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Chair

Mr. Joe Preston

Standing Committee on Procedure and House Affairs

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• (1135)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): I'll go ahead and start the meeting. We've had a bit of a delay today, so we're going to do our best.

Before I introduce Monsieur Massicotte for testimony today, the supplementary estimates have been delivered to this committee for the areas with which we need to look at them. We have until three days before the last supply day, so we're on a bit of a guess here as to when we can look at them or whether we should, I guess. That's to the will of the committee to decide. First, should we be calling the clerk forward on supplementary estimates? If so, we have a couple of meetings coming up here in late November and early December with only one witness. I thought maybe we could spend a short period of time looking at the supplementary estimates, if it's the will of the committee to do so.

I'm looking for a bit of guidance. And no one's making eye contact, so I will make my own decision.

Mr. Marcel Proulx (Hull—Aylmer, Lib.): Please do so. We can criticize.

Some hon. members: Oh, oh!

The Chair: Okay. Let's say yes, that we will look at them. We will try to find a time and place that the clerk can come...one of the meetings where we have only one witness. We'll do 15 or 20 minutes on the supplementaries and then move to the witness. If that's the will of the committee, I'll leave it up to the clerk to work that scheduling out with the clerk of the House.

All right, moving on, I should have said that we are in public today and we are continuing, pursuant to Standing Order 108(2), our study on the review of the Referendum Act.

Our witness today is Louis Massicotte. I'm going to let him introduce himself. He's a professor from Laval University. I'll let him do his own introduction. He has an opening statement, and then we will be able to ask him all the questions we can in the time that's left.

We're sorry we've taken some of your time away today, sir. The floor is yours.

[Translation]

Mr. Louis Massicotte (Professor, Department of Political Science, Laval University, As an Individual): Thank you, Mr. Chair.

[English]

I'll make my presentation in French and I will try to answer questions in either language.

I did not expect to have to introduce myself. I will try to be brief.

[Translation]

As you mentioned, I am a professor of political science at Laval University. I also hold the chair in democracy and parliamentary institutions research. That chair was established jointly by the National Assembly of Quebec and Laval University. However, I am not speaking here in any official capacity and I in no way speak for either of those two institutions.

I would like to thank you for inviting me to participate in your study of the Referendum Act. For me, the act is a bit of an old friend, since on June 15, 1992, I was invited to appear before the Standing Senate Committee on Legal and Constitutional Affairs to comment on what was at that time Bill C-81. I must tell you that that was my first appearance before a federal parliamentary committee. I wondered whether it would be my last appearance, not because things went badly, but simply because, given the situation in 1992, I wondered whether I would still be a citizen of the same country at the end of the year. You know what the situation was.

I decided to reread the text I had prepared for my appearance at that time. Reading what one wrote 17 years ago is something approached with a degree of apprehension. At the time, I told the senators that a referendum was described by everyone as a deadlock breaking mechanism. I told them that rather than breaking deadlocks, what a referendum might do was confirm them, and that provincial politicians were merely reflecting the intransigence of their respective populations. Let us say that I reread that today and I have the feeling I was not completely wrong.

I will now say a few words about the situation 17 years ago. At the time, no one knew what the government had in mind when it introduced that bill. I will spare you all the hypotheses that were circulating then, but several days ago I decided to reread Mr. Mulroney's memoirs, he having been in a good position to know about all this. I realized that he did not say a word on the subject. So I was no farther ahead. In any event, it seems that once the Charlottetown Accord was signed, the decision to organize a referendum was made by the premiers very quickly, with the results that you know. That is the only time the act has been used since it was enacted.

I have read the document prepared by your researcher, Mr. Bédard, and it gives me a good idea of the questions that concern you. Your mandate includes very technical questions about which I think you should rely on technicians rather than professors. Your mandate also involves broader issues about which professors may be able to provide you with some useful information. I am going to stick to those issues.

The question that seemed most interesting to me is: should a referendum and a general election be allowed to be held at the same time? Myself, I see no major problem in this option being open to Parliament if it so wishes. I know that the present act does not permit it. I know that in Quebec, the legislation also does not permit it. This might be difficult because Quebec's Referendum Act provides for stringent limits on spending and it would be difficult to enforce them at the same time as a provincial election. It would not always be easy to distinguish between a referendum expenditure and an election expenditure. There would be a high risk of confusion, and this would make the effectiveness of the limits problematic.

