

# Instruments of direct democracy in Canada and Québec

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3<sup>rd</sup> edition

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In this document,  
the masculine form designates both women and men.

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# Introduction

Democracy is a byword in just about every corner of the earth. We are best acquainted with representative democracy as it is reflected in our political institutions. The referendum, an instrument of direct democracy, can be considered one of the ways of broadening the democratic process. It is an exceptional occasion when voters become players through their direct participation in the process.

Our political institutions are inspired by the British parliamentary system. This is why the use of various instruments of direct democracy is sporadic here in comparison with referendum practices in Switzerland and the United States in particular. A review of Canadian and particularly Québec referendums will highlight the development of our political institutions from another angle.

The different mechanisms of direct democracy will be briefly explained in this document, with a few foreign examples before addressing referendum practices in Canada. A more comprehensive look at referendums in Québec will then be taken by means of a survey of the various stages leading to the current legislation. Lastly, the referendum experience of the Inuit People of Northern Québec in 1987 and practices at the municipal level will be examined.



# Instruments of direct democracy

The instruments of direct democracy are the referendum, popular initiative, recall and veto. However, before these various instruments are discussed, we feel that it is appropriate to define more precisely the terms “referendum” and “plebiscite”.

## 1.1 Referendum and plebiscite: definitions

The definitive distinction between these two terms has long been a bone of contention among experts. It would be pretentious to propose a solution, and this is not the objective here. Nonetheless, an attempt will be made to explore some of the possible meanings of each term.

Firstly, in Canada, the accepted meaning of the terms in English varies somewhat from the French. Patrick Boyer considers the difference between a plebiscite and a referendum to be that the former is not legally binding on the government, although a political or moral obligation may ensue. He defines the plebiscite as follows:

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*“The plebiscite is an expression of opinion by the people on a general course of action proposed by the government. The vote is not legally binding on the government, although there may be a political and a moral obligation to respect the result.”<sup>1</sup>*

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According to this definition, the 1980 referendum in Québec would be a plebiscite.<sup>2</sup> In Canada, the terms “plebiscite” and “referendum” have often been used interchangeably. For example, at the time of the 1942 plebiscite on conscription, Mackenzie King hesitated between the two terms. Finally, he apparently chose “plebiscite” because he considered the term “sufficiently vague”.<sup>3</sup>

The accepted meaning of the term “plebiscite” in French may have a negative connotation since, in France, a “plebiscite deviation” is when the president uses the results of a referendum as a vote of confidence. In this sense, referendums say more about the leader than about the question. Referendums under General de Gaulle were often of this nature.

According to the Petit Robert, the meaning has evolved over time. In fact, current French usage defines the term as a direct vote of confidence by an electorate for or against the person in power. Jean-Charles Bonenfant accepts this definition of “plebiscite”, yet he defines “referendum” as follows:

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*“In the strict sense, a referendum would be a vote whereby the people approve a decision by their representatives and give it force of law, elected assemblies ruling only “ad referendum”. A referendum would then enable the people to be associated with the drafting and application of laws. This is the type of referendum found in Switzerland. By extension, the word “referendum” has taken on the meaning of consultation of all the members of a group. The results are solely advisory, which can only obligate the government morally. Referendums in Québec are of this type. In the current constitutional context, there can be no alternative.”<sup>4</sup>*

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Today, the term “plebiscite” seems to have become obsolete in both English and French.<sup>5</sup> However, “referendum” and “plebiscite” have the same meaning in international law.

## 1.2 Referendums

The referendum is an instrument of direct democracy whereby the electorate is called upon to express its will. There are generally three categories of referendums: ratification, consultative or arbitration referendums.<sup>6</sup>

### (a) Ratification referendums

In this type of referendum, citizens are asked, in the final stage, to approve a bill adopted or a measure taken by the government. The people thus participate in the legislative process via the referendum. It is also known as a mandatory referendum as the government is bound by the people’s position. This type of referendum is often used at the time of constitutional amendments. In some countries, the Constitution may only be amended by a referendum. This is the case for Australia, Ireland, Switzerland as well as for 49 American states where amendments to the Constitution must be ratified by referendum.

### (b) Consultative referendums

“Consultative referendums allow electors to express their opinion on ideas that they would like to see implemented. In this case, the people are asked simply to advise. The authorities are not legally bound to take the results of a consultative referendum into account, but politically, they would be hard-pressed to ignore the results.”<sup>7</sup>

In Canada, this is the most common type of referendum.

### (c) Arbitration referendums

An arbitration referendum is held when there is disagreement between public authorities such as the government and Parliament. The electors are then asked to resolve the conflict. This procedure was used notably in Germany, under the Weimar Constitution.

Moreover, in addition to the categories described above, referendums manifest themselves in various forms. According to the context, a referendum can be constitutional, legislative, administrative, etc. A referendum may also be compulsory or optional. A compulsory referendum is provided for in the Constitution in provisions which obligate the government to consult the population. If no such provisions exist, the referendum is considered optional, as is the case in Canada. In addition, referendums are said to be free if they are not legally binding on the government; in the opposite case, they are said mandatory.

### (d) A few international examples of referendums

In Australia, an amendment to the Constitution must be approved by the people at a referendum. The amendment, which is proposed by Parliament, must be approved by a double majority: a majority of voters and a majority of voters in a majority of States (at least four of the six States of the country). Since the creation of the Commonwealth of Australia in 1898, 42 constitutional referendums have been held, but on only eight occasions were the proposed changes accepted. The subjects have varied: sharing of new powers, public finance measures, restructuring of Parliament and the Senate, and the power to enact laws with respect to the Aboriginal people. In the fall of 1999, Australia held a referendum on the abolition of the monarchy and the establishment of a republic. Australian electors rejected by a vote of 55% - 45% a proposal to change their nation to a republic. The Queen of England is the head of the Australian government. The Australian government can also hold consultative referendums on subjects that it deems necessary without the Constitution being affected. This was the case of the referendums on conscription of 1916 and 1917, as well as that on the choice of the national anthem in 1977.<sup>8</sup>

In Ireland, referendums are also obligatory for a change in the Constitution. Since the Constitution of 1937, which itself was approved by a plebiscite, the country's Constitution may only be amended by a referendum, which is at the government's initiative. The Irish Constitution has been amended sixteen times out of twenty-one attempts. The changes have concerned the electoral system, parliamentary structure, abortion, divorce, membership in the European Economic Community, and ratification of the Maastricht and Amsterdam treaties on the

European Union. The Irish Constitution also allows for the holding of a consultative referendum if the President and Parliament deem that a law requires the people's approval. This type of referendum has not yet been used in Ireland. <sup>9</sup>

Referendums in France were introduced at the time of the French revolution. However, it was under the 5<sup>th</sup> Republic that referendums took root in French political culture. General de Gaulle established a new Constitution in 1958, also approved by a referendum, which explains why referendums hold such an important place. The President of the Republic may, upon the proposal of the government, submit to a referendum a bill dealing with a revision of the Constitution or the organization of public powers. The President may also, on his own initiative, submit to a referendum a law dealing with economic or social policy reforms or the ratification of a treaty. However, the Constitution may be amended by Parliament and the Senate brought together in congress with a vote of 3/5 of the members, without a referendum being necessary. Since 1958, eight referendums have been held in France, including five under de Gaulle. They have dealt with the adoption of and amendments to the Constitution, Algerian autonomy and independence in 1961 and 1962, the election of the President by universal suffrage, the extension of the European Community in 1972, and the ratification of the Maastricht Treaty in 1992. <sup>10</sup>

In Great Britain, the Constitution is not written. It is made up of customs, traditions, precedents as well as a series of laws having a constitutional scope. Hence, referendums are not provided for in the Constitution, but nothing prohibits them. However, there are precedents that have entrenched referendums in the practices and customs of British politics. In Great Britain, Parliament is sovereign. Hence, referendums are only used when the government considers them necessary. However, Parliament may indicate in a bill that a consultative referendum must be held before the law is ratified. There has only been one national referendum in Great Britain. It was held in 1975 and concerned the country's membership in the European Common Market. This membership had taken place in 1972.

Thereafter, there were regional referendums on the creation of regional parliaments in Wales and Scotland in March 1979, and on the constitutional future of Northern Ireland in 1973. The referendums in Scotland and Wales did not meet with success. In Wales, 80% of the population rejected the creation of a Welsh Parliament, whereas in Scotland, 51.6% of voters were favourable to the creation of a parliament. However, it should be noted that for these referendums, a qualified majority of 40% of the registered electorate had to be in favour of the project in order for

it to be ratified, and not 50% of the vote. In Scotland, although 51.6% of the voters were in favour of devolution (creation of a Scottish Parliament with a transfer of power by London), they represented only 32.8% of the electorate. The rate of participation was 63%. Hence, the bill on devolution was unsuccessful in Scotland and in Wales.<sup>11</sup>

In September 1997, there were new regional referendums on the subject of devolution and the creation of a Scottish Parliament and a Welsh Assembly with the return of the Labour Party to power. This time, both referendums met with success as the peoples in question voted in favour of the proposals. A simple majority (50% + 1) in favour of the project was necessary, unlike in 1979. In Scotland, two questions were asked. One dealt with the creation of a Scottish Parliament and the other, with its taxation powers. In response to the first question, 74.3% of the voters approved the creation of a Scottish Parliament, whereas 63.5% supported the measure of the second question seeking to give this Parliament taxation powers. The rate of participation in Scotland was 60.4%. The elections for the Scottish Parliament were held on May 6, 1999.<sup>12</sup>

Switzerland is often cited as an example on the subject of referendums. Indeed, from 1848 to 1997, Switzerland held 437 national referendums whereas there were fewer than 900 in the world during the same period, including Switzerland. In other words, close to half of the world's national referendums have been held in Switzerland. It was in 1848 that the constitutional referendum was introduced in the Swiss Constitution. A referendum is mandatory for any partial or total revision of the Constitution. Moreover, at the request of 50,000 citizens or eight cantons, a law passed by the Federal Assembly is submitted to a referendum for approval. Hence, there are constitutional and legislative referendums in Switzerland. Constitutional referendums require the approval of the majority of voters and cantons to be ratified. As for legislative referendums, they only require a simple majority of voters. The subjects of the referendums are too varied and too numerous to list here.<sup>13</sup>

The United States has a long democratic tradition, but surprisingly, there is no referendum provision at the federal level. However, referendums are solidly entrenched at the State level. In 49 States, except Delaware, all constitutional amendments must be approved by referendum. Twenty-four States, most west of the Mississippi (except for Louisiana, Texas, Kansas, Iowa and Minnesota) have provisions regarding legislative referendums in their respective Constitution. In some States, at the request of a specified number of electors, a law of the government can be submitted to a referendum to obtain the approval of the people. As each State has its own Constitution, the terms and conditions of the referendums vary from one State to another.<sup>14</sup>

## 1.3 Popular initiatives

In contrast to the referendum, the popular initiative is a consultation process set in motion by a specified number of citizens. It thus originates with the grassroots. People can use an initiative to table a bill or to demand that a law be amended or repealed. The procedure is simple. A specified number of citizens submit a bill to their legislative assembly. The initiative may be direct or indirect. In the case of a direct initiative, the proposal is submitted directly to the vote and, if it is approved, it becomes a law. An indirect initiative is first submitted to the legislative assembly, which decides whether or not to follow up on the proposal. If the assembly refuses, the proposal is submitted to the vote of electors.

Popular initiatives are widely used in Switzerland. One hundred thousand electors can request the partial or total revision of the Constitution. The proposed amendment must then be submitted to a popular vote to be ratified.

Popular initiatives are also commonplace in the United States. Twenty-four States have provisions regarding popular initiatives and twenty-one of these States also have provisions on referendums. Moreover, in eighteen of these twenty-four States, the State's Constitution may be amended by the initiative process. However, in two of these eighteen States, Massachusetts and Mississippi, the constitutional initiative is indirect.<sup>15</sup>

It is in California that this practice has taken root most firmly. In the 1980s, some 264 initiatives were proposed, without necessarily reaching the voting stage. Indeed, several initiatives fail, because they do not collect a sufficient number of signatures to be official. They concern the domains of politics, finance, the environment, and civil rights and freedoms, etc. The best known Californian initiative is undoubtedly Proposition 13, in 1978, which was aimed at reducing taxes and government spending. In California, the entire process is being reviewed, since there is an apparent correlation between weak voter participation and the high number of initiatives.<sup>16</sup> Furthermore, interest groups have no spending limits. For this reason, an initiative often comes across as "big business",<sup>17</sup> which, in a way, undermines democracy.

However, California is not a unique case. From 1898, date of the first legislation on popular initiatives in South Dakota, to 1992, more than 1700 initiatives were submitted to American voters. At the top of the list, one finds Oregon with 274 initiatives, California with 232, North

Dakota with 160, Colorado with 150, Arizona with 133 and the State of Washington with 91. They no longer keep track of the number of initiatives and proposals that did not meet the necessary conditions to qualify for a vote. The success rate of initiatives for the period from 1898 to 1992 is 38%.<sup>18</sup> In 1996, a record number of 94 popular initiatives were submitted to American voters in twenty different States. However, despite the fact that it was a presidential election year, less than 49% of the voters turned out to vote.<sup>19</sup>

## 1.4 Recalls

This procedure is used to remove an elected leader or public servant. Recall is usually triggered by a petition. Consequently, if a sufficient number of electors support the proposal and if the person in question does not step down, an election will be held. This means has been used primarily in the United States. Some 15 States provide for the recall of state officials, while 36 States provide for the recall of local officials.<sup>20</sup> This measure is most commonly used at the municipal level in the United States. Nonetheless, a Governor of Oregon was recalled by this procedure in 1921.<sup>21</sup>

## 1.5 Popular vetoes

Popular vetoes authorize a specified number of electors to demand the repeal of a law. If Parliament refuses to comply, a referendum on the law in question will be organized. The Weimar Constitution contains an example of popular veto.



## Referendum practices in Canada

Although the use of referendums is not customary in Canadian politics, the country has nonetheless witnessed several consultative referendums (Appendix I). Three referendums have been held at the national level: the 1898 plebiscite on Prohibition, that of 1942 on Conscription and the last of 1992 on the renewal of the Canadian Constitution.

At the federal level, there was no general law governing referendums prior to 1992. There were a few previous attempts at introducing such legislation, but none bore fruit. Since June 1992, the federal government has had a law entitled the “Referendum Act”.

The most important provincial referendums have undoubtedly been the 1948 vote on the entry of Newfoundland into Confederation, the 1980 referendum on sovereignty-association in Québec, the 1992 referendum on renewal of the Canadian Constitution and the 1995 referendum in Québec on its constitutional future. Most other referendums were on questions related to Prohibition or daylight saving time. In 1982, the Northwest Territories held a vote on the division of its territory; Manitoba organized a constitutional referendum in 1983 on recognition of the language rights of Francophones; Prince Edward Island consulted the people in 1988 on the advisability of linking the Island with New Brunswick.

