear from the start that the majority will overwhelmingly support one side or the other.

Another disadvantage of the referendum is that, unlike an ordinary bill or law, it cannot be modified after it has been put to the people. If it is vague or if an error has slipped into the question, the results can be interpreted in different ways, creating unnecessary confusion.

Another negative aspect of popular consultation is that it has been used as a way in which dictators have reinforced their powers. Napoleon, Hitler, Mussolini and more recently Pinochet in Chili have used the plebiscite to justify their actions to their opposition and to world opinion.

Finally, if the proponents of the referendum argue that direct consultation is a way to prevent corruption by established parties, the opponents argue that if the 'big machines' can control elections through propaganda and expensive publicity, there is no reason to believe that they would not do the same in a referendum campaign.

In light of these arguments, it would appear that regular use of the referendum can do more harm than good to a democracy. However, in certain cases, such as the constitutional future of a country, the referendum can, if properly used, help positively the outcome of the debate.

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- 2 - Herve Duval et al., Referendum et Plebiscite, (Librairie Armand Colin, Paris, 1970), p. 5.
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- 5 - Duval, op. cit., p. 6.
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- 13 - Jacques Brossard, L'accession à la souveraineté et le cas du Québec, (Les Presses de l'Université de Montréal, Montréal, 1976,) p. 93.
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CHAPTER TWO - THE REFERENDUM ABROAD

1. WESTERN AUSTRALIA

The Western Australian attempt to secede from the Commonwealth of Australia through the use of a referendum in 1933 is a little-known precedent to the Quebec case but nonetheless provides us with an interesting parallel.

In Australia, unlike other parliamentary democracies, the referendum is an intrinsic part of the political culture. Not only were the principle of confederation and the national constitution adopted by referendum in 1899 and 1900 but since then 36 consultations have been held at the national level.¹ Australia had, before the turn of the century, three forms of direct democracy; the initiative, the recall and the referendum. The new constitution of 1900 required that any amendment to the constitution be approved by the people by way of a referendum. The process, as set out in section 128 of the constitution, requires that, after adoption in both Houses, the proposed amendment(s) is (are) submitted to the people where a double majority must approve; a majority of the nation as a whole and a majority of the individual states (4 out of 6). The referendum has been utilized on three occasions outside constitutional matters, in 1916 and 1917 dealing with the conscription and in 1977 to decide on a national anthem.

With these exceptions, however, Australian referendums are understandable only in the context of the politics of the constitution.²

Given the legitimacy of the referendum, it was only appropriate that when Western Australia wanted to secede from the Australian federation the referendum was the tool used.

Western Australia is a primarily agricultural state, occupying the western third of the continent. In 1933 it had less than 10 percent of the population.

Western Australia had always been a reluctant partner in the Commonwealth.³ Western Australia (and Queensland) did not vote on the principle of confederation and whereas the five other states adopted the constitution in 1899, Western Australia only held the vote in 1900. Also, the acceptance vote was below the national average. There was a secession movement as early as 1906. A Private Member's bill was presented that year in the Western Australian Legislature proposing a referendum on secession. The bill died on the order papers and dissatisfaction continued. Western Australia's main grievance was that the economic growth of the country was done in the east at the expense of the west. Two successive Royal Commissions in 1925 and 1927 studied the Western Australian problems. None of the recommendations was acted upon. A promise to hold a constitutional session in the federal parliament was not kept. In 1930 the Nationalist Party, with the help of two secessionist movements formed the Western Australian government. The party had pledged to hold a referendum on secession. The election of the Nationalist Party led to the consolidation of separatist forces and the formation of the Dominion League of Western Australia. The purpose of the League was clear and unequivocal. It would continue to fight:

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until the citizens of Western Australia, as a united body, asserted their determination to save the State and its people by declaring with an overwhelming majority their desire for complete separation from the control of the Commonwealth Parliament and for a return to the status of a free community in the British Commonwealth of Nations.

A referendum proposal was approved by the Western Australian parliament and was held concurrently with the election of April 1933. It asked two questions:

1. Are you in favour of the State of Western Australia withdrawing from the Federal Commonwealth established under the Commonwealth of Australia Constitution Act (Imperial)?
YES
NO
2. Are you in favour of a convention of representatives of equal number from each of the Australian States being summoned for the purpose of proposing such alterations in the Constitution of the Commonwealth as may appear to such convention to be necessary?
YES
NO

It was decided that the results would be binding on the new government. The debate was non-partisan; the parties were working to get elected and two organizations conducted the referendum campaign. The Dominion League of Western Australia was fighting for the withdrawal from the federation while the Federal League opted for a renegotiation of federalism. The referendum and the elections were held on April 8 1933. The voters were discriminating enough to differentiate the parties and the constitutional questions. The government was defeated (the premier and two of his ministers suffered personal defeat) while the secession

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wanted to renegotiate the terms of entry. The anti-marketeers in the Labour party wanted the party to adopt the principle of a consultation on the issue, knowing that public opinion was against Britain's entry.

Although Labour leadership was opposed to the holding of a referendum in 1970, it had reversed its stand by 1973. One factor that influenced the change in position is that it was a compromise within the party to avoid a split. Another factor was that in March 1972 French President Pompidou announced that a referendum would be held in France on the enlargement of the EEC. This outraged proponents of the referendum such as Tony Benn. He declared a few days following president Pompidou's announcement:

It (will) be an outrage if the French people are allowed to decide whether they want Britain in the Common Market and the British people are denied the right to say whether they want to join.¹⁵

The same month, Labour's National Executive Committee, reversing an earlier stand decided in favour of a referendum. A week later the Shadow Cabinet also adopted the principle of consulting the people on the issue. This decision prompted the resignation of three party members, Roy Jenkins, George Thomson and Harold Lever, three pro-marketeers who felt that the party was abdicating its responsibilities. In February 1974, shortly before the election that would give the Labour party a minority government, Labour committed itself to renegotiate the terms of entry with the EEC and to deciding on the issue through a General Election or a consultative referendum.¹⁶ The pledge was repeated in the October election. A vote on the issue was promised by October 1975. (The Conservative

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An important explanation for this decline is that a federalist party was now in power. Another factor that could explain this decline would be that the outbreak of the war attracted attention and energies elsewhere. Australia prospered during the post-war years, and with it, Western Australia.

In retrospect, the secession movement of Western Australia has been explained away as an aberration of history that resulted from the Depression.

There are two basic similarities between Western Australia and Quebec. First, both involve attempts at secession by states within parliamentary democracies with federal systems. States in a federal system, unlike colonies, have infrastructures, expertise and power within their own jurisdiction which could prepare them for eventual autonomy.

A second parallel is that in neither case was there negotiation with the central government on the sovereignty prior to the vote. In Australia, the central government refused to negotiate Western Australia's independence and Western Australia was left without any recourse. However, had it not been for the outbreak of the war and the election of a federalist party, the separatist movement might have been successful.

The Western Australian government had a much stronger mandate than the Quebec government would have had with a YES vote since the Western Australians voted for withdrawal from the federation not just a mandate to negotiate it.

These similarities would lead us to conclude that the referendum could be a futile exercise for the separatist movement in Quebec. The contrasts, however, point out that the final outcome in Quebec could be different than in Western Australia.

The major difference between the two cases is the source of discontent. In Western Australia the dissatisfaction was primarily economic but in Quebec the roots are also cultural and linguistic. There is no evidence to suggest that the Western Australians perceived themselves as being a 'people' distinct from other Australians. In Quebec, religion and language and culture lie at the base of its nationalism.

Another difference is that the Australian constitution explicitly forbids secession, while in the Canadian situation, the constitution is silent on this matter. This, however, could be an academic discussion since practical politics would overrule constitutional considerations.⁹ This could, however, mean one less hurdle for the Parti Québécois.

Still another difference is reflected in the close to half century which separates the two referendums. The post-war years have seen a spate of new states acquiring sovereignty. Quebec can point to these, but Western Australia had relatively few precedents.

The total failure of the independence movement in Western Australia is not likely to be repeated in Quebec. In contrast with the Western Australian case, the separatist government in Quebec remains in power despite the results, and sentiment for sovereignty-association remains strong. Constitutional changes are likely,

despite the outcome of the referendum. The Beige Paper produced by the Quebec Liberal party calls for major changes. The federal and provincial governments have also voiced their willingness to modify the new constitution.

2. THE REFERENDUM IN GREAT BRITAIN (1975)

A - HISTORY

Although the first nationwide referendum in Great Britain was held in 1975, the principle itself had been discussed at various times before. In 1890 A.V. Dilkey, a Conservative M.P., suggested that Irish home rule be put to a popular vote. The idea resurfaced in 1910 when, amidst constitutional discussions, the Conservatives under A.J. Balfour, proposed that the referendum be used as a method of resolving disputes between the two Houses. The issue was raised without avail four more times after that; in 1912-14 dealing with Irish home rule, in 1920 by Winston Churchill to grant suffrage to women, in 1930 to impose a tax on food, and finally in 1945 again by Winston Churchill on extension of the life of Parliament.

Although some leading politicians were in favour of these proposals, none of them was seriously discussed. One of the reasons is the Burkean influence on the British conception of the role of the elected representative. Edmund Burke declared in 1774:

Your representative owes you not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion.

Thus, the elected representative is responsible to the electorate only at election time and between elections he must act and vote according to his beliefs. The counter argument is that party politics have evolved in Great Britain since 1774, so that today the member follows the party line more than his personal beliefs. (2)

The referendum was introduced in Great Britain in 1973 with the consultation held in Northern Ireland on whether or not the people wanted the province to remain part of the United Kingdom. The participation rate was low (58.7 percent) since the Catholics boycotted the vote, but of those who voted, 98.9 percent were in favour of the status quo.

The Northern Ireland referendum did not settle the province's difficulties, but it set a precedent that was to be important in the argument over whether to put British entry into Europe to a popular vote. II

B - THE EEC REFERENDUM

Britain's membership in the European Economic Community (EEC) had been a controversial issue since Harold Macmillan asked to begin negotiations with the Community in 1961. Right wing conservatives objected since it meant sacrificing sovereignty while some Labour MPs did not want to be part of an organisation with "predominantly right wing governments." Both groups argued that Britain's membership in the EEC would weaken the Commonwealth. In 1963, despite successful negotiations, French president de Gaulle vetoed Britain's membership. In 1967 Britain, the Irish Republic, Norway and Denmark applied for membership. The other three countries were to hold a

referendum on membership. There was little discussion of a referendum in Britain. De Gaulle again refused entry to Great Britain but after his resignation in April 1969 his successor, Georges Pompidou declared that he was not opposed to Britain's entry to the EEC. Some Conservative MPs were in favour of a referendum. Bruce Campbell, a Conservative, presented a bill in favour of a referendum to decide on the EEC membership. He argued that membership in the EEC was an important issue but that there was no debate between the parties despite the fact that public opinion was against membership.¹² He declared:

The three major political parties have all declared themselves to be in favour of this country joining the Common Market. It therefore follows that this question will never be an election issue and the people will have absolutely no chance of ever being able to express their views on it¹³ through the ballot box at a General Election.

Though the three parties were generally in favour of joining the EEC, the Labour party was divided on the issue. The parties were unanimous in their opposition to the holding of a referendum on the issue:

Of all the issues raised during the three Election Forums (in 1970) hostility to the idea of a referendum on the Common Market provided the only point of agreement between all three party leaders.¹⁴

Negotiations with the EEC started in October 1970 and after successful negotiations Britain became a member of the Community on January 1st 1973. The vote in the House of Commons to ratify Britain's entry to the EEC was 301 to 284. There was still therefore a strong anti-EEC feeling, and the Labour party as early as 1971

wanted to renegotiate the terms of entry. The anti-marketeers in the Labour party wanted the party to adopt the principle of a consultation on the issue, knowing that public opinion was against Britain's entry.

Although Labour leadership was opposed to the holding of a referendum in 1970, it had reversed its stand by 1973. One factor that influenced the change in position is that it was a compromise within the party to avoid a split. Another factor was that in March 1972 French President Pompidou announced that a referendum would be held in France on the enlargement of the EEC. This outraged proponents of the referendum such as Tony Benn. He declared a few days following president Pompidou's announcement:

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position was to uphold membership without popular consultation.)

By the October General Election it was fairly well accepted that the mode of consultation would be a referendum since three general elections in 18 months would not be proper. Also, Labour was too divided on the issue to hold an election solely on membership.

Anthony King in Britain Says Yes argues that, in retrospect, it seems odd that the referendum was not accepted sooner.¹⁷ It was advantageous to both sides. The anti-marketeers had nothing to lose since public opinion polls showed that the electorate was opposed to membership and even if they lost, they would not be worse off than they would have been without a referendum. On the other hand, the Labour party could gain from a consultation; they would be perceived as being more democratic than the Conservatives by leaving the ultimate decision to the electorate. This would also save them from making the decision, thus avoiding a split within the party. The holding of a referendum had an added advantage; Labour would have more time to decide on its option.

Shortly after the Labour victory, in April 1974, renegotiations with the EEC got under way. On January 25th 1975, Prime Minister Harold Wilson announced officially that a referendum would be held on the results of the renegotiations. He also announced that Cabinet solidarity on the issue would be suspended. He declared:

The circumstances of this referendum are unique, and the issue to be decided is one on which strong views have long been held which cross party lines. The Cabinet has therefore decided that if, when the time comes, there are members of the Government (including members of the Cabinet) who do not feel able to accept and support the Government's recommendation, whatever it may be, they will, once the recommendation has been announced, be free to support and speak in favour of a different conclusion in the referendum campaign.¹⁸

This served to prevent further division within the Labour party since both sides could take positions publicly.

There was only one previous occasion when collective responsibility was lifted: during the Liberal government's discussion over free trade in 1931-32.¹⁹ This suspension of Cabinet solidarity "was to work more smoothly than many expected"²⁰, despite the fact that on April 9th 1975 seven Cabinet ministers out of twenty-one voted against membership. It should be noted that the referendum campaign was much like a General Election period in that the government's activities were minimal although the House was in session until May 23 or less than two weeks before the vote.

... the general running of government was carried on in the normal way... but to some extent the whole business of government was suspended during that period.²¹

A White Paper on the referendum was published on February 26 1975 and the first reading of the referendum bill itself was given on March 11th. Prior to that, however, since there was no precedent to work with, a special Referendum Unit under the direction of the Second Permanent Secretary in the Cabinet Office, Patrick Nairne,

had been set up in January to draft the documents. The committee, as well as the Cabinet, encountered several difficulties.

The first one concerned the minimum participation rate and the majority required. It was decided that since there was no precedent in the British tradition for the holding of a referendum, a referendum could not be binding. The problem was academic since the Labour government had promised to abide by the results:

The issue was not pressed because it was clear to everyone, pro-and anti-Europeans alike, that if the turnout were low or the results very close the final outcome would be decided not by what was written into the law, but by the balance of political forces on the floor of the House of Commons.²²

The manner in which the votes were counted proved to be a contentious issue. The anti-marketeers wanted the vote to be counted by constituency while the pro-marketeers, fearing defeat in the next General election, preferred to adopt another method which would not reveal local voting behaviour. The compromise arrived at protected those members by counting the results by region instead of by riding.²³

Another problem was the question of broadcasting. It was decided that, as much as possible, the method used in General Elections would be used for the referendum, that is, leaving the BBC and the Independent Broadcasting Authority to be trusted to ensure a fair balance between the two camps.

It was decided that there would be no control on campaign expenditures. There would also be no limit on contributions from donors although "organizations might be required to publish their accounts".²⁴

Another problem, that of information policy, was settled by deciding that three leaflets be distributed nation-wide. The first leaflet would explain the government's option while each of the two umbrella organizations (to be discussed below) would publish leaflets to justify their views.

A final major problem was the phrasing of the question. In its final form it read:

The Government have announced the results of the renegotiation of the United Kingdom's terms of membership of the European Community.

DO YOU THINK THAT THE UNITED KINGDOM SHOULD STAY IN THE EUROPEAN COMMUNITY (THE COMMON MARKET)?

YES

NO

In the government's original proposal (THE COMMON MARKET) was not part of the question but after discussion it was added as a compromise to the anti-marketeers who preferred that expression to 'European Community'. The actual phrasing of the question is not believed to have an important effect on the results. Pollsters have demonstrated that in an opinion poll a slight change in wording can affect the answer since the person is asked a question without warning. However, after a campaign it is believed that a voter has had ample opportunity to decide rationally whether he will vote yes or no.

...the elector (does not) go to the polling-booth and read the question to find out what it is all about ... The fact that he goes to the polling-booth means he wishes to vote,

which means he knows how he intends to vote.²⁵

Butler and Kitzinger reiterate the point:

In fact most pollsters believed that although phrasing could make a difference in a hypothetical situation, at the end of a fully publicized campaign where the issue was clear the actual wording would matter little.²⁶

Passage in the House was relatively smooth when taking into consideration the objection held to the principle of a referendum. The Conservatives had promised "that there would be all out opposition to it",²⁷ but when polls turned around and showed a clear victory for entry, that tactic was dropped since it was judged to be counter-productive. Most of the Conservatives nonetheless voted against the Bill, although there was a high rate of absenteeism for the vote.

... the real reason for the unexpectedly easy passage of the Bill was political: pro-Marketeers were in an overwhelming majority in the House of Commons and they had belatedly realised that the referendum would go their way.²⁸

The House of Lords considered and passed the Bill on April 29, May 5 and 6 1975 and Royal Assent was given on May 8. June 5 was selected as the voting day.

A less discussed but nonetheless important aspect of the referendum law was the creation of two umbrella organizations. The umbrella organization principle was conceived because of the division on the issue within the ruling Labour party.

The skeletons of the organizations existed prior to the referendum. The pro-marketeer group, Britain in Europe (BIE), was formed from non-party organizations whose role had been, since the late 1940's, to promote a closer link with Europe. The two groups, the European Movement and the European League for Economic Co-operation joined forces in September 1974 but "they maintained their separate identities organisationally and in their literature".²⁹ The anti-marketeers committee had its roots from a wide range of groups including the Common Market Safeguards Campaign, Get Britain Out, the Anti-Common Market League, the British League of Rights, British Business for World Markets, the National Council of Anti-Common Market Associations. Also part of the group were the three committed parties; the Scottish Nationalist Party, Plaid Cymru and the United Ulsters Unionists. Some Cabinet ministers who had voted in March against entry were also part of the umbrella committee.³⁰

Despite unavoidable internal conflicts in both umbrella committees, the legitimacy of the organizations was never questioned:

It was a relief to some anxious planners that no one challenged the claims of those bodies to represent the two sides.³¹

The role of the umbrella committees was more one of the co-ordination between the partisan elements than one of campaign organisers. The party leaders, the Cabinet members and the backbenchers campaigned on their own.

It is difficult to say when the actual campaign started. The umbrella committees opened their 'information' offices in January, six months before the vote. Some meetings were held in March and April.

The press was never without referendum stories from the Dublin meeting of March 10-11 onwards."³²

With a "strong sense that the public appetite for referendum news could soon cloy"³³, the umbrella committees held their first press conferences on May 12 and May 13, with just over three weeks left until the vote. It was only during the last ten days that the public became interested in the debate:

Attendance at meetings and the general level plainly increased. The tendency to say 'the referendum is a bore' markedly diminished as June 5 approached.³⁴

In a country where partisan politics is a well entrenched tradition it was feared that the parties would fight for (or against) Europe with partisan interest. It did not happen:

There might have been a good deal of friction between the Labour and Conservative leaders inside Britain in Europe, or between Britain in Europe and Wilson and Callaghan, or between Britain in Europe and the Labour campaign. But in fact there was almost none. Almost everyone recognized the overriding need to win on June 5; almost everyone accepted Britain in Europe's central coordinating role; personal relations remained good.³⁵

In fact, the Liberal party was the only one to issue a manifesto and 'throughout the campaign they stressed their specific party role'.³⁶

The pro-Europeans did not want to saturate the campaign by overstressing their point:

The pro-Europeans could not hope to gain much from the referendum; after all, Britain was a member of the Common Market already. But they had - or felt they had - a very great deal to lose.³⁷

From the start, the pro-Europeans had distinct advantages. Opinion polls, unfavourable to Britain's membership in the EEC prior to 1975 had turned around and from the middle of March onwards, the pro-Europeans knew that they would win. A distinct advantage enjoyed by the pro-Europeans was the high profile of its proponents. A leader identification survey showed that the Labour party's pro-Europeans had positive ratings while anti-Europeans had negative ratings.

