

# DESIGNING A REFERENDUM QUESTION FOR BRITISH COLUMBIA

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## Executive Summary

The British Columbia (BC) government has committed to proceed with electoral reform. The government has set a deadline of November 2018 to have a referendum on proportional representation. Part of the consultation process includes designing the referendum question. This paper reviews precedent and good practices that have been established in Canada and by several international organizations on the crafting of referendum questions. It uses these principles in assessing what kind of referendum question would have the greatest legitimacy. The consensus for referendum questions is that:

- they be clear
- they not be biased, which would lead to a specific result
- they show no favouritism as to the outcome
- electors must be informed of the effects of the referendum
- voters must be able to answer the questions solely with a yes, no, or blank vote

In addition to the design of the referendum question, this study also examines the context of referenda when voters voted no, and when they voted yes. The case of New Zealand is instructive; it demonstrates that a well-crafted referendum process with informed consent of the public and with the desire for change can result in electoral reform.

To have a meaningful and legitimate mandate, this study recommends that the government follow the New Zealand example and have two referenda on electoral reform, with the first having two questions.

Referendum 1 would consist of one question asking whether there is appetite for change, and a second question asking which system the public would like to change to.

Referendum 2 would offer a choice between the existing system and a new electoral system that has been developed for British Columbia; the later would contain all details including electoral boundaries and rules regarding coalition and minority governments.

By separating the question of reform from the type of system, the government will have the information it needs to proceed with a new electoral system.

The second referendum is the only way the government can fulfill the criterion of having the electors informed about the effects of the referendum. Only by providing two opportunities to assess the proposal will the government be able to fulfill the best practices for designing a referendum. More importantly, if the public agrees to change the system, the second referendum will give the new electoral system higher legitimacy and ensure it has a greater chance of not being changed by subsequent governments. Giving the government or an external body time to craft an electoral system that works for British Columbia, then ensuring the public learns about the system including its benefits and drawbacks as compared to the benefits and drawbacks of the current system, and then having the public vote on those changes, is the only legitimate way of proceeding with electoral reform. The premise of a fair referendum is that members of the public are aware of the consequences of their choice. An open-ended question regarding the desire for change to an unspecified system does not satisfy the criterion of informed choice.

In addition to the wording of the question and the way the referendum is conducted, this study also examines whether there should be voter turnout thresholds or a super majority vote. Although the government has stated that the referendum will succeed with 50-plus-one percent of the vote, we urge caution in proceeding with electoral reform on that criterion alone. The government should not consider the results binding if voter turnout is lower than is typical in provincial elections. Turnout of less than 50 percent would impair the legitimacy of the result. If, for example, only 36 percent of voters turned out (as was the case in PEI) and 51 percent of them supported changing the system, it could mean that the province was proceeding to change the electoral system with the support of less than one fifth of the electorate. In such a scenario, it would be impossible for the government to say it had a clear mandate for change. Therefore, the government might want to consider the impact of a low voter turnout before declaring that it has a mandate for change.

More problematic is the removal of a regional requirement. Given the high population density in the Lower Mainland, the referendum's outcome could be determined by just a few ridings. Status quo bias should also be taken into consideration. If the public is concerned about partisan manipulation, it is more likely to vote to retain the current system. Having a two-question ballot with the promise of a binding referendum on a specific electoral system will elicit a clearer picture of the public's attitude. In addition, that process would provide much-needed legitimacy for the adoption of a new system. Moreover, the binding referendum on a specific system should require some threshold of voter turnout and regional support to further ensure legitimacy for the chosen system.

## Introduction

The British Columbia (BC) government demonstrated its commitment to proportional representation (PR) with Bill 6, the Electoral Reform Referendum 2018 Act. In its haste to proceed with electoral reform, the government adopted an expedited timeline. The public has until February 28, 2018 to submit views on multiple issues: “ballot design, choice of voting systems included, and public funding distribution during the referendum campaign period” (British Columbia, n.d.). While the BC government has stated that a referendum will be held by November 18, 2018, it left the wording of the question open to consultation with the public. Premier John Horgan has said that the 2018 referendum will probably be the province’s last one on this subject (Meissner, 2017). This paper explains why the government must slow down its electoral reform process. Moreover, in order to have a legitimate consultation with the public, the government should adopt a two-part referendum that first asks BC voters if they want a change at all, and then, if the first question indicates that they do, which specific electoral system they want. This process is preferable to asking for a straight vote on the proportional system. This two-part strategy would also give voters the opportunity to make educated choices based on fair debates.

Referenda are important tools for government; they ensure that major changes have the consent of the governed and provide the necessary legitimacy for the government to act. As some scholars have noted, referenda have become more common in places where they have previously been used rarely (Bowler, Donovan, and Karp, 2002). British Columbia is leading the trend by organizing a third referendum in 15 years on the issue of electoral reform.

This paper examines key issues regarding the legitimacy of referenda in general, but with special attention to the wording of the ballot. It considers past electoral reform referenda in Canada and abroad. It also explores issues regarding the legitimacy of referenda by giving examples of the wording used on ballots in previous referenda and plebiscites, particularly on the compelling example from New Zealand. Finally, the paper recommends both the wording for the referendum question and the rationale for a second referendum on a specific electoral system.