Certain provinces have associated the referendum process with the electoral process. This is particularly true of British Columbia and Saskatchewan. Three questions were submitted to the Saskatchewan electorate during the October 1991 general elections. Electors voted at that time in favour of a law on the budget framework and on the holding of provincial referendums to ratify constitutional amendments, but 62.7% of the voters were against the State’s assuming the cost of abortions.<sup>22</sup>

British Columbia and Saskatchewan have passed legislation on referendums. Ontario, and Nova Scotia are the only provinces that have not adopted legislative provisions concerning referendums (Appendix II).

In March 1991, British Columbia passed the Constitutional Amendment Approval Act, which obligates the government to hold a referendum for any amendment to the Canadian Constitution before a resolution to this effect is introduced in the Legislative Assembly.

Newfoundland used a referendum to consult its people on September 5, 1995. The subject of this consultation was the restructuring of the school system. Electors voted in favour of the elimination of the denominational character of the province's schools. Of the valid ballots, 54.9% were cast in favour of the YES side, and 44.9% in favour of the NO side.

Number of registered electors:	384 734
Ballots in favour of the YES side:	110 705
Ballots in favour of the NO side:	90 583
Rejected ballots:	422
Valid ballots:	201 710
<hr/>	
Participation:	52.43%

Generally, of all the instruments of direct democracy, the referendum is the only one in use in Canada, despite a few attempts at popular initiatives and recall.

## 2.1 Popular initiatives

The early years of the century witnessed a few attempts at popular initiatives in Canada. By far the most famous took place in Manitoba, where the Initiative and Referendum Act was declared unconstitutional subsequent to a 1919 ruling by the Judicial Committee of the Privy Council. In fact, Canada's constitutional particularities dictate that legislative power cannot be directly attributed to a referendum process since this encroaches on the duties of the Lieutenant Governor.<sup>23</sup> In 1913, Saskatchewan was the first province to pass a law authorizing an initiative—the Direct Legislative Act. Yet this law was repealed after a referendum. British Columbia enacted a law on initiatives in 1919 which was never proclaimed. In 1958, Alberta repealed a 1913 law authorizing direct legislation. The law, however, had never been used.

Since June 18, 1991, Saskatchewan has had the Referendum and Plebiscite Act authorizing non-binding (consultative) initiative.<sup>24</sup> For its part, British Columbia submitted to the electorate a proposal on the introduction of a popular initiative instrument on October 17, 1991. It received 83% of the vote.<sup>25</sup> The question was worded as follows:

Should voters be given the right, by legislation, to propose questions that the Government of British Columbia must submit to voters by referendum?

The Government of British Columbia acted on the results of the referendum. In the summer of 1994, the Recall and Initiative Act was tabled in the Legislative Assembly. It was passed and came into force in February 1995. British Columbia thereby became the first province in Canada to give its citizens the power of recall and initiative. From 1995 to 1999, no initiative was undertaken.

## 2.2 Recalls

Recalls are not really part of Canada's political repertoire. However, in April 1936, the Social Credit Premier of Alberta, William Aberhart, sponsored a law of this type, the Legislative Assembly (Recall) Act. Ironically, his proposal backfired when he became the first victim of the law. He hurriedly enacted a second law, retroactive to April 3, 1936, declaring the recall measures used against him repealed.<sup>26</sup>

In British Columbia, in the October 17, 1991 general election, the government proposed a recall procedure that captured 81% of voter support.<sup>27</sup> Here is the wording of the question:

*Should voters be given the right, by legislation, to vote between elections for the removal of their Member of the Legislative Assembly?*

British Columbia has had legislation to that effect since February 1995. Some ten recall procedures were undertaken between 1995 and 1999. Only one was successful. In 1998, Paul Reitsma, MPP for Parksville-Qualicum, resigned following a petition in recall which had met the legal requirements to be effective.<sup>28</sup>

## 2.3 1898 Plebiscite on Prohibition

On September 29, 1898, a nation-wide plebiscite was held in Canada on the Prohibition of liquor. Since voter participation was 44%, one can hardly consider the referendum to have sparked the population's interest. At best, the prohibitionist committees were pitted against hotel owners and distillers.<sup>29</sup> Members of the prohibitionist committees included leaders of the Equal Rights League and the Protestant Protective Association.<sup>30</sup>

The Prohibition Plebiscite Act (S.C. 1898, c. 51), passed in 1898, called for a vote on the following question:

*Are you in favour of the passing of an Act prohibiting the importation, manufacture or sale of spirits, wine, ale, beer, cider and all other alcoholic liquors for use as beverages?*

Only in Québec did the majority vote against Prohibition, 122 614 to 28 582. For the country as a whole, 51.3% (278 487) of voters were in favour of Prohibition, and 48.7% (264 571) were against. In view of this small majority, Prime Minister Laurier felt in no way bound by the results, and he did not follow up on this plebiscite. Here are the results:<sup>31</sup>

<b>Province</b>	<b>YES</b>	<b>NO</b>
Ontario	154 499	115 275
Québec	28 582	122 614
Nova Scotia	34 646	5 402
New Brunswick	26 911	9 576
Prince Edward Island	9 461	1 146
Manitoba	12 419	2 978
British Columbia	5 731	4 756
Northwest Territories		
* Alberta	1 708	1 331
* Assiniboia	3 919	1 166
* Saskatchewan	611	327
<b>TOTAL</b>	<b>278 487</b>	<b>264 571</b>

\*Provincial district

## 2.4 1942 Plebiscite

The Canadian plebiscite in 1942 is surely a milestone in the history of referendums in Canada. This event, an outlet for passions, brought to light two traditionally opposing visions of Canada. Yet beyond the perpetual manifestations of the stormy relationship between the two cohabiting communities, it is unquestionably the context of the plebiscite that is more intriguing. First, here is a review of the facts surrounding the holding of the 1942 plebiscite.

Conscription has long been an explosive issue in Québec. In 1917, there was virulent opposition to the adoption of Conservative Prime Minister Borden's Military Service Act. In fact, opposition degenerated into bloody riots in Québec City. On April 1, 1918, the army, dispatched by Ottawa, opened fire with machine guns on the crowd. The outcome: 4 dead and more than 70 injured. On April 4<sup>th</sup>, martial law was imposed in Québec City by ministerial decree.

These events are deeply etched in the collective memory of Quebecers to the extent that Duplessis, to win the 1936 election, was forced to change the name of his party:

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*“Duplessis had belonged to the Conservative Party since his youth. He realized the extent that the party had been discredited in Québec owing to the Borden government’s war policy. The discredit was so total and so enduring that, 18 years later, Duplessis could not come to power in the province without changing the party’s name.”<sup>32</sup>*

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When war broke out on September 1, 1939, the spectre of conscription, so reviled in Québec, reared its head again. The Mackenzie King government rushed to enact the War Measures Act. This law allowed, amongst other things, authorities to govern by decree and thus bypass Parliament, to imprison without trial, and, particularly, to impose censorship. Under this law, any opposition to official policy was prohibited. Certain agencies, such as the CBC and the National Film Board, were used by the State as propaganda vehicles. It is important to remember that the events surrounding the 1942 plebiscite took place in a context of limited civil rights.

In the days following the outbreak of war, the federal Parliament was the scene of heated debates between partisans of neutrality and those in favour of massive participation in the war effort. A compromise arose from this debate, a “‘pact’ between English and French Canadians”.<sup>33</sup> According to this pact, Québec agreed to participate in the war effort on a voluntary basis. The man behind the compromise, the one who convinced the Québec MPs, was Ernest Lapointe, the Minister of Justice and Mackenzie King’s Québec Lieutenant.

Before we progress any further in the narration of events, an examination of certain elements that will provide an understanding of the differences between the Anglophone and Francophone communities is in order. Firstly, “conscription” did not have the same meaning for English and French Canadians. For the former, Great Britain was considered the motherland; this was especially true of people who felt close ties with Great Britain. Francophones resisted conscription. André Laurendeau states that, for French Canadians, the war, at least in its early stages, was a European affair. They did not feel affected by it. Until 1941, Canada had been the only country in America to participate in the war. In addition, propaganda and censorship thrive in times of conflict, and people were subsequently wary and poorly informed. Moreover, many felt that Canadian policy was largely shaped by British policy; this was seen as a blow to Canadian autonomy. André Laurendeau, in fact, explains this perception: “...in theory, we have been free since the

Statute of Westminster; in practice, the will of English Canada ensures that we are not free on major occasions”.<sup>34</sup> As well, for most French Canadians, conscription was synonymous with domination. Brooke Claxton, federal MP at that time, clearly attests to the symbolic connotations of conscription in Canada:

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*“For certain Canadians, conscription is a symbol of the total war effort; for other Canadians, who love their country just as much, the word conscription symbolizes racial domination.”<sup>35</sup>*

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It must be mentioned that army recruitment was an unattractive option for Francophones. Training took place in English, and the rank of officer was not easily accessible to French Canadians; the same can be said of choice branches such as aviation. Nonetheless, compared with the First World War, many more French Canadians volunteered for the armed forces.

As soon as war was declared, meetings were held in various cities in Québec. Crowds of people attended, and the atmosphere was tense and restless. Shows of disapproval in a context where censorship prevailed were risky indeed. In autumn 1939, Duplessis held general elections. His platform included the argument that the War Measures Act interfered with provincial rights.<sup>36</sup> Furthermore, Duplessis himself was subject to censorship. His refusal to allow censors to examine his speeches led to his banishment from the CBC.<sup>37</sup> These elections gave rise to an active campaign by the federal Liberals on the provincial scene, where Ernest Lapointe virtually took over from Adélard Godbout, Leader of the provincial Liberal Party. At the time, the people were reminded that it was a Conservative government that introduced conscription in 1917. In fact, conscription was enacted under a coalition government with the Liberal Party. This, however, was downplayed and largely forgotten. With strong backing from the federal Liberal Party, Adélard Godbout won the general elections.

During the 1940 federal election campaign, Leaders of both the Liberal and Conservative parties, well aware of Québec’s fears of conscription, were committed to avoiding this measure. Québec thus propelled the Liberals into power owing to a “tacit” agreement that there would be no conscription:

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*“This compromise became a ‘contract’ between the two nations, a pact of honour, ratified by the general election in March 1940. French Canadians agreed to participate in the war; and English Canadians agreed never to use conscription.”<sup>38</sup>*

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In June 1940, France surrendered. Canada reacted to this defeat with the adoption of the Resource Mobilisation Act, which authorized compulsory recruitment for the defense of Canadian territory. Yet recruitment for service outside the country was supposed to be carried out on a voluntary basis. This law met with no protest in Québec. Although it was a step in the direction of conscription, it was not yet actual conscription. However, certain opponents of conscription paid dearly for speaking out. Camilien Houde, mayor of Montréal, was arrested by the Royal Canadian Mountain Police and was sent, without trial, to an internment camp for four years.<sup>39</sup>

At the Québec Legislative Assembly, René Chaloult tabled a motion against general mobilization in Canada. It was defeated by 56 votes to 13.

The turning point for the events leading up to the plebiscite occurred in late 1941. First the Conservative Party appointed a new Leader, Meighen, who was a fervent believer in massive mobilization. Second, Ernest Lapointe's death on November 26, 1941 left Québec bereft of one of its strongest politicians. Lapointe's promise in 1939 was: "Never conscription".<sup>40</sup> Then, in December 1941 the attack on Pearl Harbour by the Japanese drew the United States into the war. Events ensued in rapid succession. The federal government was under pressure in Ottawa. In the January 1942 Speech from the Throne, Mackenzie King announced a plebiscite which would release him from his prior obligations regarding conscription. The slogan "Conscription if necessary, but not necessarily conscription" emerged. This was the mark of an adept politician, to be able to engage in double talk, a subtle way of placating both communities. On March 5<sup>th</sup>, the 1942 Act respecting the federal plebiscite was assented to. The poll was called for April 27<sup>th</sup>, and the people were asked to vote on the following question:

*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?*

This was the backdrop for the events surrounding the 1942 plebiscite. The Francophone community felt largely betrayed, since it considered the plebiscite a violation of the "pact".

From that point on, the opposition forces grew around the Ligue pour la défense du Canada. André Laurendeau reports that "the Ligue arose from the gulf between official opinion and popular sentiment among French Canadians".<sup>41</sup> The Ligue was made up of representatives from various associations in Québec, including the Union catholique des cultivateurs, the Catholic unions; the Société Saint-Jean-Baptiste, the commercial travellers, the youth movements and the Ligue d'Action

nationale.<sup>42</sup> Dr. J.-B. Prince chaired the association, and its best known militants were Maxime Raymond, Georges Pelletier and André Laurendeau. The goals of the Ligue were spelled out in a manifesto stating that each citizen might “respond to the plebiscite according to his judgment and conscience, without fear of being branded unpatriotic or a dangerous agitator”.<sup>43</sup>

As soon as the plebiscite was announced, meetings were held virtually all over. Close to 10 000 people attended the first meeting of the Ligue on February 11, 1942 at Marché Saint-Jacques, in Montréal. The crowd was particularly unruly. Eighteen people were arrested by the police, and several others were injured during the gathering.<sup>44</sup> In late February, a second meeting was held in Montréal. To the tune of God Save the King, protesters sang “down with conscription”.<sup>45</sup> Attendance was always high at meetings held by the Ligue. The atmosphere at the time was particularly strained and charged with animosity, as André Laurendeau relates:

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*“The two camps despised each other, with equal sincerity. Scorn and hate were expressed. English Canadians considered us to be traitors, who lacked the courage to fight. In them, we saw a horrible example of might makes right.”*<sup>46</sup>

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With regard to the clergy, Cardinal Villeneuve espoused the YES cause, while other priests promoted the NO vote. Even within political parties, opinion was divided.

