

Introduction:

The Commission continues to be guided by the principle that questions on matters of national importance regarding the constitution must have input from the electorate; maintain clear and open governance; and ensure non-partisan debate is an integral part of its process.

As part of our research and expert consultation phase the Commission requested that various individuals provide discussion papers on the issue of People Initiated Referendums. It is our opinion that there are many available options for establishing legislation to govern the referendum process.

The following comments represent the views of Mr. Peter Schmid as it pertains to referendums and the possible impacts that they may have on direct democracy.

Discussion

Having been born and raised in a direct democracy where citizens of voting age are accustomed to being asked to cast their vote on national and local issues several times a year, it is difficult for me to be content with exercising my vote only once every four years and then accept the level of representation that the elected representative provides, especially so if beneficiaries of my vote were not successful! This is the case in our Parliamentary Democracy. Within any electoral district there may be great divergence of opinion and if the successful representative has been elected by a small margin, then it is highly likely that a significant percentage of voters feel under- or worse, miss-represented.

On the other hand I have seen hysteria at work in a direct democracy, where well thought out and beneficial legislation was rejected or overturned by a small group of well organized and motivated voters who exercised their right of referendum and did cast their ballot, while the majority couldn't be bothered to engage until it was too late.

Clearly, both forms of democracy have their positive and negative aspects just as most issues being dealt with by legislators do. Further, under both systems, popular opinion is often being manipulated by special interest groups and or individuals.

Many times legislation is being proposed and enacted which, to the casual observer, seems beneficial to the community or benign in its impact on the daily lives of the citizenry. Often the legislation or regulation is titled in such a way so as not to attract the attention of the busy citizen on the street. Further, the elected politicians are often required to horse trade on issues in order to get support for their own agenda, so it is quite possible and often the case, that legislation is enacted that is contrary to the wishes of a significant portion of the voting population. In the absence of a referendum, there is no recourse to either amend or reverse this legislation.

This is why voters require an instrument that is more precise and surgical than the Ballot box at the next election. Sometimes the very knowledge that there is a means of overturning a piece of legislation would encourage the Legislators proposing and enacting these legal instruments to pay more attention to the details and effect on their

voters. (The mass grant of Cayman Status some years ago, could certainly have benefitted from the scrutiny of citizens to improve the process)

Recently we have seen significant verbal activism on a grassroots level on local issues, such as the consideration of various measures to re-vitalize the local economy and improve the financial situation of Government. Various proposals such as the sale of the new Government Administration Building, the creation of a Cargo port in East End, the reduction in remuneration for Civil servants, all evoked vigorous debate and were roundly rejected by the affected parties. This expression of public opinion did not seem to be orchestrated by the elected opposition, rather it emanated from the voters and other concerned residents themselves. One of the reasons I mention this strong expression of opinion is because it demonstrates one of the negative aspects of direct democracy, where voter participation is required to decide on many national issues and where, in certain instances, referendums are automatic: it can and often does result in gridlock. We further observe that public opinion and polling, as well as petitions can and have been quite effective here in Cayman without going as far as calling for, or actually collecting signatures for a Petition much less a “people initiated referendum” perhaps the close proximity of elected representatives and the voters improves the transmission of sentiments.

On the downside, it also demonstrates the effect of a small group of vociferous individuals, who by the use of the media, have an effect far beyond what their numbers justify. This “squeaky-wheel” effect demonstrates another point of the usefulness of properly designed instruments, like a referendum, by which the citizenry can express the sentiments of the majority. As I stated before, any instrument can be used for good or the bad.

Let us consider the situation if Government was holding an Island-wide referendum to determine if the majority of Citizens would favour relocating the Island’s garbage facility to the inland area of High-Rock (East End). Given that there are not that many voters in East End, it is quite likely that the referendum would succeed and the majority would have imposed its view on the minority, in this case the East End voters. On the other hand, had the Government decided to relocate the “Dump” to the afore mentioned area and the Voters of East End decided to initiate a referendum to try and reverse the Governments decision, it is highly likely that they would fail in securing enough signatures to actually force the government to bring the matter before the people, much less enough votes to overturn the decision. This is known as the “Tyranny of the Majority”.