## The Legitimacy of a Referendum

Even though British Columbia has already had two different provincial referenda this century—as has Prince Edward Island—referenda are generally rare. Compared with other jurisdictions, Canada has limited experience with direct democracy. Indeed, the Westminster form of government has an uneasy relationship with direct democracy. In the traditional sense, Parliament is supreme, which means that once legislators have been selected, they have the last say in matters of policy. As a result, early forays into referenda were consultative, and are more accurately described as plebiscites. Technically, most referenda in Canada have been plebiscites, meaning that they were non-binding. Nonetheless, governments and citizens often refer to any direct question placed before the public as a “referendum.”

The rare times that Canadians have answered referenda were on questions regarding the constitution and electoral reform. The Conscription Plebiscite in 1942 was an outlier as it asked Canadians whether the government should be held to their election promise of no conscription. The most studied referendum question in the world is that determining secession in Quebec. In 1992, Canadians were also asked to support the constitutional package known colloquially as the “Charlottetown Accord.” Canada has proven to be rich ground for analysis of the vote and is often mentioned in discussions on matters concerning the legitimacy of the vote.

Using a referendum to answer the question of democratic reform has been well established by precedent and convention (Dutil, 2016). At its core, a referendum addresses the common sense need to consult with the public for changes regarding the fundamental rules that determine who governs. It is generally agreed that changes to these institutional rules by which representatives are selected should be done infrequently. The fact that representatives themselves can alter who wins and who loses puts legislators in a conflict of interest (Bowler, Donovan, and Karp, 2002). Therefore, the convention of asking the public to give their input on the matter ensures that changes don’t just happen for political advantage or because of a one-off election result.

In BC's current political climate, the NDP and Green parties have both committed to electoral reform in their confidence and supply agreement. However, if the government proceeded to change the legislation without public input, the legitimacy of the reform would be questionable. If a subsequent election, even one held under the new rules, resulted in a different party (or combination of parties) holding power, they could easily change back to the current system, or indeed, some other system, without the same consultative process. The overall result could be frequent changes to rules and an undermining of the whole system. Previous attempts to change the electoral system in BC by this means resulted in both the unintended consequences of a different government holding power than what the legislators intended, and a quick return to the traditional voting system (Jansen, 2004).

All Canadian provinces have held non-constitutional referenda on various issues, but they do so only rarely. In total, since Confederation there have been only 50 provincial referenda and plebiscites. More specific to this discussion is that since 2003, five provinces and the federal government have engaged in the question of whether to change the electoral system and three provinces have conducted either binding or non-binding referenda to answer that question, in some cases going to the polls more than once to do so. As table 1 shows, PEI, BC, and Ontario took the question to the public, while New Brunswick, Quebec, and the federal government chose to keep the current system without further public consultation.

Clearly, the demand for electoral reform is not great and public dissatisfaction with the current electoral system was not the reason that past governments promised electoral reform. As Ken Carty states, "In no case were the promises made because the issue was central to the competitive electoral process or because more than a few reform enthusiasts were generally concerned (or even knowledgeable) about it" (Carty, 2017: 9). This was underlined in the most recent mandate letter for the federal minister of Democratic Institutions. It stated, "A clear preference for a new electoral system, let alone a consensus, has not emerged. Furthermore, without a clear preference or a clear question, a referendum would not be in Canada's interest. Changing the electoral system will not be in your mandate" (Trudeau, 2017).

In the past, BC's appetite for changing the electoral system was a result of several lopsided election results. In 1996, the NDP won a majority even though they had a lower percentage of the popular vote than the Liberals. The Liberals argued at the time that the result was because of the electoral system and that in the future they would investigate changing the rules to prevent a similar outcome. The Liberal return to power in

**Table 1: The Canadian Electoral Reform Experience**

<b>Jurisdiction</b>	<b>Date Initiated</b>	<b>Consultation</b>	<b>Referendum</b>
Prince Edward Island	January 2003	Independent Commission on Prince Edward Island's Electoral Future recommends Mixed Member Proportional (MMP).	Yes
	Nov 2016	Ranked ballot plebiscite	Yes
Quebec	March 2003	Citizens' Committee proposes an MMP system similar to Germany's	No
British Columbia	April 2003	Citizens' Assembly on Electoral Reform recommends MMP	Yes
	May 12, 2009	Second referendum	Yes
Ontario	October 2003	Citizens' Assembly recommends MMP	Yes
New Brunswick	December 2003	Commission on Legislative Democracy	No
Canada (federal)	June 2016	Special Committee on Electoral Reform	No

2001, with a 77 of 79 seat majority with just 57 percent of the popular vote, convinced the New Democrats, now on the opposition benches, that the electoral system was flawed (Pilon, 2010).

## What Makes a Good Referendum Question?

The referendum question tends to elicit as much debate and discussion as the referendum itself. On the one hand, Matt Qvortrup (2014) makes the case that there is no qualitative or quantitative evidence to support the view that the question has mattered for referenda on independence. Others in his camp argue that the campaign matters more for the referendum outcome than the strict wording of the question (Hanspeter, Hanggli, and Marr, 2009; Hobolt and Brouard, 2011).