The core of the YES side consisted of the federal parties (Liberal, Conservative, CCF (Co-Operative Commonwealth Federation) and Social Credit). The CCF kept a rather low profile during the referendum campaign despite the fact that certain MPs supported the YES side.<sup>47</sup> The YES campaign in Québec was promoted mainly via the radio and print media. YES proponents held meetings such as the one in Québec City organized by Louis Saint-Laurent and Chubby Power, two Mackenzie King ministers who were the members for the ridings of Québec Est and Québec Sud. These meetings, however, had little public appeal.<sup>48</sup>

The imbalance between the two sides is clearly evident in the 1942 referendum campaign. No public funds were allocated to the organizations, and no spending limit was imposed. The Ligue was self-financing. The federal government ordered that only Leaders of political parties and certain Ministers could have CBC air time.<sup>49</sup> The Ligue had to make do with messages on private stations, at its own expense. Except for *Le Devoir*, the press was largely in support of the YES camp. The difference in treatment between the two sides was not seen as unjust:

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*“Thus, according to The Globe and Mail, since the Government dominated the radio, it corralled it to the YES side. The Gazette congratulated King on handing the radio over to the YES partisans exclusively.”<sup>50</sup>*

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The propaganda of the conscriptionists was in no way comparable to that of the Ligue because the public service, the government, the press and the radio embraced the YES cause. Rumilly elaborates:

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*“Only one newspaper—Le Devoir—reported the Ministers’ arguments. In the English provinces, conscriptionist propaganda prevailed, without opposition. It took up the entire press, all the forums, all the microphones. Committees handed out Mackenzie King’s speech, printed by the federal administration at the taxpayers’ expense. Divisions of Women’s Voluntary Services\* actively engaged in propaganda. The Services possessed a certain official character, with organizations remunerated by the federal government.”<sup>51</sup>*

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The Minister of National Revenue, Colin Gibson, published the following announcement in the newspapers:

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*“In a few weeks, the country will hold a plebiscite, and the population will vote for or against, or will abstain. I think that Hitler would vote “no”, Quisling would not vote at all, and Canadians will vote YES.”<sup>52</sup>*

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During this campaign, the English press was particularly harsh on Québec. In many respects, the members of the Ligue were looked on as traitors, who should be forbidden to hold any gatherings.<sup>53</sup>

The 1942 referendum campaign unfolded in a climate which was even more volatile since the parties involved did not benefit from the same resources. As for the referendum itself, the Chief Electoral Officer, dubbed the Chief Plebiscite Officer for the occasion, assumed full responsibility. One of the distinguishing features of the 1942 plebiscite is the type of eligible voter. The Act defines two categories: ordinary and military voter of Canada. People of all ages in the military were given the vote, while ordinary voters had to be at least 21 years old. This provision was opposed in the House, but the effort was in vain:

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*“In the House of Commons, Maxime Raymond unsuccessfully evoked the principle of no taxation without representation, to demand the right to vote for people between the ages of 18 to 21 who were potential conscripts.”<sup>54</sup>*

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\* Translated at the time as Services volontaires féminins and somewhat later as Services bénévoles féminins. The Fort William branch, among others, was a particularly avid participant in conscriptionist propaganda.

The plebiscite was held, as set forth in the Act, on April 27, 1942, with participation of just over 75%. Some 64.2% (2 945 514) of the voters were for conscription, and 35.8% (1 648 006) were opposed. All the provinces voted yes except Québec. In fact, the results in Québec were in inverse proportion to the means the NO side had at its disposal.<sup>55</sup> André Laurendeau claims that the results were almost “embarrassing to report: Beauce (97%), Kamouraska (96%), Nicolet-Yamaska (94%)”.<sup>56</sup> Here are the results<sup>57</sup>:

<b>Province</b>	<b>YES</b>	<b>NO</b>
Ontario	1 217 604	235 350
Québec	376 188	993 663
Nova Scotia	120 382	33 043
New Brunswick	105 602	45 040
Prince Edward Island	23 660	4 841
Manitoba	221 108	55 735
British Columbia	254 301	63 314
Saskatchewan	188 110	74 371
Alberta	186 172	75 427
Yukon	860	317
Administrative district of Yellowknife	113	120
Military voters of Canada	251 118	60 885
<b>TOTAL</b>	<b>2 945 514</b>	<b>1 648 006</b>

Following this vote, in May, Mackenzie King announced his intention to amend the Resource Mobilisation Act. It was amended in July 1942, in order to empower the government to recruit people to serve outside Canada. Arthur Cardin, a Mackenzie King Minister, resigned in the wake of his campaign promise that a YES vote was not a vote for conscription.

Nonetheless, conscription was only applied in 1944. One lesson from this plebiscite is that it created a deep schism in the Canadian population.

## 2.5 1948 referendums in Newfoundland

The Newfoundland referendums of 1948 are of undeniable interest from numerous standpoints. Below is a description of the events that led Newfoundland to hold two referendums, with less than two months between them, on the form of government that the island wanted.

In the late 1920s, Newfoundland, which was then a British colony, was experiencing serious financial difficulties. Great Britain, for which Newfoundland had become a financial burden, formed a royal commission of inquiry to examine the situation prevailing on the island. In the wake of the commission's unfavourable report, the colony was placed under guardianship, as it were. In 1934, a commission of government, under the chairmanship of a governor with legislative and executive powers, replaced Newfoundland's representative institutions.

In the following years, as finances improved, representative government had to be restored. At the suggestion of British Prime Minister Attlee, a Legislative Assembly, elected in December 1945, was mandated to examine the situation and propose different forms of government, one of which was to be chosen in an eventual referendum. A passionate debate erupted in Newfoundland, at the centre of which was Joseph Smallwood. He was an ardent proponent of "a multiple-choice referendum", in which union with Canada would be proposed.<sup>58</sup> However, the Assembly decided, by a majority of 13 votes, that there would only be two options: maintaining the status quo and returning to responsible government. London settled the matter and imposed a third option on the ballot. The options were:

- Commission of government for a period of five years.
- Confederation with Canada.
- Responsible government as it existed in 1933.

Since political parties as we know them today were then non-existent in Newfoundland, the referendum campaign unfolded among various groups formed on the basis of the options.<sup>59</sup> Those in favour of the status quo dropped out of the running at the start of the referendum campaign, and the fight ensued between the groups in favour of the other two options. Those in favour of joining the Confederation belonged to the Confederate Association led by Gordon Bradley and Joseph Smallwood. The Association published a weekly newspaper entitled the Confederate. The proponents of responsible government were part of the Responsible Government League, whose propaganda organ was the Independent. A third group, in favour of economic union with the United States, had broken away from the League to found the

Party for Economic Union with the United States. The Canadian government committed itself to remaining strictly neutral. The Confederate Association did receive some assistance however.<sup>60</sup>

The results of the June 3 referendum were not conclusive enough: 44.55% of the votes (69 400) were for responsible government, 14.32% (22 311) for the status quo and 41.13% (64 066) for confederation with Canada. A second referendum was held on July 22<sup>nd</sup> on the two options that had garnered the most votes. The responsible government option received the support of 47.66% (71 334) of voters and the option for confederation with Canada, 52.34% (78 323) of voters. After lengthy negotiations concerning the terms under which Newfoundland would join the Canadian Confederation, union became a reality on March 31, 1949.

## 2.6 1992 Referendum

A series of meetings on reform of the Canadian Constitution was held in 1991 and 1992. The federal, provincial and territorial governments, as well as representatives of the Native peoples took part. These meetings followed the failure of the Meech Lake Accord in 1990. The aim of this accord, reached in 1987, was to allow Québec to ratify the Constitution of 1982. However, all of the provinces did not ratify the agreement within the stipulated time periods, and the Lake Meech Accord failed. These meetings were held in a context of constitutional reforms, calls for referendums and the democratisation of the process.

The meetings were part of the “Canada Round”, aimed at renewal of the Constitution. On September 24, 1991, the federal government tabled before Parliament a set of proposals for renewal of the Canadian federation. This document was entitled *Shaping Canada’s Future Together*. A joint committee of the House of Commons and the Senate was seized of this document and carried out a broad consultation of people throughout the country. The committee received 3000 briefs and heard 700 people.

Shortly before the tabling of the report of the joint committee, the Prime Minister of Canada invited the representatives of the provinces and territories and Native leaders to meet the federal Minister of Constitutional Affairs to discuss it. The first meeting took place on March 12, 1992 in Ottawa. The participants agreed to hold a series of meetings to arrive at a consensus on all constitutional amendments.

The recommendations found in the report of the joint committee were a starting point for the discussions. The meetings were held between March 11 and July 8, 1992. Subsequently, the Prime Minister of Canada gathered together the provincial Premiers four times. The last meeting was held on August 27 and 28, 1992 in Charlottetown.

In tandem with these constitutional steps, the Parliament of Canada raised the possibility, in March 1992, of holding a federal referendum on the Constitution. Since there had been no referendum legislation for some 50 years, a bill had to be drawn up. The bill was passed on June 23, 1992. The passage of Bill C-81, the Act concerning referendums on the Constitution of Canada (the Referendum Act), gave Elections Canada the power to organize and carry out the referendum.

On August 28, 1992, the representatives of all the Canadian provinces and territories and the Native leaders engaged in constitutional negotiations signed the Charlottetown Agreement, i.e. a consensus on the Constitution of Canada. The Prime Minister of Canada and the provincial premiers then decided to submit the proposed amendments to the Constitution of Canada to the population by holding a pan-Canadian referendum.

Several provinces had provisions allowing them to hold a referendum but only Québec decided to organize its own referendum. Indeed, under Bill 150, Québec had to hold a referendum on sovereignty by not later than October 26, 1992. Following the Charlottetown Agreement, the government decided instead to hold its referendum on that agreement. The two governments, federal and Québec, adopted the same question and held their referendum simultaneously. The referendum in Québec was held under Québec legislation whereas the other provinces took part in the federal referendum.

In accordance with section 5 of the Referendum Act, the text of the referendum question was approved by the House of Commons on September 10, 1992 and by the Senate on September 15, 1992. The text of the question is reproduced in section 5.2.

On September 17, in accordance with paragraph 3(1) of the Referendum Act, the Governor-General in Council submitted the referendum question to the Canadian electorate by proclamation. The day of the balloting was set for October 26, 1992. The referendum was held in all of the provinces and territories with the exception of Québec.

The enumeration of electors in the rest of Canada was held from October 2 to 7, 1992 and the revision of the lists of electors, from October 17 to 19, 1992. At the end of these operations, there were 13 725 966 registered voters, excluding those of Québec.

From September 15 to October 26, 1992, any group or individual could register as a referendum committee. For the referendum, the Chief Electoral Officer of Canada authorized the registration of 241 referendum committees. In Québec, the Referendum Act authorizes the existence of only one umbrella committee per option submitted to the referendum. However, there may be as many committees as there are options submitted to the referendum. (See chapters 4 and 5)

The balloting took place on Monday, October 26, 1992. There were 4 482 031 votes for the YES side, or 45.7% of valid ballots, and 5 325 049 votes for the NO side, or 54.3% of valid ballots. Of the 9 855 978 ballots that were deposited in ballot boxes, 9 807 080 ballots were declared valid, or 99.5%, and 48 898 ballots or 0.5% were rejected. In relation to the number of registered voters, 13 725 966, the rate of participation was 71.8%. The results in Québec are not included in these figures.

### 3.

## Referendum practices in Québec 1919-1979

### 3.1 1919 Referendum

Under the Referendum Act, 1919, assented to on March 17, 1919, Québec voters were consulted on April 10, 1919 concerning the sale of light beer, cider and wines. Although this referendum was of lesser importance, the circumstances of the vote are of interest.

This referendum was held in a post-war period of Prohibition. The City of Québec, which was then a demobilization centre, had been the scene of disgraceful events linked to alcohol abuse. The City passed a Prohibition by-law, and the illicit trade in alcohol thrived to the extent that, as Robert Rumilly relates, demobilized soldiers were

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*“easy prey for the merchants of pleasure”.<sup>61</sup> Prohibitionist propaganda was potent and, according to the Ontario press, “soldiers were dying like flies in Québec City, poisoned by adulterated drink”.<sup>62</sup>*

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Francophones were, for the most part, unwilling to accept Prohibition. The Gouin government therefore came under strong pressure to “temper” the Prohibition Act, which was to come into force on May 1, 1919.<sup>63</sup> The referendum was set for April 10<sup>th</sup> of the same year. The English temperance societies were virtually alone in leading the fight for Prohibition. On the Francophone side, a moderation committee favourable to the sale of beer and wine was created. From the start of the campaign, Action catholique, an organ of the clergy, advised people to vote no. However, since the Francophone public was particularly obstinate, Action catholique changed its tack and announced that it would mount no “active campaign”.<sup>64</sup> Some of the clergy were favourable to the movement; a number of priests published anti-Prohibition statements in the newspaper *La Presse*. On the eve of the vote, a major demonstration for the YES side<sup>65</sup> was organized in Montréal, much to the detriment of the prohibitionists.

On April 10, 1919, the Québec people voted on the following question:

*Is it your opinion that the sale of light beer, cider and wines, as defined by law, should be allowed?*

The anti-Prohibition side won a resounding victory: 178 112 votes for to 48 433 against. All the electoral divisions voted for the partial sale of alcohol and only seven electoral divisions, having large Anglophone populations —Pontiac, Compton, Dorchester, Huntingdon, Brome, Stanstead and Richmond—voted against it.

## 3.2 Genesis of the Referendum Act

The first Québec referendum was held under a specific law. It would take more than 50 years for Québec to acquire a general law pertaining to referendums.

However, from 1966 to 1977, the threat of calling a referendum to settle the perpetual constitutional debate reared its head from time to time. The 1966 Union nationale program contained the first mention of a possible constitutional referendum.<sup>66</sup> In the Speech from the Throne of December 1, 1966, the Johnson government explicitly proposed that a general law be drafted.<sup>67</sup> However, it was under the Jean-Jacques Bertrand government, in October 1969, that a first bill, Bill 55, was tabled. It contained 185 sections and provided for the amending of the Election Act, which was thereafter to be called the Election and Referendum Act.<sup>68</sup> The bill, which was widely contested, died on the Order Paper.

In 1974, at the suggestion of Claude Morin, the Conseil exécutif and Parti québécois MNAs adopted a proposal to include the referendum bill in the party's platform. Therefore, upon the election of the Parti québécois, Robert Burns, who was then Minister of State for Electoral and Parliamentary Reform, was given the mandate to draft a general law pertaining to referendums. On August 24, 1977, he tabled a White Paper on the referendum question, which served as the basis for the drafting of the first Québec general law.

The determination to provide Québec with such a law and to give the different options an equal chance by controlling income and spending constitute two of the principles that guided the writing of the White Paper on Québec referendums.<sup>69</sup>

A particular aspect of the general law which has been poorly understood is its origin. In the introduction to the White Paper, the government states that the law was largely inspired by the British experience in the 1975 referendum on maintaining links with the Common Market.

Among the elements borrowed from the British legislation, the concept of umbrella committees is undoubtedly the most original and most substantial. The grouping of different options under what are called umbrella committees is found only in Québec and in Great Britain.<sup>70</sup> One of the goals of this kind of organization was to ensure fairness in terms of financing and access to the media.<sup>71</sup> Québec, which is a leader in the area of political party financing, improved upon the British concept by limiting the spending of the committees.<sup>72</sup>

Finally, following this White Paper, Bill 92 (the Referendum Act) was tabled in December 1977 and assented to on June 23, 1978.



## 4.

# Québec Referendum Act

Referendums have proved to be eminently democratic instruments as the opinion of the people is sought directly. To facilitate access to this tool of direct democracy, Québec acquired a general law governing referendums in a relatively specific manner. It was this legislative framework that would be put into application at the time of the 1980, 1992 and 1995 referendums.

But before that, it should be stressed that elections and referendums are complementary. The Referendum Act governs aspects particular to referendums, while the Election Act governs procedures common to the two. To this end, a Special Version of the Election Act and the Election Regulations for the holding of a referendum is prepared under sections 44 to 47 of the Referendum Act. Appendix III contains a comparative table that identifies the aspects particular to referendums and the similarities between the elements of the referendum and electoral instruments.

## 4.1 Pre-referendum period

### 4.1.1 Nature and purpose of referendum

In Québec, referendums are of the consultative type.<sup>73</sup> Through this type of referendum, the population is asked to express its opinion concerning an approved question or a bill adopted by the National Assembly. The voting process is analogous to that in a general election.

