



House of Commons  
CANADA

# **Standing Committee on Procedure and House Affairs**

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PROC • NUMBER 025 • 2nd SESSION • 40th PARLIAMENT

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**EVIDENCE**

**Tuesday, November 17, 2009**

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**Chair**

**Mr. Joe Preston**



## Standing Committee on Procedure and House Affairs

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• (1100)

[English]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** I call the meeting to order. Let all the members know we are in public today. We're commencing our study of the Referendum Act.

To kick that off, we've invited Monsieur Mayrand back to our committee.

We know you have some opening comments. Would you please introduce the people with you. Our meeting is split into two today. Monsieur Mayrand, we're giving you one hour. We have another witness in the second hour.

[Translation]

**Mr. Marc Mayrand (Chief Electoral Officer, Office of the Chief Electoral Officer):** Thank you, Mr. Chairman. I'm pleased to meet with the committee to discuss certain issues set out in its proposed work plan to review the Referendum Act.

With me today are Stéphane Perrault, senior general counsel and Jean-François Morin, legal counsel.

In my remarks today, I will be drawing the committee's attention to various points that I feel should be taken into account during the review of the referendum regime.

Let's begin with the legislative framework for referendums. As things stand today, two main instruments govern federal referendums in Canada: the Referendum Act and the Canada Elections Act as adapted by regulations made by the Chief Electoral Officer.

The committee proposes to review various legal frameworks that could replace the one introduced in 1992. I will be talking today about two types of frameworks that could be considered, as well as various options relating to each.

The first type involves a partial referendum statute. In this scenario, most of the operational questions are resolved through adaptation of the Canada Elections Act. This type of legal framework poses certain difficulties, however, to ensure the harmonious integration of the operational provisions necessary for the conduct of a referendum, and as regards the entity charged with this integration.

One option here would be to have a referendum statute without any companion regulations or instruments, where it would simply be provided that certain aspects of the Canada Elections Act apply to referendums with "any adaptations that may be required".

This simple approach has some major disadvantages, however, related to the fact that the adaptation of the Canada Elections Act by the Chief Electoral Officer does not have the force of law. The absence of a precise, authoritative text can create uncertainty as to the applicable rules and give rise to challenges. This is especially problematic when it comes to enforcing legislation. In my opinion, this is not the best approach.

Another option would be to have companion regulations. Under the current Referendum Act, it is the Chief Electoral Officer who makes the regulations. The regulations adapting the Canada Elections Act could be the subject of a negative or positive resolution by Parliament. Thus, parliamentarians could have a more formal say on the regulations.

The second type of legal framework consists of a complete referendum statute. Although more cumbersome, this approach would help avoid or resolve the difficulties associated with a partial system. One option with this type of legal framework would be to adopt a separate referendum statute containing all the operational provisions necessary to hold a referendum.

This is the model Australia has adopted to hold referendums on proposed changes to the constitution. This idea has merit, particularly for situations where a general election and a referendum are held separately. But this solution would need to be fine-tuned in cases where an election and a referendum are held simultaneously, since coordinating provisions would have to be made to avoid legislative conflicts. Each time the Canada Elections Act is amended, it would be necessary to make corresponding amendments to the referendum statute.

A second option would be to integrate into the Canada Elections Act all of the provisions enabling referendums to be held. This would make it easier to update the rules governing a referendum, which in turn would make for a clearer process. This, too, has merit as a potential solution, especially if a general election and a referendum are held at the same time.

Concerning the referendum, the committee intends to study the possibility of holding a general election and a referendum simultaneously. At least two Canadian provinces, Ontario and British Columbia, have recently experimented with this. Obviously, holding an election and a referendum at the same time has its advantages when it comes to costs. Advantages which I consider significant.

Also, this formula might have a positive impact on voter turnout for one or both events. Naturally, the election and referendum periods would need to be harmonized if they were held simultaneously. The question of printing special ballots for a referendum, raised during my appearance on October 8 and 20, should be included in this analysis. Holding an election and a referendum simultaneously poses challenges, mainly when it comes to political financing.

• (1105)

In particular, it may be difficult to distinguish the referendum debate from the election debate and to compartmentalize the expenditures, especially for advertising. In this regard, the committee might want to consider the relevance of referendum committees when a referendum takes place at the same time as a general election. The vehicle already offered by political parties, candidates and third parties during an election period could prove sufficient to efficiently drive a debate on the referendum question. The absence of referendum committees in an election period would reduce the difficulties and the risk of abuse associated with the participation of many types of stakeholders subject to a variety of rules.

[English]

I'll now turn to the matter of referendum committees and their funding methods.

The committee may be looking into the possibility of consolidating the referendum committees into for and against camps and imposing a spending limit on each camp. This concept is used in Quebec, where these groups are called umbrella committees, or national committees. In particular, the umbrella committee model makes it easier to limit spending and control contributions.

The main caveat associated with this option, as opposed to the option of providing for an indeterminate number of committees supporting each camp, has to do with its complexity and the need to maintain the system's internal coherence. The model that is ultimately chosen must be flexible enough to allow the participation of a great number of stakeholders, be they national, provincial, or local. This is a challenge that must not be underestimated at the federal level. The model must also take account of constitutional parameters governing freedom of expression by groups unable or unwilling to affiliate themselves with one camp or the other, a question the Supreme Court of Canada considered in the case of *Libman*.

With regard to the spending limit imposed on referendum committees, the current federal regime is based on the number of electoral districts in which the committee intends to be active. No doubt, this distinction may be seen by some committees as an invitation to declare a desire to act nationally to increase their spending limit. The intent criterion could be replaced by an objective criterion like a national limit or a combination of provincial and national limits. This idea, much like the system of limits on third party election advertising spending, has its advantages in terms of fairness. It could be better adapted to the referendum debates that take place at the provincial level, such as is often the case where constitutional reforms are concerned.

Last, the manner in which the referendum committees are funded is also an important issue. The current Referendum Act does not

place a ceiling on contributions and allows donations from corporations and unions. This in itself is not an anomaly. Referendum committees, like third parties under the Canada Elections Act, do not aspire to power. Either can receive contributions that are not permitted for candidates or political parties.

The current system also allows financial participation by the government in funding referendum committees. If limits are placed on the origin or value of the contribution a referendum committee can receive, parliamentarians should consider whether minimum public financing should be provided to allow an informed debate on the referendum question. If parliamentarians conclude that such public funding is desirable, the question of distributing these sums between the two camps, and more importantly among each camp's committees, should also be addressed.

I will now address the interaction of federal and provincial referendums.

During the 1992 referendum, certain problems arose owing to the simultaneous conduct of two separate referendums—one federal and the other provincial—held the same day and on the same question. Since the rules differed from one referendum system to the other, particularly when it came to the procedure for revising the list of electors or for advance polling dates, election administrators had difficulty keeping electors properly informed, particularly in border areas for the two systems. Furthermore, the difference in the rules used by the two systems to determine who qualified as an elector was at the heart of the decision of the Supreme Court of Canada and *Haig*.

Territorial overlap also makes it more complicated to control spending by referendum committees in regions where the media disseminate referendum advertising that can reach electors in both systems.

Another challenge that had to be tackled in 1992 was coordinating federal and provincial provisions prohibiting early broadcasting of results. The provision of the Canada Elections Act dealing with this question does not take into account that the results of an event governed by provincial statute can influence the result of a federal event taking place concurrently. Because this risk was presented in 1992, the Chief Electoral Officer of Canada had to make a regulation to extend the scope of this provision to the results of the Quebec referendum. In most cases, difficulties of this sort are part and parcel of holding two parallel events.

• (1110)

Mr. Chairman, this concludes my presentation. At this stage of your proceedings, I primarily wanted to bring to your attention issues to consider, rather than solutions.

I will follow with interest the committee's review of the Referendum Act. It will be my pleasure to appear before you toward the end of this review, when certain strategic choices have been examined. At that point I will be better able to answer certain questions of a more technical nature that may have arisen during the proceedings.

My colleagues and I are now ready to answer your questions.

Thank you.

**The Chair:** Thank you, Monsieur Mayrand, for bringing maybe not answers but questions to us today. We'll move forward on those.

Committee, we're going to hold to five-minute rounds all the way through. We'd like everybody who wants to ask questions to have a chance to do so.

Madam Jennings, please go ahead. We'll watch the clock closely today.

[Translation]

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Thank you, Mr. Chairman. Thank you, Mr. Mayrand.

I was reading your presentation while you were delivering it. On page 3, you refer to various options including the option of a second type of legal framework under which there would be two options. Being a lawyer myself, I prefer the second type of legal framework, and I like the second option at the bottom of page 4. It would involve integrating all referendum-related provisions within the Canada Elections Act.

I'd like you to take the time I have left to explain to us why you believe that this legal option would facilitate the holding of referenda, and, if legislative amendments were to be made, why you believe this option would facilitate the holding of a referendum.

