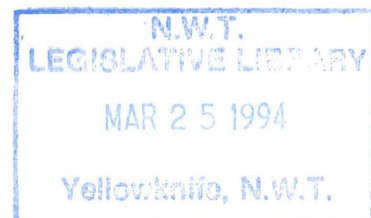


RECALL OF M.L.A.

Recall is a form of "direct democracy". It refers to the process whereby constituents of an elected member of the Legislative Assembly are able to remove their member from office prior to the expiry of his/her term of office.

Clearly any process which provides for the removal of an M.L.A. must include safeguards that the undertaking to remove a member will not be entered into lightly. An enormous amount of work normally goes into the election of an M.L.A.. No less an effort should be expected if an M.L.A. is to be removed.

There has been a renewed interest in recall in recent years. Much of the interest stems from a growing discontent with discipline imposed by political parties which prevents members from truly representing his or her constituency on many issues. The introduction of recall provisions would have the advantage of acting as a counterweight to party discipline. Members continually toeing the party line would know that eventually they



would be subject to recall if they continued to act against voters wishes.

M.L.A.'s who are elected in the Northwest Territories do not have the dual allegiance towards a political party and to their constituents which could be in conflict. If they are in doubt whether they should support a government initiative or not they can simply poll their constituents. The government has no power to impose its will on the fifteen ordinary members.

Since there are no political parties to interfere with the ability of a member in the Northwest Territories legislature to truly represent his or her constituents the question could be asked, why do we need recall in the Northwest Territories? The answer is very simple. Recall is needed because members of the Legislative Assembly of the Northwest Territories are subject to no form of party discipline.

Party discipline goes beyond directing the party members how to vote. In provincial jurisdictions, successful candidates owe their success in elections primarily to the party under whose banner they sought election. Membership in a party entails accepting the party's codes and standards.

Members who are elected in the Northwest Territories are elected as individuals. As members of the Legislative, they are legally bound by conflict of interest provisions and guided by a code of conduct. The breaking of the code leads to no form of punishment or even censure. In the absence of any constituency association or local party organisation, however, they are technically free to act with none of the constraints imposed on their counterparts elsewhere. One significant power political parties have is the power to expel members from the party caucus. Since members in the provinces are largely elected on a party platform expulsion usually leads to political oblivion unless the member finds a home in another party.

In the Northwest Territories there is only one caucus and that is the full body of 24 elected members. All members belong to the caucus and there is no mechanism to expel a member, nor is there a mechanism to compel a member to participate in caucus meetings. It is a free association of M.L.A.'s that meets regularly to deal with matters of mutual concern.

In the Northwest Territories, because candidates run as individuals and are not screened through a tough nomination process, there is a greater likelihood that northern politicians may not have been adequately tested for their suitability for public office. Although a screening process does not always work perfectly in other jurisdictions where parties held nomination meetings, there are mechanisms in place to reduce the risk of electing a candidate who may cause embarrassment to the party at a later date. In recent times, party leaders have rejected locally nominated candidates for this reason. The best known recent case perhaps is rejection by British Columbia premier Mike Harcourt of a nominated NDP candidate because he is a witch.

The need for recall of M.L.A.'s in the Northwest Territories does not stem from the difficulty of serving two masters: the party and the constituency. Recall is needed because there is too little discipline in a consensus style of government. In other words, too little discipline is just as bad as too much discipline.

There is a growing public demand to enact recall provisions but the reasons vary. Public disillusionment over the conduct of politicians has led to the drafting of codes of conduct in various order of government, usually at the party level. These codes, however, do no more than remind members of what the public expects of them. The existence of a code of conduct acts as a constant reminder of the public trust. What happens though when the code of conduct is flouted? In the absence of any form of penalty, public cynicism about politicians becomes even more exaggerated. The 12th Assembly of the Legislative Assembly has recognized the need for a code of conduct for all M.L.A.'s because of growing public concern about the behaviour of elected people. The adoption of a code of conduct by the Legislative Assembly of the N.W.T. is the first of its kind in the country. In February, 1994 the Tunngavik Nunavut also adopted a code of conduct.