Only the government may order that a referendum be held, and the Prime Minister proposes the question. However, if a bill is involved, the Referendum Act does not stipulate that it must be tabled by the Prime Minister, in contrast to a question. The National Assembly approves the final text of the question after a special 35-hour debate during which amendments and subsidiary amendments may be made to the initial text. If a bill is to be approved, assent is given according to the normal procedure in the National Assembly. It is therefore impossible to anticipate the duration of the process of adoption of a bill.

#### 4.1.2 Formation of provisional and national committees

The objective of a referendum necessarily differs from that of an election. Party divisions are set aside temporarily, and committees take their place. The referendum campaign must therefore be conducted by organizations specifically set up for that purpose.

A minimum of 18 days is anticipated between the tabling of the question or bill in the National Assembly and the issuing of the writ ordering the holding of the referendum. This period mainly provides for the adoption of the final text of the question or bill as well as the formation of committees. There is a committee for each referendum option. Members of the National Assembly have five days from the adoption of the question or bill to register with the Chief Electoral Officer in favour of one of the options. If no MNA registers, the Chief Electoral Officer chooses 3 to 20 voters who are publicly identified with an option to form the committees. There are only provisional committees at this stage. Subsequently, the people registered with the provisional committees are summoned by the Chief Electoral Officer to:

- appoint a chairperson;
- give the committee a name;
- adopt by-laws;
- create, if necessary, local sections of the national committee for each of the electoral divisions;
- establish standards, conditions and terms for membership and the financing of groups or organizations.

The last step is particularly important since only the committees are authorized to spend funds during the referendum campaign. Once these steps have been taken, the provisional committees become national committees.

#### 4.1.3 Conseil du référendum

The Act provides for a Conseil du référendum. It is composed of three judges, one of whom is the chairperson. All are designated by the Chief Judge of the Court of Québec. The Conseil has exclusive jurisdiction over any legal proceeding relating to the referendum. The opinion of the Conseil must be solicited in regard to any dispute concerning the validity of the referendum or a possible recount. Its decisions are final and without appeal.

Only the Chairperson of a national committee or a Member of the National Assembly may ask the Conseil du référendum to rule on the subject of a referendum since there can be only one referendum on the same subject during a single legislature.

The Conseil du référendum must also give its opinion concerning any legal or technical question submitted to it by the government respecting the holding of a referendum.

## 4.2 Referendum period

It is for the referendum period that the Referendum Act and the Election Act have the most similarities, since a number of steps in the referendum process are identical to those in an election.

The administration of the Referendum Act is the responsibility of the Chief Electoral Officer, who to this end has powers similar to those granted him under the Election Act. He must ensure that the operations required for the holding of a referendum proceed normally.

### 4.2.1 Referendum campaign

Since 1980, the referendum period has begun on the day that the government issues the writ. The writ instituting the holding of a referendum cannot be issued before the 20th day following the adoption of the question or the bill by the National Assembly. But following the amendments made by Bill 36 in 1992, the writ instituting the holding of a referendum may not be issued before the 18th day following that on which the question or the bill is tabled in the National Assembly.

The duration of the campaign can vary according to the day on which the writ is issued. Voting must be on a Monday. A writ instituting a general election automatically cancels a referendum writ.

### 4.2.2 Lists of electors

In 1980, no enumeration had been carried out prior to the referendum as there had been an annual enumeration in the fall of 1979. In 1992, the different enumeration stages began with the tabling of the question in the National Assembly on September 9<sup>th</sup>. These stages were spread over an 18-day period, during which the actual enumeration was carried out from Monday to Thursday of the second week following the tabling.

The lists of electors used for the 1995 referendum came from the enumeration carried out beforehand, namely between September 5 and 10, 1995. This enumeration would be the last one to be carried out as Bill 40, passed in 1995, provided for the creation of a Permanent list of electors.

### 4.2.3 Financing and regulated expenses

#### (a) Referendum fund

This is a special fund that the national committees may use to cover the expenses they may incur during the referendum period. The fund consists of:

- a subsidy determined by the National Assembly and divided equally among the committees;
- amounts transferred or lent by an authorized political party, the maximum of which was \$0.25 per elector in 1980 and \$0.50 per elector in 1992 and 1995;
- contributions made directly by an elector from his own funds, up to a maximum of \$3000 for all of the national committees in 1980 and for each national committee in 1992 and 1995. Firms and legal persons may not make any contribution.

The official agent appointed by the committee chairperson manages the subsidy given to the committee in the three days following the issuing of the writ. He also manages the referendum fund. The amount of the subsidy is determined when the question or bill is adopted. Only the official agent and the local agent are authorized to seek contributions.

#### (b) Regulated expenses

Regulated expenses are the costs of all goods or services used during the referendum period to support or oppose an option in the referendum directly or indirectly. The official agent must approve this type of expense. Any advertising, televised message or other measure must bear the seal of the official agent of the national committee or that of a local agent to be in accordance with the provisions of the Act. However, the Act permits certain exceptions that are not in this expense category, such as editorials, letters from readers, etc.

### (c) Private intervenors

Private intervenors are qualified electors who can intervene alone or as a group in the referendum campaign. They intervene independently of the umbrella committees, but their expenses are limited to \$300 and must not directly promote or oppose an option submitted to the referendum.

#### 4.2.4 Information

Given the importance of what is involved, the information role of the Chief Electoral Officer is particularly significant. Furthermore, the Act provides that a brochure explaining the options in the referendum must be made available to electors 10 days before voting takes place. The national committees provide the content of the brochure, and the Chief Electoral Officer ensures that each option is given equal space in it.

#### 4.2.5 Referendum ballots

The Act contains specific provisions regarding the ballot. It is a paper on which the question asked electors is printed in French and English. Also according to the Referendum Act, the question on ballots used in polling stations on an Indian reserve or where an Amerindian or Inuit community lives must be in French, English and the language of the Native majority in that community.

### 4.3 Post-referendum period

#### 4.3.1 Results

The returning officer proceeds to count the votes and issues a declaration indicating the option that has obtained the greatest number of votes. The declaration and the count results are then given to the Chief Electoral Officer, who must publish the results by electoral division as soon as possible in the *Gazette officielle du Québec*. A detailed report of the official results is published subsequently.

In a consultative referendum, there is no provision regarding the majority or the participation rate required for the government to be bound by the results.

### 4.3.2 Reports on regulated expenses

In the 90 days following the referendum, the official agents must provide the Chief Electoral Officer with a report indicating:

- the sums paid into the referendum fund;
- regulated expenses incurred or authorized.

The official agents must also furnish receipts, invoices and other vouchers.

In the 60 days following the tabling of these reports, the Chief Electoral Officer makes public a summary of the reports on regulated expenses.

### 4.3.3 Contestation

Only the chairperson of a national committee may apply for a recount of the votes. The application must be made to the Conseil du référendum. Within 15 days of the polling, the chairperson of a national committee may contest the validity of the referendum before the Conseil du référendum, which may receive and proceed to a recount if the recount is likely to change the overall result of the referendum.

## 4.4 Amendments to the Referendum Act

Various amendments have been made to the Act since it was adopted in 1978. Bill 100, assented to on April 10, 1980, amended, in particular, the manner of marking a ballot, and Bill 35, assented to on June 23, 1992, changed the period between the tabling of the question in the National Assembly and the issuing of the writ to at least 18 days. It was also during that period that the enumeration had to take place. The period between the writ and polling may vary from 29 to 35 days according to the day on which the writ is issued. Bill 40, adopted on June 15, 1995, amended other aspects. The electoral period may vary from 33 to 39 days and it is no longer necessary to carry out an enumeration, since Québec now has a permanent list of electors. Moreover, Bill 1, passed on June 18, 1999, henceforth requires that electors identify themselves by means of an identification card before voting. Appendix IV lists the laws that have amended the Referendum Act.

Furthermore, under section 47 of the Referendum Act, the Chief Electoral Officer has the power to effect, in the Special Version of the Election Act for the holding of a referendum, such measures of concordance as are necessary for applying the Referendum Act.

## 5.

# Referendum practices in Québec: 1980-1995

## 5.1 1980 Referendum

In 1980, the Québec people were asked to vote, in a referendum, on the future of Québec. They had to choose between the status quo and sovereignty-association with the rest of Canada.

### 5.1.1 Pre-referendum period

In the 1980 referendum, the question was tabled in the National Assembly by Prime Minister René Lévesque on December 20, 1979. The session was adjourned and the 35-hour debate only began when the session resumed on March 4, 1980. The question was debated for 17 days, from March 4<sup>th</sup> to 20<sup>th</sup>. The time allocated to speakers was distributed by the President of the National Assembly in the following manner:

Liberal Party - Official Opposition (60 minutes for the Leader and 20 minutes per MNA)	10 hr. 40 min.
Union nationale (60 minutes for the Leader and 20 minutes per MNA)	2 hr. 20 min.
Parti démocrate créditiste	30 min.
Independent MNAs Rodrigue Tremblay (Gouin) (20 minutes) William Shaw (Pointe-Claire) (20 minutes) Rodrigue Biron (Lotbinière) (20 minutes)	1hr.
Parti québécois - Ministerial party	20 hr. 30 min.
TOTAL	35 hr.

The debate lasted 36 hours and 21 minutes. The Leaders of the Union nationale and the Québec Liberal Party exceeded the period allotted to them, with the consent of the government's Parliamentary Leader.

During the debate, four amendment motions were proposed by Claude Ryan, Michel Le Moignan, Rodrigue Tremblay and Rodrigue Biron. Only the motion tabled by Rodrigue Biron was adopted. After a few minor changes, the question adopted in French and English by the National Assembly read as follows:

*Le Gouvernement du Québec a fait connaître sa proposition d'en arriver, avec le reste du Canada, à une nouvelle entente fondée sur le principe de l'égalité des peuples;*

*cette entente permettrait au Québec d'acquérir le pouvoir exclusif de faire ses lois, de percevoir ses impôts et d'établir ses relations extérieures, ce qui est la souveraineté - et, en même temps, de maintenir avec le Canada une association économique comportant l'utilisation de la même monnaie;*

*aucun changement de statut politique résultant de ces négociations ne sera réalisé sans l'accord de la population lors d'un autre référendum;*

*en conséquence, accordez-vous au Gouvernement du Québec le mandat de négocier l'entente proposée entre le Québec et le Canada?*

**OUI**

**NON**

*The Government of Québec 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 Québec to acquire the exclusive power to make its laws, levy 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;*

*no change in political status resulting from these negotiations will be effected without approval by the people through another referendum;*

*on these terms, do you give the Government of Québec the mandate to negotiate the proposed agreement between Québec and Canada?*

**YES**

**NO**

### 5.1.1.1 Formation of provisional and national committees

Beginning with the adoption of the question in the National Assembly, twenty days were allocated to form committees. The question was agreed upon on March 20<sup>th</sup>, the seven-day registration period therefore ran from March 21 to 27, 1980. Sixty-eight MNAs registered in favour of the YES option and 38 in favour of the NO option. Three seats were vacant and only the President of the National Assembly did not register for one of the options. Sixty-seven Parti québécois MNAs and one independent MNA, Rodrigue Biron, were in favour of the YES option, while 30 Liberal MNAs, five Union nationale MNAs, one Parti démocrate créditiste MNA and the other two independent MNAs registered in favour of the NO option.

On March 31, 1980, the Chief Electoral Officer called upon each provisional committee to appoint a chairperson and adopt by-laws.

National committee	Chairperson
Le Regroupement national pour le OUI*	René Lévesque
Les Québécois pour le NON/ Committee for Quebecers voting NO	Claude Ryan

\* The name of the Regroupement national pour le OUI was not translated into English

### 5.1.1.2 Conseil du référendum

The Conseil du référendum is the competent tribunal that can be seized of legal matters related to the holding of a referendum. As part of the 1980 referendum, the Conseil du référendum was created on March 4. The Chief Judge of the Provincial Court, the Honourable Allan B. Gold, chaired it and was assisted by the associate and assistant chief judges, Georges Chassé and Gaston Rondeau.

A number of decisions were handed down following motions filed with the Conseil. The cases dealt, in particular, with the validity of several provisions of the Referendum Act as it relates to the Charter of human rights and freedoms (Québec).

### 5.1.2 Referendum period

The referendum campaign began on April 15, 1980, the day the writ was issued, and ended on May 20, 1980, polling day. The campaign lasted 35 days.

### 5.1.2.1 Lists of electors

Note that for the 1980 referendum, no enumeration was carried out since an annual enumeration with a revision had taken place in the fall of 1979. Hence, the lists were printed on April 16<sup>th</sup> and a second revision was simply carried out.

### 5.1.2.2 Financing and spending of national committees

#### Referendum fund

On March 20, 1980, the National Assembly granted the national committees a subsidy of \$0.25 per elector, in accordance with the law.

As there were 4 244 514 electors, the government provided a subsidy of \$1 061 128.50 for each committee.

A political party was allowed to transfer amounts or lend funds to a national committee, provided that the total amounts did not exceed \$0.25 per elector. Each elector had the possibility of contributing up to a maximum of \$3000. That amount could be intended for a specific national committee or be broken down among all the national committees.

#### Regulated expenses

According to the Act, the amount of regulated expenses per committee was limited to \$0.50 per elector. There were 4 244 514 registered electors after the revision. Hence, the maximum amount of expenses of a committee was estimated at \$2 122 257.

### 5.1.2.3 Information

The Chief Electoral Officer conducted a vast advertising campaign to inform Quebecers about the procedures for the referendum. To this end, all Québec's daily newspapers, 110 weekly newspapers, 58 radio stations and all TV stations were used. Different posters and folders were produced. The brochure entitled *The ABC's of a Referendum in Québec* was prepared to acquaint all Quebecers with the main provisions of the Referendum Act.

The following were some of the publications:

- Referendum: Digest of Legislation
- Referendum: Digest of Legislation - Amendments
- Extracts of Legislation - enumerators, deputy returning officers and poll clerks
- OUI/NON brochure
- Brochure entitled *The ABCs of a Referendum in Québec*
- Multilingual folder (12 languages)
- Folder for the Native peoples (9 languages)

#### 5.1.2.4 Referendum ballots

The Act contained special provisions regarding the ballot. The referendum question appeared in French and English. Moreover, there was a trilingual (French, English and a Native language) ballot for 53 Native communities. The referendum question was translated into the following nine languages: Algonquin, Attikamek, Cree, Inuktitut, Micmac, Mohawk, Montagnais (2 dialects) and Naskapi.

New electoral provisions were applied under the Act to amend the Referendum Act. To reduce the number of rejected ballots, voters could, for the first time, mark the ballot in different ways: with a cross, an “X”, a check mark or a line. The terms of advance polling were broadened, particularly for election officers, the handicapped and people who had reason to believe they would be absent or unable to vote on polling day. The Referendum Act was the first electoral legislation in Québec to contain provisions facilitating the exercise by the handicapped persons of the right to vote.