• (1115)

**Mr. Marc Mayrand:** The main advantage would be clarity. Today, there are three statutes we must refer to, the Canada Elections Act, the Referendum Act and implementing regulations. We have noted that the Canada Elections Act regularly evolves as a result of amendments passed by Parliament, whereas the Referendum Act has remained static since 1992, more or less. I believe there has only been one set of amendments.

The idea of merging the two and of having a complete code governing referenda and elections would provide greater certainty as to applicable rules, and insure that when we update the Canada Elections Act, we also consider adapting the legislative regulations that apply to referenda.

Essentially, it would insure greater certainty and better updating of both.

**Hon. Marlene Jennings:** Should I presume that you prefer the option of a legislative framework within which all the provisions of a referendum act would be integrated as well as the rules regarding referenda within the Canada Elections Act?

**Mr. Marc Mayrand:** In my opinion, that is the ideal solution. I would not want to lose sight, however, of the fact that it is a significant burden for legislators and parliamentarians when they revise legislation. As far as electors and stakeholders, it would guarantee far more certainty, I believe.

**Hon. Marlene Jennings:** Thank you.

[English]

**The Chair:** Thank you. That was excellent. You were very frugal with your time today.

Mr. Lukiwski is next.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you, Mr. Chair.

Thank you, Monsieur Mayrand, for appearing here. I have a number of questions, but obviously I'll try to focus on one and perhaps get to the other ones on subsequent rounds.

First, Monsieur Mayrand, I know you are probably somewhat reticent about offering opinions because of your position. However, since you quite correctly would be considered somewhat of an expert analyst or someone who has dealt with these questions many times before, I would appreciate it if we could get some opinions from you—and again, whether that's viewed as your recommendation is something this committee can consider—particularly on committees themselves, referendum committees and funding of those committees.

Here's what the first question should be about, because you've raised a couple of options here, one being that the committee could decide or the act could determine that having no committees at all is an option, and that the messaging for the positions either for or against a particular question could be handled through the existing political system or through other methods without necessarily needing to have committees involved. What is your opinion on that? Are you a pro-committee or an anti-committee sort of guy? I have my own thoughts on this, but I'd like to hear what you have to say.

**Mr. Marc Mayrand:** I must say that it depends on the premise. If we have concomitant events, an election and a referendum at the same time, it would be relatively—I'm saying this with caution, however—simple to adapt the third party regime that exists in the current act to meet the requirements of a referendum in an election. Again, I don't necessarily see the need for committees for concurrent events. I think we can build on what already exists in the Elections Act and the regime for third party advertising. If we have a separate legislative framework with separate events, I think the regime of committees needs to be addressed.

• (1120)

**Mr. Tom Lukiwski:** I'd like to get your opinion.

For committees, regardless of whether it would be a stand-alone referendum requiring committees to be established or whether it was in conjunction with an election, what is your view on whether government should be funding committees? Or should committees be required to raise funds through their own sources, but not through government?

**Mr. Marc Mayrand:** Oh, I think that's a matter for Parliament, honestly, to determine whether it's desirable. I think it's an issue of public policy.

I will note, however, that in some provincial jurisdictions there is some public funding for both camps participating in the referendum. Again, whether this would be desirable for a referendum at the federal level.... Again, building on the third party regime, there's currently no public funding for third parties.

**Mr. Tom Lukiwski:** Could you give some...? I'm unaware. What are the current limits for funding from jurisdiction to jurisdiction? That's not necessarily government funding; I'm talking about third party funding. What are the ceilings of some of these committees?

**Mr. Marc Mayrand:** Quebec has a limit, but in terms of funding for contributions...?

**Mr. Tom Lukiwski:** Yes.

**Mr. Marc Mayrand:** Contributions in Quebec are limited to \$3,000.

**Mr. Tom Lukiwski:** Is that per committee?

**Mr. Marc Mayrand:** No, it's per elector, per contribution. Only electors can make contributions, up to \$3,000.

**Mr. Tom Lukiwski:** But is there a limit that the committees could receive?

**Mr. Marc Mayrand:** I'm not aware—

**Mr. Tom Lukiwski:** So theoretically, if there were a real hot-button issue, the committees could receive several hundred thousand dollars to advocate their positions during a referendum. Is that your understanding?

**Mr. Marc Mayrand:** I'm not aware of a limit in terms of contributions to be collected, but there's a limit on spending.

**Mr. Tom Lukiwski:** Certainly. What would the spending limits then be?

**Mr. Marc Mayrand:** It varies.

**Mr. Tom Lukiwski:** On the jurisdiction?

**Mr. Marc Mayrand:** It depends on the number of electors. It's a percentage, an amount of money per elector. It's around 50¢, but for a more precise amount, I would have to come back to the committee.

**The Chair:** Thank you, Mr. Lukiwski.

Monsieur Guimond.

[Translation]

**Mr. Michel Guimond (Montmorency—Charlevoix—Haute-Côte-Nord, BQ):** Thank you, Mr. Chairman.

Mr. Mayrand, I have one single question. It has to do with the funding of umbrella referendum committees. You referred to them in your presentation.

Perhaps the revised Referendum Act should consider accounting for third party expenditures. In Quebec, last time there was a referendum, in 1995, there was a serious problem in this regard.

I believe you are originally from Montreal. You may recall that three days before the 1995 referendum, there was a gigantic love-in in the downtown core of Montreal. People from all over Canada came to tell us how much they loved us and how important it was for Quebec to remain within Canada.

We often see that over here. Our friends from all parties and all provinces regularly tell us how much they love us and to what extent they do not want Quebec to separate from Canada.

At the time, Air Canada and Canadian Airlines had offered \$99 return airline tickets. VIA Rail train tickets from Toronto and Ottawa, as well as some bus company tickets, were being sold at rock-bottom prices. I will spare you the details about the cost of phone calls. As a lawyer, I do not know how someone was able to get my phone number from the Bar Association, but I received a phone call from a Vancouver lawyer. I asked him how he knew that I was a lawyer, because my name is not in the phone book. As far as I am concerned, phone numbers are private information. In any case, that is the Quebec Bar Association's problem. This lawyer had called me to tell me how much he loved me and how important it was to

him that I remain Canadian. I did not ask him what his sexual orientation was. I was happy to hear that he loved me.

In short, there were phone calls, and members of all professions experienced this. I am giving you this example because I am a lawyer, but doctors, engineers, people from all professions received loving phone calls from all over Canada.

So, my question is whether third party expenditures would be accounted for under a maximum allowable amount for each of the two sides, the "for" and "against" or the "yes" and "no". Is there a way to account for these expenditures?

• (1125)

**Mr. Marc Mayrand:** I would summarize by saying that in the amended act, there should be a definition of acceptable expenditures and of the type of reporting or accounting that must be made of these expenditures. That is how third party expenditures are handled during elections, by and large. I would assume that at the conclusion of the committee's work, that would be included in a referendum act.

**Mr. Michel Guimond:** Thank you, Mr. Chairman.

[English]

**The Chair:** Thank you.

Mr. Christopherson, it's great to have you here visiting us today.

**Mr. David Christopherson (Hamilton Centre, NDP):** Thank you, Chair. It's good to be here.

**The Chair:** Five minutes for you.

**Mr. David Christopherson:** Thank you.

Thank you very much for your presentation. I realize how carefully you're walking around giving educational answers versus an opinion versus trying to participate in the debate. I respect that. I'll just ask my questions. If it crosses the lines, just say so and I'm good with that.

I want to be clear on the notion of simultaneous referendums. On a scale of one to ten, ten being wonderful and one being lousy, what are your thoughts?

**Mr. Marc Mayrand:** From my perspective as an administrator, I would suggest that it's much more efficient to run concurrent events. Given the cost of an event at the federal level, I think there would be substantial savings if we were to have concurrent events.

**Mr. David Christopherson:** Thank you.

There are some around the table who are not as keen on public financing of debates. Some of us feel strongly about limiting the influence of money. People have a right to participate, but what we don't want is that those who tend to have more money have more democracy or more say in the democratic process.

This may be one of the areas on which you can't answer. In the interest of democracy and not allowing money to overly influence the outcome of any referendum, how much, as a percentage, should be public participation versus public financing? Should it be 50-50 overall? Should the bulk of it come from taxpayers?

**Mr. Marc Mayrand:** I brought this matter to this committee for consideration given the significant evolution of the political financing regime for elections over the last 20 years.

**Mr. David Christopherson:** Yes, some of us like that.

**Mr. Marc Mayrand:** I brought to the attention of the committee, for the committee's consideration, the fact that limits on contributions are quite different for an election and for a referendum. Spending limits for committees, under the current referendum regime, are quite different from what exists for third parties during elections. So there is obviously a variance and a divergence between the two financial regimes provided by the two statutes.

