

The Legal Reasons for ICBA's Challenge to the Legality of the Referendum

1. Put very simply, the way that the Government has asked and structured the questions, and the restrictions it has placed on public participation, are unlawful and undermine the entire purpose of a binding referendum: to determine whether a fully informed electorate supports adopting a new electoral system.
2. We believe that the referendum questions and process are illegal because they don't present the public with a clear choice between the current electoral system and a defined system of proportional representation – as was the case in the two previous referenda held on this matter in 2005 and 2009.
3. Instead, the Government is asking two questions.
 - a. The first question is whether the public wants the current system or a proportional representation system.
 - But it does not define the proportional representation system.
 - This question is asked in the abstract.
 - Before deciding whether you want to replace the current system with a proportional representation system, the Government is legally required to sufficiently describe the proportional representation system you are voting in favour of (or against).
 - That is the first legal error: that the public is legally entitled to know what it is voting on, and this referendum does not tell them.
 - b. The Government has set a second question that asks the public to also vote on three very complex proportional representation systems.
 - This vote will only be counted if the public votes in favour of a proportional representation system on the first question.
 - But voting in favour of a proportional representation system on the first questions doesn't necessarily mean that a person wants any of three proportional representation models set out in the second ballot.
 - And even if you did want one of the three proportional representation models, you might end up with a proportional representation system that you would not want over the current system.
 - So individuals may vote in favour of proportional representation on the first question, even if they would prefer the current system to some of the alternatives on the second question.
 - That is the second legal flaw in the referendum: a vote in favour of proportional representation on the first ballot does not indicate support for the implementation of any or all of the proportional representation models on the second ballot.

4. And to make the referendum even more legally flawed, the three proportional representation models on the second ballot are not sufficiently described to be understandable by the public.
 - That is because the Government hasn't filled in the details of the system yet, and so important matters – such as what electoral district people will be living in – are unknown to voters at the time they vote.
 - That is also a violation of the public's legal rights – the government is attempting to deceive the public through a convoluted process into voting for proportional representation that is not sufficiently described – if successful in this effort, the Government is free to define any system of proportional representation it favours later.
 - That is what the Government has done here – it has established an illegally rigged referendum that is designed to give the impression that the public supports a proportional representation system that it will impose when the reality is that there be far less than majority support for whatever proportional representation system that it will implement. In fact a mere 10% - 15% of all registered voters could determine this fundamental change in our constitution.
5. And the final illegality is that unlike in the previous two referenda on proportional representation, the Government has prevented the public from being sufficiently informed about what they are voting on by imposing severe restrictions to spending on communication to the public to inform them about the proportional representation models that the Government seeks to introduce.
 - That is a clear violation of the constitutional rights of British Columbians to freedom of speech and association.
6. Because of these illegalities, we are asking the Court to prohibit the referendum from going ahead until these legal flaws are corrected.
7. We are strongly supportive of holding referenda to decide whether British Columbia should adopt a new electoral system.
8. However, we believe it is in the public interest to ensure that this referendum is conducted in a fair, transparent, and lawful manner, given that it involves such a fundamental change to our democratic system.