While some scholars minimize the importance of the wording of the question, the consensus is that the question wording is very important. Despite the literature on campaign dynamics, many scholars and international organizations cite the text of the question as an important factor in ensuring that the results are considered legitimate. According to the International Institute for Democracy and Electoral Assistance (IDEA), “The wording of the question can have an important effect on the result and on its legitimacy” (IDEA, 2008: 54). Writing on the legitimacy of sovereignty referenda, Ilker Sen states that the ballot question was “of crucial importance in ensuring a legitimate and credible referendum” (Sen, 2015: 5). He argues that there are three principles in crafting a question: the wording must be unambiguous so that voters can make an informed decision, there should only be one question or single subject being voted on, and the ballot should not be biased in favour of the status quo.

The Supreme Court of Canada offered similar advice on crafting referenda questions in the reference case on the secession of Quebec. The subsequent Clarity Act underlined this principle. For the Supreme Court, “A clear majority vote in Quebec on a clear question in favour of secession would confer democratic legitimacy on the secession initiative which all of the other participants in Confederation would have to recognize” (*Reference re Secession of Quebec*, 1998). The Clarity Act specified that a “clear expression of the will of the population” would be needed in order for the federal government to proceed with secession. Moreover, the legislation also indicates that for the question to be legitimate it must be a clear question with a clear answer (Clarity Act, 2000).

**Table 2: British Columbia Referenda Questions and Responses**

<b>May 17, 2005</b>	<b>May 12, 2009</b>
<p><b>“Should British Columbia change to the BC-STV electoral system as recommended by the Citizens’ Assembly on Electoral Reform?”</b></p>	<p><b>“Which electoral system should British Columbia use to elect members to the provincial Legislative Assembly?”</b></p>
<p>Yes: <b>57.59%</b> No: <b>41.18%</b></p>	<p>The existing electoral system (First Past the Post): <b>60.9%</b>  The single transferable vote electoral system (BC STV) proposed by the Citizens’ Assembly on Electoral Reform: <b>39.1%</b></p>

IDEA’s advice on crafting referendum questions is that they be clear and have two alternatives. IDEA argues that there only be one goal in the referendum and that the question “should not be vague or capable of different meanings” (IDEA, 2008: 54). Ultimately the question itself must be neutral and not have any positive or negative overtones. In a similar vein, the European Commission adopted the Venice Commission’s code of good practice for referendums which includes guidelines on the question wording itself. The principles are straightforward:

- The questions put to the vote must be clear; it must not be misleading; it must not suggest an answer;
- electors must be informed of the effects of the referendum; and
- voters must be able to answer the questions asked solely by yes, no, or a blank vote (Venice Commission, 2007: 7).

While most agree that the question must be clear and not biased in favour of the status quo, others offer the view that multiple responses may elicit a better view of the public’s true wishes (McDaniels and Thomas, 1999; Rosulek, 2016).

Decades of public opinion research have shed much insight into the problems with question wording (Barber, Gordon, Hill, and Price, 2017; Schuldt, Konrath, and Schwarz, 2011; Reilly and Richey, 2009). Schaeffer and Presser (2003) have noted that small changes in the wording of a question can result in large differences in opinion. Yet, as Mieke Beckers and Jaak Billiet (2010) point out, rarely do legislators refer to this literature when crafting their own questions for referenda.

One problem with electoral reform questions is that there are many different electoral systems to choose from. Although Canadians are familiar with survey questions that have multiple responses, multiple options

pose a problem in a referendum which requires a definitive answer to a clear question. Most Canadian referenda have made electoral reform a binary choice. For example, both BC referenda asked seemingly straightforward and clear questions with two options. However, as table 2 shows, they had quite different results.

Part of the difference between the responses can be attributed to the question wording. The first referendum question could be criticized for suggesting an answer. By framing the question in the positive, the question was biased in favour of the yes vote. Moreover, including the phrase, “as recommended by the Citizens’ Assembly on Electoral Reform,” implicitly endorsed the Assembly’s proposal, which also suggests an answer.

Between BC’s two referenda on electoral reform, two other provinces held referenda on electoral reform: PEI and Ontario. PEI followed the British Columbia model and asked a yes/no question, “Should Prince Edward Island change to the Mixed Member Proportional System as presented by the Commission on PEI’s Electoral Future?” In contrast, Ontario chose not to frame the question in the positive, but instead asked a more neutral question. In both cases, voters chose the status quo. A modified version of the Ontario question was then used in the second BC referendum. In both of these cases, the referendum question adhered to best practices: it was clear and offered two mutually exclusive responses, and it did not lead to a specific result.

Although the PEI referendum suggested an answer in the positive by referring to the recommendation by the Commission, voters soundly rejected the proposition. Some might argue that it is easier for the public to vote “no” than “yes,” and that is why Ontario’s referendum question is preferable; whichever choice Ontario voters made, they were voting in the affirmative. One reason for the outcome of the vote in PEI may have been that voters did not see the electoral system as a problem in the first place. Another probable reason could have been that the threshold established by the premier was too high, which may have encouraged abstainers. (The question of thresholds will be examined later in this paper.)