Another consideration is the possibility of a referendum initiated by either side on local matters which could lead to legislation, where not just voters, but also residents could participate. Let us look at a hypothetical “bottle law”, let’s say that a significant percentage of Cayman residents would like the government to introduce a law which requires that there is a refundable deposit charged on all bottles in order to help protect the environment. Now this may be an issue that would not normally get a lot of traction with the legislators, however if 5% of the adult population of these Islands would append their signature to such a proposal, the Government of the day would be hard pressed to ignore the issue. This then would be yet another version of referendum, where for local regulations of the above mentioned calibre, participation in the referendum would not be limited to voters/citizens.

The issue of Recall (of an elected politician) is another difficult issue for Cayman because our representatives are elected on a district basis and not on a national level. While we are familiar with the concept of a bye-election which again would be conducted on a district level, I doubt that there would be much support for a recall of elected representatives. That is not to say that holders of national appointments, such as the various Ministers, Deputy Premier and Premier could not be subject to recall resulting in a recommendation for their removal from those offices.

Conclusions

In my opinion, it is human nature to always seek more control over the forces that shape one's life. However it has been my experience that many people are selective of what they will engage on and to what extent they will inform themselves on the facts of any given situation, before uttering their opinion or casting their ballot.

Participating in a direct democratic process is a burden as well as a privilege, in my experience, many people tire of the effort required to be well informed in order to exercise their privilege (vote) for the best outcome. Unfortunately this then opens the door to those elements that would avail themselves of the opportunity to manipulate the electorate with misinformation to achieve an advantageous outcome.

Without any disrespect intended, it is my opinion that the majority of Cayman voters of today, are not as independently strong and mentally resolute in their beliefs as they were when they had to be more self sufficient in the times when Cayman was the Islands that time forgot. Rather, we have become more confused with all types of influences bombarding us daily via the media emanating from foreign lands where different types of sovereignty and democracy apply. Our citizenry is still coming to grips with the idea of direct participation on an issue by issue basis, it is my hope that the extensive presentations that have led up to the referendum on and passage of the Cayman Islands Constitution order 2009, have been an education and part of a maturing process for the electorate on our Islands.

Of course we cannot overlook the limited scope of our Government, given the reserve powers of the Crown.

Recommendations:

It is my strong conviction that a number of instruments ought to be enshrined in the Constitution:

- The People-initiated referendum, as outlined in Part IV, 70 of the Cayman Islands Constitution is in my opinion too restrictive. I propose that a number equating to 10% of the registered electorate should be suffice to require the Government to bring the referendum before the people. A simple majority of those casting their ballot should decide the issue. I further propose that amendments of the Constitution ought not to be exempt from that process!
- On issues of national significance, I propose that we design a petition instrument that would allow adult residents of these Islands to indicate their convictions to the Government of the day, by appending their signatures and if the petition was supported by 10% of the Islands resident adult population, Government would be required to debate

the matter in the legislative assembly within six months of the petition having been submitted to the government with a view to acceding to the peoples wishes.

- I would like to see a robust process to be enshrined in Law that would allow the removal of appointed persons in Government from their appointed positions.

Peter Schmid

16 September 2010

Bio:

Mr. Schmid hails from Switzerland, where he gained firsthand experience with the workings of a direct democracy and its features.

He is educated to College level, and has worked his entire career in the hospitality/tourism & air transport industries. Mr. Schmid has also served on boards of service clubs and professional associations and is the holder of a number of official appointments.

Mr. Schmid is a 40 year resident of the Cayman Islands and is actively engaged in and concerned with the community and people exercising their democratic rights and obligations lest they lose them.

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