Of the eight top places in the list, no fewer than seven went to pro-Europeans... By contrast, all of the three Labour leaders at the bottom of the poll (...) were anti-Europeans.³⁸

The anti-marketeers, on the other hand, had major difficulties in resource and in organization. The first problem concerned financing. The pro-marketeers had ten times more money than their opponents. BIE spent 1,481,583 pounds while NRC had a budget of only 133,630 pounds.³⁹

This shortage of money was not only a problem in itself for the anti-Europeans; it drew attention to the narrowness of their basis of support.⁴⁰

The anti-European forces also had to contend with a press that supported Britain's membership in the EEC.

The anti-marketeers from the outset felt beleaguered by the virtually unanimous hostility of the press. Among the dailies and Sundays, only the Communist Morning Star, the newly formed co-operative Scottish Daily News, and one or two other Scottish papers took an anti-Market line.⁴¹

The disadvantage created by a generally unfavourable written press was balanced by the fact that both umbrella committees were given fair treatment by the electronic press. Both sides were given equal free time on national television. The major handicap for the NRC was its leadership. As noted above, all major politicians were in favour of Britain's membership in the EEC. Also, the NRC drew its support from the extreme right and the extreme left, thus making it difficult to achieve a consensus on the basis for opposing Britain's membership in the EEC.

This division within the anti-European camp... enabled the pro-Europeans to brand the anti-Europeans as political extremists - an unholy alliance of extreme left and extreme right against the moderate centre. There can be little doubt that this charge was well founded and that it stuck.⁴²

The final obstacle that proved insurmountable to the NRC was that Britain was already in the EEC and the voters felt that it was risky to pull out.

It was not as though Britain had been doing well economically outside the Common Market and had only begun to decline after becoming a member. On the contrary, ... the Common Market seemed to offer one of the few hopes that there were of the country becoming economically strong again.⁴³

Over 64.5 percent of the people voted, a lower turnout than the October 1974 General Election where close to 73 percent of the people voted. The Yes side had an overwhelming majority of two to one.⁴⁴

A comparison between the British law and the Quebec law will be made in a later chapter. At this time, however, it would be proper to address ourselves to parallels and differences between the two cases.

The most striking contrast between Great Britain in 1975 and Quebec in 1980 is that the British were voting on the maintenance of a union or the status quo whereas in Quebec, the vote was on the withdrawal from a union. The people in Great Britain had the benefit of a few years experience in order to judge the advantages and drawbacks of the proposal. In Quebec not only had the people not lived in the proposed state but the other side (the federal government) had refused to accede to the Quebec government demands if the population had voted in a majority for the Yes side. This uncertainty had an effect on the debate and on the vote.

Another difference between the two cases is the control on spending. While there was a ceiling imposed on the amount spent in the Quebec referendum, there was no control in Great Britain. The margin of the results if not the results themselves might have been different under more or less control.

A similarity between the two cases is the functioning of the umbrella committees. In Britain the committees were created to avoid a major split within the parties, particularly the Labour Party. In

Quebec umbrella committees permitted a better control of funding and publicity. However, in both cases it assured a smooth functioning of the referendum campaigns.

The foreign experience is of limited value due to the lack of exact parallels. Each case deals with different situations, different political cultures and different historical periods. However, the Western Australian and British experiences have shown us that the use of the referendum can be a useful tool to measure the dissatisfaction of the people as in Western Australia or be a good mechanism to decide on a sensitive issue as in Great Britain.

ENDNOTES

- 1 - Butler, David, and Austin Ranney. Referendums: A Comparative Study of Practice and Theory. Washington: American Enterprise for Public Policy Research 1978, p. 123.
- 2 - Ibid.
- 3 - Queensland, it seems was also a reluctant partner although there was no talk of secession. Queensland did not vote on the principle of confederation and the constitution referendum was adopted by only 55.4 percent of the electorate, well below the national average of 72.4 percent.
- 4 - Canadian Unity Office. Understanding Referenda: Six Histories. Ottawa: Queen's Printer, 1978, p. 3.
- 5 - Ibid., p. 6.
- 6 - Report by the Joint Committee of the House of Lords and the House of Commons appointed to consider the Petition of the State of Western Australia. London: His Majesty's Stationery Office, 1935, p. X.
- 7 - Canadian Unity Office. op. cit., p. 6.
- 8 - Ibid., p. 6.
- 9 - This view is supported by various authors. "Quoiqu'il en soit, il importe relativement peu en pratique qu'un peuple possède ou non le droit indiscutable d'accéder à l'indépendance, du point de vue de certains états, s'il réussit à exercer en fait de façon efficace le droit qu'il prétend avoir." Brossard, Jacques, L'Accession à la Souveraineté et le cas du Québec. Montréal: Les Presses de l'Université de Montréal, 1976, p. 111. Also, "In cases of secession, it is less a question of right than of success or failure", H.S. Johnson as quoted in Brossard, ibid., p. 114.
- 10 - Philip Goodhart, Referendum, (John P. Nothingham, London, 1971), p. 19.
- 11 - David Butler, "United Kingdom" in David Butler and Austin Ranney, (ed.), Referendums: A Comparative Study of Practice and Theory, (American Enterprise Institute, Washington, D.C., 1978), p. 212.
- 12 - Anthony King, Britain Says Yes: The 1975 Referendum on the Common Market, (American Enterprise Institute, Washington D.C., 1977), pages 24-25.
- 13 - Stanley Alderson, Yea or Nay? Referenda in the United Kingdom, (Northumberland Press, London, 1975), p. 49.
- 14 - Goodhart, op. cit., p. 17.

- 15 - The London Times, March 18, 1972, as quoted in King, Britain Says Yes, p. 62.
- 16 - Butler in Butler and Ranney, op. cit.,
- 17 - King, op. cit., p. 58.
- 18 - David Butler and Uwe Kitzinger, The 1975 Referendum (Macmillan Press Ltd., London, 1976), p. 52.
- 19 - Ibid., p. 53, see also Philip Goodhart, Full-Hearted Consent, Appendix C, p. 219.
- 20 - Ibid., p. 53.
- 21 - Ibid., p. 53.
- 22 - King, op. cit., p. 100.
- 23 - King, Ibid., p. 102.
- 24 - King, Ibid., p. 55.
- 25 - Alderson, op. cit., p. 80.
- 26 - Butler and Kitzinger, op. cit., p. 60.
- 27 - Butler and Kitzinger, Ibid., p. 64.
- 28 - Butler and Kitzinger, Ibid., p. 67.
- 29 - Canadian Unity Office, op. cit., p. 38.
- 30 - Kitzinger, op. cit., p. 97.
- 31 - Kitzinger, Ibid., p. 68.
- 32 - Kitzinger, Ibid., p. 161.
- 33 - Kitzinger, Ibid., p. 161.
- 34 - Kitzinger, Ibid., p. 161.
- 35 - King, op. cit., p. 108.
- 36 - Kitzinger, op. cit., p. 175.
- 37 - King, op. cit., p. 109.
- 38 - King, Ibid., p. 97.
- 39 - Butler and Kitzinger, op. cit., p. 86.

40 - King, op. cit., p. 110.

41 - Butler and Kitzinger, op. cit., p. 108.

42 - King, op. cit., p. 113.

43 - King, Ibid., p. 144.

44 - Butler and Kitzinger, op. cit., p. 264. The actual vote was:
Yes 17,379,581, No 8,470,073, spoiled ballots 54,540 for a
total of 25,903,194 votes cast out of a possible 40,456,877.

CHAPTER THREE - THE NEWFOUNDLAND REFERENDUMS OF 1948

1 - THE CONSTITUTIONAL CONVENTION

The Newfoundland referendums of 1948 are interesting to study not only because they involved constitutional changes but also because they happened a short while ago in a Canadian context. The fact that two consultations were needed to reach a decision adds to their pertinence.

In 1933, Newfoundland was in a very poor financial situation. The public debt had climbed to \$100 million and represented 56 percent of the island's total revenue.¹ The British government appointed a Royal Commission headed by Lord Almuere to study the island's financial future. Following the recommendations of the report, responsible government was abolished and replaced by a Commission government. The Commission government was made up three representatives from the British government and three citizens from Newfoundland. It was responsible to the British government. The establishment of a Commission government was intended only as a temporary measure. The suspension of self-government was to be for

a limited period of years (and) until the island shall again become self-supporting, when, on request from the people of Newfoundland, responsible government shall be restored.

It seemed that the Newfoundlanders accepted this temporary loss of sovereignty if it meant the only solution to the economic and political turmoil they were in.³

Newfoundland prospered under Commission government. This was due in part to the good administration but was facilitated by external factors:

This prosperity derived from a combination of circumstances, notably from the construction of American and Canadian bases on the island, the absorption of men in the armed forces and phenomenal rise in the price of fish...One result was the unusual appearance of a budget surplus in 1940-41, a happy event which was repeated all through the war years and the post-war period.⁴

By 1946 the public debt had declined to \$70 million and represented only 10 percent of the revenue. Newfoundland, it seemed, was ready for a return to responsible government.⁵ On December 11 1945, the British Prime Minister Clement Attlee announced in the House of Commons that a Convention would be elected in Newfoundland to determine the political future of the island. The terms of reference of the Convention were:

to consider and discuss among themselves, as elected representatives of the Newfoundland people, the changes that have taken place in the financial and economic situation of the island since 1934 and bearing in mind the extent to which the high revenues of recent years have been due to war-time conditions, to examine the position of the country and to make recommendations to HMG as to possible forms of future government to be put before the people at a national referendum.⁶

There was a certain opposition to this since in 1933, in abolishing responsible government, the British government had explicitly talked about a 'return to responsible government'. This meant that "Confederation was no longer a subject to be scrupulously avoided."⁷ The local politicians and the Water Street merchants would have much preferred to avoid any discussion on the possibility of a union with Canada. "Water Street merchants are to this day the strongest opponents to Confederation"⁸, the main reason being the prospect of direct taxation. They believed that the decision concerning the

island's future need not be submitted to the people for a vote. Their fear (as it turned out, a legitimate one) was that a plebiscite on the question could give a favourable vote on Confederation.

The vote to elect the Convention was held on June 21, 1946. Forty-five members representing 38 districts were elected to the Convention. These districts were broadly based on the pre-commission government Parliamentary constituencies. The only requirement for a candidacy was that of residency in the district for a minimum of two years prior to the vote. The Convention met for the first time on September 11, 1946. As specified in the mandate, the first task was to examine the financial situation. Different committees studying various aspects of the financial situation were set up. By February 1947, 9 committees had been working on the accumulation of facts.

The next step was to examine the type of relationship offered by the United Kingdom, Canada and the United States.⁹ A meeting with representatives from the USA did not take place but a delegation consisting of the Chairman and six members arrived for talks in London on April 29, 1947. The representatives from the British government said that they would continue to help financially if Commission government was accepted (British representatives also limited Commission government to 5 years) but made it clear that if responsible government was restored Newfoundland would not get financial help from the U.K.:

The warning this time was clear and unequivocal. Independence, if chosen, would involve a calculated financial risk.¹⁰

The proponents of responsible government felt that such a position harmed their chances of achieving their goals. Canada's High Commissioner to the U.K. wrote:

With their (the Newfoundland people) financial future thus assured for a further period without any necessity of making any irretrievable cession of their national identity, the case for retention of the Commission of Government is very strong indeed.¹¹

Others, such as Major Peter Cashin, a member of the Convention saw this as a plot to force Newfoundland into Confederation:

Major Cashin insinuated that the uncooperative attitude of the British government was due to a desire on their part to see Newfoundland become part of the Dominion of Canada, and alleged—without any attempt to substantiate his statement—that there is in operation at the present time a conspiracy to sell this country to the Dominion of Canada.¹²

This declaration of lack of support from the British government for an independent Newfoundland was probably a turning point on the road to Confederation. Some people had supported responsible government supposing there would be some type of support from London, but when that aid would not be available, those people were more likely to change their mind and support the status quo or Confederation. Another important turning point of the conventions' work was the visit to Ottawa or rather, Ottawa's generous offer to Newfoundland if it decided to join Confederation. Shortly after the Convention delegation had returned from London another group left to meet with representatives

from the Canadian government in Ottawa. The enthusiasm for Newfoundland's entry into Confederation was low on both sides. Canada was in a particularly difficult situation in regards to federal-provincial relations. Ottawa had unilaterally implemented some recommendations from the Rowell-Sirois Commission despite protest from the provinces. Quebec Premier Maurice Duplessis had spoken openly against Newfoundland's entry into Confederation. Newfoundland was also seen as "a further costly liability to the Federal Exchequer".¹³ As was mentioned above, the anti-confederate feeling was very strong in Newfoundland. Mackenzie King seemed nonetheless to have an open mind to the situation. A committee of 8, headed by External Affairs Minister, Louis St. Laurent was set-up to meet representatives from Newfoundland. The discussions lasted until the end of September. On November 6, 1947, the Canadian terms of union were presented to the Convention. The offer was not an official agreement:

The Canadian offer (...) was only a Liberal party proposition, by no means binding on the Canadian people.¹⁴

The Conservatives and the CCF were nonetheless in general agreement with the terms.

It was, by any standard, a generous offer. Newfoundland would get the same public and welfare services as the rest of Canada; these included family allowances, unemployment insurance, old age pensions etc. The Canadian government would take over expensive but essential services such as the railway system, the postal service,

broadcasting, civil aviation, customs, defense, and fisheries protection services. Newfoundland would receive a transitional grant of 26.5 million dollars. The federal government also promised to establish a Royal Commission within 8 years whose purpose would be to determine if Newfoundland needed additional help from the federal government. Newfoundland would, of course, have representation in both Houses in Ottawa.¹⁵ The anti-confederates saw this as an attempt to buy the bulk of the population.

Indeed, it was soon calculated that the average outport fisherman with, say four children, would earn more from Canadian family allowances alone than he might hope to make from a normal season's fishing.¹⁶

The Convention completed its work in January 1948 and after a heated debate two alternatives were proposed, continuation of the Commission government and responsible government. The Confederation option was rejected by a vote of 29 to 16. This was a bad political move on the part of the anti-Confederates who were left open to the charge that they were 'twenty-nine dictators' by limiting the options offered. The Confederates forces capitalized on that issue and after a short campaign, a petition of protest containing nearly fifty thousand names was sent to the governor.¹⁷ This was quite a feat in itself as there were only 176,000 eligible voters.

The British government, although it would have preferred to remain outside the debate, could not permit an important option being left out and informed the people of Newfoundland that the Confederation option would be added as a third choice on the ballot.

For all the effect of its decision, the National Convention might just as well never have met.¹⁸

The Convention did however fulfill an important role, that of acting as a spring board for the Confederate forces.

2 - THE REFERENDUMS

The vote was held on June 3, 1948. The results were:¹⁹

	votes total	%
Commission government for 5 years	22,311	14.32
Confederation	64,066	41.13
Responsible government	69,400	44.55
TOTAL	155,777	
Eligible voters (participation rate)	176,297	88.36

Given that no option had obtained a required majority, a second vote was held, this one on July 22. The Commission government option was dropped. No new development occurred during that second campaign save for the fact that two members of the Commission government intervened on behalf of Confederation. Also, a small group of wealthy St. John merchants who had remained silent throughout the whole debate came out publicly in favour of the Union.²⁰ The results of the second vote gave a small majority to the Confederation option:

	votes total	%
Confederation	78,323	52.34
Responsible Government	71,334	47.66
Total (participation rate)	149,657	84.9

The vote was interpreted as being favorable to Confederation despite the fact that only 45 percent of the population had actually voted

for that option.²¹ Another point concerning the legitimacy of the results was whether or not the Canadian government was bound by the results. King had declared in 1947 that if Newfoundland voted clearly and beyond all possibilities of misunderstandings²² in favour of Confederation, he would take the necessary steps to that effect.

The question many folk asked themselves was: would the referendum be considered an indication of the stipulated kind.²³

3. THE CONFEDERATION NEGOTIATIONS

Mackenzie King was a bit hesitant at first about accepting such a slim majority as being a clear mandate. Seven thousand votes was indeed a very close margin. Jack Pickersgill, then head of the Prime Minister's Office defined a clear expression of will as half of the vote plus one.²⁴ Another factor that influenced King's decision was Canada's international image:

(for King) to refuse Newfoundland at this point would have damaged Canada's international image.²⁵

On July 30, 1948, King announced that:

The government would be glad to receive with the least possible delay, authorized representation of Newfoundland to negotiate the terms of union on the basis of the proposals of the previous years.²⁶

The Responsible Government League tried unsuccessfully to prevent union with Canada. On July 29th, the day before King made his formal announcement inviting a negotiating team to Ottawa, the League sent a telegram to King asking him for a meeting before 'any irrevocable

alteration of the status of Newfoundland' was decided upon. King refused saying that any delegation from Newfoundland should be authorized by "the duly constituted authorities in Newfoundland".²⁷ The League also sent a petition signed by 50,000 people to the British House of Commons asking that negotiations with the Canadian government be done only by a duly elected government of Newfoundland.²⁸ Ironically, it was ruled that the petition could not be presented to the House since such a petition could be presented only by a member of the Local Legislature.

The request for a return to responsible government was based on several factors. A return to responsible government, according to the League, was the only acceptable method of negotiating with the Canadian government since the Commission Government, who would actually negotiate with Ottawa, had lost the confidence of the people in the first referendum. Another argument for the restoration of responsible government was the fact that the British government had promised a return to responsible government and thus the refusal to do so constituted a breach of contract. An often repeated objection raised by the group was that the duly elected National Convention had voted not to include Confederation as an option on the ballot and that the decision should have been respected. The League also argued that the method prescribed in the BNA Act concerning Newfoundland's entry into Confederation had not been followed. Finally, the petition complained about the fact that the people were asked to join Confederation without any knowledge of the terms of Union. Major Peter Cashin,

major spokesman for the League summed up the feeling among fellow anti-Confederates by saying:

I was not so much against Confederation with Canada as I was violently opposed to the illegal and deceptive methods which brought it about.²⁹

Another attempt to stop the Union was made when several former members of the House of Assembly and Legislative Council brought the matter to the Supreme Court seeking an injunction to prevent negotiations until the restoration of responsible government. The Court ruled against an injunction ruling that the procedure used by the governments did not involve any irregularities. The decision was appealed but to no avail.

The League died after the Terms of Union were signed between representatives of Newfoundland and the Canadian government on December 10th 1948.

But on March 28, in a last defiant gesture, the Responsible Government League sent a message to the Speaker of the House of Commons at Ottawa, declaring that they reserved the right at any future time to take such steps as might be required to secede from Canada and restore Newfoundland's lost sovereignty.³⁰

The negotiations began on October 11 1948 and were completed by the end of November and a fifty-point agreement was ratified on December 11th.³¹ The agreements were later ratified by the British government.

The terms of Union³² were more advantageous to Newfoundland than the previous fall's proposals. The Canadian government wanted to avoid a backlash from the responsible government League if the offers were

were not attractive enough. Ottawa also feared that the Newfoundland delegation might threaten to refuse to sign the agreements which would be an embarrassing situation. (One member from the delegation, Chesley Crosbie, refused to sign on those grounds.)

The result was a substantial increase in the transitional grant; from the original 25½ million dollars to 42.75 million dollars. The agreements, scheduled to come into effect on March 31st 1949 had nonetheless to be accepted by the Canadian and British Parliaments. During the debate at the House of Commons in Ottawa, the Conservative leader, George Drew tried to amend the Bill so that the provinces would have to be consulted.

Drew's point was that if the BNA act could be amended unilaterally by the federal government in this instance, 'it can amend any other clause the same way'.

The amendment was defeated and the Bill was adopted 74-14 on February 14 1949. The Conservatives and the Social Credit voted against the Bill while the CCF supported the government. At Westminster the Bill was adopted a few weeks later by a margin of 217-14. Newfoundland became the tenth province in the Canadian Confederation a few minutes before midnight on March 31st 1949. The law that authorized it is an integral part of the Canadian constitution.