#### 5.1.3 Post-referendum period

##### 5.1.3.1 Results

**The results of the referendum of May 20, 1980 are:**

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NO Option	2 187 991	59.56%
YES Option	1 485 851	40.44%
Total valid ballots	3 673 842	98.26%
Total rejected ballots	65 012	1.74%
Total votes	3 738 854	85.61%
Total registered electors	4 367 584	

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Majority in favour

of the NO Option	702 230	19.11%
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The rate of participation was 85.61%.

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The detailed results of the ballot were published on June 11, 1980 in the Rapport des résultats officiels du scrutin. The results by electoral division were published in the *Gazette officielle du Québec* of June 28, 1980.

### 5.1.3.2 Reports on regulated expenses

The referendum financial report of the Regroupement national pour le OUI and that of the Committee for Quebecers voting NO were published in August 1980.

Each committee had a fund to cover regulated expenses. The referendum fund for the “Les Québécois pour le NON/Committee for Quebecers voting NO” was \$2 060 455.11, which was broken down as follows:

- government subsidy \$1 061 128.50
- amounts received from political parties \$987 754.04
- contributions from electors \$11 572.60

The total of its incurred and paid expenses reached \$2 060 455.

The Regroupement national pour le OUI committee had \$2 049 246.55, broken down in the following manner:

- government subsidy \$1 061 128.50
- amounts received from political parties \$683 000.00
- contributions from electors \$305 118.05

The total of its incurred and paid expenses reached \$2 047 834.

### 5.1.3.3 Legal proceedings and complaints

At the time of the 1980 referendum, the Chief Electoral Officer did not have the power to make inquiry into the application of the Election Act and, indirectly, into the application of the Referendum Act, or to institute legal proceedings following offences committed under these pieces of legislation. The Chief Electoral Officer would obtain these powers in July and August 1980 following a legislative amendment.

However, the financing and the control of the expenses of political parties and, at the time of a referendum, of national committees fell under the responsibility of the Director General, Financing of Political Parties. He was invested with powers of inquiry into the legality of contributions and outlays. Complaints regarding irregularities in financing and regulated expenses were brought before the courts. These complaints dealt with such matters as the posting of publicity signs and expenses not authorized by the official agent of a national committee.

## 5.2 1992 Referendum

Following the events that have marked our constitutional history since 1982, namely the repatriation of the Constitution in 1982, its non-ratification by Québec, the failure of the Meech Lake Accord and the Bélanger-Campeau Commission, the National Assembly passed Bill 150, the Act respecting the process for determining the political and constitutional future of Québec, on June 20, 1991. Through this legislation, the Québec government promised to hold a referendum on Québec sovereignty between June 8 and 22, 1992 or between October 12 and 26, 1992. Section 1 of the Act stipulates that the result of the referendum, if favourable to sovereignty, would be to propose that Québec acquire the status of a sovereign state one year, to the day, from the date on which the referendum is held.

On September 27, 1992, the Québec government, on the recommendation of the Prime Minister, issued the writ concerning the holding of a referendum in Québec. The Chief Electoral Officer was to hold a referendum on Monday, October 26, 1992 in each of the 125 electoral divisions of Québec. Instead of holding the referendum on sovereignty, the government decided to hold the referendum on the renewal of the Canadian Constitution under the Charlottetown Agreement. Hence, Québec held the referendum on the renewal of the Canadian Constitution on the basis of its own legislation and at the same time as the federal referendum dealing with the same question.

### 5.2.1 Pre-referendum period

The question was tabled in the National Assembly by Prime Minister Robert Bourassa on September 9, 1992. The 35-hour debate stipulated in the Referendum Act continued until September 16, 1992. When it ended, the French and English versions of the question in the referendum were adopted by the National Assembly:

*Acceptez-vous que la Constitution du Canada soit renouvelée sur la base de l'entente conclue le 28 août 1992 ?*

*OUI*

*NON*

*Do you agree that the Constitution of Canada should be renewed on the basis of the agreement reached on August 28, 1992 ?*

*YES*

*NO*

The pre-referendum period lasted 18 days and MNAs had five days to register with one of the provisional committees provided for in the Referendum Act.

### 5.2.1.1 Formation of national committees

A period of 18 days elapsed between the tabling of the question and the issuing of the writ. The day on which the referendum question was adopted, September 16, 1992, the Secretary General of the National Assembly advised the MNAs, as well as the Chief Electoral Officer, that they could, in the five days following the day on which the question was adopted, register with the Chief Electoral Officer in favour of one of the options proposed in the referendum.

At the end of the period for registration, 90 Members of the National Assembly had registered in favour of the YES option and 33 Members, in favour of the NO option. The President of the National Assembly and one Liberal Member did not register with any committee. Under the banner of the YES option, there were 87 Liberal Members and three Equality Party Members, while 32 PQ Members and one independent Member registered for the NO option.

The Chief Electoral Officer called the Members of the National Assembly registered with the provisional committee in favour of the YES option to a meeting on September 23, 1992 and those registered with the provisional committee in favour of the NO option, to a meeting on September 24, 1992. During these gatherings, the resolutions adopting the rules governing the national committee and appointing the chairperson were attested to by the signature of a majority of the members of each of the provisional parties.

National committee	Chairperson
Le Comité Québécois pour le OUI/ The Quebec YES Committee	Robert Bourassa
Le Comité du NON / The NO Committee	Jacques Parizeau

### 5.2.1.2 Conseil du référendum

The Conseil du référendum is a tribunal set up under the Referendum Act. On March 23, 1992, Chief Judge Albert Gobeil named the judges who would form the Conseil du référendum. The Honourable Albert Gobeil chaired the body, assisted by Louis Vaillancourt, Associate Chief Judge of the Montréal Regional Division, and by Yvon Mercier, Associate Chief Judge of the Québec Regional Division.

The Conseil du référendum is the competent tribunal with which any legal proceedings concerning the referendum are filed. Hence, this tribunal had to be seized of the legal questions related to the holding of a referendum, such as those dealing with the validity of a legal provision, its interpretation or its application to the referendum process.

However, no motion or application for a recount was filed with the Conseil du référendum.

## 5.2.2 Referendum period

The referendum campaign began on the day the writ was issued, i.e. Sunday, September 27, 1992, and ended the day of the vote, i.e. Monday, October 26, 1992. The referendum campaign lasted 29 days.

### 5.2.2.1 Lists of electors

The door-to-door enumeration took place from September 21 to 24, 1992.

### 5.2.2.2 Financing and spending of national committees

#### Referendum fund

After adoption of the referendum question, on September 16, 1992 the National Assembly established the amount of the government subsidy for each of the national committees at \$0.50 per elector in all the electoral divisions.

There were 4 680 136 electors. The government therefore granted a subsidy totalling \$2 340 068 to each of the committees. The amount of the subsidy was increased, however, to \$2 436 483 on December 15, 1992 following readjustment of the total number of electors registered, which, after the revision, was 4 872 965.

Political parties were allowed to transfer or lend amounts to a national committee provided that the aggregate of these amounts did not exceed \$0.50 per elector. Each elector was authorized to contribute to one or more national committees up to the maximum amount set in the Act, i.e. \$3000 per committee.

#### Regulated expenses

According to the Act, the amount of regulated expenses per committee was limited to \$1 per elector. Since there was a total of 4 872 965 electors after the revision, the maximum amount of expenses of a committee was set at \$4 872 965.

### 5.2.2.3 Information

To inform the Québec people about the referendum procedures, the Chief Electoral Officer conducted an advertising campaign throughout Québec, using all available communication media, i.e. the print media, radio and television. Several referendum publications, posters and folders were produced, including:

- Referendum Act. Special Version of the Election Act for the holding of a referendum. Special Version of the Election Regulations for the holding of a referendum;
- Voter's Manual;
- Voter's Manual, large type version; Braille version;
- Multilingual brochure: 1992 Referendum (15 languages);
- Brochure in 10 languages: 1992 Referendum (French, English and eight Native languages);
- OUI/NON brochure;
- Poster in 10 languages, a ballot;  
in French, English and eight Native languages.

### 5.2.2.4 Referendum ballots

The Referendum Act stipulates that the ballot is a piece of paper on which the question asked electors is printed in French and English. It also contains a space specially and exclusively reserved for the mark by which the elector makes his choice.

In addition, on an Indian reserve or at a location where an Amerindian or Inuit community lives, the question on the ballot must be in French, English and the language of the Native majority in the community. The referendum ballot was translated into eight Native languages: Algonquin, Attikamek, Cree, Inuktitut, Micmac, Mohawk, Montagnais and Naskapi.

## 5.2.3 Post-referendum period

### 5.2.3.1 Results

After the votes were counted by the returning officers in the 125 electoral divisions, the results for Québec as a whole were given:

NO option	2 236 114	56.68%
YES option	1 709 075	43.32%
Total valid ballots	3 945 189	97.82%
Total rejected ballots	87 832	2.18%
Total votes	4 033 021	82.76%
Total registered electors	4 872 965	

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Majority in favour

of the NO option	527 039	13.36%
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The rate of participation was 82.76%, a decline of 2.85% compared with the rate of participation in the referendum of May 20, 1980.

The results for each electoral division were published in the *Gazette officielle du Québec* of November 28, 1992. The report of the official results of the poll was tabled in the National Assembly on December 16, 1992.

### 5.2.3.2 Reports on regulated expenses

In accordance with the provisions of section 435 of the Special Version of the Election Act for the holding of a referendum, the Chief Electoral Officer must make public a report containing summaries of the reports on regulated expenses prepared by the official agents of the two national committees, as well as summaries of the reports prepared by their local agents.

Under the Referendum Act, all regulated expenses had to be accounted for as of September 27, 1992, the day on which the writ ordering the holding of the referendum was issued, up to the day of the poll. The reports were produced before the deadline of January 25, 1993 and the Chief Electoral Officer made them public on March 22, 1993.

Each committee had a fund to cover regulated expenses. The referendum fund of the NO Committee totalled \$4 448 694, broken down as follows:

- government subsidy \$2 436 483
- amounts received from political parties \$1 827 700
- contributions of electors \$184 511

The total of this committee's incurred and paid expenses stood at \$4 380 004.

The Québec YES Committee had \$4 300 282, broken down as follows:

- government subsidy \$2 436 483
- amounts received from political parties \$1 796 839
- contributions of electors \$66 960

The total of this committee's incurred and paid expenses stood at \$3 966 733.

### 5.2.3.3 Legal action and complaints

The Chief Electoral Officer may, on his own initiative or at a person's request, conduct an investigation into the application of the Referendum Act. He is invested with the powers and immunity of a commissioner appointed under the Act respecting public inquiry commissions. He decides whether to institute proceedings when the acts reproached constitute a clear violation of a statute, when the evidence suggests that the suit will be successful and when the case is of an exemplary nature.

Some 150 files were opened following complaints concerning activities related to the holding of the referendum, and 106 files were opened following complaints alleging irregularities in financing and regulated expenses.

In 1992, Mr. Robert Libman, who was Chairman of the Equality Party and an MNA, tabled a motion for declaratory judgment before Superior Court in preparation for the referendum on the Charlottetown agreements. This motion, presented jointly with the Equality Party, sought to have declared inoperative and invalid certain sections of the Referendum Act and of schedule 2 of said Act. These provisions concern the formation and operation of the national committees and the ceiling on contributions and referendum expenses. In their motion, Mr. Libman and the Equality Party claimed that the provisions being challenged violated freedom of expression, freedom of association, freedom of peaceful assembly and the right to equality protected under the Cana-

dian Charter and the Charter of Human Rights and Freedoms, R.S.Q., c-12. Mr. Libman and the Equality Party also asked the Court of the first instance to recognize their right to take part in a referendum campaign without restriction and to receive a fair portion of the public funds available for the holding of such a campaign.

Superior Court rejected this motion. The Court concluded that the provisions being challenged encroached on the freedom of expression but that it had been demonstrated that this encroachment respected the test of the first section of the Canadian Charter. Mr. Libman appealed the judgment at first instance. Moreover, he no longer attacked the constitutional validity of the sections concerning the definition of regulated expenses and the terms of application of these standards by the official agents of the national committees. He limited his challenge to the encroachment on freedom of expression and freedom of association. In August 1995, the majority of the Court of Appeal rejected the appeal, confirming the conclusion of the judge of the first instance, who had ruled that the provisions in dispute encroached on the freedom of expression but that this encroachment was justified under the first section of the Canadian Charter.

The Supreme Court of Canada agreed to hear the appeal and handed down its judgment in October 1997. It declared that the provisions in question were an unjustified encroachment on the freedoms of expression and association, and declared the sections in question inoperative.

### 5.3 1995 Referendum

Following its victory at the September 12, 1994 general election, the Parti québécois promised to hold a referendum on the constitutional future of Québec during the first year of its term of office.

On October 1, 1995, the Government of Québec adopted the writ ordering the Chief Electoral Officer to hold a referendum in Québec on October 30, 1995. This referendum was held in accordance with the Referendum Act.

At the time that the referendum period began, some twenty Amerindian Chiefs of Québec signed, on October 4, 1995, a declaration stating “We respect the right of Quebecers to hold a referendum on their future but we declare that our peoples and our territories will not be bound or otherwise affected by the outcome of this referendum”. The Chiefs of the Cree, Inuit and Montagnais nations decided to each hold a referendum to find out if their people wished to continue being part of Canada in the event of a victory by the YES side in the October 30, 1995 referendum in Québec.

On October 24, 1995, the Crees of James Bay massively voted NO to the question asked: As a people, do you agree that the Government of Québec should separate the Crees of James Bay and the traditional Cree territory from Canada in the event of a YES vote in the Québec referendum? Then on October 26<sup>th</sup>, it was the Inuit who voted no to the question: “Do you agree that Québec should become sovereign?” Finally, also on October 26, the majority of Montagnais also voted no to the question: “Do you agree that the Innu people and their traditional territory should be associated with an eventual independent Québec state?”

The Native People also took part in the October 30, 1995 referendum in Québec.

### 5.3.1 Pre-referendum period

The tabling of the referendum question on September 11, 1995 in the National Assembly was followed by a 35-hour debate extending over ten days. On September 20, 1995, the French and English versions of the question were adopted.

The referendum question read as follows:

*Acceptez-vous que le Québec devienne souverain, après avoir offert formellement au Canada un nouveau partenariat économique et politique, dans le cadre du projet de loi sur l'avenir du Québec et de l'entente signée le 12 juin 1995?*

*OUI*

*NON*

*Do you agree that Québec should become sovereign, after having made a formal offer to Canada for the new Economic and Political Partnership, within the scope of the Bill respecting the future of Québec and of the agreement signed on June 12, 1995?*

*YES*

*NO*

The pre-referendum period extended from September 11 to 30, 1995, i.e. over twenty days. It was during this period that MNAs were able to register for either of the provisional councils formed at the time of this referendum.

### 5.3.1.1 Formation of the provisional/national committees

Twenty days passed between the tabling of the question and the issue of the writ. On the day that the question was adopted, September 20, 1995, the Secretary General of the National Assembly gave notice to the Chief Electoral Officer of this fact and informed the Members of the National Assembly that the period, lasting five days, for registering for one of the provisional committees would begin on the day following the day on which the question was adopted. As stipulated in the Act, MNAs registered with the Chief Electoral Officer.