I brought it to the attention of the committee, given the evolution of political financing over recent years, so it could consider whether the regime in place for referendums, which was set out in 1992, still reflects, from a public policy perspective, the view of Parliament.

• (1130)

**Mr. David Christopherson:** Thank you. That's very helpful. I appreciate your answers. They are very wholesome.

Could you help me understand a little more about the background to the Libman decision? You make reference that this needs to be taken into account. I'm sure that you already have done that in some way. Specifically, can you outline that decision and its implications for our deliberations?

**Mr. Marc Mayrand:** Mr. Libman was an elector in Quebec during the 1992 referendum, which was governed by Quebec legislation. He argued that the mandatory requirement, under the Quebec legislation, that he had to be part of an umbrella committee on either side infringed upon his freedom of expression and his freedom of association. After fulsome consideration, the Supreme Court ruled that his individual right to freedom of expression and freedom of association was infringed upon by the provisions in the legislation.

I'm not familiar with all that followed, but I believe that Quebec's Referendum Act was amended afterwards to factor in the consideration of the Supreme Court.

**Mr. David Christopherson:** Can you help me understand what that change was? What did they change to take into account that ruling? What was in place, in layperson's terms, and what did they amend it to as a result of Libman?

**Mr. Marc Mayrand:** I believe you will hear from my colleague from Quebec later this month. My understanding is that they reviewed the definition of expenses that could be incurred and introduced a new category of eligible electors who could incur certain expenses, as defined by the statute.

**Mr. David Christopherson:** Did that result in more...?

**The Chair:** Your time is up, Mr. Christopherson.

**Mr. David Christopherson:** That's fine.

Thank you for your answers.

**Mr. Marc Mayrand:** I mentioned 1992. I believe it was the 1995 referendum.

**Mr. David Christopherson:** It was 1992 when the legislation came in.

Thank you. *Merci*.

**The Chair:** We'll go to Mr. Cuzner.

**Mr. Rodger Cuzner (Cape Breton—Canso, Lib.):** Thank you very much.

You said there would be substantial savings in running parallel elections and referendums. Could you expand on that? Could you give us some indication of the cost of past referendums?

**Mr. Marc Mayrand:** That's in 1992. I'm sorry, I don't have that number fresh in my mind.

I can certainly offer to the committee that I think the last election cost around \$278 million. Included in that are reimbursements, so if you subtract about \$50 million, it's about \$225 million or so to run a general election.

A national referendum is very similar to a national election, so we're talking about a figure like that.

**Mr. Rodger Cuzner:** The synergies are found within, so there would be costs attributed to it.

**Mr. Marc Mayrand:** There would be costs, but much less significant because you're combining the events and so you don't need to rent places twice, you don't need to hire staff twice, etc., and that adds up very quickly.

**Mr. Rodger Cuzner:** Is there a ballpark number you could affix, with the synergies?

**Mr. Marc Mayrand:** I would have to do that analysis. Knowing what the regime would be, I would be able to do that analysis.

**Mr. Rodger Cuzner:** You said in your presentation, "The absence of referendum committees in an election period would reduce the difficulties and the risk of abuse associated with the participation of many types of stakeholders subject to a variety of rules." Could you expand on the types of abuses you would see avail themselves in a situation like this, where they're paralleled?

• (1135)

**Mr. Marc Mayrand:** I can only reflect what we observe now and what the sources of complaints are during an election.

I guess the most common complaint we receive regarding the third party regime is that these third parties do advocate a position that is often seen by others as being pro or against a certain party or a certain candidate. If you add committees to that, or let's say we have a regime with concurrent events and there are committees, third parties, candidates, and political parties, I think the risk is that it will only add to that perception from time to time that the line of demarcation between the various entities is not too clear. That's the concern I would have with multiplying the number of participants in the regime.

**The Chair:** Go ahead, Ms. Jennings.

**Hon. Marlene Jennings:** Thank you.

That raises a question in my mind on the blurring.

**Mr. Marc Mayrand:** I will add that in the current regime we have an unlimited number of committees. I believe it was more than 200 in the last referendum. Each of those national committees could spend up to \$18 million in today's dollars. Again, that opens the door to all sorts of potential abuse, although I wouldn't say everyone would abuse it.

I'm sorry, go ahead, please.

**Hon. Marlene Jennings:** You talked about the danger of blurring between third parties and political parties in terms of the positions that third parties are advocating; for instance, during an election. There is a danger of blurring, because it would appear in some cases that they're supporting a specific political party. Have you thought about possible measures we might want to think about to at least reduce the danger of that blurring?

For instance, if I look at Ontario, any government advertising has to go through an independent screening process to ensure there is no blurring between the political party in power and the government. They're not allowed to use minister's photos, etc.

Would that be a potential measure? I'm not saying it would be perfect, but would it be a potential measure that this committee might want to look at in terms of ensuring, as much as possible, there is not that blurring between third parties?

**The Chair:** Please give a very quick answer.

**Mr. Marc Mayrand:** I'm not familiar with the regime there. My immediate reaction would be to ask if there is a distinction between what happens during a campaign and outside of a campaign. During a campaign—and nothing is impossible—I'd have a hard time with submitting the advertising campaign of either the government or parties to a third party review, given the very short time of the campaign.

**Hon. Marlene Jennings:** I'm talking about third parties.

**Mr. Marc Mayrand:** Even third parties.

**The Chair:** Mr. Reid.

**Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC):** Thank you, Mr. Chair.

The first comment I have is not to the Chief Electoral Officer but rather to our analyst. I wonder if we could, for a future meeting, get a report on the implications of the Libman decision to all of us.

**The Chair:** Yes.

**Mr. Scott Reid:** That would be very helpful.

With respect to the second question, we have gone through one experience, which was with the national referendum under current legislation. There were two previous experiences. We do this about once every half century, on average, in Canada. There were two previous experiences under different legislation, in the 1890s and 1940s.

But when the question comes up of up to \$18 million per committee being spent, I wonder about our experience. Do you have any idea of how much money was actually spent by committees on the yes and no sides in 1992? From having been there—I was on the no side at the time—it sure felt like the yes side was getting a lot more funding. It didn't cause them to win ultimately.

I wonder if we have a sense of those numbers. That's on the theory that the past is a good guide for the future.

• (1140)

**Mr. Marc Mayrand:** I have very rough figures here. Together, the 241 committees collected \$12 million.

**Mr. Scott Reid:** For both sides.

Do you have any idea, roughly, of what the yes and no sides were at that time? Is that in your numbers?

**Mr. Marc Mayrand:** Yes, I have that and I will share that with the committee. It was a little over \$11 million for the yes side, and \$800,082 for the no committees.

**Mr. Scott Reid:** Okay. That's what it felt like at the time.

That actually makes an interesting point, from the scholarship regarding funding of referenda in the various American states. California, which is bigger than Canada in population and GDP, has most major decisions made by means of a referendum. They're constitutionally forbidden to put on spending limits. The scholarship seems to indicate that money, at least for the yes side, tends not to actually win referenda. I'm not sure if the numbers for the scholarship are different for what happens on the no side of various propositions. Anyway, that's an interesting observation.

The more fundamental question is this. It's not that difficult to establish that if one were seeking to overcome some kind of funding limit, you could have multiple no committees and work it that way. My suspicion is that as a practical matter it would be very difficult, unless one went to the system that Quebec uses, where you have umbrella yes and no committees. If you don't do that, I think as a practical matter you have to accept that you're not really going to have spending caps. You could presumably limit who can contribute, freeze out the businesses and unions, but you can't ultimately control the overall spending on the yes and no sides. That's my impression.

Is that roughly your impression?

**Mr. Marc Mayrand:** If you have an unlimited number of committees, as provided by the current regime, again, we could look at this comparison, which is not perfect, which is looking at the third party regime currently. Again, there are no limits on the number of third parties who can register for an election, but they are all subject to a threshold limit. It's much smaller. I think it's \$250,000 or \$350,000 for a national campaign for a third party and no more than \$3,000 per electoral district. That's a model that maybe could be adapted, to some extent.

**The Chair:** You have 30 seconds, Mr. Reid.

**Mr. Scott Reid:** Thank you very much.

**The Chair:** All right, great.

Madame DeBellefeuille.

[Translation]

**Mrs. Claude DeBellefeuille (Beauharnois—Salaberry, BQ):** Thank you, Mr. Chairman.

Mr. Mayrand, when a nation, a province, decides to hold a referendum, it is always on a very important matter. It is important to ensure that both sides have fair chances and that justice is done to ensure democracy.

With respect to the second option you submit, you seem to be saying, unless I've misunderstood, that it would be more practical and easier to integrate the Referendum Act within the Canada Elections Act and that that would facilitate the application of rules.