There are many factors which could explain Newfoundland's entry into Confederation after so many years of anti-Confederate feeling on the island. The single most important factor is probably Joey Smallwood, the leader of the Confederate forces:

This of course, cannot be verified; but it is beyond dispute that Mr. Smallwood must be credited with the supreme responsibility for making possible this rounding out of the Dominion.³⁴

From the time he learned that there would be a National Convention followed by a referendum on Newfoundland's political future, Smallwood became convinced that Confederation was not only a possibility but a necessity. His first task (even before getting elected as member of the Convention) was to learn about the Canadian political system of which he knew next to nothing about. He wrote to all Provincial Premiers requesting any information concerning the operation of the system, budgets, speeches, histories, policy papers etc. When the material did come, Smallwood started reading the material: "I think I spent well over a month devouring the material. I worked at it from very early morning until midnight and then on to three and four o'clock the next morning... And the thing began to take shape in my mind; I began to understand what Confederation was and how it worked."³⁵ Smallwood then published a series of eleven articles in the DAILY NEWS³⁶ in which he explained in simple, direct language what Canada was and how Newfoundlanders could gain by joining. "They (the letters) were the formal launching of the movement to make Newfoundland a Province of Canada."³⁷ Smallwood also went to Ottawa to discuss with officials. When the Convention opened Smallwood became the leader of the Confederate forces. He was clearly the underdog. Donald Jamieson wrote of Smallwood crusade:

In the spring of 1946 Mr. Smallwood told me of his ambition to bring Newfoundland into the Canadian Confederation. I would have not given a plugged nickle for his chances. Newfoundlanders were politically listless under the rule of an appointed commission. With few exceptions, union with Canada was the last thing on their minds.³⁸

After the Convention had decided not to include the Confederation option Smallwood led (and won) the battle to have the option put on the ballot. The two campaigns were directed solely by Smallwood himself:

Throughout both campaigns, I had to be virtually our only campaigner around the Island, and to organize and control every last detail of the campaign at head-quarters. It involved incredibly long hours for seven days a week, but it gave us a united control without which there would have been no hope whatsoever of success.³⁹

Smallwood was also responsible for the printing of a Confederate paper, The Confederate, of which he wrote 90 percent of the content.⁴⁰ He also delivered 56 speeches in the last two and a half days of the two campaigns.⁴¹

Smallwood's task was facilitated by the fact that the opposition was very weak. The anti-confederates had under-estimated the possibility of a serious debate on Confederation and were ill-prepared to fight it. No one was able to establish himself as a leader. The only possibility of a potential leader was Major Peter Cashin, but "he preferred, however, to remain his own man,

one of nature's extremists, as unpredictable as he was volatile."⁴²

Cashin was no match to Joey Smallwood, the "tough brainy, passionate, little man who spoke often of the 'toiling masses' and addresses them as though they mattered."⁴³

Their cause was thus never given a united front, and they never had a united strategy; and their tactics, therefore, were always contradictory.⁴⁴

Besides being well-organized, the Confederates had good financial backing and it is estimated that close to \$150,000.00 were spent by the Confederates.⁴⁵ (The anti-Confederates managed with only half that amount.)⁴⁶

Though skillfully cultivating the image that they were the party of the 'little man' bravely confronting the vast wealth of 'Water Street' in fact the Confederates were far better financed than their opponents.⁴⁷

Some of this money came from the Liberal Party of Canada who "supplied a list of pliable Liberal donors, including unsurprisingly most of Canada's liquor, beer, and wine manufacturers and importers."⁴⁸ The Confederates could also, (and did) promise positions to influential people joining the Confederation option; seats, ministries, senatorships, judgeships etc.

I don't know to how many people he (Smallwood) promised senatorships, but it was his method of lining up supporters - I think he would admit this himself after all these years. He went around to everyone and promised senatorships if they would join the Confederation action.⁴⁹

4 - PARALLELS WITH QUEBEC

Given the experience with the referendum in Newfoundland, what lessons might be gained in understanding the Quebec referendum?

There are many parallels which make the Newfoundland case interesting.

The first one deals with the legal aspect of Quebec withdrawal from Confederation. If a province can enter Confederation by way of referendum why couldn't a province leave by the same method?

Jacques Morin, in an article in Le Devoir⁵⁰ analysed the situation and comes to the same conclusion. Morin points out that if the steps for Newfoundland's entry into Confederation are simply reversed we would get something like this:

- 1) a referendum law in Quebec
- 2) results of the referendum favorable to secession
- 3) negotiations between Ottawa and Quebec on the conditions and modalities of secession
- 4) agreements reached between the two governments
- 5) the federal government adopts a law putting the agreements in an official form
- 6) the Quebec government adopts a similar law
- 7) the Senate and the House of Commons signs a request to London asking to modify the BNA act
- 8) adoption of a law at Westminster modifying the BNA act. Morin also suggests other steps
- 9) declaration of independence for Quebec
- 10) adoption of a new constitution

Morin admits to the failings of this scenario; it takes into account a favorable vote and also a peaceful settlement between Ottawa and Quebec. One thing that is definite is that no matter what happens, the events and decisions will be first and foremost political ones. One important lesson we can draw from the Newfoundland referendums is the role of one man. It is fair to assume that without Joey Smallwood, Newfoundland might not have entered Confederation. Does a leader like Rene Levesque have the necessary charisma to convince the people, against the will of the establishment that independence is not only good but also viable? A major difference between the Newfoundland case and the Quebec situation is that in Quebec there is no lack of leadership. Rene Levesque, Claude Ryan and Pierre Elliott Trudeau are very brilliant and capable leaders and there is no chance that one side will lose by default. The three main currents of Quebec nationalism in the past decades are very well represented by those three men. When the people of Quebec voted in May 1980, they voted as much for Trudeau as they were voting for federalism, just as the people in Newfoundland were giving Joey Smallwood a vote of confidence.

The Newfoundland case also gives us some light on the possibility of holding a second referendum. (The Quebec legislation forbids the holding of a second referendum on the same question within one electoral mandate.)

Given a favorable vote on independence the Parti Quebecois might have the problem of convincing the hard-core federalists that since the majority of people have voted for an option, that option should be followed. In Newfoundland there were problems, but they were mostly confined to Newfoundland while in Quebec it is a safe assumption to think that there will be help from the rest of Canada (money, public opinion etc.). In the Newfoundland case the government of Canada and the Canadians did not openly participate in the debate.

Another major problem (and this will be emphasized in a later section) is the fact that there was no discussion planned between the two levels of governments before the vote was held. The Parti Quebecois can talk about establishing a economic union with the rest of Canada in order to convince the voters, but the rest of Canada is not bound by this. A similar situation arose in Newfoundland. The Anti-Confederates argued until the end that the people voted on something they did not know. The agreements reached with the Canadian government prior to the vote were not binding. The federal government therefore did not have to make all the concessions it had promised. The fact that the Canadian government respected the first offers (and improved them in fact) does not solve the problem. Official negotiations should have taken place before the vote and the people could have voted on those specifics agreements reached. In Quebec this problem could be solved by holding two referendums, the first one asking for a mandate to negotiate 'souverainete-association' and given a 'yes' majority, a second one on the agreements reached.

ENDNOTES

- 1 - Mayo, H.B. 'Newfoundland's Entry into the Dominion'. Canadian Journal of Political Science, Vol XV, no. 4, 1949, p. 505.
- 2 - Mayo, H.B. in Ibid, p. 508.
- 3 - Noel, S.J.R. Politics in Newfoundland. Toronto: University of Toronto Press, 1971, p. 221. It is interesting to note that while the Bill creating the Commission government was being debated at Westminster, an opposition MP tried unsuccessfully to amend the original Bill so that responsible government would be abolished only after the matter had been voted on in a plebiscite. The government refused and the matter was dropped. See also Chadwick, John, Newfoundland: Island into a Province. Cambridge: Cambridge University Press, 1967.
- 4 - Mayo, H.B. op. cit., p. 507.
- 5 - This in itself constituted a debate; was Newfoundland's economic recovery permanent or was it an aberration due to the war? See Chadwick, op. cit. p. 195 and Mayo, Ibid, p. 509.
- 6 - Chadwick, John, Ibid, p. 193.
- 7 - Eggleston, Wilfrid, Newfoundland: The Road to Confederation, Ottawa: Queen's Printer, 1974, p. 23.
- 8 - Eggleston, Wilfrid, Ibid, p. 14.
- 9 - Chadwick, John, op. cit., p. 196. The Convention was advised that a discussion with the USA regarding possible financial relations did not fall within the terms of references. Also, the timing for such a discussion would not have been proper since the international conference which was to lead to the establishment of GATT was in progress.
- 10 - Chadwick, John, Ibid, p. 198.
- 11 - Eggleston, Wilfrid, op. cit., p. 36.
- 12 - Eggleston, Wilfrid, ibid, p. 36.

- 13 - Chadwick, John, op. cit., p. 199.
- 14 - Eggleston, Wilfrid, op. cit., p. 75.-
- 15 - Chadwick, John, op. cit., p. 200.
- 16 - Chadwick, John, ibid, p. 201.
- 17 - Noel, S.J.R., op. cit., p. 254.⁵³
- 18 - Noel, S.J.R., ibid, p. 255.
- 19 - Mayo, H.B., op. cit., p. 513.
- 20 - The leading spokesman for that group, Sir Leonard Outerbridge, was named Lieutenant Governor of Newfoundland in 1949.
- 21 - Morin, Jacques, 'L'Histoire peu connue des referendums terre-neuviens: Un précédent intéressant pour le Québec'. Le Devoir, 30 novembre 1976, p. 5.
- 22 - Mayo, H.B., op. cit., p. 516.
- 23 - Mayo, H.B., Ibid, p. 516.
- 24 - Pickersgill, J., The Book of Newfoundland, Joey Smallwood (ed.) vol. III St. John's: Newfoundland Book Publishers, 1967, p. 67.
- 25 - Gwyn, Richard, Smallwood: The Unlikely Revolutionary. Revised ed. Toronto: McClelland and Stewart, 1972, p. 113.
- 26 - Mayo, H.B., op. cit., p. 516.
- 27 - Eggleston, Wilfrid, op. cit., p. 79.
- 28 - Debates, House of Commons, 29 July 1948, volume 462. Also reprinted in Chadwick, John, op. cit., pp. 240-241.
- 29 - Eggleston, Wilfrid, op. cit., p. 100.
- 30 - Eggleston, Wilfrid, ibid, p. 102.
- 31 - The negotiations were not held between two governments but between one government and a non-elected delegation. This legal and constitutional issue was "resolved by the expedient of ignoring it". Gwyn, op. cit., p. 114.

- 32 - Chadwick, John, op. cit., Appendix V, pp. 242-259.
- 33 - Gwyn, Richard, op. cit., p. 119.
- 34 - Mayo, H.B., op. cit., p. 516.
- 35 - Smallwood, Joey, The Book of Newfoundland, p. 7.
- 36 - Smallwood, Joey, Ibid, pp. 38-62.
- 37 - Smallwood, Joey, Ibid, p. 8.
- 38 - Jamieson, Donald, in Smallwood, Joey, Ibid, p. 70.
- 39 - Smallwood, Jey, I Chose Canada, Toronto: MacMillan of Canada, 1973, p. 292.
- 40 - Smallwood, Joey, The Book of Newfoundland, op. cit., p. 28.
- 41 - Smallwood, Joey, Ibid, p. 32.
- 42 - Noel, S.J.R., op. cit., p. 252.
- 43 - Noel, S.J.R., ibid, p. 255.
- 44 - Smallwood, Joey, I Chose Canada, op. cit., p. 273.
- 45 - Gwyn, Richard, op. cit., p. 99.
- 46 - Gwyn, Richard, ibid, p. 99.
- 47 - Noel, S.J.R., op. cit. p. 256.
- 48 - Gwyn, Richard, op. cit., p. 100.
- 49 - Noel, S.J.R., op. cit., p. 256.
- 50 - Morin, Jacques, op. cit., p. 5.

CHAPTER FOUR- THE REFERENDUM IN THE CANADIAN PROVINCES

Plebiscites as tools to help governments to decide on policy issues have been widely used by the Canadian provinces, particularly in the first third of the twentieth century. In fact, prior to May 1980, the provinces had used the plebiscite 40 times.

The use of plebiscites by the provinces can be attributed to two closely related movements in the early part of this century: direct legislation and prohibition. Direct legislation was mostly a Western phenomenon. A wind of political dissatisfaction swept the prairie provinces during the first third of the century. This dissatisfaction was caused mainly by a loss of faith in the traditional parties due to corruption, unkept promises and a general neglect of Western Canada by federal politicians. South of the border, Americans had some of the same complaints, and in the 1890's and 1900's numerous states had adopted some form of direct legislation, which enabled voters to initiate legislation and vote on it in a referendum. The direct legislation movement crossed over to Canada, and by 1910 Manitoba, Saskatchewan and Alberta had direct legislation proponents. By 1916 these three provinces not only had held referendums but had also adopted direct legislation laws.

The use of the plebiscite to deal with the liquor question was due to political expediency. The liquor issue was controversial, the parties divided, and the governments were unable to adopt laws or regulations satisfactory to both sides. As we shall see, the use of the plebiscites for this purpose was not successful for the same reasons.

What follows is a province by province survey of the use of the plebiscite, beginning with the Eastern provinces, which have used it least, moving to the Western provinces, which have used it most, and concluding with a discussion of what caused the rise and fall of the direct legislation movement in the first half of the century.

THE EASTERN PROVINCES

Compared with the Western provinces, the Eastern provinces have made very little use of the plebiscite as a policy-making device. I have combed the literature and have made a list of all the cases of the use of the plebiscite or referendum that I could identify, and I believe it to be reasonably complete.¹ New Brunswick, as far as I could determine has not used it all and Prince Edward Island, it seems, has used it only twice, in 1893 and 1948, both on the question of liquor control. In Newfoundland, the two referendums held on its constitutional future in June and July 1948, prior to its union with Canada were dealt with in the previous chapter.

NOVA SCOTIA

Nova Scotians were consulted three times by way of a plebiscite, every time on the liquor question. The first time, in March 1894, the people approved control of liquor by a large majority: 43,756 to 12,355. The next vote, in 1920, held under federal administration, sought to abolish the importation of liquor from other provinces. By a slim margin, 55,548 to 51,748, Nova Scotia voted to be dry. Liquor sale was prohibited except for medical, religious, scientific and

industrial purposes. Such sales were under government control. The third and final plebiscite was held on October 31, 1929. The favour of prohibitionists had died and Nova Scotia became a 'wet' province. The people were asked two questions:

1. Are you in favour of continuing the Nova Scotia Temperance Act?
2. Are you in favour of the sale of alcoholic liquor under the Government Control Act?

The results were, to the first question, 14,611 in favour and 30,539 opposed while in the second question the results were 43,433 in favour and 8,868 against. A new law was adopted in April 1930 and an independent commission was created to administer the Act. Liquor stores and hotels were opened only in areas that voted in favour of rescinding the Temperance Act.

QUEBEC

Prior to May 1980, a referendum or plebiscite had been used only once before in Quebec, in 1918. Some form of prohibition had been in effect during the First World War in that province. The government, knowing that it could not prevent drinking but wanting to legitimize its action in the eyes of the prohibitionists, decided to call a plebiscite for April 10, 1919. On the question of government control of the sale of beer, liquor, wine and cider, 178,112 people voted yes while only 48,433 voted no.

ONTARIO

Ontarians were consulted by way of a plebiscite five times. The consultations of 1894, 1919, 1921 and 1924 all dealt with the controversial liquor question.

1894

The roots of the temperance movement in Ontario can be traced back to 1812 but it was not until the end of the nineteenth century that the movement gained strong support. In 1894, two laws governed liquor in Ontario, the Canada Temperance Act which provided for local option and a badly enforced provincial act. Prohibitionists were granted a plebiscite on the question in 1894. The question, which proposed stricter control over liquor, was adopted 62.5 percent to 37.5 percent. The 56 percent participation rate was significantly lower than the 69 percent rate of the general election held six months later.

1902

The 1902 plebiscite was forced upon the government by the temperance movement because of the movement's dissatisfaction with the weakness of the 1894 provincial act and the federal government's failure to act on the results of the 1898 plebiscite. The government, fearing that a minority of strongwilled prohibitionists might impose its view on the majority because of a low participation rate, required that a majority consist of two-thirds instead of a simple majority as in 1894. The prohibitionists came within a few hundred votes of the required two-thirds majority: 65.8 percent to 34.2 percent. Prohibition, it seemed, was an important issue only to prohibitionists.

The participation rate was only 50 percent while in the general election a few months earlier, the rate had been 70 percent.

1919

If the temperance movement had been only moderately successful in its attempt to abolish the demon rum until then, the tide started to turn in its favour around 1914. In 1911 the Liberals elected N.W. Rowell, a strong prohibitionsit, as their leader. In the 1914 election prohibition was a central theme in the campaign as both parties pledged to adopt some prohibitory measure. Partly due to campaign promises and partly due to the war, the government adopted in 1916 the Ontario Temperance Act (OTA). The OTA provided for the closing of all bars. No person could have, keep, give or consume liquor except in a private dwelling house. The OTA was to be a temporary measure for the duration of the war. By 1919 the government was ready to withdraw or amend the OTA. The ballot consisted of four questions:

1. Are you in favour of the repeal of the Ontario Temperance Act?
2. Are you in favour of the sale of light beer containing not more than 2.5 percent alcohol weight measure?
3. Are you in favour of the sale of the same light beer in standard hotels in local municipalities that by majority vote favoured such sale?
4. Are you in favour of the sale of spirituous and malt liquor through government agencies?

Both sides urged a straight vote, yes or no. The vote, held on the same day as the general election, gave four 'no' answers, a fairly consistent two to one ratio:

1. 772,041 to 365,365
2. 733,691 to 408,266
3. 747,920 to 383,727
4. 693,829 to 447,146

Not only did prohibition as such win the day but the party that took the strongest stand on the issue, the United Farmers of Ontario, formed the government.

1921

One of the major flaws of the Ontario Temperance Act was that it did not (and could not) prohibit the interprovincial trade of liquor. Quebec had become a 'wet' province and liquor could be ordered from Montreal. Liquor was available from bootleggers and people would often have some liquor at home. In response to demands by temperance reformers, the federal government adopted in November 1919 a Bill which permitted the provinces to request the federal government to hold a plebiscite on the question of importation of liquor. The vote, held on April 18, 1921, asked: "Shall the importation and the bringing in of intoxicating liquors into the Province be forbidden?" The prohibitionists won by a slight margin of 166,835 votes. On July 19 1921, Ontario became bone dry and would remain so until 1925. In the long run, the 1921 plebiscite proved to be detrimental to the temperance movement since a large minority favored some access to

liquor and the moderates were upset at the unavailability of liquor. In practice the Act also discriminated against the poor since the rich people could purchase liquor, albeit illegally.

1924

The Conservatives, favourable to more lenient liquor law, were returned to power in the 1923 general election. In October 1924 the government put two questions to a plebiscite vote. The dry vote dropped significantly to 51.5 percent while wet vote climbed to 48.5 percent. The government, determined to liberalise the liquor law, disregarded the results and proceeded in that direction. Within a year, a beer containing 4.4 percent alcohol was available to Ontarians. Reintroduction of liquor through government control was the main issue in the 1926 election, and after the Tories were returned to power, the Ontario Liquor Act was adopted.

THE WESTERN PROVINCES

MANITOBA

Manitobans were consulted seven times by referendum: 1892, 1902, 1916, 1920, twice in 1923, and 1927. All consultations dealt with liquor control. The Manitoba case is important because the government adopted, in 1916, a direct legislation law which was later declared ultra vires. According to that law, if 8 percent of the voters signed a petition asking for a referendum on any matter (except money bills) the government had to hold a referendum on the issue. Similarly, if 5 percent of the voters signed a petition requesting a general vote on a law already adopted, a referendum was compulsory. And the referendum was to be binding, that is, the law was adopted or repealed,

depending on the outcome of the vote, without the intervention of the Legislature or the Lieutenant-Governor. The Direct Legislation Act was contested in the Manitoba Court of Appeal and before the Judicial Committee of the Privy Council (which at that time was the equivalent of today's Supreme Court). It was declared ultra vires since it contravened the British North America Act, section 92.1. This section gives the provinces the power to change their constitution except as regards the Office of the Lieutenant Governor. The Direct Legislation Act contravened that clause since it amended the power of the Lieutenant Governor to assent or veto bills. In light of this ruling, referendums in the Canadian provinces can only be held on a consultative basis. The Manitoba government did not present another law in view of the ruling.