At the end of the registration period, 77 MNAs had registered in favour of the YES option and 47 in favour of the NO option. The President of the National Assembly did not register for either option. The YES option included the 75 Parti québécois MNAs, the MNA of the Action démocratique du Québec and the independent MNA. The NO option included the 47 Liberal MNAs.

As stipulated in the Act, the MNAs registered with the provisional committee in favour of the NO option were invited by the Chief Electoral Officer to a meeting on September 24, 1995 in Montréal, whereas those registered with the provisional committee in favour of the YES option were invited to a meeting on September 27<sup>th</sup> in Québec City.

The resolutions adopting the by-laws governing the National committee and appointing the chairperson, attested to by the signature of a majority of the members of each provisional committee, were adopted at these meetings.

Name of the National committee	Name of the Chairperson
Le Comité national du OUI / The YES National Committee	Jacques Parizeau
Le Comité des Québécoises et des Québécois pour le NON / Committee of Quebecers for the NO	Daniel Johnson

### 5.3.1.2 Conseil du référendum

On September 6, 1995, the Chief Judge of the Court of Québec addressed a letter to the President of the National Assembly and to the Chief Electoral Officer regarding the appointment of the judges of the Court of Québec to sit on the Conseil du référendum. The Conseil du référendum was formed by Chief Judge Louis-Charles Fournier, Chairperson of the Conseil, Associate Chief Judge Rémi Bouchard and Judge Paul Mailloux.

Within the framework of the October 30, 1995 referendum, the Conseil du référendum was seized with six motions.

1. The first proceeding, a motion for remedies, was filed by two persons against the Committee of Quebecers for the NO and Daniel Johnson as Chairperson of that committee, and in which the Chief Electoral Officer was impleaded. The aim of the petitioners was to have the Special Committee for Canadian Unity, which they represented, recognized as a group affiliated with the Committee of Quebecers for the NO and to grant the former reasonable funding.

The Tribunal's decision, handed down on October 19, 1995, ordered the affiliation of the Special Committee for Canadian Unity with the Committee of Quebecers for the NO and ordered the latter to grant appropriate funding to the Special Committee for Canadian Unity to allow it to make its views known during the referendum campaign. The Tribunal did not specify any amount that could be considered reasonable funding. The decision of the Conseil du référendum relieved Daniel Johnson as Chairperson of the Committee of Quebecers for the NO from the contestation in this case.

2. Following this decision, negotiations were held between the parties on the amount of the funding to be granted, without producing an agreement. As a result, the Committee of Quebecers for the NO filed before the Conseil du référendum a motion for declaratory judgment asking the Tribunal to declare that a sum of \$2 500 was appropriate funding to allow the participation of the Special Committee for Canadian Unity in the referendum campaign. The judgment handed down on October 24, 1995 by the Conseil du référendum in response to this second motion confirmed that the sum of \$2 500 was appropriate funding.

However, this judgment of the Conseil du référendum gave rise to a motion in evocation before Superior Court. In its judgment, Superior Court sided with the Committee of Quebecers for the NO. The case has been appealed before the Court of Appeal. No judgment had been rendered at the time this document was written.

3. The Conseil du référendum was seized with a third legal proceeding on October 28, 1995. It involved a motion for revision of the list of electors presented by five electors of the electoral division of Westmount-Saint-Louis, whose registration on the list of electors had been refused by the special board of revisors. The aim of this motion was to order the Chief Electoral Officer to register the electors in question on the list of electors so that they could vote in the referendum. In its judgment handed down on October 28, 1995, the Conseil du référendum declared the motion inadmissible because it was ill founded in law. Indeed, as the Act makes no provision for appealing a decision of a board of revisors, the only applicable legal proceeding is of the nature of an evocation or a mandamus. The Tribunal stated that the board of revisors would have had to be directly involved in the proceeding, which was not the case. The Conseil du référendum concluded that the applicants had not instituted proceedings against the right person, as the Chief Electoral Officer cannot take the place of a board of revisors.
4. Following this decision, the electors who had filed the previous motion filed a new motion, this time to quash a decision of a special board of revisors. The members of the special board of revisors in question and the Chief Electoral Officer are directly referred to in the proceeding. The motion, filed on October 30, 1995, was supposed to be heard by the Conseil du référendum on December 13, 1995. It was postponed on two occasions. The Conseil began to hear the motion on April 2, 1996. In its decision, handed down on December 11, 1996, the Conseil du référendum accepted the motion for dismissal from the Chief Electoral Officer and rejected the motion by the petitioners. The latter asked Superior Court to overturn the decision of the Conseil du référendum, something the Court refused to do, rejecting their motion for legal review.
5. The Conseil du référendum was seized with a fifth legal proceeding on December 21, 1995. It was a motion for remedies filed by Jocelyne Dupuis, in his capacity as Leader of the Parti de la démocratie socialiste, against the YES National Committee and

Jacques Parizeau in his capacity as Chairperson of that committee and Leader of the Parti québécois. The Chief Electoral Officer was also impleaded in this motion.

The aim of this motion was to have the Parti de la démocratie socialiste recognized as being a group affiliated with the YES National Committee, this despite the refusal of that committee to recognize it as such and to grant the funding due to the petitioner as an affiliated group. The motion was heard on August 28, 1996. In its judgment, handed down on November 27, 1996, the Conseil du référendum rejected the motion.

6. On July 18, 1996, *The Gazette* newspaper asked the Conseil du référendum to order the Chief Electoral Officer to make accessible all of the ballot papers rejected at the time of the October 30, 1995 referendum. This case was heard before the Conseil du référendum on August 30, 1996. The Conseil du référendum and subsequently, Superior Court rejected the motion by *The Gazette* which has since lodged an appeal with the Court of Appeal. No date for a hearing before that Court had been set at the time this document was written.

### 5.3.2 Referendum period

The referendum period began on October 1, 1995 and ended on October 30, 1995, lasting 29 days.

#### 5.3.2.1 Lists of electors

The door-to-door enumeration was carried out from September 5 to 10, 1995.

#### 5.3.2.2 Funding and spending of the national committees

##### Referendum fund

The National Assembly set the amount of the government subsidy for each of the national committees at \$0.50 per elector in all of the electoral divisions. The number of electors was established by adding the electors registered on the lists of electors used in the poll to those registered on the list of electors outside Québec as of October 9, 1995, the deadline for the registration of these electors. The total number of registered electors was 5 086 980. The government paid a subsidy of \$2 543 490 to each of the national committees.

##### Regulated expenses

The national committees were each allowed to spend a maximum of \$5 086 980. That amount represents \$1.00 per elector.

### 5.3.2.3 Information

To inform Québec electors about the referendum, the Chief Electoral Officer conducted a vast advertising campaign using the available communication media. Numerous documents were produced including:

- Referendum Act. Special Version of the Election Act for the holding of a referendum. Special Version of the Election Regulations for the holding of a referendum
- Voter's Manual
- Voter's Manual, large type version
- Voter's Manual, Braille version
- Multilingual brochure. 1995 Referendum (nineteen languages)
- Brochure in nine languages. 1995 Referendum (French, English and seven Native languages)
- OUI/NON brochure
- Notice to electors
- Students who have temporarily left your domicile. You can choose the place where you will vote
- Register and vote without having to move about
- This is what you must do to make sure that your vote counts
- Nine languages, one ballot paper
- Voting by mail for Quebecers outside Québec
- What you should know to have access to the electoral process
- Financing and expenses of national committees
- Are you a Native elector?
- Duplessis: Special measures for the 1995 referendum
- Ungava: Special measures for the 1995 referendum
- Guide of the official agent, the assistant and the local agent at the time of a referendum. Funding of the national committees and control of regulated expenses.

### 5.3.2.4 Referendum ballots

The Referendum Act stipulates that the ballot is a piece of paper on which the question asked electors is printed in French and English. It also contains a space for the mark by which the elector makes his choice.

The referendum nature of the poll permits the translation of the question into the language of the aboriginal majority in the community on a reserve or in a place where an Amerindian or Inuit community lives.

Within the framework of the October 30, 1995 referendum, the ballot was translated into seven Native languages: Algonquin, Attikamek, Cree, Inuktitut, Micmac, Montagnais and Naskapi.

### 5.3.3 Post-referendum period

#### 5.3.3.1 Results

Beginning at 9:00 a.m. on the day after the poll, the votes were added at the office of the returning officer of each of the 125 electoral divisions. Here are the results for all of Québec:

YES option	2 308 360	49.42%
NO option	2 362 648	50.58%
Total valid ballots	4 671 008	98.18%
Total rejected ballots	86 501	1.82%
Total votes	4 757 509	93.52%
Total registered electors	5 087 009	
<hr/>		
Majority in favour of the NO option	54 288	1.16%

The rate of participation was 93.5%, i.e. a 10.8% increase compared with the rate of participation observed at the time of the October 26, 1992 referendum.

The results for each electoral division were published in the *Gazette officielle du Québec* of November 25, 1995. The report of the official results of the poll was tabled in the National Assembly on December 11, 1995.

#### 5.3.3.2 Reports on regulated expenses

Under the Referendum Act, all regulated expenses had to be accounted for as of October 1, 1995, the day on which the writ ordering the holding of the referendum was issued, up to the day of the poll, October 30, 1995. The Chief Electoral Officer made the expenses public on March 20, 1996.

The referendum fund of the Committee of Quebecers for the NO was made up of the following sums:

• government subsidy	\$2 543 490
• amounts received from political parties	\$2 590 000
• contributions of electors	\$53 190
TOTAL:	\$5 186 680

The total of this committee's incurred and paid expenses stood at \$4 709 693.

As for the fund of the YES National Committee, it was made up of the following sums:



The total of this committee's incurred and paid expenses stood at \$4 835 576.

### 5.3.3.3 Legal action and complaints

The October 30, 1995 referendum gave rise to a large number of complaints pertaining to the application of the Referendum Act and the conduct of the referendum. In all, more than 400 files were opened following complaints. Two events in particular were the focus of attention: the unusually high number of rejected ballots in some electoral divisions and the "Unity Rally".

A compliant was filed with the Chief Electoral Officer by the Committee of Quebecers for the NO concerning the number of rejected ballot papers in the electoral divisions of Chomedey, Marguerite-Bourgeoys and, to a lesser extent, in those of Laurier-Dorion and Notre-Dame-de-Grâce, which in comparison with the number of rejected ballot papers in the other electoral divisions, was abnormally high. Following an inquiry\*, the Chief Electoral Officer instituted legal proceedings against 29 deputy returning officers because they allegedly acted against the Special Version of the Election Act for the holding of a referendum and two official delegates because they helped or encouraged the deputy returning officers to engage in such actions.

To avoid flooding the courts needlessly, the parties agreed to proceed in two test cases. An initial judgment of the Court of Québec acquitted the two defendants. The Chief Electoral Officer appealed this ruling before Superior Court. The latter, in a judgment handed down on April 16, 1998, confirmed the judgment in the first instance. On July 8, 1998, the Chief Electoral Officer obtained permission to appeal this judgment before the Court of Appeal. The hearing before this Court took place on May 31, 1999.

\* On May 13, 1996, the Chief Electoral Officer published a report on the inquiry that he carried out into this complaint. The report was entitled: "Rejected Ballot Papers – Unity Rally. Report of the Chief Electoral Officer. October 30, 1995 Referendum".

On December 17, 1999, the Court of Appeal upheld the decisions of Superior Court and the Court of Québec in this case, accepting the explanations of the deputy returning officers or, at the very least, granting them the benefit of the doubt. Considering that six judges had ruled in favor of the acquittal of the deputy returning officers because the necessary proof of a fraudulent intent had not been established and on the basis of an indepth legal opinion, the Chief Electoral Officer of Québec decided not to appeal the case before the Supreme Court. For the same reason, she dropped the charges brought against the other 27 deputy returning officers for the excessive rejection of ballot papers as well as those brought against the persons in charge of the partisan training given to most of the deputy returning officers charged.

On October 27, 1995, a rally in favour of the NO option was held in Montréal. Several tens of thousands of people took part in this rally, better known under the name of the Unity Rally. Several participants came from outside Québec and had been transported, for the most part, at the expense of third parties residing in other provinces. The YES National Committee denounced this activity in a complaint filed with the Chief Electoral Officer. Following an inquiry, it was determined that certain players had contravened the Special Version of the Election Act for the holding of a referendum by incurring regulated expenses in violation of the rules applicable in Québec at the time of a referendum. Twenty proceedings were instituted against nine persons in Québec and six persons outside Québec.

On October 9, 1997, the Supreme Court of Canada handed down its decision in the case of the Procureur général du Québec v. Robert Libman. In this case, known as the “Libman case”, the Supreme Court invalidated the provisions of the Referendum Act and of the Special Version of the Election Act for the holding of a referendum, the effect of which was to prohibit third-party advertising, judging that these provisions unduly restricted freedom of expression. The immediate consequence of this judgment was the withdrawal of the proceedings that the Chief Electoral Officer had instituted against several third parties who had incurred expenses within the framework of the Unity Rally.

In addition to the proceedings instituted with respect to the two aforementioned subjects, the Chief Electoral Officer has issued, to date, 69 notices of an offence against 67 different persons for contravening the Act in matters pertaining to the conduct of the poll, voting and the control of regulated expenses.

## Referendum of October 1, 1987 in Northern Québec

On October 1, 1987, the people in the 14 northern villages of Northern Québec were invited to vote in a most unusual referendum. This event was part of an approach to regional autonomy, which had been gaining momentum, particularly since the signing of the James Bay and Northern Québec Agreement in 1975. In 1983, following the deliberations of a Parliamentary Committee, the people of Northern Québec were asked to define the type of public administration that would meet the needs of the community. The committee responsible for studying this matter agreed to form a task force to prepare a Constitution for a Regional Assembly. There was disagreement, however, over the composition of the task force and how its work would be funded. It was decided that the people of Northern Québec would settle the matter through a referendum. Organizations in the region officially requested the help and assistance of the Chief Electoral Officer to hold a referendum.

Section 485 of the Election Act stipulates that the Chief Electoral Officer may, in addition to his usual responsibilities, carry out any other mandate entrusted to him by the National Assembly. Under this section, a resolution was adopted on June 23, 1987 by the National Assembly, giving the Chief Electoral Officer the mandate to assist the Inuit of Northern Québec in preparing and holding their referendum. The mandate was threefold:

1. the drafting of rules or special provisions to serve as guidelines in holding a democratic poll;
2. the design and supervision of the operations required to hold the poll;
3. the information and training to be provided both the electoral officers and the public in general.

