

Gordon Gibson:

Ladies and Gentlemen... Ladies and Gentlemen...with your permission we will proceed to a most interesting part of the day. It is my privilege to introduce to you the Hon. Geoff Plant who is, among other things, Minister Responsible for Democratic Reform along with input from other ministers of course in the BC Government. As a very short formal introduction I will note that he attended Harvard, South Hampton University, Dalhousie and Cambridge University and received impressively superior degrees in all of these. He had an extensive and distinguished law practice, which of course eminently suits him for the heavy responsibilities of the Attorney General. In addition to that however, I think it is an indication of the esteem in which Mr. Plant has held, that he has been given what in my view the two most significant responsibilities in historical terms of the government of British Columbia which is to say treaty negotiations, probably the most important moral question facing this province and democratic reform, our preoccupation of this conference and something which I suspect will be remembered to the extent it happens long after various budgets and so on in this province. So it's a great honour to ask you to welcome the Attorney General, Geoff Plant.

Hon. Geoff Plant:

(Mic Test)

I'm sorry to interrupt your lunch. I've been to gatherings like this long enough to know that sometimes there's a buzz in the room because the topic of the day has actually excited people to the extent that they are talking about it over lunch and I'm sure that the conversations over lunch have been interesting. I hope that you'll have an opportunity to continue them as the day wears on but for now it's me.

And I have to say that I'm slightly intimidated. I did catch the last five minutes of the morning and I can't remember the last time I heard a Canadian Member of Parliament referring with confidence to the Federalist papers in a public discussion so I'll see what I can do to come close to that.

I want to begin by congratulating the Fraser Institute for sponsoring this important conference on an important but marvellously intractable subject: reforming politics.

The subject is important, obviously, because politics comprises the institutions, the rules and the practices, which permit and limit access to state power. Politics, if you will, is the space between the citizen and the state.

But the subject of politics is also intractable, in the Oxford Dictionary sense of "not docile." Politics is the thing we instantly recognize but cannot define. It is elusive and ever changing and it is capable of seemingly infinite expansion. In my former professional discipline, as a lawyer, for example, one of the great debates of the last quarter century has been the argument that this thing called legal reasoning is actually just politics practiced under a different label. If all law is politics, then so, too, no doubt, sooner or later, is geology, bird-watching and Mariano Rivera's splitter.

But enough about baseball, there's actually never enough about baseball but unfortunately I'm here to talk about reforming politics.

It was W.H. Auden who said "There is no such thing as the perfect democratic state, good for all time." Our political institutions will change, even when we're not paying attention to them. But as circumstances change, so, too, will our attention focus from time to time on the need to embrace more consciously the project of political reform.

For my part, this particular story begins on election night in British Columbia in 1996.

On May 28, 1996, the BC Liberal Party, which I am a member of, lost a provincial election by six seats, despite winning the popular vote.

The election may in fact have marked a turning point in BC's political history, because the outcome prompted people of every political stripe – even people not committed to any political party – to take a good, long look at their electoral system.

Some said the system had failed us. Others argued the will of the people had not been served. There was a call for electoral reform. That call has really never ended.

Fast forward, then, to 2001.

We, that is the BC Liberals, went into the most recent provincial election promising to create the most open, accountable and democratic government in Canada – with an implicit message that to meet this goal we would need a complete review of how we run our elections.

In the run up to the campaign, I told the voters of the constituency that I sought to represent that I believed it was time for change. Not just a change in the cast of governors, but change in the way government works, and change even in the institutions of government themselves.

Our campaign platform – the New Era document – laid out a roadmap for institutional change. We committed to change the public service, we committed to change the operations of government and we committed to open up a formal discussion about electoral reform through the mechanism of a Citizens' Assembly on Electoral Reform.

The job of this assembly would be to assess all possible models for electing MLAs – things like preferential ballots, proportional representation, and even the status quo.

We also promised to give the Citizens' Assembly a mandate to hold public hearings throughout BC and, if it recommended changes to the current electoral system, to put those recommendations to the people through a province-wide referendum.

And now we know how much province – wide referendums cost. (Sorry) Ah, the tyranny of the urgent. (?)

We were elected to keep these commitments and we intend to keep them.

But the results of the last election have, for some, and perhaps only temporarily, shifted the focus of the debate on electoral reform.

Because in the last election, the election of 2001, a strong majority of the popular vote translated in to a massive majority for one party in the legislature. The corollary was, that as a result, parties like, for example, the Green Party, received a significant number of votes, but elected no representatives.