Manitobans had however been consulted by referendum before, in 1892 and 1902. In 1892 some form of control of liquor was approved by a margin of 18,637 to 7,115 in a vote where the participation was 55 percent. In 1902 the people were asked to approve the Manitoba Prohibition Act of 1900. The Act was approved 22,464 to 15,607. Dissatisfaction with the liquor control led to the adoption in January 1916 of the Temperance Act. Although restricting the sale of liquor in the province, the Act permitted the importation and exportation of liquor, and possession of liquor at home was permitted. The law was approved by a two-to-one margin in March of that year. The final results were 50,484 in favour and 26,502 opposed. The next vote on liquor was a victory for the prohibitionist forces. In a

vote held on October 25 1920, the people approved a law forbidding the importation of liquor. The vote was close: 68,831 to 55,056.

Three years later, in June 1923, the people approved the principle of government control of liquor by a margin of 107,609 to 68,879.

However, in another plebiscite the next month easier access to beer and wine was rejected. The final liquor plebiscite, in June 1927, asked four separate questions. The extension of the sale of beer was approved 77,843 to 62,201. The sale of beer by the glass and by the bottle in licensed establishments was also approved. The right for the brewers to sell beer directly to permit holders was upheld by the margin of 66,187 to 63,989.

SASKATCHEWAN

The voters of Saskatchewan were consulted by way of referendum 5 times.² The first time was in 1913 when they voted on a law establishing the principle of direct legislation. The proposal stipulated that any petition for a new law supported by 8 percent of the population necessitated a general vote on the question.

Established laws were subject to a general vote if the request was supported by 5 percent of the population. Any law could be put to a vote except when the situation was defined as being an emergency.³

In order to assure fairness, there was a clause to the effect that no new law would take effect until 90 days after its adoption in the legislature. This would provide opponents of the law the time to collect the necessary signatures. The vote, held in November 1913, gave the following results: 26,696 in favour, 4,897 opposed and 540 spoiled ballots - total of 32,132 out of a possible 161,561, or a 20

percent participation rate.⁴ The law required a minimum participation rate of 30 percent. The government abolished the law shortly thereafter.⁵ The citizens of Saskatchewan were nonetheless consulted five times after that, in 1916, 1920, 1924, 1934 and 1956. The first four concerned alcohol while the last one dealt with the establishment of time zones.

THE LIQUOR PLEBISCITES

The regulation or prohibition of alcohol created a great controversy in the first third of the century across Canada, and the province of Saskatchewan was no exception. Three referendums were held on that issue. The first one, in 1916, dealt with the Liquor Store System. The government had earlier adopted the "local option" legislation. Any city or town could decide whether it would tolerate the sale of liquor within its boundaries. This measure was not enough for the anti-liquor lobby and the Premier of the province, Walter Scott, was pressured into holding a referendum for the closing of the government controlled Liquor Stores. On December 11, 1916, 95,249 people voted for the abolition of the liquor stores while 26,666 voted against it. The government adopted a law shortly after that closing all liquor stores in the province. The problem did not end there. Soon after, stores exporting liquor were opened in eastern and western border towns. In 1918 the federal government adopted a measure prohibiting the traffic of liquor from other provinces. This lasted until December 31, 1919. On October 25, 1920, the federal government held a referendum in Saskatchewan concerning the same

question: "Shall the importation and the bringing of intoxicating liquors into Saskatchewan be forbidden?" Of the 278,930 registered voters, 142,208 cast a ballot: the affirmative votes totalled 86,949 while the negative votes were 55,529.⁶ The Moderation League, an anti-prohibition movement, continued to put pressure on the government and on July 16, 1924, another plebiscite was held. This time, a majority voted against prohibition, 119,537 versus 80,381.⁷ In that same referendum people were given a choice between a) Sale by government vendors in sealed packages of all spirituous and malt liquors (89,011 in favor) or b) Sale by government vendors in sealed packages of all spirituous and malt liquors and also the sale of beer in licensed parlors (81,125 in favor). System a) was adopted. This vote did not allow for the sale of beer in hotels. The Moderation League managed to pressure the government into holding another referendum on the sale of beer by the glass in licensed premises. The vote, held on June 19, 1934, gave 197,630 affirmative votes and 164,752 negative votes and 20,441 spoiled ballots.

Referendums to settle liquor issues have not been used in Saskatchewan since 1934.

There seems to have been a general abandonment of the plebiscite method of settling questions relating to the management of liquor traffic.⁸

THE TIME QUESTION

Besides the liquor question another controversial problem has existed in Saskatchewan: the establishment of time zones. The province did not have uniform time, although theoretically

Saskatchewan falls entirely within the Mountain Standard time zone.

The factors explaining the lack of uniform time are various: the operations of the railway companies, provincial legislation, local customs and the adoption by some communities of daylight saving time during the summer months.⁹ Part of the province was on Central Standard Time, part on Mountain time. Also, some parts in the Mountain Time Zone adopted fast time, (i.e. Mountain Daylight or Central Standard for different periods of the year), while adjacent areas remained on Mountain Standard Time. To add to the complications, there were some urban centres where dual time was in effect.¹⁰

There were movements to establish uniform time, but of course the problem was determining which time zone, Mountain or Central. The issue was very hotly debated. Douglas, then Premier of the province, summarized the problem by saying, "Next to liquor and Elvis Presley I now of no question on which you can get a street argument started so quickly as time".¹¹

In order to try to solve the problem, the government decided to hold a plebiscite on the question in October 1956. Unfortunately, or predictably, this did not solve the problem as the vote was divided on regional lines. The Eastern part of the province voted solidly for Central Standard Time while the Western portion voted predominantly for Mountain Standard Time.¹² The government adopted uniform time in 1958: in the winter, it would be Mountain Standard Time while in the summer it would be Central Time. Dissatisfaction

continued, however, and in 1959 the government permitted the 'local option' whereby municipalities could, if desired, not follow the rest of the province.

This is an example where the use of the referendum did not achieve its purpose:

The legislative attempt to achieve uniformity of time had obviously failed; existing social habits were too strong. It had been hoped that in matters not regulated by statutes, bylaw or private contract the people would follow the legal time prescribed in the legislation. As the Attorney General explained: 'The government thought it should be a matter of persuasion rather than compulsion'.

ALBERTA

There were seven plebiscites held in Alberta, 1915, 1920, 1923, 1948, 1957, 1967 and 1971. Four of them dealt with the prohibition or control of alcohol, two with the establishment of a uniform time zone and one dealt with public ownership of power companies.

The Liberal government of A.L. Sifton adopted the Direct Legislation Act in 1913. The Act provided for the holding of plebiscites in three different situations. In the first instance the government could, after adopting a law in the Assembly, submit it to the people for adoption. In the two other cases, the initiative for a vote was left to the people. A petition signed by ten percent of the electorate would require a plebiscite on a law adopted by the Assembly. In order to give a fair chance to opponents of certain measures, a law would not take effect until at least 90

days after third reading. The final method by which a plebiscite could be held was on a law that had not been adopted in the House. In this case a petition signed by 20 percent of the electorate was required. In all three cases 'money bills' were excluded from popular consultation. The Attorney General could also exclude any question which he judged to be outside legislative jurisdiction.

The law was amended in 1931 giving the Lieutenant-Governor in Council power to refer any questions to the public before taking legislative action.

THE LIQUOR PLEBISCITES

The first plebiscite was held in 1915. In 1914 a petition signed by 23,000 electors asked for a plebiscite on the Prohibitory Liquor Act of 1914. The Act prohibited the sale of intoxicating liquor within the province for beverage purposes. The sale of liquor for medicinal, mechanical, scientific and sacramental purposes was left in the hands of the government. It also limited the amount held by an individual. The plebiscite, held on July 21, 1915, approved the law with 58,295 in favour and 37,509 against, a majority of 20,786 (a 25 percent difference). The Act was adopted in the 1916 session "without substantial alteration"¹⁴. Despite the fact that the Bill contained serious defects, it was adopted. "The Legislature was, therefore, practically stripped of its powers in this respect".¹⁵ Among the flaws of the new law was the fact that it did not deal strongly enough with the importance of liquor. Liquor was available from the states and from other provinces. It was argued, rightfully, by the anti-prohibitionists that an important sum of money from the

traffic of liquor left the province. The prohibitionists continued their struggle in order to prevent importation of liquor. The pressure from that group forced the government to hold another plebiscite on the question in 1920. The 'wets' lost again but the gap was smaller, 63,102 in favour of prohibition, 44,321 against, a majority of 18,691 (a 17 percent difference). A third prohibition plebiscite was held in 1923. By that time prohibitionists had lost their original will to battle the evils of liquor, particularly after Manitoba had become wet. A Temperance Act was drafted in 1922 allowing the sale of beer in hotels. The bill would be referred to the people after its adoption. The government set up a committee to study the question which recommended that four separate questions be put to the people. The vote would be in accordance with the principle of the single transferable preferential ballot. The four choices were:

- a) the continuation of the present control of liquor,
- b) licensed sale of beer in hotels,
- c) government sale of beer for private consumption,
- d) government sale of all liquor, permitting the sale of all liquor and beer in licensed premises and for consumption in private residences.

The vote, taken on November 5, 1923, gave the following results: 16

- a) 61,780
- b) 3,939
- c) 3,092
- d) 93,990

Alberta was wet again, much to the disenchantment of the prohibitionists. The Alberta legislature adopted a new liquor law in its 1924 session.

The final liquor plebiscite was held on October 30, 1957. In the first consultation on liquor in almost 35 years, the Albertans voted in favour of additional types of outlets for beer, wine and liquor. The 1913 Direct Legislation Act was repealed in 1958 and replaced with the Liquor Plebiscite Act, providing for local option on various matters relating to the sale of liquor.

THE OWNERSHIP OF POWER COMPANIES (1948)

Very little information is available on the 1948 plebiscite on the ownership of power companies. According to press reports, Premier Ernest Manning and his cabinet were split on the issue of nationalisation of the power companies. The plebiscite of August 17, 1948, held at the same time as the general election, gave a small majority in favour of private ownership, 109,330 to 102,084. The vote, held at some farmers' request, was characterized by an urban-rural split with the urban vote carrying the day.

DAYLIGHT SAVING TIME (1967 and 1971)

In Alberta, as in British Columbia and Saskatchewan, the establishment of a single time zone was a contentious issue ~~and was~~ put to a vote. The first time the issue was dealt with through a plebiscite was on May 23, 1967, and daylight saving time was narrowly defeated 248,680 to 236,555. Despite pressure from rural people who claimed that a switch from standard time would disrupt their operations,

a second plebiscite was held four years later, again concurrently with a general election. The second vote, held on August 31, 1971, saw a substantial drop in the opposition, and daylight saving time was adopted 296,739 to 176,144. The new Conservative government, in its first session, enacted legislation giving Albertans daylight saving time.

BRITISH COLUMBIA

British Columbia's governments have used the plebiscite eight times. There were five plebiscites dealing with liquor control (1909, 1916, 1920, 1924 and 1952), one for women suffrage (1916), one for public health insurance (1937), and one for daylight saving time (1952). In British Columbia there was no movement as such promoting the use of the plebiscite. Rather, plebiscites were used because of political expediency. Particularly in liquor plebiscites, the parties were split on the issue and the governments did not want to alienate themselves from vocal groups such as the temperance movement. All the plebiscites, save the 1920 Temperance Act vote, were held concurrently with a general election.

1. Local Option Plebiscite (1909)

The pressure to hold a plebiscite on local option for liquor control began in 1907 with a campaign on the part of the Women's Christian Temperance Union (WCTU). That year the British Columbia Local Option League was also formed and fifty branches were constituted across the province. In February 1909 the Local Option League presented British Columbia Premier Richard McBride a petition of

9,000 names asking that local option be adopted in British Columbia. Premier McBride refused, saying that he had no mandate to enact such legislation. He decided nonetheless to hold a plebiscite on the subject. The plebiscite was held on November 25 1909, on the same day as a general election. The plebiscite asked the people if they were in favour of the principle of local option for the sale of liquor. This angered the local option league since they would have preferred a more specific question. The debate was non-partisan with the party leaders fighting for re-election and refusing to take a stand on the liquor question. The results were 22,771 in favour, 19,184 against. The requirements of the plebiscite vote, however, were that the affirmative vote equal a majority of all votes cast in the general election. This left the Yes side with 629 votes short of the required majority. The government nonetheless introduced a new liquor act enlarging the powers of the government in the granting of liquor licenses.

2. Women's Suffrage Plebiscite (1916)

British Columbia is the only province to have held a plebiscite on the question of women's suffrage. The right to vote had been granted to women in the three prairie provinces early in 1916 but the B.C. Conservative government, under McBride and then Bowser, refused to franchise women. The suffragette movement started as early as 1885. It was thought that if women had the right to vote, they would use it to abolish the traffic and use of liquor. Between 1886 and 1899

eleven Private Member's Bills were introduced to provide for women's suffrage. None of these reached second reading. Although only two bills were presented between 1900 and 1910, proponents of women's suffrage held public meetings and teas, presented petitions and founded a newspaper "The Pioneer". In 1915 the British Columbia Women's Liberal Association was formed to help defeat the Conservative government. By 1916 the Conservatives were in a weak position; they had failed to complete the railway despite huge expenditures and they were torn by internal strife. McBride resigned in 1915 and was replaced by W.J. Bowser, an anti-suffragist. Pressured to grant the woman the right to vote, Bowser decided to hold a plebiscite on the issue rather than make a decision. The suffragist movement was unhappy with this since their battle had been directed at the members of the legislature and not the general male population. This meant that they now had to change their method of campaigning. There was no organised opposition. Also, long years of debate on the question had worn down the arguments against women's suffrage. The fact that the prairie provinces had accepted to give the women the right to vote helped the women's cause. The vote, held on September 14, 1916, gave a two to one victory to the suffragettes. This is an example when the plebiscite was used for political expediency since the Conservative leader Bowser, a strong anti-suffragist, campaigned in favour when he saw that the vote would carry.

3. The Prohibition Referendum (1916)

The act governing liquor in 1916 was the one adopted after the 1909 local option plebiscite. No license was to be granted unless petitioned by two-thirds of the residents in a three mile radius. Also, the drinking hours were shorter and conviction of offenders was made easier than before. This, however, did not discourage prohibitionists:

Prohibition, which had been the ultimate goal when they agitated for local option, now became the immediate objective.

Much to the discontent of prohibitionists who would have preferred unilateral action from the government, Premier McBride promised a plebiscite on total prohibition. Pressed by the prohibitionists, the government adopted a strict law and it was that law that was put to a vote in the fall general election. The question was: "Are you in favour of bringing the B.C. Prohibition Act into force?" On voting day, 36,490 people voted in favour and 27,217 against. However, the soldiers' vote overseas proved to be a problem. When the final vote came in on December 16, the majority in favour was changed to a majority against. The new Liberal Premier Brewster was in an awkward position since his party was prohibitionist but the prohibition referendum had been defeated. Amidst protests that there had been irregularities in the soldiers' vote overseas, a Royal Commission was appointed. The Commission recommended that of the 8,505 votes cast after September 14, 4,697 should be rejected. The referendum should therefore carry. The government accepted the report's recommendations and the B.C. Prohibition Act came into operation October 1, 1917.

4. The Temperance Plebiscite (1920)

The major flaw with any prohibition legislation is that much of the success of its application depends on the public's attitude and respect towards it. In British Columbia, after the 1917 Prohibition Act came into effect, it was realised that two loopholes existed in the law. Firstly, it was impossible to prevent importation for personal use, which meant in fact that anybody who wanted to have some liquor could get some. Also, liquor was available for medicinal purposes. Here again, it meant that people had access to liquor:

The practice became farcical as prescriptions were issued by the thousands every month.¹⁸

Liquor was available through distillers and bootleggers illicitly.

The problem was amplified by the fact that enforcement of the Act lay in the hands of the municipalities who lacked the resources and revenue to put the Act into force properly. Still another problem lay in the fact that former licence owners were refused compensation payments for revenues lost. They formed a lobby group and gained the promise of a plebiscite on the issue. The vote was held on October 20 1920, and had two options: The question read:¹⁹

Which do you prefer:

- 1) Maintenance of the present Prohibition Act or
- 2) An Act to provide for government control and sale in sealed packages of spirituous and malt liquor.

The prohibitionists lost the vote by a large majority: 75,964 people voted in favour of government control and sale while 49,225 people

voted for the status quo. This is another example where the holding of a referendum proved to be a useless exercise since, shortly after the vote, the Liberal government called an election on a proposal for the new liquor legislation. Also, the two parties had similar positions. The Liberals were returned to power with a reduced majority and a new liquor law was adopted in 1921.

5. The Beer by the Glass Plebiscite (1924)

The 1924 beer by the glass plebiscite in British Columbia is another example where plebiscites are used for political expediency rather than on democratic principles. The sale of beer by the glass in clubs, restaurants and hotels was not provided for in the 1921 law. Yet, some establishments sold it, and when its sale was brought to Court it was ruled that since beer by the glass was not explicitly forbidden in the law, its sale was legal. Prohibitionists wanted the law to be clear on the problem. The government, not wanting to announce a policy with an election in the offing, decided to ask the question at the same time as the ~~general~~ election on June 20, 1924. Voters rejected beer by the glass but the government, not bound by the results, decided to adopt legislation to provide for it. The government made one concession to the prohibitionists: municipalities opposed to it could have local option plebiscites.

THE PUBLIC HEALTH INSURANCE PLEBISCITE (1937)

The issue of Public Health Insurance had been discussed in British Columbia as early as 1919. Various legislative committees studied proposals which were never acted upon. A Royal Commission appointed in 1929 published a report in 1932 which recommended state health insurance. Although there were no major objections to the scheme, it was not adopted for financial reasons. Finally, in 1936 a law was adopted providing for a health insurance plan which would be financed jointly by employers, employees and the government. The Act, proclaimed on May 18 1936, was to take effect on January 1 1937. There were however objections to the mechanism of the plan by doctors and employers. The government was pressured to postpone enforcing the Act until an agreement had been reached between the parties concerned. The federal government decided to hold a plebiscite on the question in conjunction with the 1937 general election. The question was vague. It asked:

Are you in favour of a comprehensive health insurance plan progressively applied?

There were objections to the question. People were not opposed to the principle of the plan but to the proposed functioning. Also, the question being vague, left room for interpretation. The plebiscite was approved by 44,198 votes. The Liberals, returned to power with a reduced majority, decided to wait before taking some action on the health plan; it neither enforced the 1936 act nor replaced it. The

C.C.F. opposition presented motions requesting action, in 1937, 1938, 1939, 1942 and 1945 but to no avail. The government introduced a compulsory system of hospital insurance in 1948 but medical services and maternity benefits were excluded.

Failure to act on the referendum results seems to have been the main reason for the fall of the Liberals in British Columbia. The party lost seats in the 1941 election, and for eleven years needed a coalition with the Conservatives to survive. In the 1952 election they were reduced to a representation of only six seats. The issue of public health insurance also provided the C.C.F. with ammunition to gain the status of a serious alternative to the government in British Columbia.

THE LIQUOR PLEBISCITE (1952)

Administration of the 1924 Liquor Act proved to be difficult. There was a wide discrepancy between the law itself and its application, particularly after 25 years from the date of its adoption. The prohibitionists wanted stricter controls while the 'wets' wanted less in order to stop the bootlegging. In 1952 the Liberal-Conservative government decided to hold a referendum at the time of the general election on the sale of liquor and wine in restaurants. The wets received a large majority: 315,533 against 205,736. The parties were mostly silent on the liquor question since other issues were more important: hospital insurance, the appearance of the Social Credit party, and the break-up of the Liberal-Conservative coalition.