To ensure that the mandate was carried out, a tripartite committee, composed of the Chief Electoral Officer and two provisional committees, was set up. A consensus was reached regarding the preparation and holding of the referendum. The consensus was formalized in an agreement duly signed by the parties. Under this “gentlemen’s agreement”, the parties were, among other things, to act fairly and to respect the results of the referendum. A Chief Returning Officer was named for the

referendum. Using the Election Act and the Referendum Act as a guide and in keeping with the Referendum Agreement, the Chief Electoral Officer set out rules for the holding of the referendum. In the absence of a legislative framework, these rules were, in fact, the legal formulation of the referendum agreement. Polling took place on October 1, 1987 and the residents of Northern Québec voted on the following two options, set forth in three languages:

*Residents of Northern Québec will work on preparing the structure and Constitution for the Regional Assembly. A Working Group will be created to achieve the above. Please indicate which option you prefer by putting a mark in one of the appropriate boxes below.*

*Les résidents du Nouveau Québec rédigeront la constitution d'une assemblée régionale. Un groupe de travail sera mis sur pied à cette fin. Veuillez indiquer laquelle des options suivantes vous semble la meilleure en signifiant votre choix dans un des deux carrés ci-dessous.*

*Should the Working Group be appointed and financed by the existing organizations?*

*or*

*Should the Working Group be elected by the residents and financed through taxes paid by them and all businesses operating in Northern Québec?*

*Les membres du groupe de travail devraient-ils être désignés par les organismes en place et financés par ceux-ci?*

*or*

*Les membres du groupe de travail devraient-ils être élus et leur travail financé à l'aide des taxes prélevées auprès des résidents et des entreprises commerciales opérant au Nouveau Québec?*

There were 3437 registered voters; 1109 supported the “Citizens for a responsible government” option, which was in favour of an election by universal suffrage. A total of 982 people voted for the “Timiujuit Committee” option, which favoured appointment.

The mandate, which was carried out in four months, set a precedent in Québec and Canada for the expression, through a referendum, of the desire of the Inuit people for regional autonomy. This referendum also posed a challenge, since there was no legal basis for it. It was an unparalleled opportunity for the creation of electoral law because new electoral instruments had to be put in place for the occasion. In short, it was a special moment in our electoral history that enabled a Native community to adapt democratic rules in accordance with its culture.

## Municipal referendums

Recourse to referendums is most frequent at the municipal level. In Québec, since January 1, 1988, such referendums have been governed by the Act respecting elections and referendums in municipalities. The Minister of Municipal Affairs is responsible for administering this Act, except for Chapter 13, whose application falls under the responsibility of the Chief Electoral Officer.

Two types of municipal referendums are used: consultative referendums and referendums of approval. A consultative referendum is held in the municipality's areas of competence, such as public security, recreation, the acquisition of property and the management of services. Moreover, the Minister of Municipal Affairs may order that the people able to vote in a territory for which there are annexation or amalgamation plans be consulted. The referendum of approval is increasingly used, since, under a number of laws, it is mandatory for certain council decisions to be subject to the approval of the people. For example, a number of municipal by-laws governing development and urban planning, long-term borrowing and territorial annexation stipulate that the approval of the people is required before the by-laws come into force.

Under the Act respecting elections and referendums in municipalities, the legislator has entrusted the Chief Electoral Officer with certain responsibilities in the election and referendum field. The Chief Electoral Officer may, at the request of municipal clerks or secretary-treasurers, provide any assistance they may require in carrying out the duties incumbent upon them as the people responsible in the municipality for preparing and holding a referendum. The Chief Electoral Officer may also make recommendations to them to improve the organization and holding of municipal elections and referendums. The Chief Electoral Officer also has the power to issue directives to returning officers and, finally, he has the power to inquire into possible offences.

Here is an overview of the place that referendums hold at the municipality level. There are approximately 1500 municipalities in Québec.

Year	1994	1995	1996	1997	1998
Number of referendums	32	35	49	47	46

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On the subject of municipal referendums, we must mention the experience of the Québec City area at the time of the referendum on the 2010 Winter Olympic Games, which was held from September 30 to October 3, 1998. The unusual aspect of this referendum is that the 46 municipalities of the Québec City area, directly or indirectly concerned by the holding of the 2010 Olympic Winter Games, agreed to adopt the same rules for the organization of the referendum and to hold it simultaneously. The objective was to find out people's opinion on the holding of the Olympic Games.

The rules used were based on the Act respecting elections and referendums in municipalities without directly resorting to that Act. Voting took place at city hall in each of the municipalities and extended over a 4-day period to allow as many electors as possible to exercise their right to vote. The Permanent list of electors was not used. Instead, the list of electors was drawn up as electors came to polling stations. Electors presented a document indicating their name and address in order to prove their identity.

Only natural persons were allowed to vote. The YES side won with 76.91% of the votes while the NO side received 22.78% of the votes. In all, 477 ballots were rejected, namely 0.31%. The rate of participation was 28.68%. Out of an electorate of 530 893 persons, 152 260 took part in the poll. <sup>74</sup>

# Conclusion

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What conclusions should be drawn about the Canadian and the Québec experiences in light of the practices inherent in direct democracy?

The use of referendums is an interesting avenue that permits a more active participation of citizens in the political arena, thereby making up for certain shortcomings of representative democracy.

In Québec, referendums have been used, for several years now, as a means of expression for the people and a means of action for the government on major questions. Although the scope of these referendums is consultative, the fact remains that they offer good indications to the government about the decisions and orientations that should be taken. It would appear that the referendum is becoming a part of our political practices.

The Referendum Act facilitates the use of referendums in so far as it provides a framework for the process, while respecting the rights and duties of each participant.

Making use of referendums strengthens our democracy, which must be constantly evolving.



## Appendices

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## Appendix I (table 1 of 3) Referendums held in Canada

Place	Date	Subjects
<b>Canada</b>	September 29, 1898	Prohibition of liquor
	April 27, 1942	Releasing the government from its 1940 promise of no conscription
	October 26, 1992	Renewal of the Constitution of Canada
<b>British-Columbia</b>	November 25, 1909	Local option policy for liquor control
	September 14, 1916	Women's suffrage
	December 16, 1916	Prohibition of liquor
	October 20, 1920	Temperance
	June 20, 1924	Sale of beer by the glass
	June 1, 1937	Public health insurance plan
	June 12, 1952	Adoption of daylight saving time
	June 12, 1952	Regulating the sale of liquor
	August 30, 1972	Adoption of daylight saving time (vote in 5 electoral divisions)
	October 17, 1991	Motion to introduce recall procedures Motion to introduce initiative procedures
<b>Alberta</b>	July 21, 1915	Prohibition of liquor
	October 25, 1920	Prohibition of liquor
	November 5, 1923	Temperance
	August 17, 1948	Ownership of power companies
	October 30, 1957	Opening of other outlets for the sale of liquor
	May 23, 1967	Adoption of daylight saving time
	August 30, 1971	Adoption of daylight saving time
<b>Saskatchewan</b>	November 27, 1913	Approval of the Direct Legislation Act
	December 11, 1916	Abolition of liquor stores
	October 25, 1920	Liquor importation
	July 16, 1924	Prohibition of liquor
	June 16, 1934	Sale of beer by the glass
	October 31, 1956	Choice of local time zone
	October 21, 1991	Laws on budget framework Advisability of submitting amendments to the Canadian Constitution in provincial referendums Cost of abortion to be paid by the government



## Appendix I (table 2 of 3)

### Referendums held in Canada

Place	Date	Subjects
<b>Manitoba</b>	July 23, 1892	Prohibition of liquor
	April 2, 1902	Prohibition of liquor
	March 13, 1916	Temperance Act
	June 22, 1923	Government control of liquor sales
	July 11, 1923	Amendments to Temperance Act
	June 28, 1927	Three questions on the sale of beer
	November 24, 1952	Marketing of coarse grains
	October 26, 1983	Constitutional recognition of the language rights of Francophones
<b>Ontario</b>	December 4, 1902	Prohibition of liquor
	October 20, 1919	Four questions on the repeal of the Ontario Temperance Act and the sale of beer
	April 18, 1921	Liquor importation
<b>Québec</b>	April 10, 1919	Sale of beer and wine
	May 20, 1980	Sovereignty-association
	October 1, 1987	Formation of a working group for the drafting of the Constitution of a future Regional Assembly (in Northern Québec for the Inuit)
	October 26, 1992	Renewal of the Constitution of Canada
	October 30, 1995	Constitutional future of Québec
<b>New Brunswick</b>	July 10, 1920	Prohibition
	October 10, 1921	Liquor importation
<b>Nova Scotia</b>	October 25, 1920	Laws on liquor sales
	October 31, 1929	Retention of Prohibition
<b>Prince Edward Island</b>	1878, 1901, 1929, 1940	Prohibition of liquor
	June 28, 1948	New Temperance Act
	January 18, 1988	Construction of a causeway between the Island and New Brunswick

## Appendix I (table 3 of 3) Referendums held in Canada

Place	Date	Subjects
<b>Newfoundland</b>	November 4, 1915	Prohibition of liquor
	June 3, 1948	Type of government for the island (3 questions)
	July 22, 1948	Type of government for the island (2 questions)
	September 5, 1995	Restructuring of the school system
<b>Northwest Territories</b>	April 4, 1982	Division of the Northwest Territories into two regions
	May 4, 1992	Proposed border for the division of the Territories into two regions

### Sources:

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LEMIEUX, Vincent, « Le référendum et la démocratie au Canada », in Peter Aucoin, *Le gouvernement représentatif et la réforme des institutions*, 1985, pp. 168-170.

## Appendix II

### Legal provisions regarding plebiscites, referendums, recalls and initiatives

Place	Bill	Election Act	Enabling legislation	No provision
Canada			Referendum Act	
British Columbia			Referendum Act Recall and Initiative Act	
Alberta			Constitutional Referendum Act	
Saskatchewan			Referendum and Plebiscite Act	
Manitoba			Balanced Budget, Debt Repayment and Taxpayer Protection and Consequential Amendments Act	
Ontario				X
Québec			Referendum Act	
New Brunswick		X		
Nova Scotia				X
Prince Edward Island			Plebiscite Act	
Newfoundland		X		
Northwest Territories			Plebiscite Act	
Yukon			Plebiscite Act	

## Appendix III (table 1 of 3)

### Comparative table - referendum and election terminology

Referendum	Election
Referendum period (SV 131)	Electoral period (EA 131)
Referendum period (SV 131)	Electoral period (EA 131)
Committee chairperson (RA 23)	Leader of party
Official agent of committee (SV 405)	Official agent of party (EA 405)
Option (RA 22)	
	Candidate (EA 234)
Official delegate of committee (SV 146)	
Local agent (SV 406)	Official agent of candidate (EA 408)
Regulated expense (SV 402)	Electoral expense (EA 402)
Pre-referendum period	
Tabling of question or bill in National Assembly (RA 7)	
35-hour debate on question ( $\pm$ three weeks), or parliamentary procedure for adoption of a bill (indeterminate period) (RA 9 and 10)	
Adoption of question or bill (RA 8 and 10)	
Formation of national committees within approximately 10 days of adoption of question or bill (RA 22-23)	
Minimum of 18 days between tabling of question or bill and writ ordering holding of referendum (RA 14)	
Referendum period	Electoral period
Writ issued by Prime Minister (RA 13)	Writ issued by Prime Minister (EA 128)
Duration: * 33 to 39 days (SV 131) (Except for the referendum slated for 1995, when the duration will be 29 to 35 days)	Duration: 33 to 39 days (EA 131)
Voting rights of electors outside Québec (SV 293)	Voting rights of electors outside Québec (EA 293)



## Appendix III (table 2 of 3)

### Comparative table - referendum and election terminology

Referendum	Election
<p><b>Electoral personnel</b></p> <p>Recommendations of official delegates of national committees, according to number of MNAs belonging to them, for revisors and revision officers, deputy returning officers and poll clerks and members of the elector identification panel. (SV 184, 190 and 310)</p>	<p><b>Electoral personnel</b></p> <p>Recommendations of Leaders of parties that came in first and second in previous election (EA 194, 190 and 310)</p>
<p><b>Information for electors</b></p> <p>Voter's Manual and list of electors (day 22) (SV 134 and 197)</p> <p>Notice of registration on the list of electors (day 22) (SV 198.1)</p> <p>Explanatory booklet (day 10) (RA 26)</p> <p>Reminder (day 2) (SV 135)</p>	<p><b>Information for electors</b></p> <p>Voter's Manual and list of electors (day 22) (EA 134 and 197)</p> <p>Notice of registration on the list of electors (day 22) (SV 198.1)</p> <p>Reminder (day 2)</p>
<p><b>Notice of poll</b></p> <p>Upon receipt of writ (SV 260)</p> <p>The notice contains:</p> <ul style="list-style-type: none"> <li>- Text of question</li> <li>- Days and times of advance polling and voting</li> <li>- Names of national committees</li> <li>- Names of chairpersons and official agents</li> <li>- Names of official delegates and local agents</li> </ul>	<p><b>Candidates</b></p> <p>Nomination papers (EA 237)</p> <p><b>Notice of poll</b></p> <p>At end of period for receiving nomination papers (EA 260)</p> <p>The notice contains:</p> <ul style="list-style-type: none"> <li>-Names of candidates</li> <li>-Party allegiance</li> <li>-Official agents and mandataries</li> </ul>
<p>Advance polling (SV 262)</p>	<p>Advance polling (EA 262)</p>
<p>Mobile polling station (SV 288)</p>	<p>Mobile polling station (EA 288)</p>
<p><b>Voting by inmates</b></p> <p>Advance polling (SV 273)</p> <p>Vote recorded in electoral division of house of detention (SV 273)</p> <p>Operations decentralized under the responsibility of returning officer (printing of ballots, counting)</p>	<p><b>Voting by inmates</b></p> <p>Advance polling (EA 273)</p> <p>Votes recorded in electoral division of inmate's domicile (EA 273)</p> <p>Operations centralized with Chief Electoral Officer (printing of ballots, counting of votes)</p>



## Appendix III (table 3 of 3)

### Comparative table - referendum and election terminology

Referendum	Election
<p>Revision - same procedure</p> <p>Transmission of documents to official delegates</p>	<p>Revision - same procedure</p> <p>Transmission of documents to candidates</p>
<p>Polling - same procedure except for ballot</p> <p>Model according to Chief Electoral Officer's instructions (SV 320)</p> <p>Bilingual ballots (RA 20) If required, Native language (RA 21)</p>	<p>Polling - same procedure except for ballot</p> <p>Model provided for in Act (EA 320)</p>
<p>Recount and addition of votes - same procedure</p>	<p>Recount and addition of votes - same procedure</p>
<p>Declaration</p> <p>15-day period (SV 377 and RA 41)</p>	<p>Declaration</p> <p>4-day period (EA 377 and 385)</p>
<p>Judicial counting</p> <p>15-day period for polling (RA 41)</p> <p>Only chairperson of a national committee may apply for recount (RA 41)</p> <p>Conseil du référendum (RA 41)</p>	<p>Judicial recount</p> <p>4-day period for recount of votes (EA 385)</p> <p>Any elector may apply for recount (EA 382)</p> <p>Court of Québec (EA 384)</p>
<p>Contestation</p> <p>Within 15 days of polling (RA 42)</p> <p>Only chairperson of a national committee may contest (RA 42)</p> <p>Conseil du référendum (RA 42)</p>	<p>Contestation</p> <p>Within 30 days of publication in the <i>Gazette officielle du Québec</i> (EA 460)</p> <p>Any elector may contest (EA 458)</p> <p>Court of Québec (EA 459)</p>