Electoral reform in PEI cannot be linked to a single lopsided electoral victory—or to declining voter turnout— which some advocates argue as an impetus for electoral reform. In fact, PEI boasts the highest voter turnout in Canada (*White Paper on Democratic Renewal*, 2015). However, elections in PEI often result in large majorities from a “relatively modest majority of the popular vote” (*White Paper on Democratic Renewal*, 2015: 8). More problematic is that PEI’s Official Opposition often comprises just one or two members. This is what happened in 2000 when Premier Pat Binns was returned to a second majority and in which the Progressive Conservatives won 26 of the 27 seats with just 58 percent of the vote. In

**Table 3: Prince Edward Island and Ontario Referendum Questions**

<b>November 28, 2005 Prince Edward Island</b>	<b>October 10, 2007 Ontario</b>
<p data-bbox="212 401 818 499">“Should Prince Edward Island change to the Mixed Member Proportional System as presented by the Commission on PEI’s Electoral Future?”</p> <p data-bbox="272 527 407 558">No: <b>63.58%</b></p> <p data-bbox="272 575 407 606">Yes: <b>36.42%</b></p>	<p data-bbox="829 401 1393 468">“Which electoral system should Ontario use to elect members to the provincial legislature?”</p> <p data-bbox="878 493 1344 560">The existing system (First-Past-The-Post): <b>63.1 %</b></p> <p data-bbox="878 575 1360 674">The alternative electoral system proposed by the Citizens’ Assembly (Mixed Member Proportional): <b>36.9 %</b></p>

other words, the 58 percent popular vote translated into 97 percent of the seats. In the 2002 Speech from the Throne, Premier Pat Binns committed to electoral reform:

The most important and fundamental right of our democracy is the franchise. It is incumbent upon political leadership to ensure that the way in which we elect our representatives continues to be relevant and effective. Therefore, my Government will appoint an independent commission to consult on and consider Prince Edward Island’s electoral system and accompanying statute and regulations so that it continues to reflect what Islanders require of their legislature. (Prince Edward Island (2002))

The independent commission was composed of one individual: PEI Chief Justice Norman Carruthers (McKenna, 2006). In his final report released in December 2003, Carruthers recommended that PEI “modify” the current first-past-the-post (FPTP) system to a Mixed Member Proportional (MMP) system (McKenna, 2006). Carruthers argued that doing so would “provide an element of proportionality” but also that it would still hold some of the elements of the current system. The PEI legislature decided to convene a second commission with the mandate to “refine a Mixed Member Proportional system as an alternative and to conduct an education program on the alternate system and the First Past the Post System leading to a plebiscite...” (*Commission on PEI’s Electoral Future*, 2005: 1).

The PEI legislature adopted the recommendations, including the referendum question: “Should Prince Edward Island change to the Mixed Member Proportional System as presented by the Commission on PEI’s Electoral Future?” Yet, despite the two pro-reform commissions and the affirmative question, Islanders rejected the proposal either by selecting an alternative after many rounds of voting, or by having very few voters participate. In PEI’s case, one could argue, the rejection of change had more to do with the issue than with the wording of the question.

## Status Quo Bias

To what extent can the case be made that the question in the second BC referendum and the questions from the PEI and Ontario referenda were biased in favour of the status quo given that they had similar outcomes? The “status quo bias” argues that “potential voters make their decision based on the status of the current policy” (Barber, Gordon, Hill, and Price, 2017: 152). This bias is heightened in cases when there is higher voter uncertainty, indifference, or lack of knowledge (Magleby, 1984). Some researchers point out that questions that highlight the status quo produce higher “no” votes because voters are risk adverse and uncertain about the consequences of change (Barber, Gordon, Hill, and Price, 2017). Rather than have voters explicitly vote “no,” the questions offered voters a choice between two different systems. Nonetheless, by framing the responses as a choice between the existing system and one proposed by the Citizens’ Assembly, it is argued that undecided or uninformed voters are more likely to choose the status quo rather than risk changing to an unknown system. However, the status quo effect is mitigated when the referendum itself is rare and high profile. That is because the novelty of the referendum leads to significant attention by media and the elites, so there are few undecided or uninformed voters on election day (Bowler and Donovan, 2000).

There is a lot of evidence to support the case that status quo bias could have been a factor in the Ontario referendum, although there is a weaker argument in the case of PEI. It could also be argued that in both PEI and Ontario there wasn’t much public appetite for change in the first place. In Ontario, there was little publicity of either the work of the Citizens’ Assembly or its findings. As a comparison, in British Columbia, the assembly’s work was mailed to all households in the province, whereas in Ontario it was only provided by request (Stephenson and Tanguay, 2009). In Ontario, the participation of MPPs was limited and the parties took no sides. In BC’s case, as author Dennis Pilon argues, because partisan elites in the Liberal and NDP parties did not campaign on the issue, voters lacked partisan cues about how to vote. Pilon also points out that based on public opinion polling, the public had “no knowledge of a referendum at all, let alone what it was about” (2010: 84). While some have attributed the results of both referenda to “widespread public ignorance of both the referendum and the substance of the issue at stake” (Pilon, 2010: 85),

others claim that the change in outcome had more to do with the fact that there were serious flaws in the very structure of the single transferrable vote (BC-STV) alternative (Archer, 2017). For many voters, the way in which votes would be counted under STV was considered overly complex. There were objections to the party lists and to the increased numbers of representatives that would be elected. In addition, some voters were also concerned about the risk of frequent changes in government because of the increased likelihood of minority governments.