After the election, the new Social Credit party appointed a Royal Commission to study the problem. The Liquor Act of 1953 contained most of the recommendations of that commission's report: the establishment of a permit system, the sale of liquor and wine in restaurants in limited amounts, cancellation of licenses for infractions, and a local option clause.

THE DAYLIGHT SAVING TIME PLEBISCITE (1952)

A second plebiscite, on daylight saving time, was held at the same time as the 1952 general election, and it commanded less attention than the liquor plebiscite. As in the other provinces, in particular Saskatchewan, the time question had always been a controversial issue. The matter had been in the hands of the Cabinet since 1919. From 1919 to 1945 a single time zone had been in practice. In 1945, after being pressured by the rural people, the government adopted 'fast time' during the summer. However, there were objections from urban people. Judging that the farmers would accept a majority vote, the Liberal-Conservative government decided to hold a plebiscite asking for a single time zone for the province, with no 'fast time' during the summer months. As stated above, the campaign drew little attention. There were no organizations fighting for or against the question. The vote was 290,353 in favour, 231,008 against. Unlike in Saskatchewan, however, the referendum dealing with the time question put the issue to rest despite the urban-rural split.

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CONCLUSION

We have seen that the use of the plebiscite by the provinces was stimulated by the rise of the direct legislation movement in the Western provinces, and then dropped rapidly with the decline of that movement.

What caused the rise and fall of the direct legislation movement? According to W.L. Morton, the movement was a revolt against the established parties. In the movement's view:

The people ... were perverted by the existing parties. The first task, therefore, was to free people from the grip of the old parties, in which there was no good. They had become "machines" dominated by "bosses" and subservient to the "interests".²¹

The loss of faith in the old parties was partly due to the election of the Liberals federally in 1896. The West had voted for the Liberals for their free-trade policy. But, once in power, the Liberals had refused to lower tariffs. Like the Conservatives, they had become an urban party:

From that date more radical Westerners grew increasingly sceptical of the good faith of the old parties and the hope of influencing them.²²

A more direct form of democracy seemed to be the answer:

Diverse though its source might be, progressivism was marked by a single conviction, that all evils might be remedied by direct political action of the people.²³

The Progressivists had two methods for achieving their goals: direct legislation and the formation of third parties. At first there was resistance to the formation of third parties on the part of certain members of the established parties who felt that direct legislation was a better method of achieving their goals. Foreign experience provided the proponents with positive examples of direct democracy at work.

One final factor to consider is the fact that proponents of direct legislation had a cause, the prohibition of alcohol:

The connection between the movement for direct legislation and temperance reform was indeed especially close. As it turned out, first prohibition, and then government control of the sale of liquor were the only achievements of direct legislation in the West.²⁴

And

The support it received was derived largely from special groups seeking definite ends in legislation. When those ends were accomplished or abandoned, interest in direct legislation lessened, particularly as it failed to achieve the general purpose of its supporters, the purification of politics.²⁵

The weakening of the movement can be attributed to the fact that, as pressure for direct legislation mounted, the governments became increasingly sensitive to the needs and demands of the people:

By 1920, according to The Leader, the publicly voiced demands for direct legislation had grown much weaker, allegedly because the people of Saskatchewan had learned through experience that they were able to exercise effective control over their government by means of their recommendations made at their very representative annual conventions' which the government always received very sympathetically.²⁶

Chambers adds that, even so, in Saskatchewan,

such vital and controversial issues as prohibition were referred to the electors for a decision.²⁷

Did the direct legislation movement succeed? Referendums were used sparingly, the voters have never actually initiated laws, and laws on the use of the referendum were abolished. In this sense, the movement cannot be seen as having achieved its goals. On the other hand, it has been successful with respect to its long-term effects. The rise of third parties, more progressive legislation, the drop in corruption, and the democratisation of political parties can all be partly attributed to the direct legislation movement.

Referendums or plebiscites have not been very useful as a tool in the decision-making process in the provinces. This can be attributed to the nature of our parliamentary system and to the types of issues dealt with by the referendum or plebiscite.

The Manitoba decision is of consequence in that it prevented the adoption of binding referendums in the provinces. Non-binding referendums continued to be held on specific issues and not as a regular tool. Responsible government is not as suited to popular consultation as other forms of government such as the American system since the government is responsible to the Legislature or Parliament whereas in the United States the elected representatives are responsible to no one except the voters after a fixed mandate. In 200 years of republicanism, between 1778 and 1978, there have been no less than 3,698 statewide consultations in the United States.²⁸

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The types of issues dealt with by popular consultation also give us clues as to the reason for the decline of the use of this mechanism. The plebiscites were used mostly for political expediency, since parties and governments were divided internally on moral and non-ideological issues (liquor control, time zones) and did not wish to take a stand on them.

The decline of the use of the plebiscite in the Provinces since World War II then, is not a coincidence but rather evidence of its ineffectiveness. A return to regular use of the device for policy (as opposed to constitutional) issues is unlikely in the foreseeable future. In the four years since the adoption of the referendum law in Quebec there has been no discussion on the possibility of using the referendum in a context other than constitutional despite the fact that the law permits it.

ENDNOTES

- 1 - The Butler and Ranney table mentions a plebiscite in Manitoba on November 24, 1952 on the marketing of coarse grains but a search for details through newspapers of the period does not give evidence of a plebiscite on that date.
- 2 - Chambers, E.J. The Use of the Referendum and the Plebiscite in Saskatchewan, (Saskatoon: M.A. Thesis, University of Saskatchewan, 1965), p. 1. Most of the information on the use of the referendum and plebiscite here is taken from Chambers's thesis. The thesis is very well documented to over 250 pages.
- 3 - This constituted a very good escape clause in that the government was the only body that defined 'emergency'.
- 4 - Chambers, op. cit., p. 59.
- 5 - Ibid., p. 62.
- 6 - Ibid., p. 135.
- 7 - Ibid., p. 158.
- 8 - Ibid., p. 187.
- 9 - Ibid., p. 189.
- 10 - Ibid., p. 192.
- 11 - Ibid., p. 221.
- 12 - Ibid., p. 215.
- 13 - Ibid., p. 225.
- 14 - Canadian Annual Review, 1916, p. 741.
- 15 - Ibid., p. 741.
- 16 - Ibid., p. 745, p. 923.
- 17 - Adams, A Study of the Use of the Plebiscite and Referendum by the Province of British Columbia (Vancouver: M.A. Thesis, U.B.C.), p. 61.

- 18 - Ibid., p. 77.
- 19 - Ibid., p. 80.
- 20 - A revision of part of my essay: "The Use of the Referendum in Canada" in Donald C. Rowat (ed.) Referendum and Separation Elsewhere: Implications for Quebec (Ottawa, Carleton University Press, 1978), pp. 21-23.
- 21 - Morton, W.L., "Direct Legislation and the Origins of the Progressive Movement", Canadian Historical Review (September 1944), p. 279.
- 22 - Ibid., p. 279.
- 23 - Ibid., p. 279.
- 24 - Ibid., p. 284.
- 25 - Ibid., p. 284.
- 26 - Chambers, op. cit., p. 63.
- 27 - Ibid., p. 63.
- 28 - David Butler and Austin Ranney (ed), Referendums: A comparative study of practice and theory (Washington D.C. 1978), American Enterprise for Public Research. Table 4-4, page 77, 4-5, page 78, 4-6, page 81; 5-1, page 90, 5-2, page 91, and 5-4, page 95.

CHAPTER FIVE- THE REFERENDUM AT THE NATIONAL LEVEL

A The Federal Plebiscite of 1942

During the 1940 general election, Mackenzie King and Robert Manion, leaders of the Liberal and the Conservative party respectively, promised French-Canadians that there would be no overseas conscription. This promise was part of a tacit agreement:

"Les Canadiens français acceptent de participer à la guerre, les anglo-Canadiens consentent à ne jamais recourir à la conscription"

King's political philosophy was based on the belief that national unity was the key to power in Canada. He sought to avoid the conscription error of the Conservatives in 1917 which had divided the country. In the summer of 1940 the government adopted Bill 80, the Resource Mobilisation Act which gave the government power to draft Canadians for domestic but not overseas defence. It was generally well accepted by French Canada.

After adoption of Bill 80 a number of significant events transpired. Arthur Meighen, a strong conscriptionist replaced Manion as head of the Tories and attracted a growing group of supporters. In the same year, Ernest Lapointe, the Quebec Lieutenant for King died creating a major gap in the Cabinet. Lapointe had had a hand in the formulation of the concept 'participation without conscription.' There was also

the Japanese attack on Pearl Harbour which brought the United States into the war. Public opinion in English Canada was demanding a greater war effort.

King faced a dilemma. On the one hand the conscriptionist forces were getting stronger. Within his Cabinet, Defence Minister J.L. Halston, and Marine Minister Angus Macdonald had much support for their request for increased participation in the war. On the other hand, he knew that Quebec would never consent to conscription. King adopted a strategy he hoped would avoid another conscription crisis. He would ask the people, by way of a plebiscite, to free him of his electoral promise. On January 22, 1942 the Speech from the Throne announced the holding of a plebiscite on the question. The question was asked in such a way that the government would not be bound by the results:

"Are you in favour of releasing the government from any obligation arising out of any past commitments restricting the methods of raising men for military service."

In this way King sought to appease both English and French Canada. The English could not accuse him of inaction since he was consulting the people on the question. To the French he could say that the vote was not on conscription itself but on freeing him of a promise. He coined the phrase 'Conscription

if necessary but not necessarily conscription'. King nevertheless had his difficulties. The Conservative opposition was in principle against a plebiscite on the question. They maintained that the government had the right to conscript people and therefore need not consult the population on it. But as King was well aware, the Conservatives had little option but to support conscription.

In French Canada however the battle was more rigorous. The support of Cardin, who was Lapointe's successor, was not enough to get the Quebec support. Cardin, it should be noted, was very clear about his position. He favoured a yes vote but strongly opposed conscription. So strongly did he feel about it that he promised to resign if conscription ever became a reality. Soon after the plebiscite was announced, La Ligue pour la Defence du Canada brought together men like Jean Drapeau, Gérard Filion and André Laurendeau who saw the plebiscite as a betrayal on Ottawa's part. The promise had been made to French Canada, yet Canada as a whole would vote. Moreover, why would the government ask to be freed from its promise if it had no intention of implementing conscription? The L.D.C. had become increasingly popular:

"On devenait membre de la Ligue moyennant un dollar; il en vint des dizaines de milliers."

They published tracts and held frequent general meetings.

It soon became clear to King that the plebiscite was having the unintended consequence of dividing the country rather than giving him the mandate he sought.

Two technical points should be discussed, the franchise and the air time allotted to each group. The minimum voting age was twenty-one years. But since the age group 18-21 years was subject to conscription and therefore directly affected, the opposition requested a lowering of the minimum age to 18 years. King refused. However, anyone serving in the Armed Forces, regardless of age would be allowed to vote. Franchise however was denied to people born in countries at war with Canada.

Another problem was that the campaign was directed by the political parties. This put the LDC in an awkward position since their option was not supported by any party. The CCF, under the leadership of J.S. Woodsworth had been opposed to conscription but after his death the party remained silent throughout the whole campaign. Furthermore, the CBC made free air time available only to the political parties, a policy imposed on it by the government.³

The vote was held on April 27 1942. The results indicated 63.7 percent in favour and 36.3 percent were opposed. According to F.A. Angers, it had been "un vote de race"⁴. Quebec voted 71.2 percent against conscription. Moreover, the opposition was substantially stronger in ridings with large francophone

population than it was in primarily anglophone districts.

The same results were observed outside Quebec with French-Canadians pockets of the population voting against conscription.

Angers estimates that the French vote against conscription in Canada as a whole was 80 percent while in Quebec it was 85 percent.⁵

Laurendeau reinforces that thesis by stating:

"Car voici le phénomène le plus étonnant: sans presque avoir été rejointes par la propagande de la Ligue, les minorités françaises du Canada ont donné partout où elles forment un groupe important, une majorité au NON. Cela ressemble à un réflexe instinctif."⁶

On May 8 1942, shortly after the vote, the King government amended Bill 80 giving the government the power to conscript men for overseas service, subject to approval by Parliament.⁷ Cardin, accusing King of betrayal, resigned. Ralston also threatened to resign although his antagonism towards King had a different source than Cardin's.

B The Use of the Referendum and the Constitution

Although some Private Members's Bills advocating the use of the referendum were presented after 1942 the idea was not discussed by any government until 1977, a year after the election of the Parti Québécois in Quebec. On October 19 1977, Prime Minister Trudeau announced in the House of Commons that his government planned to introduce legislation that would enable the government to hold a country-wide referendum on Quebec's separation from Canada. The Bill was given first reading on April 3rd, 1978. The proposed

law would have permitted the government to call a referendum on constitutional matters, nationwide or in a single province.

The Minister of Federal Provincial Relations, Marc Lalonde said, in tabling the Bill, that the referendum was a key to the federal strategy in fighting the Quebec government and that the referendum might not be used but that the government would not hesitate to use it if it judged that the Quebec government was undemocratic in its use of the referendum.

The federal proposal, like the Quebec law, is consultative and the voting mechanism is based largely on the electoral process. There are however a number of differences between the two laws. The federal proposal is a sunset law; after five years, unless extended by both Houses, the law will lapse. The federal proposal allows any federal or provincial party to participate in a campaign; there are no umbrella committees as in the Quebec case. The federal project places no limit on spending by groups while in Quebec the limit is set at 50 cents per elector. While in Quebec the contribution per individual is limited to \$3,000, the federal ceiling is set at \$5,000 and corporations can also contribute money. The bill tabled in April 1978 died on the order papers with the prorogation of Parliament on October 10 of the same year. The Bill was tabled again, a few days later, on October 18. After a second reading it was sent to committee on February 1st, 1979. The Conservative Opposition opposed it arguing that it was too general a law. Less than two months later Parliament was

dissolved and the Bill died. During the campaign Liberal leader Pierre Trudeau promised to hold a national referendum if negotiations on the constitution reached an impasse. In August 1979, three months after his election, Prime Minister Joe Clark announced that his government had no intention of tabling a referendum law. In October 1980, five months after the Quebec referendum, Prime Minister Trudeau, in presenting his constitutional package, evoked the possibility of having recourse to a referendum for amending the new constitution once it was patriated. In the Trudeau package there was also a provision to hold a national referendum if the federal and provincial governments cannot come to an agreement on a new amending formula within two years. The package is presently before the Supreme Court.

Reactions to the proposed referendum law were fairly negative. In an editorial entitled 'Une Leçon Prématuration' in *Le Devoir*⁸ Lise Bissonette wrote that the tabling of the bill shortly before a General Election demonstrated that the federal government wanted to show to the population that it is holding its own in the constitutional battle. She argued that if the federal government wanted to hold a referendum of its own to keep the Quebec government from abusing its powers then that referendum law was premature. The *Globe and Mail*, in an editorial argued against the wide scope of the law:

(10)

If the federal government wants a bill with which to respond, if necessary to the planned plebiscite in Quebec, that is the bill that should be drafted. Bill C-9 left unamended, is a scattershot act that opens doors which should be left locked and barred.⁹

Some provincial premiers also attacked the proposal. Manitoba Premier Sterling Lyon feared that a federal referendum might be used to take power away from the provinces. New Brunswick Premier Richard Hatfield was the most outspoken critic of the use of the referendum in general. He argued that not only would the referendum threaten national unity but that it would also undermine our parliamentary tradition.

The most important conclusion that can be drawn from experience elsewhere and earlier experience in Canada with the referendum at the national level is that, in a bicultural country such as Canada, popular consultation on a nationwide scale should be avoided for fear of dividing the country on cultural lines.

Besides the possibility of dividing the country, another important factor to consider is that the main political parties in Quebec, be they federalist or nationalist, recognize Quebec's right to self-determination; a federal referendum held before the PQ's referendum would have been perceived as outside interference. English Canada has its future at stake too, but it would have been preferable if the bill had provided for approval or rejection of Quebec's constitutional future after Quebec

had decided by itself on it. Nothing would prevent the federal government from consulting its constituency or part of it after a vote had been held in Quebec.

What if, and history shows us it is possible, English Canada were to vote opposite to Quebec? What would the government do with such results? Ignore them as King and Laurier have done? Act on them in favour of one group to the detriment of the other? And, what if by backlash or by effective campaigning on the part of the Parti Québécois, English Canada were to vote only weakly against sovereignty for Quebec? This could only weaken the federal government's position.¹⁰

If the federal government wished to hold a referendum on Quebec sovereignty, it would be better to restrict the referendum only to Quebec, if only to counter-balance the Quebec government referendum. But again this would create problems: a different question, posed much later, could bring a different answer. Added to this is the possibility that the federal referendum could be characterized by a high rate of absenteeism. The federal government has an important role to play in the national unity debate, but the use of a referendum on Quebec's sovereignty should not be one of the methods used.

Finally, an important factor for the federal government to take into consideration is that by holding such a referendum, it would implicitly acknowledge the right of Quebec to self-determination, a difficult position to be in if Quebec were to vote in favour of self-determination,

Referenda are always potentially dangerous devices, then, and the country is likely to be better off if Mr. Levesque is allowed to play with them alone.

ENDNOTES

- 1 - Laurendeau, Andre. La Crise de la Conscription de 1942, Editions du Jour, Montréal, 1962, p. 72.
- 2 - Laurendeau, A. Ibid., p. 83.
- 3 - Laurendeau, A., Ibid., p. 108.
- 4 - Angers, F.A. 'Un vote de race' L'Action Nationale, mai 1942, pp. 299-312.
- 5 - Angers, F.A., Ibid., p. 308.
- 6 - Laurendeau, A., op. cit., p. 121.
- 7 - Conscription for overseas service would only come later, in 1944.
- 8 - Le Devoir, April 6, 1978.
- 9 - The Globe and Mail, March 5 1979.
- 10 - A public opinion poll published by the Canadian Institute of Public Opinion on November 6 1976 shows 40 percent of Canadians accepted that if Quebec decided to separate, it should be allowed to. The federal government position then is not as strong as we are led to believe.
- 11 - Granatstein, J.L., 'Separation Device Dangerous for P.M.' The Globe and Mail, November 9, 1977.

CHAPTER XIX- THE REFERENDUM IN QUEBEC

1 - HISTORY

The idea of a referendum law in Quebec did not originate with the Parti Québécois. The main theme of the 1962 election in Quebec was the nationalisation of the hydro-electric companies. The Union Nationale platform was to hold a referendum on the issue. Their proposal died with the reelection of the Liberal party. In the 1966 campaign, the Union Nationale again pledged to adopt a referendum law. In December 1966 in the Speech from the Throne, the Union Nationale government declared:

Le temps est venu de repenser non seulement la constitution canadienne, mais également la constitution interne du Québec, qui a grand besoin d'être modernisée. Il importe de mettre en place les organismes nécessaires pour que ces problèmes constitutionnels puissent être étudiés et résolus dans le meilleur climat possible et dans le plus profond respect de la volonté populaire. En conséquence, le comité de la constitution sera ravivé avec un mandat élargi et vous serez appelés à voter une loi cadre permettant de tenir des référendums.¹

For numerous reasons, including the constitutional debate and Daniel Johnson's death in office, the Union Nationale did not table its referendum bill until October 1969. A few months earlier, in June, Jean Jacques Bertrand declared that the referendum would be used to adopt a new constitution. The referendum would also be used to consult people "on matters affecting them". Among the possibilities discussed then was the establishment in Quebec of a presidential system.

The referendum bill, Bill 55, was given first reading on October 9 1969 and permitted the government to consult the electors "sur tout sujet qu'il indique et sur lequel il désire obtenir leur opinion".² According to the Bill, the question would be submitted to the National Assembly, which would vote on it. It would be up to the government to determine the date of the vote. The results would not be binding to the government. After first reading, the bill was referred to the Constitutional Affairs Commission (Commission des Affaires Constitutionnelles) for further study. The commission discussed it only once, on November 27 1969. During that session, the main spokesman for the Liberals was their leader, Jean Lesage. Lesage was opposed to the principle behind the referendum. He also maintained that the proposed bill was too vague. He wanted certain subjects exempted from popular consultation; anything that dealt with language, religion and minority rights. The Liberals also recommended the formation of a constitutional council (conseil constitutionnel) whose role would be to see that the referendum be administered in the best possible way. The Liberals had a political motive in opposing the Bill and trying to postpone its adoption; they did not want the Union Nationale to campaign in the next election with the referendum as a tool. As it happened, the Union Nationale dissolved the National Assembly without adopting Bill 55 but Jean Jacques Bertrand nonetheless campaigned on the issue. He promised to hold a referendum on independence in 1974 if the Canadian constitution had not

been revised. The Union Nationale lost power to the Bourassa Liberals in April 1970 and the idea of giving people a direct voice on the constitutional issue died for a few years before being revived, this time by the Parti Québécois.