# Appendix IV

## Legislation amending the Referendum Act

- 1980, c. 6, Act to amend the Referendum Act (Bill 100)
- 1981, c. 4, Act respecting the enumeration of electors for the year 1981 and providing amendments to the Referendum Act (Bill 14)
- 1982, c. 31, Act to amend certain legislation concerning the financing of political parties and concerning municipal elections (Bill 66)
- 1982, c. 54, Act respecting integration of the administration of the electoral system (Bill 96)
- 1982, c. 58, Act to amend various legislation (Bill 101)
- 1982, c. 62, Act respecting the National Assembly (Bill 90)
- 1983, c. 4, Act respecting the enumeration of electors for the year 1983 (Bill 7)
- 1983, c. 54, Act to amend various legislative provisions (Bill 50)
- 1983, c. 55, Public Service Act (Bill 51)
- 1984, c. 51, Election Act (Bill 19)
- 1985, c. 30, Act to amend various legislation (Bill 48)
- 1986, c. 61, Act respecting certain agencies responsible to the Minister of Justice (Bill 87)
- 1987, c. 68, Act to amend various legislation having regard to the Act respecting Access to documents held by public bodies and the Protection of personal information (Bill 28)
- 1987, c. 28, Act to amend the Act respecting electoral representation and other legislation (Bill 25)
- 1988, c. 21, Act to amend the Courts of Justice and other legislation to establish the Court of Québec (Bill 10)
- 1989, c. 1, Election Act (Bill 104)
- 1990, c. 4, Act to amend legislative provisions respecting the implementation of the Code of Penal Procedure (Bill 12)
- 1992, c. 38, Act to amend the Election Act and the Referendum Act (Bill 36)
- 1992, c. 49, Act respecting enumeration following the delimitation of electoral divisions and amending the Referendum Act (Bill 45)
- 1995, c. 23, Act to establish the permanent list of electors and amending the Election Act and other legislative provisions (Bill 40)
- 1997, c. 58, Act to amend the Election Act and other legislative provisions concerning the permanent list of electors (Bill 100)
- 1998, c. 52, Act to amend the Election Act, the Referendum Act and other legislative provisions (Bill 450)
- 1999, c. 15, Act concerning the elector's obligation to establish his identity at the time of voting and amending other legislative provisions in the electoral field (Bill 1)

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## Notes

1. J. Patrick Boyer, *Lawmaking by the people: referendums and plebiscites in Canada*, Toronto, 1982, p. 12.
2. *Ibid.*, p. 13.  
“ There is also the fact that in Newfoundland, Québec and the Yukon, the term ‘referendum’ is used in statutes and ordinances to mean what, in other Canadian electoral jurisdictions, is referred to as a plebiscite.”
3. Jean-Charles Bonenfant, “Référendums et plébiscites au Canada”, *L’Action-Québec*, October 23, 1969, p. 4.  
“ The French historian Robert Lacour-Gayet wrote that Mr. Mackenzie King, wanting a popular vote on the institution of compulsory military service, wondered if he should call the vote a referendum or a plebiscite. The first term seemed too categorical to him, and the historian added that Mr. King ‘opted for the word plebiscite, which, no one really knows why, seemed sufficiently vague to him.’”
4. *Loc. cit.*
5. Minister of State for Federal-Provincial Relations, *Canada Referendum Bill: an explanation*, Ottawa, 1978, p. 5.  
“ But usage of ‘plebiscite’ in both English and French now seems very uncertain. Modern usage in both languages clearly favours ‘referendum’ and the word ‘plebiscite’ seems to have lost all currency.”
6. These developments regarding the various instruments of direct democracy along with their definitions are largely inspired by Maurice Champagne, *Mécanismes de consultation populaire directe (référendum, initiative et veto populaires, rappel (recall) d’élus, plébiscite)*, Bibliothèque de la législature, Québec City, 1977, 48 pp.
7. *Ibid.*, p. 11.
8. Australian Electoral Commission, Referendums Factsheet, 1999, [www.aec.gov.au/pubs/factsheet20.htm](http://www.aec.gov.au/pubs/factsheet20.htm), July 16, 1999.
9. Department of Environment and Local Government of Ireland, *The Referendum in Ireland*, 1998, [www.environ.ie/elections/reflef.html](http://www.environ.ie/elections/reflef.html), July 16, 1999.
10. Vernon Bogdanor, *Western Europe in David Butler and Austin Runney, Referendum around the World: Growing use of Direct Democracy*, London, MacMillan Press, 1994, p. 47.
11. Commission on the Conduct of Referendum, *Report of the Commission on the Conduct of Referendum*, London, The Constitution Unit and Electoral Reform Society, 1996, p. 21.
12. British Broadcasting Corporation Scotland, *State of the Nation Database*, 1998, [www.bbc.co.uk/stateofnation/scotland/politics/pdevreferendum.shtml](http://www.bbc.co.uk/stateofnation/scotland/politics/pdevreferendum.shtml), August 11, 1999.
13. Serge Zogg, *La démocratie directe en Europe de l’Ouest*, Centre européen de la culture et Actes sud, 1996, p. 54 and f. in Francis Hamon (dir), *Le référendum*, Document d’étude : droit constitutionnel et institutions politiques, n. 1.21, Paris, La Documentation française, 1997, p. 21.

14. Initiative and Referendum Institute,  
— I&R Factsheet: *What is Initiative and Referendum?*, 1999,  
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— [www.iandrinstute.org/factsheets/fs1contentent.htm](http://www.iandrinstute.org/factsheets/fs1contentent.htm).
15. Shaun Bowler, Todd Donovan and Caroline J. Tolbert, *Citizens as Legislator: Direct Democracy in the United States*, Columbus, Ohio State University Press, 1998, p.4.
16. Government of British Columbia: *Referendum B.C.: The decision is yours!*, Referendum B.C.: Background paper Initiative, 1991, p. 3.
17. Royal Commission on Electoral Reform and Party Financing, *Reforming Electoral Democracy: Final Report*, Ottawa, Vol. 2, 1991, p. 238.  
“ As Cronin (1989) has argued, the process of citizen-initiated referendums is ‘big business’; the so-called process of citizen-initiated referendums is dominated by public relations firms, media consultants, public opinion pollsters and direct mail specialists.”
18. Shaun Bowler, Todd Donovan and Caroline J. Tolbert, *op. cit.*, p. 3.
19. Sylvie Kauffmann, “Les référendums ont davantage la cote que les élections”, *Le Devoir*, November 8, 1996, p. A7.
20. Government of British Columbia, *Referendum B.C.: The decision is yours!*, Referendum B.C.: Background paper: recall, 1991, p. 4.
21. Maurice Champagne, *op. cit.*, p. 27.
22. Royal Commission on Electoral Reform and Party Financing, *op. cit.*, p. 262.
23. Gérald Beaudoin, “Les aspects constitutionnels du référendum sur l’avenir politique du Québec”, *Le Devoir*, May 13, 1977, p. 5.  
“ The Manitoban law on the referendum was voided because it forced the Lieutenant Governor to submit a bill to electors which would render the Lieutenant Governor powerless to prevent the bill from becoming law if it was approved by the electors.”
24. Government of British Columbia, *Referendum B.C.: The decision is yours!* Referendum B.C.: Background paper: Initiative, *op. cit.*, p. 3.
25. Royal Commission on Electoral Reform and Party Financing, *op. cit.*, p. 262.
26. J. Patrick Boyer, *op. cit.*, pp. 23-24.
27. Royal Commission on Electoral Reform and Party Financing, *op. cit.*, p. 262.
28. Elections British Columbia, *Annual Report 1998*, Victoria, 1999. p. 11.
29. Robert Rumilly, *Histoire de la province de Québec : F.-G. Marchand, Montréal*, 2<sup>nd</sup> edition, Volume IX, pp. 70-71.  
  
The temperance societies launched an intensive propaganda campaign, by speeches and pamphlets, strongly peppered with biblical quotations. People in the liquor industry organized counter-propaganda, with posters and circulars. They were numerous and powerful. In the cities, distillers and importers hired a staff, placed advertisements in newspapers and donated to electoral funds. In each village, the two hotel-owners—the red and the blue—were well known personalities, perhaps the most influential people after the parish priest.
30. *Ibid.*, p. 70.

31. Elections Canada, *Background Documentation*, Ottawa, Elections Canada, 1991, p. 2.
32. André Laurendeau, *La crise de la conscription*, Éditions du Jour, Ottawa, 1962, p. 40.
33. *Ibid.*, p. 32.
34. *Ibid.*, p. 38.
35. *Ibid.*, p. 67.
36. Fred Gaffen, “La guerre sans fusils”, *Horizon Canada*, Vol. 9, No. 107, p. 2546.
37. André Laurendeau, *op. cit.*, pp. 41-42.
38. *Ibid.*, p. 72.
39. *Ibid.*, p. 58.
40. *Ibid.*, p. 31.  
“ I am authorized by my colleagues in the Province of Québec...(Dandurand, Cardin and Power)...to declare that we will never agree to conscription.”
41. *Ibid.*, p. 81.
42. *Loc. cit.*
43. *Ibid.*, p. 84.
44. *Ibid.*, p. 88.
45. *Ibid.*, p. 90.
46. *Ibid.*, p. 101.
47. *Ibid.*, pp. 106-107.
48. Robert Rumilly, *Histoire de la province de Québec : la guerre 1939-1945*, Éditions Fides, Montréal, Vol. XXXIX, 1969, p. 232.
49. André Laurendeau, *op. cit.*, p. 108.
50. *Loc. cit.*
51. *Ibid.*, p. 220.
52. *Ibid.*, p. 220.
53. *Ibid.*, pp. 211-212.  
“ The Père Marquette section of the Société Saint-Jean-Baptiste de Montréal took under its auspices a new assembly of the Ligue pour la défense du Canada, at the Marché Maisonneuve on March 1. A correspondent, or a would-be correspondent from The Gazette was shocked that the municipal authorities would allow a group of traitors to hold a meeting ‘with the avowed goal of discrediting British institutions and inciting violence and riots’.”
54. *Ibid.*, p. 214.

55. André Laurendeau, *op. cit.*, pp. 120-121.  
 “ For here is the most astonishing phenomenon: with virtually no exposure to the propaganda by the Ligue, the majority of French minorities in Canada voted NO, wherever they constituted a substantial group. This seems to have been an instinctive reaction.”
56. *Loc. cit.*
57. Elections Canada, Background Documentation, *op. cit.*, p. 3.
58. Canadian Unity Information Office, *Understanding referenda, six histories: Australia, Newfoundland, Ireland, Norway, Denmark, United Kingdom*, Ottawa, 1978, p. 8.
59. Vincent Lemieux, *Le référendum et la démocratie au Canada*, in Peter Aucoin, *Le gouvernement représentatif et la réforme des institutions*, 1985, p. 140.  
 “ The two referendums in Newfoundland and the referendum in Québec were held outside electoral campaigns. The struggle between the opposing camps took place in a very different manner in the two cases. In Newfoundland, there were not yet any political parties in the strictest sense of the term at the time of the referendum battles. Each of the three options was defended by a coalition.”
60. Canadian Unity Information Office, *op. cit.*, p. 12.  
 “ The Confederate Association was lent some unofficial assistance in conducting its campaign—for example in combatting the group for Economic Union with the United States. Information on such matters as commercial treaties between Canada and the United States was provided post-haste to the Association at Smallwood’s request; this was justified by the argument that such material would have been made available to anyone asking for it.”
61. Robert Rumilly, *Histoire de la province de Québec : succession de Laurier*, Éditions Chanteclerc, Montréal, Vol. XXIV, 1952, p. 43.
62. *Loc. cit.*
63. *Ibid.*, p. 46.  
 “ Parangons of abstinence were rare in Lomer Gouin’s entourage. In an open letter, Ulric Barthes begged the Prime Minister, ‘on his knees if necessary’, to save at least wine and beer, which he considered healthful drinks. ‘If they persist in reducing me to a diet of grapefruit, ginger ale and sugar water, I’ll become a Bolshevik.’”
64. *Ibid.*, p. 50.
65. *Le Soleil*, “Résultat du vote d’aujourd’hui”, April 10, 1919, p. 12.  
 “ The Prohibition forces have been overcome following the arrest of Rev. S.F. Newton for distributing circulars in the street without permission. The prohibitionists say people are unfair to them; they add that the grand, so-called “yes” procession last night was also in violation of the by-laws and should have been prevented.”
66. Gérard Bergeron, *La pratique de l’État au Québec*, Québec/Amérique, Montréal, 1984, p. 176.
67. Legislative Assembly of Québec, *Journal des débats*, First Session, 28<sup>th</sup> Legislature, Vol. 5, No. 1, December 1, 1966, p. 5.  
 “ The time has come to rethink not only the Canadian Constitution, but also Québec’s internal constitution, which is in great need of modernization. It is important to set up the bodies required to study and resolve these constitutional problems in the best possible climate and with the deepest respect for the popular will. Consequently, the Constitution committee will be rejuvenated with a broader mandate, and you will be called upon to adopt a general law under which referendums may be held.”

68. François Trépanier, “Le Québec aura la première loi des référendums au Canada”, *La Presse*, October 10, 1969, p. 2.
69. Robert Burns, “Une nouvelle étape vers le référendum”, *Le Devoir*, December 29, 1977, p. 4.
70. J. Patrick Boyer, *op. cit.*, p. 206.
- “ This concept of an umbrella organization is fairly novel; with the limited exception of Britain in 1975 during the Common Market referendum, no other democracy has conducted referendums under a statutory framework of umbrellas (and in Britain there was no restriction on anyone spending any amount of money).”
71. *Loc. cit.*
72. Claude Ryan, “Le livre blanc de Robert Burns : de Londres à Québec, des manières très différentes de concevoir les contrôles et le regroupement des forces”, *Le Devoir*, September 16, 1977, p. 5.
- “ It was learned after the referendum was held that the pro-European group spent ten times more than the group in favour of the withdrawal of Great Britain from the Common Market.”
73. Henri Brun, Guy Tremblay, “Consultations populaires québécoises et référendums fédéraux”, *Cahiers de droit*, Vol. 20, 1979, p. 140.
- “ According to the White Paper that preceded the referendum bill,<sup>9</sup> the government assumed that our constitutional system would only allow a consultative referendum, which is more than doubtful.<sup>10</sup>”
- <sup>9</sup>. Minister of State for Electoral and Parliamentary Reform, Gouvernement du Québec, *Consulting the people of Québec*, Québec City, Éditeur officiel du Québec, 1977.
- <sup>10</sup>. The decision of the Privy Council in *The Initiative and Referendum Act*, (1919) A.C. 935, did not have this general meaning at the time it was rendered and has it even less so today, given the development of constitutional agreements. One may now believe that a sovereign Parliament can modify its composition (if only in its areas of competence). See *A.-G. New South Wales v. Trethowan* (1932) A.C. 526.
74. Office of the General Coordinator, *Référendum Québec 2010*, Québec City, 1998, p. 2.