During the 5th Session of the 12th Assembly the Legislative Assembly also passed a motion of zero tolerance towards violence against women, children, disabled people and the elderly. A similar motion was subsequently passed by the city council of Yellowknife.

The increased attention to the expected behaviour of politicians must be seen in the context of accountability. Politicians in the Northwest Territories are not elected on the basis of a political platform. They can give the public no promises of what they will deliver in terms of programs and services if they are elected, although of course, they can promise to push hard for local issues. In the absence of a platform and a means of implementing it, the member has limited accountability. In territorial elections, all the public is asked to do is to choose a representative to be their voice in the Legislative Assembly. Since the only promise a candidate can make is to be a good representative what happens when a large segment of the population feels betrayed on this basic principle of accountability? It should be clear that the need for recall goes far beyond the issue of divided loyalty between party and constituency. In the Northwest Territories it relates to the overall problem of accountability in a consensus style system of government where

there is minimal discipline.

Except in those instances where a member is elected, or chooses to be an independent, no provincially elected M.L.A.'s enjoy as much political freedom to act as members of the Legislative Assembly of the Northwest Territories. As a consequence of this, there is no motivation for M.L.A.'s to change a system so that limits would be put on their freedom. The threat of recall would limit the autonomy of politicians. Since any changes to the current system of government will be made by the politicians in office, how can they be persuaded to make changes that will make them potentially vulnerable?

Recall has not been in legislation since 1935 when Premier Eberhardt introduced it into the Alberta Legislature where it was short lived. In 1991, however, referendum questions were placed before the people of British Columbia. During the general election, over 80% of the population voted for recall. In response to the referendum results, Social Credit M.L.A. Jack Weisberger introduced a private member's bill (Recall Act) in the British Columbia legislature in November, 1992. The bill is currently tied up in a

legislation committee dominated by the NDP. Similar legislation is also being introduced into the Alberta legislature as a private member's bill by Gary Dickson, a Liberal.

Although the direct democracy techniques of petitions, referenda and recall are closely associated with the platform of the Reform Party of Canada, in the two most recent initiatives, the sponsors were members of the Social Credit and Liberal parties. There is clearly a movement that goes beyond party affiliation towards involving citizens more in the democratic process. Recall is one instrument which has widespread public support.

Evidence in support of recall can be found in the seventh annual MacLeans/Decima poll published in January 7, 1991. Although the word recall was not used in the poll there was a majority in favour of some method of removing politicians during their term of office. Forty four percent of the 1500 people polled believed politicians had earned the right to remain in office until the end of their term. One percent had no opinion. Fifty five percent preferred some form of recall.

The British Columbia experience is probably the most instructive in setting out the advantage and disadvantage of recall. When the voters went to the polls on October 17, 1991 they were asked to respond to the following referendum question.

"Should voters be given the right by legislation to vote between elections for the removal of the member of the Legislative Assembly?"

Prior to the election the B.C. Referendum office circulated to the electorate the pros and cons of recall legislation.

Four advantages of recall were placed before the voters. Recall provides a method for removing a member who does not meet standards for elected office. It encourages ongoing accountability by the elected official. It would encourage the public to keep abreast of political issues. It would help to restore trust in elected people. On the other hand, recall poses four problems. Recall could discourage elected officials from making long-term decisions, or decisions on issues of broad public interest beyond the

parochial ones of the constituency. It could also lead to almost complete political inactivity because of fear of controversy. A recall election could also be disruptive and unproductive. Provisions for recall would also have to be accompanied by other changes to the parliamentary system of government.

Having examined the pros and cons of recall in some detail, the voters in British Columbia voted overwhelmingly in favour of it. There is no reason to believe that once people in other parts of Canada fully understand the implications of recall they would vote any differently though not necessarily in such large numbers.