The question of electoral reform which was raised then in 1996 has not been answered, but it may have been redefined. At times, it seems to me, that the current debate has begun to focus more on ways of ensuring political parties are happy with the results, with the number of seats they get on Election Day.

But surely the fundamental goal of elections and electoral reform, is not to serve the needs of political parties. The goal of elections and the goal of electoral reform, is to give citizens a voice in choosing their government. Thus the urgent question for 1996, for 2001 and for all elections yet to come, is this: How do we create a system that better serves all of the people of British Columbia?

The history of electoral reform in British Columbia has traditionally focused not on enfranchising political parties, but rather on enfranchising voters.

In 1876, for example, British Columbia dropped property ownership as a qualification to vote, thereby expanding the franchise.

Forty years later, the province extended voting rights to women. And then in the late 1950's, British Columbia's voting age from dropped from 21 to 19, and then in 1992, was reduced still further to 18, to conform with national standards.

Even the most significant changes in the last ten years of our political history, have tended to focus primarily on reforming politics to better serve the interests of voters. For example, the 1995 Recall and Initiative Act represented an attempt to put more power in the hands of voters.

Of course there is also a legislative history in British Columbia of regulating political parties. That history culminated in 1995 in a new Election Act, a statute about which I'll have more to say in a minute or two, but a statute which prescribes in 160 pages of mind-numbing detail the ways in which we are, and are not, permitted to engage in electoral democracy.

So the Election Act does speak to political parties. But the main focus of electoral reform is and ought to be, not the political party, but the voter.

The challenge is to find ways to ensure that citizens are satisfied with the politicians they have elected, and with the process used to elect those politicians.

It's not an easy task.

But I do believe we need to ensure that our inquiry is not limited to a mindset that automatically identifies partisan representation as the benchmark of a successful electoral system. The debate about electoral reform, the debate about government reform is a broader debate than the debate about insuring that the political parties are adequately represented in the Legislature.

In the months since last spring's election, the new government in British Columbia has moved to implement a range of reforms across this broad spectrum, a range of reforms to the way we are governed.

In his speech at the Cabinet swearing-in ceremony on June 5, Premier Gordon Campbell elaborated on his vision for open, accountable and democratic government when he said that he wanted BC's new government "to" and these are his words "reflect a fundamental change in attitude."

As he said, "The Legislature is there to serve the people, and the cabinet is there to serve the Legislature." And he went on to say, "Our Legislature will be open. It will be a place where we all learn from one another. It will be a place where we strive to reflect the values of British Columbians and to unite our province in common purpose."

Simply put, the government has embraced the challenge of earning back some measure of trust and respect for political leaders.

One measure of political credibility must surely be the extent to which elected leaders keep the commitments they made in seeking public office.

We have been working hard to fulfill our commitments.

One of the first acts of the new government was to honour the New Era commitment for fixed election dates.

And so we have amended the Constitution Act of British Columbia to provide that the next provincial election will be held on Tuesday, May 17, 2005. Thereafter, barring dissolution for loss of confidence, provincial elections will be held on the second Tuesday in May every four years.

The intention behind this change is to disperse power from the Premier's office, by ensuring that the timing of elections can no longer be manipulated for political or partisan purposes.

The enactment of a fixed election date means everyone in British Columbia knows that we, in government, have four years to keep our commitments and that in May 2005 the citizens of British Columbia will be able to hold us to account for our record.

Similarly, we have followed up the fixed election date reform with laws establishing a fixed date for the tabling of the provincial budget and a set legislative calendar. Reforms that were long

overdue all with the goal of increasing public accountability.

We have introduced lobbyist registration legislation, not to regulate the profession of lobbying but to provide a measure of public disclosure of the significant volume of political persuasion and influence that takes place behind closed doors along the corridors of power.

We have also committed to free votes in the Legislature, to permit MLAs to vote freely on behalf of their constituents on all matters not specifically identified as a vote of confidence for a new era platform commitment.

Free votes help decentralize the power base. Free votes, and an expanded role in government policy-making, through the use of government caucus committees, help give individual MLAs a real voice in the decision-making process of government – an opportunity to exercise individual judgment – and they give the electors of constituency MLAs a more direct voice in the Legislature, through their elected representatives. Free votes is a reform that looks forward but does so by recalling a past in which the firm hand of the whip played a less intrusive role in the control of parliamentary governments.