It is also noteworthy that in Ontario, none of the political parties campaigned on electoral reform and there was little discussion of electoral reform on the campaign trail. Both proponents and opponents of MMP indicated that they had few resources available for launching information campaigns. One proponent of change called the referendum “an unmitigated disaster,” adding, “I don’t think ever so much money has been wasted in educating people so poorly” (Dennis Pilon, as cited in Stephenson and Tanguay, 2009: 16). This view was supported by scholars who found that being informed about MMP was one of the significant factors that led voters in the Ontario referendum to support the alternative electoral system. However, the problem was that many voters were not informed about the new system, leading those scholars to conclude, “that less informed individuals were more opposed to MMP also suggests that such voters may have tried to deal with their information deficit by casting a ballot in favour of the status quo” (Stephenson and Tanguay, 2009: 19). Yet newspaper coverage of the reforms, while on the whole neutral, did tend to have more positive than negative mentions in both BC and Ontario (Fournier, van der Kolk, Carty, and Blais, 2011: 137). This indicates that the popular press did convey the reformers’ messages to the public, but nonetheless there was an information deficit on the subject.

Being informed about the electoral system is only one of the factors that voters in BC and Ontario used to decide on whether or not to adopt a new voting system. Scholars have found that knowledge of the new system was a factor in the support for it, but they also noted that the specific designs of the new systems were unpopular (Fournier, van der Kolk, Carty, and Blais, 2011). However, more important for all three referenda in BC and Ontario was the finding that the “public was not consumed by an urgent need for change” (Fournier, van der Kolk, Carty, and Blais, 2011: 134).

Therefore, status quo bias provides little explanation for the results of the Ontario and PEI referenda on electoral reform. There is even less evidence to support that the status quo bias was at work in BC. Given that BC was holding the second referendum on electoral reform in four years, it is unlikely that the status quo vote was the result of lack of knowledge or interest. After all, surveys found that three-quarters of British Columbians

“were satisfied with the existing electoral system,” leading researchers to conclude: “Considering the large impact of this variable on individual voting decisions, such widespread satisfaction may have made reform a non-starter from the beginning” (Fournier, van der Kolk, Carty, and Blais, 2011: 134). Furthermore, the Referendum Information Office had tried to educate the public on the new system; it placed advertisements in traditional and digital platforms. Content analysis of newspaper coverage of the referendum indicated that there were about four stories every five days during the first BC referendum, and one article every three days during the second (Fournier, van der Kolk, Carty, and Blais, 2011: 134).

While surveys, such as those done by Fournier and his colleagues, provide limited evidence about the status quo bias, they also note other factors that voters took into consideration, such as the specifics of the new system. Keith Archer (2017), the Chief Electoral Officer of British Columbia, argued that there was more information provided to the electorate in the second referendum than in the first. The crucial difference between the two referenda was that in the first, the public did not know that the electoral boundaries would change if the province went to the BC-STV. In the intervening years, the BC Electoral Boundaries Commission proposed 20 BC-STV districts compared with the existing 85. The Fournier study does not test whether this additional information influenced the outcome. However, they do note that concerns about the complexity of how votes were to be counted in the new system coupled with unstable governments were determinants of a no vote (Fournier, van der Kolk, Carty, and Blais, 2011: 131). Rather than conclude that the public rejected the new voting system because they did not understand it, it is more evident that the public rejected the new system because they did not see its merits outweighing its costs.

Advocates for electoral reform often point to the Ontario, PEI, and BC referendum questions as proof that the status quo bias is so entrenched that either no referendum should be held, or that the question be modified in such a way as to “build consensus around a new system.” This is the approach advocated by FairVote Canada, which favours a single question on proportional representation. While this approach might help ensure a victory for electoral reform, it is not clear that this approach clearly indicates the public’s preference. Moreover, by being too open-ended, such an approach might have a greater chance of being rejected because of status quo bias. The core element of a well-crafted referendum question is that it does not lead voters to one answer. More importantly, the premise of a fair referendum is that the public is aware of the consequences of their choice. An open-ended question regarding the desire for change to an unspecified system does not satisfy the criterion of informed choice.

# New Zealand Shows How It Should Be Done

Even though Canadian voters have not endorsed electoral change, other jurisdictions have. Unlike Canadian provinces, referenda in New Zealand have led to electoral reform, but the conditions for reform had less to do with question wording than with the political climate of the time. New Zealand is an instructive case study. Rather than ask voters for a simple yes/no response, the electorate was asked to choose between an affirmative vote for the current (FPTP) status quo option or an affirmative vote for a different voting system. Then voters were asked a second question: “If New Zealand were to change to another voting system, which voting system would you choose?” As Table 4 indicates, New Zealanders overwhelmingly chose to change the system. In the second part of the question, 71 percent of voters chose MMP. Clearly in this referendum there was little status quo bias. However, the context of the New Zealand referendum for electoral change is probably more instructive than is the exact wording of the question.

**Table 4: New Zealand Plebiscite, September 19, 1992**

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**Part A: Should New Zealand keep the First Past the Post (F[PT]P) voting system?”**

I vote to keep the F[PT]P voting system: *15%*

I vote to change to another voting system: *85%*

**Part B: If New Zealand were to change to another voting system, which voting system would you chose?**

Mixed Member Proportional (MMP): *71%*

Preferential Voting (PV): *7%*

Single Transferable Vote (STV): *17%*

Supplementary Member system (SM): *6%*

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New Zealanders had expressed growing discontent with their electoral system in the 1970s and 1980s. In 1971 and again in 1981, the government was elected with fewer votes than the opposition (Vowles, Banducci, and Karp, 2006). The power of the main parties to win mandates was especially relevant when Social Credit received 22 percent of the vote, but only won two seats. More problematic, economic realities required Labour Finance Minister Roger Douglas to introduce monetary policies that did not have wide support. The public was primed for change.