What effect would that have had if it had been done by the time the 1992 referendum took place? What impact would that have had? What would the advantages have been, would it have been clearer? In 1992, for instance, Quebec held its own referendum on the same question but using its own legislation. Would your option to integrate one within the other change things? Would things have been different, for Quebec, for instance?

**Mr. Marc Mayrand:** I believe that that is a separate matter, as I briefly mentioned in my presentation.

The committee should consider—or review and perhaps even reaffirm—the option of two concurrent events being governed by two separate schemes. That is what happened in 1992. I would point out that that raises some issues for electors in terms of harmonization of rules between the two statutes.

It is up to the committee to determine whether it is appropriate to proceed to public consultations dealing with only one question but subject to two different legal frameworks.

• (1145)

**Mrs. Claude DeBellefeuille:** Mr. Mayrand, although I cannot see into the future, I do not think that the Government of Quebec, regardless of which party is in power in the province, would agree to hold a referendum which, for example, would be ordered by the federal government and administered in accordance with the federal as opposed to its own legislation. That is the scenario that you have presented to us.

If we were to go ahead with the amendments that you are suggesting, namely that the Referendum Act be integrated into the Canada Elections Act, and we were to see a repeat of the exercise carried out in 1992, with the Government of Quebec consulting its population on the same issue under its own legislation, would that change anything? Nothing would change. The Government of Quebec would invoke its legislation. As far as Quebec is concerned, integrating the Referendum Act into the Canada Elections Act would change nothing. It would have no impact on the decision, for instance, to hold the same referendum on the same question.

Perhaps I am not expressing myself clearly. I am trying to understand what changes that would entail for Quebec.

**Mr. Marc Mayrand:** From what I understand, that would depend on the order triggering the referendum. I would imagine that there would be discussions between the people from the various governments.

With the option that allows the use of various regimes, it would theoretically be possible to hold consultations in 10 provinces under 10 different systems. This is a matter that must be decided by the governments of the day. This option is always possible under the current Referendum Act, unless it is amended, as is the option of holding concurrent events.

As I already mentioned, that creates some administrative difficulties. A few cases have been sent to the Supreme Court of Canada. Voter eligibility is not the same under the federal legislation and under the Quebec legislation. Issues have been raised and they need to be clarified.

**Mrs. Claude DeBellefeuille:** Would the integration of the two acts guarantee a better balance in expenditures and fundraising for

the “yes” and “no” sides? Would such a measure make administration easier?

**Mr. Marc Mayrand:** The way I see it, the answer is yes. It is easier to deal with expenditures, for example, when you have a system that is better compartmentalized. When there are two parallel regimes, you will always have people who push the envelope for both of these regimes and try to take advantage of one or the other. In my opinion, that is the drawback of having two different regimes for the same question, for the same event.

**Mrs. Claude DeBellefeuille:** Is the Canada Elections Act stricter or more?...

[English]

**The Chair:** Thank you.

Mr. Christopherson, you're having a second chance before some others have had a first. Please be as frugal as you can with your time so we can make sure everybody who has a question gets a chance in this hour.

**Mr. David Christopherson:** Thank you, Chair. I will.

Theoretically, can you envision the practicality of having a federal referendum and 10 provincial referendums held at the same time?

**Mr. Marc Mayrand:** If there are 10, 11, or 14 referendums—the territories might have their own—except for collecting results at the end of the day, I'm not sure what role I would play in that. I assume that in those cases the referendums would be run by provincial authorities. That's what happened in 1992. The national referendum in Quebec was run by the provincial authorities in Quebec.

**Mr. David Christopherson:** Right, but I'm talking about the possibility of a referendum happening under a national government, and then provinces.

**Mr. Marc Mayrand:** The issue was raised again because we would have issues, I believe, of harmonizing rules among various jurisdictions. Again, eligibility for electors varies from jurisdiction to jurisdiction. The right to vote varies from jurisdiction to jurisdiction. Proof of identity, for example, is not the same for every jurisdiction. So you would have in some parts of the country some electors who would be eligible to cast a ballot on the referendum, but the same elector living in the next province would not be eligible to cast a ballot on the same question. So these are issues for Parliament.

• (1150)

**Mr. David Christopherson:** I have one more question, and I will end it there, thank you, Chair.

Do we have any examples of other federations around the world that have grappled with this already, and of any conclusions they've come to?

**Mr. Marc Mayrand:** With the issue of concurrent federal and...?

**Mr. David Christopherson:** Yes.

**Mr. Marc Mayrand:** I'm not aware of any.

**Mr. David Christopherson:** Perhaps the analyst will be good enough just to see if that does exist and how that's working for them.

Thanks, Chair.

**The Chair:** Thank you.

Mr. Lukiwski, the same thing, if you could. A couple of your colleagues would still like to get a question in.

**Mr. Tom Lukiwski:** Sure.

I'm going to, in a roundabout way, get back to the funding issue again. Let's just dumb it down here and really be clear. Currently, for a referendum question to be put on any kind of ballot, that would be the decision, ultimately, of the government of the day, whether it be national or provincial, right?

**Mr. Marc Mayrand:** Right.

**Mr. Tom Lukiwski:** So clearly some—not all, but perhaps most—of the referendum questions can be viewed as being highly political. Obviously, if it's a question of separation in Quebec, clearly it's political. Some may be less so. But for those referendum questions that are highly charged and highly political, every established party, obviously, one would think, would have a defined position on that question.

Currently, under electoral laws, individuals can contribute only a maximum of \$1,100 a year to a political party or candidate, yet you said that under the current situation—and correct me if I'm wrong here—individuals could contribute up to \$3,000?

**Mr. Marc Mayrand:** That's only in Quebec, sorry. That's the Quebec legislation. There's no limit at the federal.

**Mr. Tom Lukiwski:** So there's no limit whatsoever as to the level of contributions to committees or third parties outside of Quebec. Then if we went to the committee function or system, unless we decided to amend that, and there was a highly politicized question out there, you could only contribute \$1,100 to the party that represented your position but you could contribute, literally, \$100,000 to a committee or a third party to allow them to advocate the same position as your political party of choice? Is that correct?

**Mr. Marc Mayrand:** That's what is currently the case under the third party regime, except that the third party regime has much lower spending limits, I should point out.

**Mr. Tom Lukiwski:** Yes. I just think there has to be some consideration given to that by this committee.

**Mr. Marc Mayrand:** Especially, as I mentioned, depending on where the committee goes with respect to having a concurrent event or not.

**Mr. Tom Lukiwski:** Yes. I'm an unabashed supporter of having concurrent referendums with the provincial or national elections just because of the cost savings there, but there seems to be quite a disconnect. As I say, in the situation I outlined, if you were restricted to \$1,100 to give to your political party but you can give \$100,000 to a third party that advocates exactly the same position as your political party of choice—

**Mr. Marc Mayrand:** And corporations and unions can contribute —

**Mr. Tom Lukiwski:** —and unions, and corporations, and everything, what are we really solving here, right?

That's all, Chair.

**The Chair:** Thank you very much.

Monsieur Guimond, the same thing, if possible.

[Translation]

**Mr. Michel Guimond:** Thank you, Mr. Chair.

When the referendum was held with respect to the Charlottetown Accord in 1992, we know that the rest of Canada was governed by the legislation we are discussing. Nevertheless, the referendum was held in Quebec under the Quebec legislation. I do not recall which legal instrument was used to do this.

Did we simply have an administrative agreement? Was the legislation amended? I cannot remember what occurred.

**Mr. Marc Mayrand:** The federal Referendum Act has a provision for this possibility.

**Mr. Michel Guimond:** In general terms, what does this provision say?

**Mr. Marc Mayrand:** This provision provides that the referendum can be held in one or more territories. When the referendum is held, the territories and the populations to be consulted are determined. So it is by government decree, by proclamation, that we determine where the referendum will be held.

• (1155)

**Mr. Michel Guimond:** So that means that the Government of Quebec and the federal government probably came to an agreement to allow it to play out that way.

**Mr. Marc Mayrand:** I have to assume so, yes.

**Mr. Michel Guimond:** The act provides for it. Indeed, my assistant is telling me that the provision is contained in subsection 6 (1).

Thank you, Mr. Chairman.

[English]

**The Chair:** Thank you very much.

Mr. Albrecht, you and Mr. Calandra are left.

**Mr. Harold Albrecht (Kitchener—Conestoga, CPC):** Thank you, Mr. Chair. I'll be very brief.

Mr. Mayrand, you mentioned there were 241 committees in 1992. They potentially had a limit each of \$18 million, plus or minus, and the actual expenditures were around \$12 million for the entire yes and no sides.

Then later you mentioned that in a third party situation in an election, for each EDA there's a \$3,000 limit. Is there, in fact, a limit for each EDA when it comes to a referendum? How does that work at the local level? Is it all done from the national level?