The promise to hold a referendum on sovereignty was not always a part of the Parti Quebecois program. In fact, the idea of a referendum was a late concession from the ultra nationalists who believed that accession to power meant a mandate to achieve independence. The party strategists who believed that sovereignty was a long term goal.

At the founding meeting of the Parti Québécois in 1968 the party's position was that a victory at the polls meant that a Parti Québécois government had a mandate to negotiate sovereignty and if negotiations failed, it could unilaterally declare independence.

Le Québec négociera son accession à la souveraineté soit avec l'Etat fédéral (si les autres Etats provinciaux lui permettent de négocier en leur nom), soit avec des représentants des autres Etats provinciaux, ce qui suppose la désignation de l'interlocuteur anglo-canadien et un rapport d'égalité à établir entre les deux parties en présence... Si toute entente s'avérait impossible, le Québec devrait procéder unilatéralement. 3

During the 1972 federal election campaign some Parti Québécois leaders suggested that a referendum might be necessary along the route to independence. This position, although not following official party lines, was strategically wise. It served two purposes; it eliminated the possibility that the federal Government

take a first step and announce a referendum of its own and it served to water down the 'dangerous' aspects of the party's platform.⁴

In the February 1973 convention the militants of the party accepted the idea of a referendum confirming a declaration of independence.

The party also attempted, it appears, to end the ambiguity concerning the actual acquisition of independence. The convention approved the following statement:

Therefore a Parti Québécois government is committed to:

1. Immediate impetus for the movement towards sovereignty as soon as this is proclaimed by the National Assembly. - the transfer of powers and jurisdiction might stretch over several months - while opposing any federal interference, even in the form of a referendum, this being contrary to the right of peoples to self-determination.
2. Holding a referendum, in order to solidify this independence, for the adoption of a constitution worked out with citizen participation at the riding level by delegates meeting in a constituent assembly.⁵

In the fall campaign of 1973 Levesque again modified his party's position on accession to independence by separating the election of a Parti Quebecois government and the issue of sovereignty. Full page ads in newspapers read:

Aujourd'hui, je vote-pour la seule équipe prête à former un gouvernement. En 1975, par référendum, je déciderai de l'avenir du Québec. Une chose à la fois! Chaque chose en son temps.

Apparently the tactic worked. Mark Wilson (Montreal Star, October 23) interviewed a Matapedia farmer who admitted he was working for the Parti Québécois because of their economic and social platform and their belief in the dignity of the individual and 'standing on our feet'. Asked if he was not worried about the consequences of independence, he replied: 'Less than last time, I think. Besides, electing the Parti Québécois doesn't necessarily mean independence, you know, there would be a referendum. It's a way of improving a bargaining position, like taking a strike vote. There's got to be some changes.' ⁷

By the November 1974 party convention the rank and file had accepted the political advantages of a referendum. Thus the new party position was that the Parti Québécois government would ask the federal government for a transfer of powers and should this fail, refer the matter to the people by way of referendum.

In the event of wholesale opposition from Ottawa, systematically assume the exercise of all powers of a sovereign state, first assuring itself of the support of the Quebecois by means of a referendum. ⁸

This was a major turning point in the Parti Québécois strategy since it was the first time that it explicitly said that there would not be a unilateral declaration of independence before the holding of a referendum:

De cette façon, la décision de recourir au référendum, avant de déclarer unilatéralement l'indépendance du Québec, marque un tournant important dans le Parti Québécois. ⁹

In the November 1976 election the party leaders campaigned on that point but it seemed that they had put aside, for strategic reasons, that the party program stipulated that negotiations for accession to independence with the federal government were to be held prior to the

holding of the referendum.

2 - THE REFERENDUM LAW

A - THE WHITE PAPER

Robert Burns, who had been elected under the PQ banner in 1970, 1973 and 1976, was named Minister of State for Electoral and Parliamentary Reform in the new Levesque government. Under this title he was responsible for bringing forward a law on the referendum. In August 1977 he published a white paper entitled Consulting the People of Quebec. The purpose of that document was to outline the government's position on the referendum while inviting opposition parties and other interested groups to discuss it in a parliamentary commission.

At the outset, the white paper stated that it is better to have a general law on popular consultation rather than a specific bill dealing with the sovereignty referendum:

The proposed law on consultation with the public corresponds to the government's profound belief that the role of the people in public affairs should be gradually intensified. For this reason the mechanisms which the government proposes to set up have not been designed for one consultation in particular, however important it might be.

According to the white paper, the general framework used by the Quebec government was that of the British referendum of 1975, this model being more appropriate to a parliamentary system.

The White paper as such was divided in six chapters.

i) Consultation by Referendum

As mentioned in a previous chapter, a referendum at the provincial level can only be consultative in nature. The White paper acknowledged this and that the results of the question would not be legally binding on the government. The government would nonetheless, consider itself to be politically bound to the results:

This constitutional obstacle in no way diminishes the political value of a referendum since the first binding law of democratic process is that of the clearly expressed majority, and a government can always commit itself explicitly¹¹ to accepting the result of a referendum.

The White paper added that since the referendum is only consultative, it is not necessary to include a section on the participation rate or the required majority.

ii) The initiative

There are two ways of initiating a referendum, by the political power as in Great Britain and France, or by the public as in Switzerland and the United States. The White paper proposed that the Quebec referendum originate at the political level. If in the long term, it might be preferable to have the public initiate consultation, the White paper suggested that in the short-term, it is not so. The government offered three arguments against it. First of all, the referendum

is not part of our political culture as it is in the United States and Switzerland and it is preferable to wait and experiment with it before allowing the public to originate consultation. The White paper also argued that a referendum initiating from the people is more appropriate to a presidential system than a parliamentary regime. Finally, the White paper suggested that it is better to study different procedures before-hand so that the formula adopted is more appropriate to Quebec's political structures.

(iii) Phrasing the Question

The government proposed that any referendum question be treated as an 'ordinary bill', that is, the government would submit a proposal and after discussion and three readings, the National Assembly would adopt it. Any member of the National Assembly could propose amendments. As in the case for the inaugural address and the budget, there would be a time limit of 25 hours allowed for the debate.

iv) The Vote

a) Procedure

It is recommended that the British example be copied, insofar as is possible, in that the normal election procedures be used.

b) The right to vote

The government was opposed to lowering the voting age for popular consultation. It was however recommended that the right to vote be given to judges, the Public Protector, the permanent Attorney-General prosecutors and to prisoners.

c) Organization

Again, the normal election procedures should be followed; the chief electoral officer would be responsible for organizing the voter and he would be assisted in each district by a returning-officer.

V) The Referendum Campaign

a) Issuing the writ

After the National Assembly gave its third and final reading to the referendum question, the government would issue a writ to the Chief Electoral officer. The vote would have to be held between 35 and 60 days after the writ had been issued.

b) The participants

The White paper suggested the formation of two umbrella organizations responsible for promoting the respective causes. This is based on the British model. The government argued there are two main reasons for this. First of all, it would make it easier to control expenses and both options would be assured of equal treatment. The second reason is that it would leave partisan politics out of the debate. Parties may be divided on a question, as was the case in Great Britain in 1975, and this would permit elected representative and rank and file members to support a different option than the official party position.

c) Setting up the organizations

As mentioned above, there would be one organization per option (If, as was the case in the first Newfoundland referendum, there were three options, three organization would be formed).

Within three days of the issuance of the writ, the Chief Electoral

officer would see to it that provisional committees be formed. These provisional committees would have three functions; to determine the make-up and structure of the 'national' committee, to name a chairman and to appoint an official agent. In order to be a member of the provisional committee, a member of the National Assembly would have to register his name to the Chief electoral office within three days of the issuance of the writ.

d) Supervision of polling procedures

The chairman chosen by the provisional committee with the largest number of members of the National Assembly would appoint the Deputy Returning Officer for each polling station while the chairman with the second largest number of MNA's would appoint the poll-clerks for each polling station.¹²

e) Financial aid from the state

Since the organizations would cease to exist after the vote, the reimbursement of electoral expenses (as in general elections) was not a practical idea. The White paper suggested that, following the British example of 1975, a flat contribution be made at the start. Each organization would receive the same amount. The amount would be fixed by the National Assembly during the debate on the wording of the question.

f) Control over spending

The White paper suggested that control over spending follow established practice for general elections. A ceiling of 50 cents per voter was suggested.

g) Control over funding

There are three sources of income, the state, as mentioned above, the electorate and the political parties. The maximum

amount of money transferable from a party to the organisation would be set at 25 cents per voter.

vi) Polling

a) Polling procedures

Again the White paper suggested that normal election procedures be followed.

b) Counting the votes

There are three possibilities on this point: counting in the electoral district, at the regional level or on a Quebec-wide basis. The White paper was open to any of these options.

c) Reports to the National Assembly

The Chief electoral officer and the director general of financing for each organization would be required to submit reports to the National Assembly after the vote on matters arising from their respective mandates.

2 - THE PARLIAMENTARY COMMISSION ON POPULAR CONSULTATION

Shortly after the publication of the White paper on popular consultation, a parliamentary commission met in order to receive briefs on the subject. During the session 26 different groups presented position papers to the commission.¹³

In this section we will do a brief content analysis of those presentations. The most outstanding feature of these briefs is that we can easily sort out three groups, the 'nationalists', the 'federalists' and the 'others'. We use those terms loosely, for lack of better classification.¹⁴ The main characteristic of the nationalist group was the enthusiasm shown towards the

principle of the referendum. Their comments on the White paper were generally favourable. There were twelve briefs from that category. On the other hand, the federalists, understandably were more critical of the government's proposal. This group was made up nine organizations. The five briefs coming from the 'others' were too different and unique to fit in the other two divisions.

Doing a content analysis of these briefs proved to be a difficult task for three reasons. First of all, the different briefs do not approach the subject matter in the same fashion, leaving out some points that others discussed at length. Another problem faced is that some briefs stated that they approved of the project in general except for a few points which they set out to discuss. It is therefore impossible to judge the intensity of the approval. For the purpose of this exercise a point is put in a category only if raised explicitly. A third problem is that some briefs discuss more about the need for Quebec to stay in confederation (or to leave) rather than the principle of the referendum.

We have isolated six main themes which were discussed more often and which permit classification. These themes are: the principle of a general law on popular consultation, the right to vote, the phrasing of the question, the consultative aspect, the length of the debate in the National Assembly and the formation of the umbrella committee. Such themes as the financing and the length of the campaign were not discussed often enough to make any conclusive statement.

i) the principle of a general law

The nationalists were generally in favour of a general law (7 in favor, 3 opposed and 2 silent) while the federalists were opposed (6 opposed, none in favour and 3 silent). The federalists suggested a specific law on the referendum for sovereignty and a general law, in the long term, if judged necessary. The trade unions were opposed to a general law, stating that the referendum is a conservative device and that popular consultation should be limited to constitutional matters only.

ii) the right to vote

All the federalist groups except one were silent on this point. The nationalists, on their part, wanted the right to vote lowered from 18 to 16 years. Some even suggested that the right to vote be limited to Quebec-born residents or to people having lived in Quebec for 18 years prior to the vote. It is obvious why they would propose this: they thought that the young are more favorable to independence and limiting the vote to long-time residents would eliminate a good section of the English and immigrant vote, individuals who would presumably vote 'no' in the sovereignty referendum.

iii) the phrasing of the question

All groups except la Société Saint Jean Baptiste de Montréal and la Société Nationale des Québécois de l'Outaouais were in favor of a straightforward question. They argued in favor of a multiple choice question stating that Quebecers are mature enough to choose between various options. The nationalist magazine Ici Quebec wanted a question that deprived the voter from choosing the status-quo.

iv) the consultative aspect

The federalist briefs were unanimous in declaring that the government should be bound by the results. Some proposed that a minimum participation rate and a required majority be decided upon prior to the vote. The nationalists, on the other hand, did not feel that the government should be bound by the results (10 against, 2 in favour). The difference is understandable. Both groups believed that the government could lose a first referendum. While the federalists hoped to settle the question as quickly as possible, the nationalists believed it might be necessary to hold a second or third consultation before achieving their goal.

v) the length of the debate in the National Assembly

This is another aspect of the government's proposal which divided the two groups. The federalists believed that 25 hours was not enough to discuss the question. Some argued that there should be no limit. The nationalists (9 in favour, 3 opposed) argued that 25 hours was long enough since the debate would start

before and would last throughout the campaign. They also feared a "filibuster" from the opposition. The federalists believed that more than 25 hours was needed in order to permit the different opposition parties to unite against a well prepared government.

vi) the formation of umbrella groups

The principle of forming umbrella organizations also divided the two groups. The federalists were opposed to it, arguing that it is basically anti-democratic since one of the organizations (the government) would phrase the question, control its adoption through its majority in the National Assembly, and decide on the date of the vote. They also maintained that it was just that the two groups should receive equal treatment while in reality the two options did not have equal support from the population. They also argued that such committees would limit the right to free association. The nationalists, (except the CNTU) argued that not only was the formation of camps a good idea, but that it was an essential one if the debate was to be democratic. This position can be explained by the fact that, with limited controls, the federalist forces could not saturate the campaign with money and propaganda. The formation of committees also ensured that the debate would be essentially a Quebec one.

vii) Other Presentations

There were five briefs from this category, La ligue des droits de l'Homme, le Barreau du Quebec, the Montreal Board of Trade, the Communist Party of Quebec and the North American Labour Party.

as follows:¹⁷

The Government of Quebec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations;

This agreement would enable Quebec to acquire the exclusive power to make its laws, administer its taxes and establish relations abroad—in other words, sovereignty—and at the same time, to maintain with Canada an economic association including a common currency;

Any change in political status resulting from these negotiations will be submitted to the people through a referendum;

On these terms, do you agree to give the government of a mandate to negotiate the proposed agreement between Quebec and Canada?

iv) The Debate in the House

The debate on the question in the National Assembly started on March 4th and ended on March 20 after 35 hours of debate, the allotted time in the law. The government members, with 60 percent of the MNAs, received that share of the time while the Opposition received the balance of the time. At the end of the debate, three amendments were voted upon. The first one came from Rodrigue Biron, the Union Nationale leader, who, unable to convince his caucus to join the YES forces, left his party and joined the YES forces alone. His amendment replaced the third paragraph with the following:

No change in political status resulting from these negotiations will be effected without the approval¹⁸ by the people through another referendum.

Assembly could have representatives on the committees.

viii) The opposition parties

Besides the above groups, two other important actors participated in the debate, the Liberal party and the Union Nationale. The most striking aspect of their respective briefs is the consistency of the parties' positions during the debates of 1969 and of 1977. The Union Nationale still believed in the principle of a general law while the Liberals saw the referendum as being incompatible with the parliamentary system. They both had reservations on the formation of umbrella committees. They both desired the debate to be democratic: "un débat honnête et dans le respect des droits et libertés des citoyens du Québec" (the Liberals) and "un débat étanche et résistant, noble et hautement digne de respect" the Union Nationale. The formation of a referendum council was suggested by the two parties. This council was proposed by Jean Lesage in 1969. Although it was not part of the Union Nationale's original proposal, the Union Nationale's brief stated that one would have been created had the government presented Bill 55 in its final form.

C BILL 92

The Referendum Act, Bill 92, was given first reading on December 19, 1977. Although the Bill was similar to the white paper, some changes are worth noting. The most important of these was the creation of a Referendum Council, the Conseil du Référendum.

The Conseil

shall have the exclusive jurisdiction to hear any judicial proceedings relating to a referendum and to the application of this act. Its decisions are final and without appeal. ¹⁵

The Conseil was to be made up of the Chief Judge of the Provincial Court, who would act as chairman and of two other judges designated by the government. Only the president of the elections or a member of the National Assembly could apply to the Conseil for a ruling.

The length of the debate was also modified. In the White paper the length was set at 25 hours. In the first reading of the bill, the debate had a minimum of 30 hours. The Government House Leader could, at any time after that, move that the question be put to a vote. In the third reading, this part was changed. After 35 hours, the President of the National Assembly after conferring with the house leaders, must put the subsidiary motions and the main motion to a vote.

Another change from the White paper to the final version of the bill is the length of time between the vote by the members of the National Assembly and the issuance of the writ. While the White paper was silent on that topic, Bill 92 fixed a minimum of 20 days. The period of time between the vote and the formation of the provisional committees was lengthened from three to 7 days.

Some aspects of the White paper remained unchanged: the principle of a general law, the consultative aspect, the formation of umbrella committees and the right to vote.

One important aspect of the bill was the language in which the question was asked. Despite the fact that Bill 101 established French as the official language in Quebec, the question on the ballot was to be in English and in French.

On Indian reserves and in Inuit communities the ballot was printed in French and in the language of the majority.

Although the government hadn't changed the essential aspects of its original proposal, it used the Parliamentary Commission and critics from the Opposition as a basis to refine its final version of the referendum law. The law was adopted in the spring 1978 session and was given Royal Assent on June 23 1978.

(See Appendix 2 for copy of the law.)

D BILL 92 AND THE BRITISH MODEL

In the White paper and throughout the debate on Bill 92, the minister responsible for its adoption, Robert Burns, maintained that the Quebec government had used the British referendum as a model. Although there are some similarities, there are some major differences which should be noted.

The first major difference is that the British law dealt only with Britain's membership in the European Community whereas the Quebec law is a general law permitting the holding of popular

consultation on various issues. The White paper is explicit on that point. The referendum "will allow public consultation whenever the Government needs it to carry out its mandate".¹⁶

Another major aspect which differentiates the two referendum laws is that in Great Britain negotiations with the EEC had been held prior to the vote. The vote was held to ratify (or reject) the results of the negotiations between the Common Market and Great Britain. Obviously this could not be done in Quebec's case since the federal government or the provincial governments would refuse to negotiate with a separatist government unless it had a mandate to do so.

One of the most controversial aspects of the Quebec law was the creation of umbrella committees. In Great Britain people joined an umbrella organization on a volunteer basis and could campaign without being a member of an organization whereas in Quebec, everything had to be done within those groups. In Great Britain the groups were formed for basically two reasons, to avoid a division within the ruling labour party and to facilitate the distribution of government funds. In Quebec the umbrella committees were to be created so that each side had equal financing and coverage. It is worth noting that there was no limit on spending in the U.K. referendum. The pro-marketeters, which won the vote by a margin of 2 to 1, spent ten times more money than the anti-marketeters.

On the question of umbrella committees, William Johnson of the Globe and Mail wrote in his column, "View from Quebec," that if the government decided to hold a referendum outlawing strikes in the public service, the bill did not guarantee the right of the unions to participate in the debate. They could only do so at the invitation of the members of one of the committees. Also, according to Johnson, there is no precedent on limiting funds for a referendum campaign.

The Quebec Federation of Labour found that the principle of having umbrella committees was restrictive but nonetheless was ready to live with them. In the brief submitted to the parliamentary commission the QFL stated:

Nous trouvons restrictive les dispositions sur l'obligatoire relation entre l'appartenance aux comités nationaux et le droit d'engager des fonds dans la campagne. Ceci dit, nous sommes d'accord avec la rigidité des dispositions, qui constituent pour la FTQ le prix à payer pour l'élimination des influences indues des pouvoirs financiers. 18

In its final form of the bill, the government relaxed somewhat its rigidity on that point by permitting expenses of less than \$300 incurred by individuals not to be part of the umbrella organization's regulated expenses.

A major point of criticism from the opposition during the Whitepaper debate was that the government would not be bound by the results of the referendum. As explained earlier, under the Canadian constitution, a referendum cannot be binding.