To deal with the concerns of legitimacy, the Labour Party committed to electoral reform by creating the Royal Commission on Electoral Systems once in office. In 1986, the commission released its report. In it, the commission recommended that New Zealand adopt the MMP system (Royal Commission on the Electoral System, 1986). The commission also recommended that the New Zealand government hold a referendum on changing the voting system to MMP at or before the general election in 1987. Labour did not fulfill this recommendation and it was labeled a broken promise.

In 1990, the opposition National Party released its manifesto, which stated that if it was elected, it would hold a referendum before the end of 1992. The timing was designed to ensure that if the outcome of the referendum necessitated any changes to the Electoral Act, they could be carried out before the next general election. Six months after its election victory, the National Party reversed its campaign promise and decided instead to hold a “pre-referendum” at the end of the year. In other words, it was opting for a non-binding plebiscite (Temple, 1995). The plebiscite would gauge whether there was support for electoral reform. The government argued that if the majority supported electoral reform, a second binding referendum would be held in 1993 and the electorate would be asked to choose between FPTP and the alternative that received the most support in the plebiscite.

Considering the context in which the plebiscite was held, voters were engaged in the question and were not influenced by a status quo bias. While the vote ostensibly was about electoral reform, it was also considered a mid-term protest vote against the government’s broken promises. Between the time the National Party won the election and referendum day, it had made many unpopular policy decisions. Philip Temple points out that the reasons for electoral reform in New Zealand had not so much to do with dissatisfaction with democracy or the parliamentary system, “but with politicians and both major political parties: Labour and National, over almost sixty years, had turned government and Parliament into a two-party club increasingly distanced from electors, and had departed from their fundamental ideological bases (especially Labour) in pursuit of electoral power at the centre” (Temple, 1995: 238).

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**Table 5: November 6, 1993, New Zealand Referendum**


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I vote for the present First-Past-The-Post system as provided in the Electoral Act 1956: **46%**

I vote for the proposed Mixed Member Proportional system as provided in the Electoral Act 1993: **54%**

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Because the plebiscite was so definitive, the government followed through with its commitment to hold a binding referendum during the next general election in 1993. The wording for the 1993 referendum continued the practice of having voters choose between two affirmative statements. On November 6th, 1993, the exact wording of the options on the ballot was “I vote for the present First-Past-The-Post system as provided in the Electoral Act 1956” and “I vote for the proposed Mixed Member Proportional system as provided in the Electoral Act 1993.” Despite the increase in support for the current FPTP system, the referendum results were clear: 54 percent voted for MMP (table 5). Ironically, the campaign and the results delivered with the general election resulted in a hung Parliament, underlining the problems with FPTP. The National Party was able to obtain a bare majority only after several recounts of close races.

New Zealand’s experience with electoral reform is instructive for such discussions in Canada. First, voters were given two chances to express their views on the electoral system. In the first plebiscite, there was a resounding desire for change, partly because of dissatisfaction with the way parties gained power. In the second vote, while the desire for change was not as great, a majority of the public still voted for change; they did so knowing clearly what the new system would look like because the Select Committee on Electoral Law, which was composed of parliamentarians opposed to MMP (Vowles, 1995), took the time to craft the legislation well, and to explain to voters the features of the specific system that would be implemented. Second, in none of the cases where provinces or the federal government have engaged in a process of electoral reform have they done so as a result of public dissatisfaction with the political process. All of the provincial and federal forays into electoral reform in Canada were initiated by parties when they were out of power. Third, and more relevant, is the finding that knowing something about how the new system will work in practice is an important part of making the decision to choose a new electoral system.

## The Need for Informed Consent

In none of the examples that this paper has reviewed on electoral reform in Canada has the criterion of having electors be informed of the effects of the referendum been present in the question. Often those in charge of the referendum interpret this provision to be fulfilled in the campaign itself, either by funding both yes and no sides, or by providing information from a neutral body such as Elections BC. However, some suggest that the question itself should include the consequences of a decision in order to better gauge real public opinion. As Ron Levy (2013) points out, electoral reform can be arcane to most voters, which makes them more risk adverse.

The usual response from reformers as they attempt to deal with status quo bias is to ask a general question in the referendum regarding the support for change, and then deal with the specifics later. This is the advice organizations such as Leadnow and the Canadian Centre for Policy Alternatives (CCPA) have given for the upcoming BC referendum (Leadnow, 2017; Klein, Daub, and Hemingway, 2017). Leadnow asks that the first question for voters be whether they would like to retain the current system or see it changed. The CCPA recommendation is somewhat less open-ended. It recommends that the first question be whether the public “would like to maintain BC’s current FPTP electoral process or change to a form of PR.” Both organizations suggest a follow-up question. For Leadnow, that question is a ranked ballot listing all alternative systems except the current FPTP. For CCPA, the second question asks voters to rank a list of PR models only.