**Mr. Marc Mayrand:** Sorry, it's not for the EDA. It's for the third party.

**Mr. Harold Albrecht:** For the third party in the EDA, though.

**Mr. Marc Mayrand:** No. The limit is imposed on candidates and parties. So all expenditures have to flow through the candidates' campaign.

**Mr. Harold Albrecht:** So each third party has a limit of \$3,000—

**Mr. Marc Mayrand:** Per district or riding where they want to be active.

**Mr. Harold Albrecht:** Okay, I used the wrong term, then.

Is there a limit per riding when it comes to referendum?

**Mr. Marc Mayrand:** No. That's one point I made earlier. It's interesting. Under the Referendum Act now, the limit is determined by the intention of the committee. If they registered with the intention of operating across Canada, they would be entitled to the full limit. If they expressed the intention to operate only in their riding or a number of ridings, then it would be a different calculation. But I think it's based on the number of electors.

**Mr. Harold Albrecht:** And that's at 78¢ per elector.

**Mr. Marc Mayrand:** Yes.

**Mr. Harold Albrecht:** All right. Thank you.

Paul.

**Mr. Paul Calandra (Oak Ridges—Markham, CPC):** I have a quick question.

In terms of the timing of a referendum, the actual period of the referendum, do you have any suggestions on how long that period should be? An election can obviously be 37 days or it can be, as in the case of 2006, 55 days. And I can tell you that in the context of an urban setting, running a campaign over 30 days is a lot cheaper than running a campaign over close to 60 days.

What I worry about is this. We can set limits for the referendum campaigns, and then we can put it in the context of a general election and expand the time of a general election, thereby giving one side or another more of an opportunity because they can raise money over a longer period of time.

**Mr. Marc Mayrand:** From an administrative point of view, which is what I have to be concerned with day to day, the issue we have right now with the 36 that was supposed to apply to a referendum is that it's not enough to print special ballots. We need to make special ballots available from day one of the referendum period. And we would need more time. In an election, we have blank ballots where voters can mark the name of a candidate they wish to vote for. And in a referendum, of course, you need to have the questions and answer yes or no.

So I guess some analysis we've done on that part is that we would need an additional seven to ten days to make sure we can print the ballot with the question and make it available early for electors.

**Mr. Paul Calandra:** So the referendum law, in essence, if it's held concurrently, would be deciding the length of the election.

**Mr. Marc Mayrand:** Sorry?

**Mr. Paul Calandra:** By virtue of that, a referendum would be deciding the length of the general election.

**Mr. Marc Mayrand:** I think if the committee proposed to move with concurrent events, that's one thing that would need to be considered. As for adjusting the length or exploring alternative administrative solutions, I would have to think about that. But right now I know we need more time to print ballots for a referendum.

• (1200)

**The Chair:** Thank you very much.

We've reached the end of our first hour and the witnesses we have.

Monsieur Mayrand, obviously you'll be watching as we continue our study, I'm sure you will, and if you think of any information we

should know, please feel free to send it to the committee. We will be having you back at some point near the end of this process to discuss with you where we find ourselves at that time, so we'll keep you posted and you'll know where we're at. So thank you again for coming today.

We will suspend for one minute while we change our witnesses.

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\_\_\_\_\_ (Pause) \_\_\_\_\_

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**The Chair:** I call the meeting back to order, back into session, again remembering that we are in public today discussing the Referendum Act.

Our next witness is Mr. Neufeld, the chief electoral officer for British Columbia. We're happy you were able to be in Ottawa today when we're looking at this. We're happy to have you here.

I believe you have some opening comments for us. If you do, please share them with us, and then we'll be able to ask you some great questions after that.

• (1205)

**Mr. Harry Neufeld (Chief Electoral Officer, Elections BC):** Thank you, Mr. Preston.

Thank you, committee members, for inviting me here. I'm very honoured to share with you the wisdom from across the mountains.

B.C. referendum legislation allows a referendum to be held either in conjunction with an election or as a stand-alone event. Conducting a referendum, we say, as a thin layer on top of a general election is very effective at reducing costs and increasing participation.

The British Columbia Referendum Act predates a complete rewrite of the provincial Election Act in 1995, so we find that not all the provisions are exactly parallel. However, it continues to remain workable.

In British Columbia, regulations must be established specific to each referendum. In 2005 the regulations, at 16 pages in length, were substantially lengthier than the Referendum Act, which has never been longer than two pages since it was introduced in 1992. While it's not an ideal model for clarity—there is a lot of cross-referencing—it is a reasonable model for referencing the parts of the Election Act that are to be used, and this provides the framework for administration of the event, either as a stand-alone or in conjunction with an election.

Please be aware that there are several pieces of referendum law in the B.C. equation in addition to the Referendum Act. There is the Constitutional Amendment Approval Act, which was passed in anticipation of the referendum in 1992, but the decision of the B.C. government was to allow Elections Canada to run that referendum and not to do it at a provincial level. So that act has never actually been used.

There was a specific 2009 Electoral Reform Referendum Act, which specifically said that the Referendum Act did not apply, and this act was what was to be used for the referendum we held earlier this year. However, they all follow the same approach of setting out the general framework of policy and process and requiring regulations to fill in the administrative detail with references to the Election Act and to other pieces of legislation.

B.C. has held two province-wide referenda in my tenure, in 2005 and this year. Both were on the subject of electoral reform, and they were both conducted in conjunction with a general election. I think they were both successfully administered as a thin layer on top of a general election, and there was no public criticism of the administration of either referendum.

Additionally, for both referenda an independent referendum information office was established to provide neutral information to voters about the referendum subject.

In 2005 the ballot question voters were asked was: Should British Columbia change to the BC-STV electoral system as recommended by the Citizens' Assembly on Electoral Reform? Yes or No. There were two threshold requirements, and this is different from the Referendum Act normally, which is that 50% plus one vote is a majority, and that's binding on government if the referendum question receives that. Here the first threshold was that at least 60% of the ballot votes needed to be cast as yes in order for BC-STV to be implemented. This threshold was not met, with 57.69% of the total ballot votes marked yes.

The second threshold was that in at least 60% of the electoral districts—and at the time there were 79 provincial electoral districts, so in 48 of those—more than 50% of the ballot votes needed to be cast as yes for BC-STV to be adopted. This threshold was met when voters in 77 of the 79 districts, or 97.5% of the districts, voted yes by more than 50%.

The total expense for the 2005 referendum was just over \$1 million on top of a general election cost of \$23 million. Due to the fact that the referendum results only narrowly missed the first threshold and greatly exceeded the second, the government decided that a second referendum on the same subject was needed.

The 2009 referendum was originally expected to be conducted in conjunction with the November 2008 province-wide local government elections. The winning system was then to be used in the 2009 general election. Concerns were raised by my office that this would be an expensive proposition. For various legal reasons there would have been no substantive cost savings associated with holding the provincial referendum in tandem with local government elections.

• (1210)

The provincial boundaries for electoral districts did not always line up with the local government boundaries. As well, the eligibility rules were different at the local government level. It would have been effectively a stand-alone event.

That stand-alone event was expected to cost \$27 million. We would have had to invest heavily in preparing for a general election under both electoral systems, a cost expected to exceed \$30 million.

Based on these concerns, the government decided instead to conduct the referendum in conjunction with the 2009 provincial general election.

In 2009 the question posed in the referendum was slightly different. Voters were asked the following: which electoral system should British Columbia use to elect members to the provincial legislative assembly? There were two choices—the existing electoral system of first past the post or the BC-STV, the single transferable vote electoral system proposed by the Citizens' Assembly on Electoral Reform.

There were several other differences as well. Late in 2005, an electoral boundaries commission was convened to redraw the provincial electoral boundaries. As required by statute, I was one of the three commissioners.

Our commission was tasked with also proposing multi-member BC-STV boundaries along with single-member plurality boundaries. Missing in the first referendum on electoral reform, the BC-STV boundaries gave voters a tangible understanding of what the BC-STV system would mean in terms of representation for their respective area.

Following criticism from the 2005 referendum regarding the availability of information to voters regarding the referendum, for 2009 the legislators agreed to fund registered proponent and opponent groups at \$500,000 apiece. That didn't really seem to have the desired effect. In our pre-election survey at the end of April, just two weeks before general voting day, the information we received was that only 63% of eligible voters had any knowledge of the referendum, while more than 96% had knowledge of the general election.

Again, for this year's referendum there were two thresholds. One threshold was that 60% of all votes province-wide had to support BC-STV in order for it to pass. At the end of the vote count, this threshold was not met, with only 39.09% supporting BC-STV.

Threshold two was that in 60% of the electoral districts—that would be 51 of the now 85 districts—more than 50% of the votes had to support BC-STV. This threshold also was not met, with only eight districts, 9.04%, supporting BC-STV in the majority.