The government could nonetheless resign if the option it proposed were to be rejected by the voters. To answer this point the government had a provision in the law (Chapter III, section 12) to the effect that two referendums on the same topic cannot be held within one mandate. It is up to the Conseil du Referendum to decide on that matter.

During the debate preceding the adoption of Bill 92, a common fear of the opposition was that the Parti Quebecois might use its majority in the House to stack the deck in its favour. The creation of the Conseil du referendum was designed to put a stop to this. Although it would be still up to the majority party in the Assemblée Nationale to decide on the interpretation of all aspects of the bill, it could be overruled by the Conseil, thus preventing abuse.

E THE REFERENDUM CAMPAIGN

1) Preparations for the Vote

Most of the research for this thesis was done prior to the fall of 1978 and it was then not our purpose to discuss the referendum campaign or its results but rather to draw implications for a Quebec referendum from precedents and experience elsewhere. However, it is now desirable to present a brief account of events from June 23, 1978, when the referendum law was adopted, to the May 20 1980 vote on Sovereignty-Association. Mainly the tabling of the White Paper on Sovereignty Association, the presentation of the proposed question, the debate in the National Assembly

followed by the adoption of the question, and finally the vote on May 20.

ii) The White Paper on Sovereignty-Association

Since the foundation of the Mouvement Souveraineté-Association in 1967 the expression 'Souveraineté-Association' lacked a precise definition. Sometimes the emphasis was put on the sovereignty aspect while at other times association seemed to be the more important element and still, at other times the two were presented as inseparable. From the government's point of view it was therefore essential that a clear statement be made before the referendum. It was with this in mind that the government published, over six months before the vote, the long-awaited White Paper entitled Quebec-Canada: A New Deal on November 1979. The 109-page document explained the government's political option and the methods to achieve it. The sovereignty sought by the White Paper meant that a Quebec government would have exclusive power to legislate, tax and administer justice in its territory. Sovereignty also meant accession to an international status. Association, on the other hand, implied a link with Canada in areas such the free circulation of goods and people. A common currency was also proposed. This was to be negotiated over a period of years. Questions still remained to be answered by the government. What if Canada refused to negotiate? What would be the weight of Quebec in the new association? At times parity was used as a basis while at

other times there was mention of proportional representation in relation to the size of each economy.

Another important part of the White Paper dealt with the method to be used in achieving Sovereignty-Association: the referendum. The government clearly states the meaning of a YES vote:

By giving a positive answer in the referendum, Quebecers will express their desire to reach a new political agreement with the rest of Canada based, this time, on the legal equality of the two peoples. a Yes vote by Quebecers would thus be, in fact, a mandate given the Quebec government to make this new agreement a reality through negotiations. By its vote, the Quebec people will have clearly established the negotiations on the principle of Quebec's accession, in law and in fact to the status of sovereign state, and association with Canada. Sovereignty cannot go without association: they are inseparable. This aim, to be sure, will not be achieved overnight, but a positive result in the referendum will allow Quebec to embark on the road that leads to it.¹⁶

ii) The Presentation of the Question

Four months prior to the vote on December 20 1979 Premier Levesque tabled the question before the National Assembly. Although he was under no legal obligation to make the question public before the beginning of the debate itself, Levesque did so in order to reassure the undecided that he was not asking for a blank check to negotiate since the third paragraph mentioned a second referendum on the results of the negotiations. The question as presented in December read

as follows:¹⁷

The Government of Quebec has made public its proposal to negotiate a new agreement with the rest of Canada, based on the equality of nations;

This agreement would enable Quebec to acquire the exclusive power to make its laws, administer its taxes and establish relations abroad—in other words, sovereignty— and at the same time, to maintain with Canada an economic association including a common currency;

Any change in political status resulting from these negotiations will be submitted to the people through a referendum;

On these terms, do you agree to give the government of a mandate to negotiate the proposed agreement between Quebec and Canada?

iv) The Debate in the House

The debate on the question in the National Assembly started on March 4th and ended on March 20 after 35 hours of debate, the allotted time in the law. The government members, with 60 percent of the MNAs, received that share of the time while the Opposition received the balance of the time. At the end of the debate, three amendments were voted upon. The first one came from Rodrigue Biron, the Union Nationale leader, who, unable to convince his caucus to join the YES forces, left his party and joined the YES forces alone. His amendment replaced the third paragraph with the following:

No change in political status resulting from these negotiations will be effected without the approval¹⁸ by the people through another referendum.

This amendment and the main motion were adopted by a vote of 68 to 37.

Two other amendments were defeated. Liberal leader Claude Ryan wanted a two-part question, the first one asking the people if they supported sovereignty for Quebec. Those who answered yes could then give their approval (or disapproval) to an economic association with Canada. On March 31st the official umbrella committees were formed.

The 'Regroupement National pour le Oui', under the leadership of Rene Levesque defended the Yes option while Liberal leader Claude Ryan was leading the No committee, 'Les Québécois pour le Non'. On April 15 René Levesque announced in the National Assembly that the writs had been issued and that the vote would be held on May 20.

v) The Results

The results of the vote, after a campaign of 35 days were:¹⁹

Yes 1,485,761	(40.44%)
No 2,187,991	(59.56)
Participation rate 85.61%	

ENDNOTES

- 1 - Débat de l'Assemblée Législative du Québec, volume 5, no. 60, page 5.
- 2 - Débat de l'Assemblée Nationale, 9 octobre 1969, volume 8, no. 62, page 2951.
- 3 - Levesque, René, Ce pays qu'on peut bâtir, 1968, p. 34, as quoted in Vera Murray, Le Parti Québécois: de la fondation à la prise du pouvoir, Montréal, Cahiers du Québec, Hurtubise, 1976, p. 70.
- 4 - The Parti Québécois executive (not the militants) gradually became aware that a hard line approach on independence would never succeed. There are numerous examples of this softened approach; the discontinuance of the use of the term independence, putting more emphasis on the association part of sovereignty-association and of course the idea of the referendum. The Parti Québécois could then appeal to the non-separatist voter. This strategy always threatened to split the party. The victory in November 1976 served to moderate the nationalist wing.
- 5 - Saywell, John, The Rise of the Parti Québécois 1967-1976, Toronto University of Toronto Press, 1977, p. 78.
- 6 - See Le Devoir, October 27 and 29 1973
- 7 - Saywell, John, op. cit., p. 87.
- 8 - Saywell, John, ibid, p. 115.
- 9 - Murray, Vera, op. cit., p. 73.
- 10 - Consulting the People of Quebec, Editeur Officiel du Québec, 3ième trimestre 1977, p. 6.
- 11 - Ibid, p. 9.
- 12 - Ibid, p. 18.
- 13 - The 26 organizations or groups that presented briefs to the Parliamentary commission are La Société Saint Jean Baptiste de Montréal, Le conseil du Patronat du Québec, Les fils du Québec, The Montreal Board of Trade, Le Magazine Ici Québec, La Société Nationale des Québécois de Lanaudière, La Société Nationale des Québécois de l'Outaouais, Decision Canada, Jeunes Libéraux de la Région de Québec, Fédération des Travailleurs de Québec, La société nationale de l'est du Québec, L'Avant Garde Française de l'Amérique, Le Barreau du Québec, La société Nationale des Québécois du Centre du Québec, one unidentified citizen, Comité

d'Action Positive, Mouvement Québec Canada, Inuit du Québec, Participation Québec, La ligue des Droits de l'Homme, North American Labour Party, Parti Communiste du Québec, Parti Liberal d'Anjou (Comite d'information Jeunesse) Mouvement National des Québécois, Confédération des Syndicats Nationaux, La Chambre de Commerce de la Province de Québec et le Conseil pour l'Unité Canadienne.

- 14 - The Quebec Federation of Labour and the Confederation of National Trade Unions are by principle neither federalist nor nationalist but because of their position regarding the White Paper they fit better in the nationalist category.
- 15 - The referendum Act, Bill 92, Assemblée Nationale, Quebec, Chapter II, section 3.
- 16 - Gouvernement du Québec, Conseil Executif, Québec-Canada: New Deal - The Quebec government proposal for a new partnership between equals: sovereignty-association, Editeur officiel du Quebec, Quebec City, 1979, p. 77.
- 17 - The Gazette, Montreal, December 21, 1979.
- 18 - The Gazette, Montreal, March 21, 1980.
- 19 - Rapport des résultats officiels du scrutin Référendum du 20 mai 1980. Le Directeur Général des Elections du Québec.

CONCLUSION

Over two years have passed since the Quebec population has voted in the referendum on sovereignty-association. Although the referendum was lost by the government, the vote has had an impact on the Canadian political system.

The referendum served as a catalyst to the constitutional development of that province and of the country as a whole. The federal government interpreted the results of the vote as a confirmation of its belief that, despite some dissatisfaction within Quebec with the existing structures, Quebecers wanted to remain a part of Canada. Armed with the results, the federal government led an 18-month thrust that led to the patriation of the Canadian constitution.

One of the consequences of the referendum in Quebec is that it forced the Parti Quebecois to question its own existence. In fact, the Parti Quebecois has evolved from a separatist government to a nationalist government. This is not to say that the party has dismissed Article One of its constitution (the creation of an independent state) but that it has shelved the idea for the time being and has decided to function within the existing structures.

An important social and political effect of the referendum is that it was an occasion to debate an important issue. Quebecers were asked what type of society they wanted. The referendum put that issue to rest, albeit temporarily, after occupying the mind of Quebecers from 1976 to 1980. The May 1980 referendum was a relief for the population in that attention could be turned elsewhere.

In our first chapter, in our discussion on the disadvantages of the use of the referendum, we pointed out that the referendum threatened our system of responsible government. It was implied that a government, once defeated on an important issue, would not be able to govern. This was not the case in Quebec, where the government continued to govern for almost a year after the loss of the referendum and was given another four year mandate.

One of the positive points of the referendum device is that the voters can differentiate between a party's general policies and the party's position on the referendum question. This seems to have been the case in Quebec. While only 40 percent of the people voted 'yes' in the referendum, a year later the Parti Quebecois was re-elected with 49.2 percent of the popular vote.

Despite some fears, we have not seen a movement toward an increased use of the device. The Canadian constitution was patriated without its use. In Quebec, even though the referendum law remains in the statutes and permits the holding of a consultation on issues other than the constitution, there is no movement or pressure group that promotes the use of the referendum to advance a cause or a number of causes. The fact that the use of the referendum has not been promoted is an indication of the incompatibility between the referendum and the parliamentary system. People recognize that the instrument is there but there is faith that the parliamentary system and the electoral process can face and solve most issues.

The Desirability of the Referendum in the Quebec Case

There are three main ways in which the government of Quebec could have taken action on the question of sovereignty-association: a unilateral declaration of independence, the holding of an election on the issue, and the use of the referendum. In our eyes, the referendum appears to be the best method.

Unilateral declaration of independence is no longer seriously considered by the Parti Quebecois, although it was part of the Parti Quebecois program in the 1970 and 1973 campaigns. There are four main reasons that make a unilateral declaration of independence politically unwise in the Quebec case. The first one concerns Quebec's needs for a future link with the rest of Canada. Party leader Rene Levesque has reiterated often his belief that sovereignty and association go hand in hand and nothing suggests that this policy would change under a new leader. A unilateral declaration of independence would make it almost impossible to establish economic links with English Canada after sovereignty. A second reason against such action is that the government would probably not have the support of a sufficient part of the population in doing so, thus making the governing of the new state difficult if not impossible. Another reason that a unilateral declaration of independence has been rejected is that it would probably do more harm than good to the cause; the international community might, at the request of the federal government, refuse to accept the new regime. Rhodesia suffered 15 years from lack of international recognition after its unilateral declaration of independence. Economic

Date	Subject
May 23 1967 ²	Daylight saving time
August 31 1971 ²	Daylight saving time
British Columbia (8)	
November 25 1909 ²	Liquor (local option)
September 14 1916 ²	Women's Suffrage
September 14 1916 ²	Liquor (prohibition)
October 20 1920	Liquor (temperance)
June 20 1924 ²	Liquor (beer by the glass)
June 1 1937 ²	Public Health Insurance
June 12 1952 ²	Liquor (administration)
June 12 1952 ²	Daylight saving time

1. Note on the sources.

A list of referendums or plebiscites in the Canadian provinces was difficult to compile due to the limited study done on the subject. I believe however that this list is reasonably accurate. My main sources, in addition to those cited in my footnotes are:

1. The Canadian Annual Review for the years cited.
2. Agar Adamson's "We Were Here Before: The Referendum in Canadian Experience" in Policy Options, vol. 1, number 1.
3. David Butler and Austin Ranney, (ed.) Referendums: A comparative study of practice and theory (Washington D.C. 1978) American Enterprise for Public Research, Table 4-3, p. 74.
4. Graham White, "Social change and Political Stability in Ontario: Electoral Forces 1867-1977", Phd Thesis 1979, McMaster University.

2. Denotes the plebiscite was held at the same time as a general election.

important as sovereignty. As we have seen in a previous section, elections are too complex to deal with one important issue since the people vote for a party for a variety of reasons (leader, record, local candidate, etc.).

The use of the referendum, therefore, appears to us as the best method to resolve the debate. The people vote on a specific question. Granted, the voter is influenced by his party's views or that of its leader as in an election, but the results nonetheless reflect the will of the population in a better fashion. A referendum, regardless of the results, helps to justify the government's actions in abiding by the results, not only within Quebec but also at the international level and in English Canada.

A final advantage of the referendum in the Quebec case is that it has ended uncertainty:

The circumstances are ripe for the use of a plebiscite whenever there is enough agitation for change of sovereignty to create genuine uncertainty as to a majority's consent to the status quo.¹

ENDNOTES

1. H.S. Johnson, Self-Determination Within the Community of Nations, (Sythoff, Leyden, 1967) as quoted in Brossard, L'Accession a la souverainete et le case du Quebec, (Montreal, Presses de l'Universite de Montreal, 1976), p. 93.

APPENDIX I¹

PLEBISCITES IN THE CANADIAN PROVINCES

Date	Subject
Newfoundland (2)	
June 3 1948	Constitutional future (3 choices)
July 22 1948	Constitutional future (2 choices)
Prince Edward Island (2)	
December 13 1893	Liquor
June 28 1948	Liquor (Temperance Act)
Nova Scotia (3)	
March 15 1894	Liquor
October 25 1920	Liquor (regulation of sales)
October 31 1929	Liquor (Temperance Act)
Quebec (2)	
April 10 1919	Liquor (sales of beer and wine)
May 20 1980	Sovereignty-Association
Ontario (5)	
January 1 1984	Liquor (control)
October 14 1902	Liquor (prohibition)
October 20 1919 ²	Liquor (Ontario Temperance Act)
April 18 1921	Liquor (interprovincial trade)
October 23 1924	Liquor (government control)

Date	Subject
Manitoba (7)	
July 23 1892 ²	Liquor (prohibition)
April 2 1902	Liquor (prohibition)
March 13 1916	Liquor (Temperance Act)
October 25 1920	Liquor (interprovincial trade)
June 22 1923	Liquor (government control)
July 11 1923	Liquor (Temperance Act)
June 28 1927 ²	Liquor (sales of beer)
November 24 1952 ³	Marketing of coarse grains
Saskatchewan (6)	
November 1913	Direct Legislation Act
December 11 1916 ²	Liquor (store system)
October 25 1920	Liquor (interprovincial trade)
July 16 1924	Liquor (government sale)
June 12 1934	Liquor (beer by the glass)
October 1956	Daylight saving time
Alberta (7)	
July 21 1915	Liquor (Prohibitory Liquor Act)
October 25 1925	Liquor
November 5 1923	Liquor (sale of beer)
August 17 1948 ²	Ownership of Power Companies)
October 30 1957	Liquor (additional outlets)

Date	Subject
May 23 1967 ²	Daylight saving time
August 31 1971 ²	Daylight saving time
British Columbia (8)	
November 25 1909 ²	Liquor (local option)
September 14 1916 ²	Women's Suffrage
September 14 1916 ²	Liquor (prohibition)
October 20 1920	Liquor (temperance)
June 20 1924 ²	Liquor (beer by the glass)
June 1 1937 ²	Public Health Insurance
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4. Graham White, "Social change and Political Stability in Ontario: Electoral Forces 1867-1977", Phd Thesis 1979, McMaster University.

2. Denotes the plebiscite was held at the same time as a general election.

3. The Butler and Ranney table mentions a plebiscite in Manitoba in November 24, 1952 on the marketing of coarse grains but a search for details through newspapers of that time does not give evidence of a plebiscite on that date.

REFERENDUM ACT
(S.Q. 1978, chapter 6)

[Assented to 23 June 1978]

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

CHAPTER I
INTERPRETATION

- Interpretation: 1. In this act, unless otherwise required by the context,
- "Conseil du référendum": (a) "Conseil du référendum" means the Conseil established by section 2;
- "referendum": (b) "referendum" means a referendum ordered and held under this act;
- "writ": (c) "writ" means a writ of referendum issued in accordance with section 13;
- "national committee": (d) "national committee" means a committee established in accordance with Division I of Chapter VIII;
- "official agent": (e) "official agent" means a person appointed in accordance with section 30;
- "local agent": (f) "local agent" means a person appointed by the official agent in accordance with section 31;
- "referendum period": (g) "referendum period" means the period beginning on the day fixed for issuing a writ and ending on the day for its return;
- "ballot-paper": (h) "ballot-paper" means the ballot-paper described in section 20;
- "elector", "polling-subdivision", "list", etc.: (i) "elector", "polling-subdivision", "urban polling-subdivision", "rural polling-subdivision", "list", "annual electoral list", "second revision", "revisors", "period of the annual enumeration", "official delegate", "electoral district", "election", "general elections", "domicile", "to be domiciled", "polling", "director general of elections", "returning-officer", "election clerk", "assistant election clerk" and "election officer" have the same meaning as in the Election Act (Revised Statutes, 1964, chapter 7) as it applies to a referendum;
- "director general", "authorized party", "official representative": (j) "director general of the financing of political parties", "authorized party" and "official representative of a political party" have the same meaning as in the Act to govern the financing of political parties (1977, chapter 11) as it applies to a referendum.

CHAPTER II

CONSEIL DU RÉFÉRENDUM

Establishment
Composition.	2. A Conseil du référendum is established. It is composed of three judges of the Provincial Court, one of whom is the chairman, designated by the chief judge of that Court.
Substitute.	If one of the members of the Conseil du référendum is unable to act, the chief judge of the Provincial Court shall designate another judge of the Court to replace him.
Exclusive jurisdiction	3. The Conseil du référendum shall have exclusive jurisdiction to hear any judicial proceeding relating to a referendum and to the application of this act.
No appeal.	Its decisions are final and without appeal.
Appeal.	However, an appeal lies to the Court of Appeal, on a question of law, from a decision rendered by the Conseil du référendum by virtue of section 41 or 42.
Idem.	This appeal is heard by preference, and the decision of the Court is final and without appeal.
Applicable articles
of C.C.P.	This appeal is governed by articles 491 to 524 of the Code of Civil Procedure, so far as they are applicable.
Application regarding
identical subjects.	4. Only the President or a member of the Assemblée nationale du Québec may apply to the Conseil du référendum to render a decision on the subject of a referendum for the purposes of section 12.
Decision or
presumption.	The Conseil must render a decision within ten days of this application, failing which the subject of the referendum is deemed to be not substantially similar to that of a referendum held during the same Legislature.
Adoption by Ass.
nat. prevails.	Such application must be made and, as the case may be, the decision must be rendered before the Assemblée nationale du Québec adopts the question contemplated in section 8 or the bill contemplated in section 10.
Opinion to
Government	5. The Conseil du référendum must give its opinion on any question of law or technical question submitted to it by the Government respecting the holding of a referendum.
Requests and
opinions made public.	Upon the tabling in the Assemblée nationale du Québec of a question contemplated in section 8 or a bill contemplated in section 10, every request for an opinion on that question or bill, as well as the opinion given by the Conseil du référendum, shall be made public by the latter.
Temporary assistance.	6. The chairman of the Conseil du référendum may call upon the services, on a temporary basis, of any person he considers necessary for the carrying out of its functions in respect of the holding of a referendum.

CHAPTER III

SUBJECT OF THE REFERENDUM

Question or bill
passed in Ass. nat.