While a two-question ballot would be preferable, the way in which both Leadnow and CCPA have framed their recommendations for the referendum question is not in keeping with best practices. The CCPA recommendation only allows for a PR system as a replacement for the current model. People who want change, but perhaps do not agree with PR, or who prefer a different model, will not have their viewpoint reflected. Moreover, the ranked ballot is problematic, as will be demonstrated in the example of PEI’s latest referendum. Apart from the ranking, excluding some electoral systems predetermines a specific outcome. Although the NDP and Green parties and some electoral reform activists prefer PR, it is not necessarily the case that others who support reform agree with this system.

**Table 6: Prince Edward Island Ranked Ballot**

Rank the following electoral system options in your order of preference, 1 through 5 (with “1st choice” being your most preferred and “5th Choice” being your least preferred). You may choose as many, or as few, of the electoral system options as you want.

	Round 1	Round 2	Round 3	Round 4	Final*
Dual Member Proportional Representation	7,951	8,224	8,948	—	
First-Past-The Post (the current system)	11,567	13,108	14,466	15,869	42.84%
First-Past-The-Post Plus Leaders	2,821	—	—	—	
Mixed Member Proportional Representation	10,757	11,153	12,780	19,418	52.42%
Preferential Voting	3,944	4,216	—	—	

\*Final results do not add up to 100% because 4.74% were exhausted. A vote or ballot is “exhausted” following the voter’s choice being “excluded,” if there were no further preferences ranked on the voter’s ballot or if their next preferred option has already been excluded. Source: <http://www.electionspei.ca/plebisciteresults>.

Often advocates and scholars conflate the general question of whether we should have proportionality with support for any alternative system. They then blame the question, or lack of knowledge of the specific reform, as the reason for the failure of the public to accept change. However, the public may rightly be wary of giving government *carte blanche* to implement any alternative electoral system without knowing the details. Thus, a general question of whether the public wants change in a referendum could also fail either because of campaigning on the “no” side, or a real fear of the uncertainty of what a new electoral system might look like.

One way to deal with this dilemma is to provide more context in the wording of the referendum question itself. If it is true that the public is unaware that the referendum is being held, or what the impacts of the decision are, then the question and its responses must go beyond the simple binary yes/no. Some jurisdictions offer more than one choice, as was the case in Part B of the New Zealand plebiscite. Most recently, Prince Edward Island tried to provide more than one choice and used a ranked ballot to gauge public support for a new system (table 6).

Using the preferential ballot in PEI resulted in the MMP system being selected with 52.4 percent of the vote. That result came after four rounds voting. It is noteworthy that in the first three rounds, the current (FPTP) system had the most votes, but not enough to secure the majority.

Only with all the other votes reallocated was MMP selected. The result was considered inconclusive in part because the turnout was only 36.4 percent. Due to low voter turnout, the government felt that there was not a large enough mandate to proceed with reform. The question posed to PEI voters, while suitable for a plebiscite, fails to fulfill the criteria of a clear question with a clear answer. As alluded to above, the problem with the ranked ballot is that it does not force the voter to make one choice, and as a result, the final choice is not always the first or second choice—or even the third choice—of the majority.

The New Zealand example offers a far superior method of determining whether the public is in favour of change, and if so, what change they prefer. The simplicity of asking the public to choose one alternative, rather than rank several, makes it clear that everyone's first choice of change will be the one that is pursued. Another step makes the New Zealand method even more legitimate: after a new system is designed from those alternatives that the public identifies as their first choice, the public has a second opportunity to assess and compare the new legislation with the current system. This second step ensures that the changes the government is making have public support. It also ensures that the public is aware of the consequences of their choice because they have been able to give full and informed consent.

## The Test of Conviction: Thresholds

Apart from the wording of the question, there is another contentious issue regarding referenda: the threshold of votes needed for the referendum's approval. There are two types of thresholds: the requirement for a certain percentage of voters to turn out and vote, and the percentage of votes needed to accept the result. Normally an outcome is considered legitimate when it has 50 percent plus one of the vote. However, sometimes government calls for a supermajority, where a higher threshold, such as 60 percent, is needed to ensure legitimacy and acceptance of the vote (Gay and Horton, 2011). One argument for a threshold stems from instances where there is low voter turnout. For example, Elizabeth Garrett notes, "thresholds and supermajority vote requirements may be justified in situations where voter turnout is low and thus passage by a simple majority of those voting can result in laws and constitutional provisions being adopted by a minority of voters with intense and outlying preferences" (Garrett, 2001: 163). Another justification for a threshold is to protect minority or regional voters (Sen, 2015). Switzerland, for instance, requires double majorities to protect smaller cantons.

An argument in favour of supermajorities is that fundamental changes to how governments operate, such as constitutional amendments and electoral reform, are needed to ensure that changes are done infrequently and with due caution. When BC held its first referendum on electoral reform, Premier Gordon Campbell imposed two thresholds that had to be met before the reforms would be implemented: a 60 percent supermajority (i.e., 60 percent overall in the province had to vote in favour of electoral reform); and a simple majority in at least 60 percent of all ridings. The referendum failed because the vote for change was under the first supermajority threshold of 60 percent. One argument against voter turnout thresholds is the fear that they suppress voter turnout, which in turn affects the outcome of a referendum. Researchers Yoichi Hizen and Masafumi Shinmyo (2011) argue that when a threshold, specifically a voter turnout threshold, is not imposed, or the threshold is low, the electorate is more likely to vote. However, when the threshold is a high, voters who favour the status quo are more likely to abstain from voting, which leads to a

decrease in voter turnout. In their models, abstaining from the vote when there is a threshold is more likely to result in the status quo.