Although the total costs of the 2009 general election and referendum are still being compiled, the projected expense for the referendum this year was \$2 million on top of a general election projected expense of \$36 million.

In the way of general advice before I open things up for the inevitable questions, I would say, first, provide in your review the legislative ability to hold referenda in conjunction with federal electoral events whenever possible, for the obvious administrative and economic efficiencies. Secondly, ensure that the regulations, however they're done and whoever does them, are passed in a timely way, preferably six months to a year in advance of the event, in order to allow for orderly planning of the administration of the referendum.

Back to you, Mr. Chair.

**The Chair:** Thank you very much.

Madam Jennings, we're going to start with you.

**Hon. Marlene Jennings:** Thank you very much.

Thank you for agreeing to come before this committee.

I find the experience—the contrast between the 2005 referendum and the 2009 referendum, and the differences in the results—quite interesting, including the fact that in 2009 there was an actual electoral map created so that voters were able to see, should the single transferable vote exist, what the difference would be between the existing first past the post system and the new system.

Have any studies been conducted to determine whether or not the fact that voters had an actual visual understanding of the differences had any impact on voter support of the single transferable vote system?

• (1215)

**Mr. Harry Neufeld:** It's an interesting question. I have not seen any studies yet that indicated what the factors were on that quite dramatic shift of voter opinion, which came very close to endorsing it, even at the super-majority threshold set in the legislation, in 2005, and quite soundly rejected it in 2009.

There were a lot of factors at play. The economy was different, the balance in the House was different, the proponent and opponent groups were active, and there was a lot of TV advertising being done by the opponent groups. I'm not sure which factor was the most dominant one, but my office did make sure that the maps showing the difference between 85 single-member districts and 20 multi-member districts that would still return 85 members total were available to everybody. There was a household flyer, sent to every household in the province, that showed those maps.

So it will be very interesting to see what the factor was that caused this dramatic shift, but I'm not aware of any of those studies being published yet.

**Hon. Marlene Jennings:** Are you aware of whether there are any studies under way to look at the two different referenda and attempt to determine what factor or factors contributed to the dramatic change in results? Are there any studies under way?

**Mr. Harry Neufeld:** The only ones I know of that are under way are at the University of British Columbia and the University of Victoria in the political science departments. At what level these are being done, whether they're PhD.D theses or student papers in undergraduate I'm not sure, but I have heard some suggestions and my office has been asked a lot of questions in support of the research that's going on.

**Hon. Marlene Jennings:** Would it be possible then to provide this committee, through our chair, the contact people?

**Mr. Harry Neufeld:** I'd be happy to do that.

**Hon. Marlene Jennings:** Yes. So we could possibly contact them and see if they have any information they could provide us.

The other question I have arises out of a statement that Mr. Calandra made about a simultaneous referendum and election and that if a referendum would require extra time for the printing of the special ballots, for those of us who represent urban ridings, five or

ten days extra, or more, in a campaign can make a major difference in our expenses, because our expense limit does not change. It then means that a bigger percentage of that expense limit is being used for equipment rental, etc.

Under your system, is there any provision so that if an election campaign or a referendum goes beyond the minimum mandated days, there is a pro-rated increase in the expense limit?

**Mr. Harry Neufeld:** The way it's set out, the referendum can be, according to regulation, over a longer or shorter period. In the spring of 2002, before I started in this position, there was actually a referendum done by mail on treaty negotiation principles.

If it's tied with a general election, we have fixed periods for general elections in law in British Columbia. They cannot be varied. The writ is issued on a Tuesday, and four weeks later on a Tuesday it's general voting day.

**Hon. Marlene Jennings:** Okay. So it's not an issue.

• (1220)

**Mr. Harry Neufeld:** It's a four-week cycle and it doesn't vary.

We also have the benefit of majority governments and fixed-date elections. As you probably know, British Columbia was the first province to move to a scheduled election date. It's the second Tuesday in May every four years. I had the ballots printed for the referendum in March, I believe, of last year. So we were there considerably in advance. There are considerable economies with being able to do things in an orderly way well in advance.

**Hon. Marlene Jennings:** We supposedly have a fixed election date, but it seems the Prime Minister doesn't believe in his own legislation.

**The Chair:** We'll go to Mr. Lukiwski now, thank you.

**Mr. Tom Lukiwski:** [*Inaudible—Editor*]...the opposition when it suits their purposes, I would point out, Mr. Chair.

**Hon. Marlene Jennings:** We're taking the lead from the Prime Minister—the 2008 election.

**The Chair:** Speak through the chair, please. Thank you very much.

**Mr. Scott Reid:** They could take the lead on a regular basis. Perhaps if they condemned the practice so much, they could stop putting...[*Inaudible—Editor*]...over and over again.

**The Chair:** Mr. Lukiwski has the floor.

**Mr. Tom Lukiwski:** Thank you, Mr. Neufeld, for being here. I enjoyed your presentation.

Let me see if I can get this clear. In British Columbia, do you have referendum committees?

**Mr. Harry Neufeld:** The way the regime worked before the 2009 referendum, we had committees for that one, umbrella committees, proponent and opponent groups that were given the public funding, but in addition to that—and this is all there was in previous referendums—you could register as a referendum advertiser. It was like being a third party advertiser in an election.

The rules in 2009 were very clear, though. If you were a referendum advertiser, you couldn't promote a political party or a candidate. If you were a political party, you could state your position on the referendum, but you had to consider that advertising as an election expense and you had to stay within the expense limits. You could become a registered referendum advertiser and a registered election advertiser, but you had to keep your messages separate then. There were no limits on spending and no limits on contributions to third parties.

**Mr. Tom Lukiwski:** To third parties...?

**Mr. Harry Neufeld:** Sorry, except during an election. For the referendum, there are no limits. For the election, there was a limit. There was a limit that was struck down pre-writ, actually, for third party advertisers. The limit during an election is \$150,000, and \$3,000 in any one electoral district.

**Mr. Tom Lukiwski:** Okay. I'm just trying to get the contrast between what you do in British Columbia and the situation we have federally.

Were you listening to the presentation before?

**Mr. Harry Neufeld:** Yes.

**Mr. Tom Lukiwski:** Currently we have a system where, for contributions to federally registered political parties, the maximum is \$1,100 per individual. Unions and corporations cannot contribute at all. However, if there is a referendum, whether it be referendum committees or third parties, they can receive and spend, outside of Quebec, unlimited amounts of money, it seems.

If there is a convergence of views between a particular third party and a political party, one could very easily make the case that you're doing an end run on the political financing regime because you're giving \$100,000 to a third party who's advocating a position identical to that of a political party. So rather than be restricted to \$1,100 to contribute to your favourite political party, you can contribute 10 or 20 or 100 times more than that to a third party who will be advocating the same position.

I'm wondering how you deal with that. Is it similar in British Colombia, or do you have regulations in place to prevent that type of end run from occurring?

**Mr. Harry Neufeld:** The only regulation that I think really addresses that is a law that prevents a registered referendum advertiser from promoting or opposing, directly or indirectly—that's the wording you'll often hear with election advertising—the election of a candidate or a party. They can make only statements that promote a particular response to the referendum ballot in their advertising.

So it's unlimited expenses for referendum advertisers. But first of all, there weren't that many referendum advertisers who registered. Secondly, from what I've seen, they didn't spend nearly as much money as was the case in 2005. Most of the money went in support of these two umbrella groups, which were each receiving half a million dollars from the government to promote the debate.

•(1225)

**Mr. Tom Lukiwski:** Do you care to offer an opinion, then—and it'll be my final question, Chair—on whether, if it's a simultaneous referendum with a provincial election, there should be committees at

all? Should third party advocacy groups be allowed to spend money and receive money, or should it just be through the political process?

**Mr. Harry Neufeld:** It's a very interesting question. In both of the two referenda I have administered, the politicians and political parties have stayed curiously quiet and have not engaged in the debate. When I think about the kinds of topics that might be the subject of a federal referendum, I can't imagine that being the case.

My sense is that you need a debate for the referendum to be meaningful. The question of whether that debate will be addressed politically is the one you have to deal with. The democrat in me says you should foster that debate, and if having citizens' committees does that, by all means have them. The pragmatist in me says if you're going to have to register all these committees, manage their spending limits, and oversee them, you might be looking at an administrative headache.

I guess I'm riding the fence here, but I appreciate the gravity of the questions this committee has to grapple with.

**The Chair:** Mr. Guimond.

[Translation]

**Mr. Michel Guimond:** Thank you, Mr. Chairman.

Mr. Neufeld, as I arrived late, I missed the beginning of your presentation, and so you have perhaps already answered the question I am going to ask.

As far as I understand it, there is no referendum committee in British Columbia, be it an umbrella committee, a committee for the "yes" camp or a committee for the "no" camp.