The federal act is not based on the strict principle of equal spending for the "yes" and the "no". As a result, it would probably not prompt the same objections. There is no shortage of precedents in Canadian history for referendums held at the same time as an election, although there have been none at the federal level, or in fact in Quebec. I have a reasonably good body of documentation on the history of referendums in Canada. I had a chance to consult it before coming here.

● (1140)

I found at least seven provinces and one territory that have at one time or another held a referendum and a general election at the same time. I have the years and the subjects of the referendums, if you are interested. The most recent cases, the ones that are most interesting for you, occurred in British Columbia and Ontario. I understand that those two provinces' chief electoral officers have told you or will tell you how things went.

At the international level, you may be interested to learn that Australia has combined elections and referendums seven times in its history, and that two referendum questions were put on the same date in 1999—as I recall; I was there. New Zealand held a referendum at the same time as an election in 1993 and 1999. France has done it once, in 1945. In England and Germany, the practice is unknown because referendums there are very rare, in any case. So the problem does not arise very much.

I see an advantage to a simultaneous election and referendum in terms of election turnout. One of the most consistent observations in this regard is that turnout depends to a large extent on the nature of the vote, on its salience, as it is put in English. A municipal or school board election, for example, draws fewer people than a provincial election. If a major and minor election are held at the same time, the second one will draw a higher turnout than if it were held in isolation. The country with the record for turnout for local elections, municipal elections, is Sweden. And coincidentally, it is the only country where local elections are held at the same time as elections for parliament.

In Germany, like here, there is considerable concern about the marked decline in turnout for provincial elections. In recent years, a

rather clever trick has been used. Some provinces have simply decided to hold their provincial elections on the same day as the federal election. I can tell you—and I will spare you the details—that the effects are quite miraculous: if we look at the figures, we see that when the provincial election is held at the same time as the federal election, the turnout is significantly higher; and conversely, when a province stops holding its provincial elections on the same day as the federal election, when the provincial election is held in isolation, that is, there is a marked drop in the turnout. So holding the votes simultaneously may be an advantage.

I would note that right here, referendums on electoral reform have clearly illustrated how what I am saying applies. In Prince Edward Island, as you may know, a referendum on the voting method was held in isolation and there was a 33% turnout, while in British Columbia and Ontario, the election and the referendum were combined and while the turnout was not spectacular, it was still considerably higher.

I am simply saying that if a referendum deals with a broad reform, the importance of the subject will of course be enough to draw voters; we saw that with Charlottetown. If, however, the referendum deals with a less important question, one that is less sexy in the voters' eyes, we might be afraid that voters will stay home, so that by doing this, I think, we would protect against that risk.

Concerning referendum committees, another question that is part of your committee's mandate, the present act does not impose an equal ceiling for spending by the "yes" and the "no". It limits the spending of each referendum committee, but not the number of committees. To many people, that provision allows the wealthy to buy the outcome of the referendum.

When I appeared before your fellow senators in 1992, I suggested that this vision, that the government could buy the outcome of the referendum simply by spending more than its adversaries, was somewhat simplistic.

● (1145)

I do not think I was wrong, in that in 1992, as you know, supporters of the Charlottetown Accord outside Quebec spent not twice as much as their adversaries, not 5 times or 10 times as much, but 13 times as much. Nonetheless, as you know, they lost the referendum. If memory serves, they lost by a substantial margin.

I don't think that Mr. Trudeau's speech at La Maison Egg Roll ended up in the expense accounts for the "no", nor did the tape recordings of Ms. Wilhelmy's and Mr. Tremblay's late-night frustration. If that cost the "no" committee a cent, it was certainly the most profitable cent in all the history of elections in Canada. It did not appear in any expense. And yet any expert will tell you: that is what made the most difference in the referendum. In fact, it had more impact than all of the expensive advertising with which voters were inundated at the time.

It might have been amusing for some to see the "no" protagonists at the time, Mr. Trudeau, Mr. Preston Manning and Mr. Jacques Parizeau, having to work together on the same committee. It would certainly have been interesting to observe, but I don't think they would have found the experience very enjoyable.

Now let's consider the discrepancies between the Elections Act and the Referendum Act. If I understand correctly, in 2000, when a new Elections Act was enacted, amendments were also made for consistency with the Referendum Act. As I understand it, that exercise has not been repeated since then, and so there are discrepancies between the Elections Act and the Referendum Act. In particular, it seems that inmates have the right to vote in elections, but not in a referendum. Personally, I think that discrepancy is undesirable in principle. Referendum law should, as much as possible, be in line with elections law.