FEATURES OF RECALL LEGISLATION

1. The process of recall must be initiated by a voter whose name appears on the electoral roll for the election in which the member to be recalled was elected.

2. The person who initiates the recall process is called a "promoter", a term used in the Alberta recall legislation of 1935.
3. The promoter's first step is an application to the Chief Electoral Officer for petition forms. Accompanying the letter requesting the petition forms is an outline of the reasons for recall signed by the promoter and 14 other sponsors, voters whose names appeared on the electoral roll for the election in which the member to be recalled was elected. (The promoter and 14 other sponsors who initiate the process is the same number of voters required by any candidate who seeks nomination for election in a general election).
4. On receipt of the application the chief electoral officer shall return to the promoters the required number of petition sheets requesting signature, printed name, occupation, phone number, address of petitioner and date the petition is signed.
5. The petition must contain a copy of the reasons for recall which the Chief Electoral Officer causes to be printed at the head of the petition.

This must not exceed 500 words.

6. The petition must contain the names of the promoter and 14 other sponsors of the recall.
7. The promoter is required to sign a sworn declaration outlining previous contacts or dealings between the promoter and the member of the Legislative Assembly when recall is being sought, or indicating that there have been no contacts or dealings.
8. No one signing, circulating, publishing or broadcasting the contents of a recall petition shall be liable for defamation except the sponsors and promoter who initiated the process.
9. The member of the Legislative enjoys full rights and privileges as a member until a majority of votes are cast in a recall election to remove the member.
10. Both the promoter and the member whose recall is being sought will be

permitted to file with the Chief Electoral officer, an information paper not exceeding 1000 words setting out the reasons why or why not the member should be recalled.

11. In order to recall a member a petition would require 20% of the names of eligible voters that appeared on the voters list when the member subject to recall was last elected.
12. The Chief Electoral Officer is responsible for the costs of producing petition forms and providing to each voter in the constituency where recall has been initiated, copies of the two information papers outlining reasons for or against recall.
13. The Chief Electoral Officer must also ensure that copies of the information papers are available at each polling station if a recall election is held.
14. If a petition signed by 20% of valid voters is filed with, and verified by the Chief Electoral Officer, a recall election shall be called.

15. The finding of the Chief Electoral Officer that a petition is or is not qualified may be appealed to the Supreme Court of the N.W.T. whose ruling is final.
16. There are sound reasons why the Recall Election shall not be held at taxpayer expense. If voters in a constituency have elected a member and then find they have made a mistake other taxpayers should not be asked to pay for the removal of their member.
17. On notification from the Chief Electoral Officer that a recall election will be held the promoter and 14 sponsors of the recall initiative shall form a legal body called the Recall Society. The body will have one goal and that is to raise funds to cover the cost of the Recall Election.
18. Funds provided the Recall Society will be tax deductible. Any surplus funds collected by the Society will be donated to any qualified non-profit organization within the constituency at the direction of the Society.

19. The Recall Election will be conducted by the Chief Electoral Officer and the process will be conducted under the provisions of the Elections Act.

20. The ballot will have two marked spaces with equally prominent Yes and No above each space. The voter fills his or her ballot in response to the following question:

"Having read the two information papers regarding the recall election do you vote to remove M.L.A. (Name) from the Legislative Assembly?"

21. Where a simple majority of valid voters are cast in the recall election the seat is declared vacant.

22. The process to fill the vacant seat is the same one normally used for a by-election and will be conducted at public expense.

23. Although a member has been recalled there should be no impediment

to the member seeking re-election.

24. A by-election cannot be proceeded with until costs associated with the recall election have been remitted by the Recall Society. Failure to do so could mean a constituency is without a member until the next general election.
25. A recall society is dissolved following announcement of a by-election or a general election.
26. The process of recall cannot begin until six months after a general election.