Free votes, government caucus committees, fixed budget dates, three year ministerial service plans, and a new approach to ministerial accountability that creates personal financial incentives for ministers to meet their government-wide and individual ministerial budgets are all part of the toolkit for dispersing power away from the Premier's office, out to ministers, and beyond them to the private members of the legislature and the voters they were elected to serve.

Reforming recall and initiative legislation – another platform commitment – will make it easier for citizens to hold MLAs accountable to the people of this province.

And it does not stop there.

We are also working on legislation to honour additional commitments targeting electoral reform. I said we would come back to the Election Act. In the New Era document, we promised to amend the Election Act to eliminate loopholes on disclosures of financial contributions to parties and to include donations of labour, as well as to outlaw donations from charities to political parties.

These commitments represent a response to some specific issues identified as problems with the 1995 Election Act. But in arguing for and expressing my commitment to these particular reforms, I do not want to impose unreasonable constraints on a public discussion concerning our regulation of elections.

I recently came across a marvellous speech given in 1999 by Roderick Macdonald when he was president of the Law Commission of Canada. He gave it at Dalhousie, which is a marvellous place to give a wonderful speech. In that speech Professor Macdonald talked about the limits of prescriptive regulation as a tool for social change. He identified as one of the misconceptions that has afflicted the law for the last half-century “the belief” and these are his words “the belief that it is possible to make people better by detailed Parliamentary prescription.”

This is a passage also from that speech.

“Sustaining these misconceptions of law are two debatable suppositions about the motives and capacities of human beings. One is that people are not able to function in society without the assistance of public officials staffing specialized regulatory bodies. The other supposition is that people are naturally inclined to exploit one another and will always try to extract disproportionate advantage in situations of conflict.”

Well, from this perspective, and the perspective of those observations, I believe it may be both timely and appropriate to encourage a broader discussion about reforming the regulation of elections themselves. Do we really need a 160 page Election Act?

But this brings me back to the Citizens’ Assembly. The Citizens’ Assembly is, I believe, a noble idea, but obviously one not without it’s practical challenges.

British Columbia is a unique political entity. We are neither New Zealand, nor Germany, nor Israel, nor anywhere else. Our population is widely dispersed and diverse. Our expectations of elected representatives are sometimes less than clear. And we cannot re-design our electoral system without asking ourselves the question: what is it that we expect our elected MLAs to do?

The fundamental objective of the Citizens Assembly takes us back to the fundamental objective of electoral reform, that is, to create a system that better serves all of the people themselves. To achieve this objective, the government of which I am a member, believes that it is necessary to take the question of electoral reform out of the hands of the politicians and to place it in the hands of the people we are elected to serve.

The challenge, therefore, is to find a way to create a Citizens’ Assembly that effectively represents the citizens of this province and gives voice to their concerns.

Premier Campbell has suggested that the Citizens’ Assembly should be selected randomly, as are members of a jury. I’ve heard objections to this proposal. Among them, of course, is the familiar objection that we might not end up with citizens with the expertise needed to address these complex issues. Well, that’s an interesting dilemma. It presupposes that democracy has become incomprehensible to the citizens it is intended to serve. I am unwilling to accept that contention. In truth, while I confess, personally, that I might want to be at the front of the line at the first congress of philosopher kings, we had better figure out how to ensure that a system of government that is intended to work for ordinary citizens is comprehensible to them.

But that is only the beginning of the list of questions about the selection and process of a Citizens’ Assembly, and indeed, about the idea itself, many of which, I am certain, you will have been discussing and will continue to discuss here today. I come here to reaffirm the commitment of the Government of British Columbia to political reform, and to reaffirm the commitment of the Government of British Columbia to a process that will engage citizens in a dialogue about the difficult question whether we should change the way we vote for those who govern us. There is much that each of you can add to that discussion. The discussion of how to implement the

commitments we have made, the commitments we intend to keep and I look forward to hearing the results of your deliberations.

Thank you again for inviting me.

[Applause]

Gordon Gibson:

Mr. Plant has kindly agreed to take questions. With the spirit of this conference we're recording it. There's the microphone right there. I would be grateful if you would come forward and identify yourself and proceed with the question.

Ted White, MP, North Vancouver

Minister, I attended a meeting you were guest speaker at just a few weeks ago and I asked you questions about the referendum on Native land claims. I was very buoyed by your answers and felt you had a commitment to it. So I'm a little disturbed to hear the news reports in the last few days that some research has been done into comparing a mail in ballot with a true electoral type of ballot for this referendum. Now keeping in mind that the results of this ballot has to be seen to be valid and perceived to be valid, what on Earth was the thinking behind any idea that you could run a mail in ballot for this process?