In fact, I apply the same reasoning to contributions. I do not see why companies and unions could contribute to referendum funds but not to election funds. In a way, there has to be consistency with the principles we proclaim. Choose the rule you like best, but I think, as much as possible, it should be the same for elections and referendums. However, I would like to state a caveat that seems appropriate to me. If you opt to model the Referendum Act on the Election Act, and thus prohibit contributions by companies and unions, the government will probably have to make up the difference that will remain as a result of prohibiting contributions from corporations. Obviously, taxpayers will be the ones who have to pay the difference, because the government will very probably have to give the various committees a subsidy to compensate.

The final point in my comments is the interaction between provincial and federal referendums. The Referendum Act is asymmetrical legislation, in that it can apply in one province, in several provinces or in the entire country. Special circumstances meant that in 1992, there were, legally speaking, two referendums. There was one in Quebec and one in the entire country less Quebec. I am not sure that was the best choice, even though political reality at the time made it necessary. I would simply like to point out that whatever good arguments can be made for doing it, there are in fact people who lost their right to vote because the Quebec act required six months' residence, which the federal act did not.

Personally, in 1992, I moved to Quebec. Very fortunately for me, I moved in January 1992. The referendum was held in October. If I had had the misfortune of having to move in July 1992, I would not have been in good standing under the act and I would not have been able to exercise my right to vote, because I would not have lived in Quebec for six months.

• (1150)

Obviously, I am not going to tell you that the referendum would have lost much if my voice had not been heard. What I want to say is that in terms of principles, it seems to me that a solution that means that people lose their right to vote is not the best solution.

I would add that this business of applying one act rather than another ended up in a fight between our two governments over money that went on for two years: whether Mr. Mulroney, two years earlier, had promised to reimburse Mr. Bourassa for the referendum. They were hunting everywhere at Privy Council to find a piece of paper. Apparently there wasn't one. I can tell you that people in very high places in the election bureaucracy did not even know there had been an agreement on this. It eventually ended as you know. In my opinion, that was not the best scenario.

On the question of that interaction, you can keep the flexibility in the existing act, if it appeals to you. But in terms of principles, I think this is pushing opting-out a little too far. In fact, to my knowledge, we are the only federation in the world that does things this way. Ordinarily, in a federation, when a "national" referendum is held, it is held throughout the country. In any event, I teach a course on comparative federalism, so I have to know a little about these things.

I will talk a little about another small detail, one that is more technical but that is still of some interest. In fact, I referred to it earlier. When Parliament votes on the motion that contains the referendum question, it does not know—in any event, there is no obligation to tell it—what province the referendum will be held in. It is the executive that decides, after the vote on the referendum question is held, which province the referendum will be held in.

Personally, I think the motion to adopt the referendum question should, at that point, specify the province where the referendum will be held, because in my humble opinion that kind of decision should not be left to the executive and be announced after the House of Commons and the Senate have passed the referendum question.

Ladies and gentlemen, those are my written comments. I am now prepared to answer your questions as best I can.

[English]

The Chair: Mr. Proulx, you're first today.

Let's start off our questioning of Professor Massicotte.

[Translation]

Mr. Marcel Proulx: Thank you, Mr. Chair.

Good morning, Mr. Massicotte, thank you for traveling from one capital city to another to be with us this morning. It is much appreciated.

Mr. Massicotte, I have a completely technical question.

Assume that a general election is going to be held and that at the same time there is a referendum campaign. Someone stands as a candidate in the riding of Hull—Aylmer and has to limit their spending to amount x for the general campaign. Let's take the magic number of \$100,000 in spending. At the same time, for the referendum, there are "yes" committees and "no" committees whose spending is also limited. We know that in a general election, the votes are counted per individual, per candidate, so there is competition among four or five or six or seven or eight candidates in the riding. For the referendum, it is the total votes that decide the winner, all the votes, not by riding, but for the entire jurisdiction affected by the referendum, whether it be federal, provincial or municipal. Right in the middle of the campaign, after public debates are held, we find ourselves in a situation where the Liberal candidate in Hull—Aylmer has to give their opinion on the referendum. The candidate says they are on the "yes" side or the "no" side. Assume they come out in favour of the "no" and campaign very actively both to get elected and for the "no" camp.