There is little evidence from the Canadian referenda on electoral reform that thresholds had any impact on the vote. In British Columbia, the threshold did not seem to affect the turnout as 61 percent of registered voters exercised their franchise. Ontario had the same 60 percent threshold in their referendum, and voter turnout was 52.09 percent, consistent with the turnout in that province's general elections.

There is mixed evidence on the effect of thresholds from PEI. In the 2005 plebiscite, one month prior to the vote, Premier Patrick Binns imposed the supermajority of 60 percent in 60 percent of the districts. For that referendum, the voter turnout was 33 percent, which led commentators to argue that the threshold discouraged voters. Commissioner Carruthers remarked at the time that the premier was misled: "Personally, I am of the view that Premier Binns was very ill-advised to impose such a limitation on the plebiscite vote. There is no precedent in this province that I am aware of that calls for such a high percentage" (McKenna, 2006). Yet when the 2016 plebiscite was held and its threshold was a simple majority, turnout remained abysmally low at 36 percent. The low turnout was surprising because in provincial elections, Islanders have the highest voter turnout in Canada. The poor response was doubly remarkable given that for the first time in Canadian history, 16- and 17-year-olds were eligible to vote, and electronic and telephone voting options were available.

Whether or not the threshold has an impact on the vote is a moot point for the upcoming referendum in British Columbia as the premier has rejected both the 60 percent overall threshold and the regional requirement. However, too low a voter turnout, such as was the case in PEI, would impair the legitimacy of the result. If, for example, only 36 percent of voters turned out (as was the case in PEI) and 51 percent of them supported changing the system, it could mean that the province would proceed with a change to the electoral system with the support of less than one fifth of the electorate. In this scenario it would be impossible for the government to say it had a clear mandate for change. Therefore, the government might want to consider the impact of a low voter turnout before declaring that it has a mandate for change. More problematic is the removal of the regional requirement. Given the higher population density in the Lower Mainland, the referendum's outcome could be determined by just a few ridings.

## Conclusion

The BC government has made its commitment to electoral reform clear. It has fast-tracked the process by which a referendum will be held. In doing so, it has given the Attorney General a challenging task. To be considered legitimate, the referendum question should fulfill Canadian and international best practices. Specifically, it must be a clear question with no unambiguous result; it must provide informed consent; and it must be free of directing the public to one conclusion. As this essay has shown, to do so requires that the public be informed of all the available options and the consequences of those options. The current problem is that there is no specific alternative to the current system. The NDP and Greens have committed to proportional representation, but have not stated the form that will take. The previous Citizens' Assembly recommended BC-STV, which had some elements of proportionality and reduced the electoral boundaries from 85 to 20. This system was soundly rejected by the public in a previous referendum.

There is a consensus among Canadian and international best practices that referendum questions must:

- Be clear
- Present the status quo as an option
- Be free of biased language that could drive voters to a specific result
- Ensure that electors are informed of the effects of the referendum

If the attorney-general were to take the advice of leadnow.ca and the Canadian Centre for Policy Alternatives, BC would use a two-part ballot that would provide the government with some direction on the public's sentiment for change, as well as an indication of what alternative, if any, the public preferred over the current system. While activists may think this approach is sufficient, it is our opinion that a two-part question is just the first step. Simply having an open-ended question regarding an electoral system leaves the details up to political partisans. While that flexibility might be tempting for the NDP and Greens, the uncertainty could backfire on their attempt to implement electoral reform. As we have noted above, status quo bias should be taken into consideration. If the public is concerned about partisan manipulation, it is more likely to vote to retain

the current system. Having a two-question ballot with the promise of a binding referendum on a specific electoral system will elicit a clearer picture of the public's view. In addition, it will provide much-needed legitimacy for the adoption of a new system. Moreover, the binding referendum on a specific system should require some threshold of voter turnout and regional support to further ensure legitimacy for the chosen system.

Although the requirement for a supermajority has been removed from the forthcoming BC referendum, the government should proceed with caution if the resulting referendum has a low voter turnout. If voter turnout is less than 50 percent, it will be difficult for the government to claim that the reform has public endorsement. It is worth noting that the lowest voter turnout in a general election in BC was 55 percent (2009). The last election, in 2017, had a 61.5 percent turnout (Elections BC, 2017).

The current government should not translate its desire for change into immediate action. Indeed, all parties in the province have committed themselves to electoral reform, so there is no urgency to implement a change prior to the next election. If there is indeed a real appetite for change amongst voters, then the government should be confident that the public will express that in the first referendum. Giving the government, or an external body, time to craft an electoral system that works for British Columbia, to have the public learn about the new system, its benefits, and drawbacks, as compared to the benefits and drawbacks of the current system, and then have the public vote on those changes, would be the only legitimate way to proceed with electoral reform. Yes, this process will be longer than what is currently envisioned. But it will be a process that will give the outcome legitimacy and make subsequent changes less likely. Either way, changing the electoral system should be done only rarely and with much deliberation by the governed and the government.

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