Hon. Geoff Plant

Well, I don't think you can make good public policy decisions particularly expensive public policy decisions without canvassing the options. And the objective of the referendum is to give all citizens of British Columbia a one-time opportunity in the form of a vote on the principles that should guide the province's treaty negotiators as they sit down and negotiate treaties. The government is thinking about how, what is the most effective, efficient, fair, and affordable way to give affect to that commitment and in that regard we did impose upon the folks at Elections BC to give us a sense of what the cost would be of some of the options and we were much assisted by the work that they have done in giving us a bit of a sense of what the range of costs are.

Ted White, MP, North Vancouver

Oh, Minister, please do not throw away eight million and have a worthless result. Please consider very carefully that you need to do an electorally sound referendum.

Hon. Geoff Plant

The state of Oregon of course they do electorally sound voting by mail so it's not something that is completely unique. Anyway, but thank you for that.

David Elton

Mr. Minister, I've been working on this issue for 30 years.

Hon. Geoff Plant

He's too tall for the microphone for those of you who can't see.

David Elton

I am too tall... How're we doing now. My name is David Elton, I the Director of the CanadaWest Foundation. I've been working on direct democracy and parliamentary reform issues for thirty years. This is the first time I've heard as clear a declaration of intent on this issue in that thirty year period and I thank you very much for it. I think this is a window of opportunity that British Columbians should take and seize and act on very quickly. We've never had anything quite like this in Alberta.

My question, however, deals with a comment that was made this morning that many of us have heard before. In all of these kinds of issues the devil is in the details. And so I want to deal with one issue that you indicated that your government has already done and I'd like you to tell us how your dealing with that and that's particularly the issue of non-confidence votes. It's easy to say we're going to provide a free vote for all non-confidence votes and then make all subsequent votes confidence votes. How would you as a minister and how are you as a minister going to determine the issues that come from your department which one of them will be confidence votes and which one of them will be non-confidence votes?

Hon. Geoff Plant

The starting point for that is this...confidence vote includes those things which are traditionally confidence votes. The address and reply to the throne and the budget. We have also determined that it did not make much sense to encourage people to run for office on the New Era platform and then to say they could vote against the elements of that platform when they became elected. It seems to me hard to figure out how they could have run for office on that basis. But when you examine the New Era document itself you will see that some of the commitments in that document are expressed in precise terms, some are expressed more as principles or objectives and a precise manner of implementing those objectives is ... ,may well be something that will be a subject of debate within the larger society and even within the caucus. You said that the devil was in the detail. That's right! Although, I would put the point differently. The test of a commitment to free votes lies in the reality of its implementation. Which is a long way of saying time will tell. We did as an opposition party for five years between 1996 and 2001 implement free votes on a number of matters. I could wish that the headlines the morning after each of the days we did that were liberals bravely embrace concept of free votes. Interestingly enough the headlines were usually Liberals greatly divided on important and difficult issues.

I think we're all of us citizens, media, academics, participants going to have to get used to a few more of those headlines because the Premier continues to say that if it isn't the budget, the address and reply to the throne and New Era commitments it's not a confidence vote. Now that

isn't to say that from time to time issues may arise and clearly on May the 17th 2005 the voters of British Columbia will be able to assess the credibility of our claim against our record but the goal is to make it real.

Gary Lauk

Mr. Attorney, I want to join with others in congratulating the government in embracing electoral reform as openly as you have and I for one and my colleagues who have been concerned about this issue are hopeful of change. My question, however, having thrown you a bouquet is with respect to access to justice my deep concern in North America is that while the Soviet Union is starting to develop a system very slowly and not without real difficulties of the rule of law, we in Canada and Britain and the United States are whittling away at individual rights. That is to say individual's right to access the courts. We in the British Columbia through your, the government's prior to yours, have increased fees and costs so that ordinary citizens have absolutely no way to access the supreme courts of our province. What I'm concerned about, and I have friends who (I'll only be another hour)...

Hon. Geoff Plant

I lifted my foot up and I was worried I was going to knock the waters over. I'm waiting in breathless anticipation.

[laughter]

As I always am when you're speaking, Gary.

Gary Lauk

While you're catching your breath I will just say this. I am concerned with that and I was somewhat concerned with a speech you've recently given to, I forget the body, but it was on November 16th, where it sounded as if you were going to limit access to the courts by reason of high costs rather than turn your mind, although you did mention this rather than turn your mind to making it affordable to individual citizens.