[English]

**Mr. Harry Neufeld:** In the referendum this year in May there was an umbrella proponent group for electoral reform, BC-STV, and there was an opponent group. They were both funded, and this was a first in British Columbia referenda. There was also the ability for other groups to form as registered referendum advertisers, but there wasn't a lot of that.

Most of the community that was interested in this gravitated to the proponent and opponent groups and funded them and assisted their efforts in getting the message out on the two sides of the referendum debate.

[Translation]

**Mr. Michel Guimond:** If I understand you correctly, you are referring to the most recent referendum, which was held at the same time as the elections in May 2009. Is that correct?

[English]

**Mr. Harry Neufeld:** In the one that was held this year, it was the first time we had these two umbrella groups, and the first time there was any public funding for referendum groups. Before that, the regimes were always along the lines of third party advertisers for an election. There was a requirement for referendum advertisers to register and disclose their funding after the referendum was over.

**Mr. Michel Guimond:** But was this referendum held at the same time as the provincial election?

**Mr. Harry Neufeld:** Absolutely.

[Translation]

**Mr. Michel Guimond:** I am curious as to how you keep expenditure for the referendum separate from expenditure for the election. I would imagine that in British Columbia, as in the federal context, you set a maximum amount that each political party can spend and a maximum amount that each candidate for each riding can spend. But what do you do when a referendum is held at the same time as the election? Do you keep separate accounts? In normal circumstances, it is fairly straightforward.

• (1230)

[English]

**Mr. Harry Neufeld:** There is separate accounting for the referendum and the election, except for political parties. Political parties were able to incorporate referendum advertising into their election advertising, but they still had to stay within their expense limits. This is relatively new legislation. For parties it was 60 days before the writs were issued—before the campaign period started. It was \$1.1 million, and during the four-week campaign period it was \$4.4 million.

Candidates could not advertise their position on the referendum with the election. They had to stay separate from it. They could register as a referendum advertiser, they could speak about it, they could write editorials about it, but they were prevented from doing advertising. Their limit was \$70,000 in the 60 days before the election started and \$70,000 for the 28-day period itself.

[Translation]

**Mr. Michel Guimond:** I am struggling to follow you. Let us take a concrete example. Premier Campbell's party, the Liberal Party, is allowed to spend \$5 million on being re-elected. His party is part of the group of political parties in favour of electoral reform. The group is allowed to spend \$3 million. So the party can spend \$5 million, and, in addition, provide funding to the pro-reform group, provided that the \$3 million limit is not exceeded. Is that correct?

[English]

**Mr. Harry Neufeld:** I see where you're going. It's not what happened in British Columbia, though.

As far as I know, neither of the political parties that are in the House made any contributions to either the proponent or the opponent groups. We'll see when we get the full disclosures, which will come out next March, when there's a public disclosure for the whole process from the political parties about where their money went over the last year.

I think it is a little bit interesting that the political attitude was very much that this is a decision for the people to make, that this is a decision the politicians need to step back from, in terms of changing electoral systems, and there was no advocacy on the part of either the governing party or the opposition party to advocate for the change or against it. Individual members made comments, some of them for and some of them against, but for the most part, the position was that this is a decision you need to make yourself. I think, for that reason, there wasn't nearly the level of debate in our society as there might have been; and it's why, I'm sure, so few people seemed to know about the referendum, relative to the election, just a few weeks before general voting day.

**The Chair:** Monsieur Godin.

[Translation]

**Mr. Yvon Godin (Acadie—Bathurst, NDP):** My question follows on from Mr. Guimond's question.

In British Columbia, the subject of the referendum was electoral reform, was it not? But a referendum can be on any subject, can it not?

[English]

**Mr. Harry Neufeld:** Indeed, the referendum was in conjunction with the election, but there was separate law for the referendum, and the regulations determined that it was being done in conjunction. It could have been any other question; it didn't need to be on electoral reform.

• (1235)

**Mr. Yvon Godin:** Okay, I want to use the example of this year. I know you are in British Columbia, but I'll give an example for New Brunswick. It could have come to the federal level on something else, but I'll use the New Brunswick example, okay?

New Brunswick has decided to sell Énergie New Brunswick to Quebec. People are upset, pissed off, and they say you should go to the people. That could be a referendum, right?

**Mr. Harry Neufeld:** It could.

**Mr. Yvon Godin:** Now we go to a referendum, and say we do it at election time. We know that the present government wants to sell it.

I'll use names. I don't care. We're privileged—I hope so.

Irving has a big interest in selling it to Quebec because they're going to get 20% savings on their electricity. Does this mean that then they could make a promotion on their own, as a third party, saying it's a good thing that we sell Énergie New Brunswick to Hydro-Québec, which is the same thing as the government wants, but it's part of a referendum. And all the big businesses that want that 20% off say they don't care if New Brunswick owns it or not, but what they're interested in is how much money they put in the bank.

**Mr. Harry Neufeld:** It brings up the issue that was raised earlier about whether spending inordinate amounts of money on the yes side will necessarily win you the day. I see exactly the situation you spell out.

**Mr. Yvon Godin:** Then the government just sits on the sidelines and says, hey, I have some partners there who'll do a good campaign for me.

**Mr. Harry Neufeld:** In the British Columbia context, they could spend as much as they wanted on the referendum, and the contributors could spend as much as they wanted on contributing to third party advocacy.

**Mr. Yvon Godin:** The contributors are the ones who don't get their 20% and they're probably broke in the beginning anyway. They're the ordinary people.

I want to use an actual situation that could happen. In the electoral change referendum you said the government and the opposition didn't get involved; it's just electoral change. But when you take a referendum on something that would make a big difference, as I just explained—everybody is all upset and ready to go to the gates, saying, “We should make the decision and not you; we should tell you where we should go”—then actually, yes, what you're saying could happen.

**Mr. Harry Neufeld:** The way the law is structured in British Columbia right now, the scenario you draw out about interested parties raising significant moneys and putting up a big campaign would certainly be possible. Whether that would guarantee the result they want is an unknown.

**Mr. Yvon Godin:** The result is something else.

**The Chair:** Thank you.

Mr. Cuzner.

**Mr. Rodger Cuzner:** How long will it be before the next referendum on electoral reform in B.C.?

**Mr. Harry Neufeld:** I haven't heard anything about another referendum on electoral reform, sir.

**Mr. Rodger Cuzner:** From a distance, it seems that the people in B.C. are pleased with the final outcome and how the referendum really had an effect this time. They seem pleased that at least the issue has been dealt with.

**Mr. Harry Neufeld:** From my own perspective, it was a definitive decision. The worst case would have been another close miss.

**Mr. Rodger Cuzner:** It seems to be an issue that has died since the referendum, at least.

**Mr. Harry Neufeld:** I'd say that's true.

**Mr. Rodger Cuzner:** You mentioned that about 64% of the people didn't understand that there was going to be a referendum as part of that election. Did you guys advertise the referendum as well, or are you saying the advertising just took place between the two camps, the two umbrella groups? Was there a general advertising campaign put on by Elections B.C. as well?

**Mr. Harry Neufeld:** We gave both messages out at the same time: that there was an election and a referendum process under way. There was the government's referendum information office. They had an advertising campaign and, of course, the proponent and opponent groups had their advertising campaigns that were a little bit more issue-based. So there was a fair amount of information going out. It was being broadcast on television. It was being printed in newspapers. It was on the Internet. It was on the radio. It was certainly being put out there, but in modern society there are a lot of messages being put out every day, and this one didn't seem to be getting through.

• (1240)

**Mr. Rodger Cuzner:** About \$4.5 million each was the limit on the yes and no.

**Mr. Harry Neufeld:** No, there were no limits on the referendum, only on the election spending.

**Mr. Rodger Cuzner:** Oh, really? Okay.

**Mr. Harry Neufeld:** The limits I spoke of were that the parties could make statements about the referendum, but they had to stay within their election spending limits.

**Mr. Rodger Cuzner:** Do you have the final tally as to what the pro and the con each spent on the campaign?

**Mr. Harry Neufeld:** We don't have that yet. It's being pulled together now. It should be out in a few months. There'll be a report on the referendum coming out of my office.

**Mr. Rodger Cuzner:** I'm sure we'll receive a copy of that.

Is there no limit to the contributions one can make to a referendum campaign?

**Mr. Harry Neufeld:** In the 2009 context, you could make a donation to the proponent or opponent groups, which is where most of the activity was happening, or you could fund a registered referendum advertiser. There were no limits, but there was disclosure after the fact of anybody who provided more than \$250 to an advertiser, and the advertisers had to divulge how they spent their money after the referendum was over. The deadline on that was in August, and again, that'll be part of our reporting.

**Mr. Rodger Cuzner:** And these were tax-deductible contributions?

**Mr. Harry Neufeld:** The election advertising and contributions to parties and candidates are tax deductible, but election advertising and referendum advertising are not.