7. The Government may order that the electors be consulted by referendum

(a) on a question approved by the Assemblée nationale du Québec in accordance with sections 8 and 9, or

(b) on a bill adopted by the Assemblée nationale du Québec in accordance with section 10.

Motion by Prime
Minister.

8. On a motion of the Prime Minister, the Assemblée nationale du Québec may adopt the text of a question which is to be the subject of a referendum. The debate on this motion is privileged, and takes precedence over every other question, except the debate on the inaugural message.

Rules of debate.

9. During debate of the motion contemplated in section 8, a member may propose a motion of amendment or sub-amendment, but the latter motion does not restrict the right of another member to introduce a similar motion, or to address the main motion and the motions of amendment or sub-amendment at the same time. The rule that a member may speak only once does not apply. Upon thirty-five hours of debate, the President of the Assemblée nationale du Québec, after conferring with the house leaders of the recognized parties, must put the subsidiary motions and the main motion to the vote, in such order as he may determine.

Bill must contain
question when tabled.

10. A bill adopted by the Assemblée nationale du Québec cannot be submitted to a referendum unless it contains, at the time of being tabled, a provision to that effect, as well as the text of the question submitted for the referendum.

No assent before
referendum.

This bill cannot be presented for assent until it has been submitted to the electors by way of a referendum.

Assent after
prorogation not
after dissolution.

11. A bill submitted to a referendum may be assented to after the prorogation of the session during which it was adopted, provided that it be before the dissolution of the Legislature which voted its adoption.

No duplication in
same Legislature.

12. There shall not be, during the same Legislature, more than one referendum on the same subject or on a subject which, in the opinion of the Conseil du référendum, is substantially similar to the former subject.

CHAPTER IV

ISSUING THE WRITS

Writ of referendum.

13. Every referendum is instituted by a writ according to form 1, addressed by the director general of elections to each returning-officer.

Dates of writ
and polling

The Government shall fix the day on which such writ shall be issued, that on which the polling is to be held and the ultimate date for the return of the writs. Such dates must be the same for all electoral districts.

Restricted
period, writ.

14. No writ shall be issued before the twentieth day following that on which the Assemblée nationale du Québec has approved the motion contemplated in section 8 or the bill contemplated in section 10.

Idem.

No writ may be issued between the first day of the period of the annual enumeration and Sunday of the second week following that of such enumeration.

Restricted period,
polling

Where a writ is issued between Sunday of the second week following that of the annual enumeration and 1 January, the polling shall not be held before the twenty-eighth day following that on which the writ was issued.

Restricted period
polling

Where a writ is issued between 1 January and the first day of the period of the annual enumeration, the polling shall not be held before the thirty-fifth day following that of the issue of the writ.

Idem.

No polling may take place between the first day of the period of annual enumeration and the end of the fifth week following that of the enumeration.

Maximum referendum
period.

Not more than sixty days may elapse between the date on which the writs are issued and that of the polling.

Writ of general
election voids writ
of referendum.

15. From the time a writ instituting a general election is issued, every writ instituting a referendum becomes void and no writ may be issued before the general election is held.

CHAPTER V

ELECTORAL LISTS

Lists under Election
Act and App. 2.

16. The electoral lists of urban and rural polling-subdivisions, prepared and revised in accordance with the Election Act, and, where required, in accordance with the relevant provisions of Appendix 2, are the only lists that may be used for a referendum.

House of
detention list.

17. The warden of a house of detention must, within three days after the writs are issued, provide the returning-officer with a list of the persons qualified as electors at a referendum who are detained in such establishment.

Status, revision, office.

Such list constitutes an electoral list for the purposes of this act and the returning-officer must forward a copy of it to the official delegate of each national committee without delay. Such list must be revised in accordance with the provisions of Appendix 2 that apply to revision of the lists of urban polling-subdivisions and the returning-officer shall open, in such establishment, an office to receive applications for the entry and striking off of names and for corrections on the list. Such office must be open from Monday to Saturday of the third week prior to that of the polling, during the hours and in the manner proper to the nature of the establishment.

Agreements.

For the purposes of this section, the director general of elections may make any agreement considered necessary with the wardens of houses of detention established under an act of the Parliament of Canada.

Amended electoral boundaries.

18. Where, following the adoption of an act amending the limits of electoral districts for the following general election, the annual enumeration has been made taking into account the limits so amended, the holding of a referendum must be made in accordance with the limits as so amended and the returning-officers appointed by anticipation are competent to act as such for the purposes of the referendum; similarly, the polling-subdivisions which have been defined by anticipation are those that are to be used for the purposes of the referendum.

CHAPTER VI

RIGHT TO VOTE

Voting qualifications.

19. Every person has the right to vote at a referendum, who

- (a) is entered on an electoral list in force and used at the polling;
- (b) is of the full age of eighteen years on polling-day;
- (c) is a Canadian citizen at the time of voting;
- (d) has been domiciled in Québec for at least one year before the day of issue of the writs and is still so at the time of voting, or who, after establishing his domicile outside Québec for the discharge of duties on behalf of the Gouvernement du Québec or the Government of Canada, is again domiciled in Québec at the time of voting;
- (e) is not affected by any disqualification provided for in the law, at the time of voting.

CHAPTER VII

BALLOT-PAPERS

Question in French and English

20. The ballot-paper is a printed paper on which is entered, in French and in English, the question put to the electors.

Space for mark The ballot-paper also contains a space specially and solely reserved for the mark by which the voter expresses his choice.

Question also in language of native majority **21.** Notwithstanding section 20, the question entered on the ballot-papers used in polling-stations situated in an Indian reserve or in a place where an Amerind or Inuit community lives, must be drawn up in French, in English and in the language of the native majority of the place, to the extent that the returning-officer may have the ballot-papers printed in such language.

Idem The returning-officer shall determine which native language must be used and cause a translation of the question entered on the ballot-paper to be made into such language.

CHAPTER VIII

THE REFERENDUM CAMPAIGN

DIVISION I

NATIONAL COMMITTEES

Director general of elections informed. **22.** Upon the adoption of the text of a question or of a bill that is to be submitted to the referendum by the Assemblée nationale du Québec, the secretary general of the Assemblée must inform the director general of elections of it, in writing.

MNA's have seven days to register option He shall also, within three days, send to each member of the Assemblée nationale du Québec a notice to the effect that the latter may, within seven days after the adoption of the question or of the bill, register with the director general of elections in favour of one of the options submitted to the referendum.

Registered MNA's form provisional committee **23.** All the members of the Assemblée nationale du Québec who, within seven days after the adoption of a question or of a bill that is to be submitted to the referendum, register with the director general of elections for one of the options, shall form the provisional committee in favour of such option.

Electors invited to form provisional committee Where, at the end of the delay provided for in the first paragraph, no member of the Assemblée nationale du Québec has registered in favour of one of the options, the director general of elections may invite not less than three nor more than twenty electors to form the provisional committee in favour of such option. Such electors must be chosen from among the persons publicly identified with such option.

By-laws and chairman of national committee The director general of elections shall, with the least possible delay, call a meeting of each provisional committee at the place, day and time he indicates. At such meeting, the members of each provisional committee shall adopt the by-laws to govern the national committee in favour of such option and appoint the chairman thereof.

Establishment, name,
operation of national
committee

Branches

Affiliation of groups

24. The by-laws governing a national committee may determine any matter relating to its proper operation, including the name under which it is to be known and the manner in which it is to be established.

Such by-laws may also provide for the setting up of local branches of this committee in each electoral district, provided that each of these branches is authorized by the chairman of the national committee.

These by-laws must furthermore provide for the affiliation to the committee of groups which are favourable to the same option and see to the establishment of the norms, conditions and formalities governing the affiliation and financing of these groups.

Majority resolution
of provisional
committee

25. The resolution of a provisional committee appointing the chairman of a national committee and that adopting the by-laws thereof must be certified by the signature of the majority of the members of such provisional committee. They shall take effect when they are forwarded to the director general of elections. They shall be replaced or amended only in accordance with the same procedure.

DIVISION II

THE RIGHT TO INFORMATION

Explanatory
booklet to electors.

26. Not later than ten days before the holding of a poll, the director general of elections must send the electors a single booklet explaining each of the options submitted to the referendum, wherein the text is established by each national committee, respectively. Equal space, as fixed by the director general, must be given in this booklet to each option.

DIVISION III

REGULATED EXPENSES

"regulated
expenses"

27. All the expenditures incurred during a referendum period to directly or indirectly promote or oppose an option submitted to the referendum are "regulated expenses", within the meaning of this act.

Exclusions

28. The following shall not be deemed regulated expenses:

(a) the publishing in a newspaper or other periodical of editorials, news, reports or letters to the editor, provided that they are published in the same manner and under the same rules as outside the referendum period, without payment, reward or promise of payment or reward, that the newspaper or other periodical is not established for the purposes of the referendum or with a view to the referendum and that the circulation and frequency of publication thereof do not differ from what obtains outside the referendum period.

(b) the transmission by a radio or television station of a broadcast of news or comment, provided that such broadcast be made in the same manner and under the same regulations as outside the referendum period, without payment, reward or promise of payment or of reward;

(c) the reasonable expenses incurred by a person, out of his own money, for his lodging and food during a journey for the purposes of the referendum, if such expenses are not reimbursed to him;

(d) the transportation costs of any person paid out of his own money, if such costs are not reimbursed to him;

(e) the reasonable expenses incurred for the publication of explanatory commentaries on this act and the instructions issued under its authority, provided that such commentaries are strictly objective and contain no publicity of such a nature as to favour or oppose an option submitted to the referendum;

(f) the reasonable expenses usually incurred for the current operation of the permanent office of an authorized party on the island of Montreal and in the city of Québec, if the leader of such party, before the seventh day following the issue of the writs, has given written notice to the director general of the financing of political parties of the existence of such office, of its exact address and of any change of address;

(g) interest accrued, from the day following the polling, on any loan lawfully granted to an official agent for regulated expense purposes;

(h) the expenditures, not greater than \$300, incurred for holding a meeting, including the cost of renting a hall and the convening of participants, provided that such meeting is not directly or indirectly organized on behalf of a national committee.

Permanent office of
an authorized party.

For the purposes of subparagraph f of the first paragraph, the permanent office of an authorized party is the office where, in order to ensure dissemination of the political programme of such party and to coordinate the political activity of its members, employees of the party or of a body associated therewith work on a permanent basis outside the referendum period, for the attainment of its objects, and which the leader of the party has recognized for such purpose by a letter sent to the director general of the financing of political parties before the seventh day following the issue of the writs.

"regulated
expenses"

29. The expenditures incurred before a referendum for literature, objects or materials of an advertising nature, used during the referendum period for the purposes contemplated by the definition of the expression "regulated expenses", are regulated expenses.

Official agent

30. A national committee wishing to incur regulated expenses during the referendum period must have an official agent.

Appointment

Such official agent is appointed by the chairman of the national committee, who shall notify the director general of the financing of political parties of it. The director general shall then give notice of it in the *Gazette officielle du Québec*.

One official agent
per committee.

Deputies and local
agents

Disqualifications

Exclusive right to
authorize expenses

No unauthorized
expenses

Regular prices only

Volunteer work.

No application to
civil servant

Limit on expenses.

Limit for local
agent or deputy

Number of electors

31. Only one official agent shall be appointed for each national committee.

However, such official agent may, with written approval of the chairman of the national committee, appoint deputies in sufficient number, and a local agent for each electoral district.

32. No person may be the official agent of a national committee, or his deputy or his local agent, if

(a) he is not of full age;

(b) he is not a Canadian citizen,

(c) he has not been domiciled in Québec for at least one year;

(d) he is affected by any disqualification under the law from participating in a referendum.

33. During a referendum period, no person other than the official agent of a national committee, his deputy or his local agent may incur or authorize regulated expenses.

It is forbidden for any person to accept or execute an order for regulated expenses not given or authorized by such an official agent, deputy or local agent or in his name by his publicity agency recognized by the director general of the financing of political parties.

No person shall claim or receive for regulated expenses a price different from his regular price for similar work or merchandise outside the referendum period nor shall he accept a different remuneration or renounce the same.

Any individual may however contribute without remuneration his personal services and the use of his vehicle provided that he does so freely and not as part of his work in the service of an employer.

Subject to section 55 of the Civil Service Act (1965, 1st session, chapter 14), nothing in this section relates to the services rendered by a functionary of the civil service.

34. Regulated expenses must be limited so as never to exceed for a national committee, during the same referendum, fifty cents per elector in the aggregate of the electoral districts.

Where an official agent appoints a local agent in an electoral district or appoints a deputy, he shall, in his deed of appointment, indicate the maximum amount of regulated expenses that such agent or deputy may incur or authorize on behalf of the national committee. The official agent may, however, revise this amount at any time during the referendum period.

35. For the purposes of the first paragraph of section 34, the number of electors is the number of electors entered on the lists drawn up by the enumerators before any revision. However, in the case of a referendum at

which there is a second revision, the number of electors is the total number entered on the lists after the annual revision.

Certificate Such number is established by the director general of the financing of political parties, who shall prepare a certificate and send a copy of it to the chairman and the official agent of each national committee.

DIVISION IV REFERENDUM FUND

Payment solely from fund **36.** The official agent, his deputy or the local agent shall not pay the cost of a regulated expense except out of a special fund called the "referendum fund" for the purposes of this act.

Sole payments into fund **37.** Only the following amounts shall be paid into the referendum fund put at the disposal of an official agent:

(a) the subsidy provided for in section 40;

(b) the amounts transferred or loaned to such fund by the official representative of a political party authorized under the Act to govern the financing of political parties, provided that the total sum of the amounts so transferred and loaned does not exceed twenty-five cents per elector in the aggregate of the electoral districts;

(c) the contributions directly paid by an elector out of his own property.

Number of electors For the purposes of subparagraph *b* of the first paragraph, the number of electors is that provided for in section 35.

Sole payments into fund **38.** Only the following amounts shall be paid into the referendum fund put at the disposal of a local agent:

(a) the amounts transferred to such fund by the official agent out of the fund contemplated in section 37;

(b) the contributions directly paid by an elector out of his own property.

Limit on individual contributions. **39.** The total amount of contributions that an elector may make during the same referendum shall not exceed \$3 000 for the aggregate of the referendum funds.

Volunteer work Volunteer work and the goods or services produced by such work are not considered to be a contribution within the meaning of this act.

DIVISION V GOVERNMENT SUBSIDY

Equal subsidies **40.** The Ministre des finances shall, within three days after a writ of referendum is issued, send to the official agent of each national com-

mittee the amount of subsidy that the Assemblée nationale du Québec may fix at the time when it adopts the text of a question or a bill that is to be submitted to the referendum. The amount of such subsidy must be the same for each of the national committees.

CHAPTER IX

CONTESTATIONS

Recount	41. Only the chairman of a national committee may apply for a recount of the votes before a judge.
Application for recount	Such application shall be made before the Conseil du référendum, which has exclusive and ultimate jurisdiction to hear it. It must be made within fifteen days after that of the polling. The application for a recount of the votes before a judge may be limited to one or several electoral districts.
Receivability	The Conseil du référendum shall receive such application only to the extent that it is of opinion that the facts alleged, were they true, would be susceptible of changing the total result of the referendum.
Recount procedure	Where the Conseil du référendum receives an application for a recount of the votes before a judge, such recount shall be made, in each electoral district contemplated, as if the referendum had been an election, <i>mutatis mutandis</i> . No security shall be necessary and no costs may be awarded; in the case of a tie-vote between the options, the returning-officer shall not give a casting vote; even where all the ballot-papers are rejected by the judge, there shall not be a new referendum.
Contestation of validity	42. Only the chairman of a national committee may, upon application made before the Conseil du référendum within fifteen days after that of the polling, contest the validity of a referendum.
Receivability of application	The Conseil du référendum shall receive such application only to the extent that it is of opinion that the facts alleged, were they true, would be susceptible of changing the total result of the referendum.
Procedure	Where the Conseil du référendum receives an application for the contestation of the validity of a referendum, such application must be tried before the Conseil du référendum, which has exclusive and ultimate jurisdiction to hear it, in accordance with the provisions of the Provincial Controverted Elections Act (Revised Statutes, 1964, chapter 8) to the extent that they are applicable, except sections 59 to 63.
Applicable provisions	
New writs.	Where a referendum is declared invalid, a new referendum shall be held only if new writs are issued in accordance with this act.

CHAPTER X

MISCELLANEOUS

Powers of director general of elections, etc	43. The director general of elections, the acting director general, his assistants and his personnel have with respect to the holding of a referendum powers similar to those granted to them by the Election Act with respect to elections.
Powers of election officers	The same applies to returning-officers and the other election officers.
Powers of dir gen of fin of polit parties, etc	The director general of the financing of political parties and the person replacing him have with respect to national committees and their agents powers similar to those granted to them by the Act to govern the financing of political parties with respect to political parties, their authorities and their representatives.
Applicable provisions	44. Except to the extent that this act provides otherwise, every referendum shall be governed by the provisions of the Election Act and of the Act to govern the financing of political parties that are enumerated in Appendix 2, with, where necessary, the amendments indicated therein.
Special version of Election Act	45. The director general of elections must cause a special version of the Election Act to be printed, striking out therefrom the sections not appearing in Appendix 2, incorporating therein the sections of the said act appearing in the said Appendix and making the amendments indicated in the said Appendix.
Amendment of titles	In preparing such version, the director general of elections may amend the titles and sub-titles of the said act and the forms provided for therein in order to adapt them to the holding of a referendum.
Amendments respecting tariff	Furthermore, subject to subsection 1 of section 423 of the Election Act, he may also amend the sections of the tariff to adapt them to the holding of a referendum.
Special version of Act to govern the financing of political parties	46. The director general of the financing of political parties must cause a special version of the Act to govern the financing of political parties to be printed, striking out therefrom the sections not appearing in Appendix 2, incorporating the sections of the said act appearing in the said Appendix and making the amendments indicated in the said Appendix.
Amendment of titles	In preparing such version, the director general of the financing of political parties may amend the titles and sub-titles of the said act in order to adapt them to the holding of a referendum.
Measures of concordance	47. The director general of elections and the director general of the financing of political parties must execute, in addition to the obligations

imposed by sections 45 and 46, such measures of concordance as are necessary in pursuance of this act, in the versions of the acts contemplated in those sections.

Prior consultation
with Commission de
refonte

No such measures may be executed before consultation with the Commission de refonte des lois et des règlements established by Chapter 11 of the statutes of 1976.

Source of moneys

48. The moneys necessary for the application of this act shall be taken out of the consolidated revenue fund.

R.S., c. 7, s. 48, am.

49. Section 48 of the Election Act (Revised Statutes, 1964, chapter 7), amended by section 4 of chapter 12 of the statutes of 1965 (1st session), by section 4 of chapter 5 of the statutes of 1966, by section 38 of chapter 11 of the statutes of 1968, by section 1 of chapter 13 of the statutes of 1969 and by section 18 of chapter 6 of the statutes of 1972, replaced by section 11 of chapter 8 of the statutes of 1975 and amended by section 6 of chapter 9 of the statutes of 1975 and by section 126 of chapter 11 of the statutes of 1977, is again amended by replacing paragraph a by the following paragraph:

“(a) the director general of elections, the acting director general, his assistants, the director general of the financing of political parties, his assistants, the returning-officer except when there is a tie-vote and he has to give a casting vote, the election-clerk, any assistant election-clerk and the revisors of urban polling-subdivisions;”

R.S., c. 7, s. 48, mod.

50. Section 134 of the said act is replaced by the following section:

Disqualified persons.

134. The following persons shall not take part in elections:

(a) the persons mentioned in section 48, except election officers as to the performance of their duties;

(b) the judges of the Supreme Court of Canada, the Federal Court, the Court of Appeal or the Superior Court, the judges of the sessions, the judges of the Provincial Court, the judges of the Social Welfare Court, municipal judges, the Public Protector, any permanent prosecutor of the Attorney-General.”

1977, c. 11, s. 83, am.

51. Section 83 of the Act to govern the financing of political parties (1977, chapter 11) is amended by adding at the end of paragraph i, the following: “or, during a referendum, the total sum of the amounts transferred and loaned to a national committee;”

Coming
into force.

52. This act comes into force on the day of its sanction.

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