Hon. Geoff Plant

While I appreciate that comment and the subject that it raises is the subject of ...that could occupy several speeches. We are looking at both the opportunity of justice system reform and the challenge of managing the publicly funded justice services in the province of British Columbia within a climate of fiscal reality that is frankly a bit daunting. I think that there is work we can do within that fiscal reality that will ensure that ordinary citizens have access to justice but I also think in saying that that the legal profession and that includes lawyers and judges and the public generally are going to have to from inside the box if you will push away at the lines and the walls around the box. I think that lawyers care about adjudication. Clients care about having your disputes resolved. The two are sometimes the same thing. They are not always. In family law disputes for example dispute resolution I think is in many cases and we could quibble about how

many, dispute resolution achieves in an atmosphere that encourages a constructive continuing relationship is hugely preferable to a seven day trial fighting over issues that the parties are going to have to live with and I think that in fact there is work that needs to be done across the spectrum to ensure that mediation, alternative dispute resolution is provided to citizens across a wider range of disputes than is currently the case. I don't think there is much prospect of reducing the fees that are currently charged for access to the supreme court of British Columbia but we did campaign on a commitment not to increase them and I have to tell you when you are facing what an independent fiscal review panel said was before we did any tax reform a structural deficit of 3 billion dollars next year and 3.8 billion dollars the year after that it's a challenge because fee recovery is certainly a tool that governments would like to use to try to offset the cost of providing services. We're not going to increase these for access to the courts but we are going to be forced to make some changes to ensure that we can operate the justice system in a way that was within the financial reality and when we get the last part of this is when all of us as ministers of the crown get a sense from the Finance Minister and the Treasury Board with the government caucus committees of what our financial (lugbolts?) are, we're all going to have to roll up our sleeves and figure out how to deliver the services that need to be delivered and to maintain the values including the values that you've talked about which are important to all free and democratic societies.

Peter Dobell, Parliamentary Centre, Ottawa

Minister, I was encouraged by your statement as it referred to free votes. I was also encouraged by your response to David Elton's very appropriate question. I was a little disturbed when you described the conditions under which a member might be free to vote against and you said if his constituents wished it or thought it appropriate. I hope that also includes just disagreeing with the policy. One of the concerns or one of the challenges which I think you face as a government where you really have no opposition is that the credibility of the Legislature will depend on the extent to which there is debate in the chamber and so I hope that the courage that your government is displaying will go so far as to actually promote division or debate between members of the party in the chamber and if you are successful in doing that then I do believe you could become a model for the reform of the political culture of Canada.

Hon. Geoff Plant

Well, thank you for that comment. I had intended to say that the way in which free votes would work was to help give individual MLAs a real voice in the decision-making process of government and individual opportunity to exercise individual judgement and give the electors of constituency MLAs a more direct voice in the Legislature through their elected representatives. I tried to cover all bases there. I know that there is a debate about what the role of elected MLAs should be in a representative democracy whether is the Brukeian (sp?) your know Burke 1 or Burke 2 (sp?) What he first said to the electors of Bristol and then what he said when he changed his mind (?). And that's only 225 years ago so I don't think that I'm not sure that we've achieved any greater clarity on that subject in the last two centuries. Clearly, each individual MLA is going to have to figure out what is their rationale for making decisions and I think it ought to be the toolkit if you will, or the range of options ought to include simple disagreement with the policy of government. I'm not by the way, you know, I'm not for example suggesting that none of my

caucus colleagues who are not members of government would be permitted to exercise free votes without conducting constituency polls for example. I don't advocate that. They can do what ever they want probably the best way of putting it.

Wonderful!

Gordon Gibson

Are there any further questions? If there are no further questions, let me just take a moment on your behalf to say what both an honour and a pleasure it is to have a Minister come before a gathering like this and bring what I can only describe given what we're looking at here as a message of hope. I thought it was just extraordinary. I thank you very much. I would like to present you, we've had an on-going debate today as to whether red ties or blue ties are appropriate I see the one here is blue. I want you to know we have an open exchange policy if it doesn't suit you.

Hon. Geoff Plant

What colour did Andrew get?

Gordon Gibson

Andrew got red actually. So in any event, thank you very, very much. We are honoured by your presence and gladdened by what you said. [Applause] Ladies and Gentlemen, that concludes the luncheon we will reassemble next door in about five minutes. Thank you very much.