**Mr. Rodger Cuzner:** Are not. Okay.

**The Chair:** Mr. Albrecht.

**Mr. Harold Albrecht:** Thank you, Mr. Chair.

I want to thank you, Mr. Neufeld, for the very clear presentation you gave us.

I would like to follow up on three things.

First, I think you indicated that the Referendum Act in B.C. is about a two- or three-page document, but then you develop legislation that's specific to each referendum.

**Mr. Harry Neufeld:** Regulations.

**Mr. Harold Albrecht:** I was wondering if it would help us get away from a book this thick in terms of the Canadian scene if we were to apply regulations specific to each referendum.

You also mentioned the different dollar amounts: \$23 million in 2005 compared to \$1 million for the referendum—and I'm sure we could argue as to whether or not some of that could have gone either way—and then \$36 million to \$2 million. Do you think, based on that experience, we could experience that kind of savings if we were to lump together a referendum and an election at the national level?



**Mr. Harry Neufeld:** I think the savings are considerable. I know it seems very low, and part of it is some of the accounting rules my office is under. All the preparation of procedures and guides and forms is done under my ongoing operating budget, so the event budget is for conducting the event itself. So for the additional costs for the referendum in conducting the event itself, there was a little bit more. The advertising might have a few more lines in it. It may not be any bigger. So is it an additional cost? Well, my accountants would say no, there's no additional cost there; you just spend some more money on the text.

We had all the election officials hired. We did hire extra accounting officials for advance voting, but advance voting has become so popular that we needed extras anyway, so we might have hired a few extras other than the extras we needed in any case.

So overall, when we added all the costs, it was only that incremental addition. It was incorporated into all our procedures; it was incorporated into the training. So the cost of actually delivering it wasn't really all that much more. Training manuals might have been a page or so longer, but—

**Mr. Harold Albrecht:** I would have expected maybe a 25% or a 50% saving, but this looks as if you're in the 80% to 90% saving in terms of—

**Mr. Harry Neufeld:** I think it's something like 5% of the election costs. That's incredible.

**Mr. Harold Albrecht:** In each referendum you had the two different thresholds, one for the entire province and then one for the number of EDAs within the province, and a certain percentage of those needed to have the 60%. Would you recommend the two-stage threshold for national referendums as well?

**Mr. Harry Neufeld:** This was debated, and it's the same threshold that was used in P.E.I. and in Ontario for their electoral reform referendums.

The issue was that legislators felt it shouldn't be something that was decided by the urban core; it should have widespread support across the province, and it needed a so-called super-majority because it was such a significant shift in public policy with regard to how the democratic process worked and how representation was going to work in terms of translating votes into seats. So there has been lots of debate in British Columbia about whether that's appropriate. There were numerous suggestions that we've made far more important decisions in this country on the basis of 50% plus one vote and that's all we need.

So it's one of the things we leave to legislators to decide.

• (1245)

**Mr. Harold Albrecht:** I wasn't referring so much to the 60% as I was to the double threshold of the number of EDAs and the number of electors. I think that was a more significant change.

**Mr. Harry Neufeld:** I think every referendum question is going to be different, and it may be appropriate for some. I'm not sure it's something I'd say is a good call across the board.

**Mr. Harold Albrecht:** Thank you.

**The Chair:** Mr. Reid, you are next.

**Mr. Scott Reid:** My questions follow very much from the line of questioning Mr. Albrecht was engaged in.

The two referendums were both connected to elections, is that correct?

**Mr. Harry Neufeld:** Yes, in conjunction with the 2005 election and the 2009 election.

**Mr. Scott Reid:** So the confusion on the part of voters not understanding that a referendum was coming the second time around cannot be because this was new to them, that they had experienced a stand-alone referendum and were now experiencing a referendum at the same time as an election.

**Mr. Harry Neufeld:** It was the second time with an election.

**Mr. Scott Reid:** Yes. It wasn't a novel experience for them the second time around.

**Mr. Harry Neufeld:** No. We did get lots of questions about it, such as, "Didn't we already vote on this?"

**Mr. Scott Reid:** All right. I can see that. Wait until they run for public office, or make a decision that their spouse disagrees with, for that matter. Are we in camera?

On the question of the dual majority, we had a similar process for the referendum in Ontario on multi-member proportional, and there was a requirement that a 60% majority be achieved. I can't remember if there was a majority-of-seats requirement. It didn't matter in practice, because fewer than 40% voted in favour of the referendum.

What's the general feeling out there, if there is a general feeling out there in British Columbia, on the merits of having two protections, two hurdles that had to be met in addition to an overall provincial majority? Is it now seen as being a good idea or a bad idea, all things considered?

**Mr. Harry Neufeld:** The whole discussion about electoral reform is extremely quiet. I haven't heard this debated in the media or elsewhere.

**Mr. Scott Reid:** It's more after the first referendum, because at that point hurdle number one, a majority, had been achieved. So had hurdle number two, a majority of ridings, but not hurdle number three, the 60%. I assume there was a discussion at that point. Presumably there was enough of a discussion that the government felt it had to do a second referendum.

**Mr. Harry Neufeld:** Yes. It very much was the major discussion point in the summer of 2005. In the throne speech of September 12, 2005, there was the announcement that there was going to be another referendum on the question. The majority of voters had selected BC-STV as their choice. It hadn't met the dual threshold. There was only one threshold that had been surpassed.

What led to the decision was the discussion over the summer, that it had been significant support. The decision at the time was to have it in conjunction with local government elections in November 2008 and decide it then. As a result of some concerns about the costs, that was delayed until 2009, in conjunction with the provincial elections.

• (1250)

**Mr. Scott Reid:** Wasn't there also a concern that you could wind up getting a majority in favour of it that meets the hurdles despite the fact that you'd actually get a lower number of people voting for it, because of lower overall turnout in the municipal elections?

**Mr. Harry Neufeld:** That was part of the debate as well, that this was a really significant question, that local government election turnouts are less than half of what they normally are provincially, and it was too important a decision to have such low participation levels decide.

**Mr. Scott Reid:** With regard to the results in the referendum, in the first referendum, I think I'm right in saying that support was relatively evenly spread across ridings. I think there were very few ridings in which it was not approved, and they tended to mirror each other much more than one might have expected.

What about the second referendum? Was there more geographic distinction? The second referendum would have been in the context of people then knowing whether they were in a riding that was going to have just a couple of MLAs or one of these larger ridings that would have a larger number of MLAs.

I'm just trying to find out if that kind of thing had any impact on the riding-by-riding results. Was it more widely supported in rural areas than urban areas, or the reverse? I'm just throwing these out.

**Mr. Harry Neufeld:** From my recollection, the ridings that did not support BC-STV in majority in 2005 were sort of mixed urban-rural in the central interior, whereas the eight ridings that supported it in majority in the 2009 referendum were primarily dense urban.

**The Chair:** Thank you, Mr. Reid.

I have on my list quick questions from Mr. Lauzon and Mr. Calandra. I'll give you each a quick one.

**Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC):** Very briefly, one of the challenges we have nationally—I'm sure you have it provincially—is the participation rate in general elections, and it seems to be going in the wrong direction. First of all, what was your participation rate in the last provincial election?

**Mr. Harry Neufeld:** It was 51% of eligible voters.

**Mr. Guy Lauzon:** Of that 51%—that's even worse than the national turnout—what percentage actually exercised or gave their opinion on the referendum?

**Mr. Harry Neufeld:** It was interesting. In the 2005 referendum, voters had a choice of declining one ballot or the other, which led to incredible problems in balancing the ballots at the end of the night. The decision taken for 2009 was that everybody was getting both ballots if they showed up to vote. They were told that if they didn't want to vote in one or the other, they could leave the ballot blank, and then it was rejected.

The number of rejected ballots—and I don't have it at the tip of my tongue—was higher in the referendum than it was in the election. There was certainly a phenomenon of people leaving their ballots blank. It was 2% or 3%.

**Mr. Guy Lauzon:** Okay. I thought it might have been more significant. So roughly 48% voted in the referendum.

**Mr. Harry Neufeld:** That's right.

No, I'm sorry. I apologize. You are correct. The 51% is, of eligible voters, how many cast votes, not necessarily votes that were counted.

**Mr. Guy Lauzon:** Forty-eight per cent cast votes on the referendum.

**Mr. Harry Neufeld:** That's right.

**The Chair:** I'll entertain anyone else who would like to ask a short question. Great.

Thank you very much for your help today, Mr. Neufeld. You see that we are starting on this road. It's going to be a long one. I think you've promised us you'll give us the coordinates of anyone at your universities who's doing the study on your referendum. It would be great if we could get that.

We thank you for your attendance today.

Is there anything else from any other committee member?

Seeing nothing, I declare the meeting adjourned.







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