How are we going to distinguish between the candidate's personal campaign expenses and the expenses associated with one of the "yes" or "no" committees?

It has become so complicated for official agents to do the accounting for all this, to do it with extreme care. They have always done it, but they were going to have to file report after report. This is almost as bad as it is for this government's advertising signs.

How do you see this, Mr. Massicotte? I understand the broad principles, whether we can have an election at the same time as a referendum and whether we can change the rules. My answer to that is “yes”, but in practice, the real question is how to do it. There has to be two sets of books, two arenas. How do you see this?

• (1155)

Mr. Louis Massicotte: Mr. Proulx, you are persuading me of the merits of public discussion, because when I listen to you I can distinguish between two scenarios, two typical referendums.

In the first kind of referendum, the people who support Party A almost all support one referendum option, and the people who support Party B all support the other option. As a result, in that scenario—

Mr. Marcel Proulx: That is possible.

Mr. Louis Massicotte: There is a risk that this scenario will cause problems. In the other cases I have in mind, that correspond to the most recent instances dealing with the electoral system—and much longer ago, with prohibition—the reason why a referendum was decided on was precisely because the parties were unable to arrive at an internal consensus, for the “yes” or the “no”.

One tactic that is good policy was for people to say that if it was impossible to find unity within their ranks, it was better to put the question to the voters. In that case, I think doing it simultaneously does not cause a lot of problems because there is a campaign held. In Ontario and British Columbia, when there were referendums on the electoral system, all the politicians spread the word: they agreed not to tell the voters that they supported the system. I think the vast majority of candidates or sitting members were not very enthusiastic about the electoral system proposed. So there was a kind of self-censorship order. They decided it would be preferable not to come out in favour of the existing system to avoid voters reacting the opposite way and saying to themselves that it was probably a good idea after all. You are undoubtedly familiar with this kind of knee-jerk opposition. In other words, the problem you refer to does not arise if the parties are not clearly in favour of the “yes” or the “no” in a referendum.

In the other case, I think you have identified a very good argument, that it may not be wise, in terms of public policy, to do it that way.

As to your question about how to distinguish between the expenses, it all depends on the type of campaign you have. If you say offhand, on television or radio or in an interview with the local paper, that you support the “yes” or the “no”, that is not an election expense. It is if you start printing advertising or incurring expenses that it could become problematic.

Myself, I think it is possible, in accounting terms, to distinguish between referendum spending and election spending. I know it may be a little labour-intensive, but that can also be true sometimes in an election under the existing rules, when it comes to dividing up

national expenses and local expenses. You see the difference. The fact is that it is done. The act provides for it.

Have I answered your question?

• (1200)

Mr. Marcel Proulx: Partly. I am going to come back to it later. My time is up for now.

Mr. Louis Massicotte: I will be happy to come back to it.

[English]

The Chair: Let's see if we can be just a little more compact on our questions and answers.

Mr. Lukiwski.

[Translation]

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

Professor Massicotte, please excuse me: I don't speak French. I speak English.

[English]

You mentioned several times during your presentation that if the Referendum Act were to be aligned with the Elections Act there should be consistency of spending, contribution limits, number of contributors, types of contributors, that sort of thing. Would you prefer to see the Referendum Act aligned with the Elections Act, or would you rather see a stand-alone Referendum Act?

Mr. Louis Massicotte: I think I would prefer the Referendum Act to be aligned with the Elections Act. As far as I know, the Referendum Act has not been debated on its own merits since 1992. The Canada Elections Act, on the other hand, has been debated many times. I understand that in 2000 a brand new Elections Act was adopted. Parliament had time to adjust its thinking to everything that happened—new members of Parliament, representations, court decisions. I would tend to assume that the most up-to-date of these two documents is the Elections Act. So if you have to change one to square with the other, I would suggest that the Referendum Act should follow the principles set out in the Canada Elections Act, unless, in your wisdom, and in accordance with your privilege as members of Parliament, you feel that the Elections Act is wrong.

Mr. Tom Lukiwski: Thank you for that.

Let me ask you another question about the composition, then, of referendum committees. Again, in your opinion, would you prefer to see a system similar to the one in Quebec, where they have umbrella committees? You mentioned the interesting possibility and the interesting dynamics that could have occurred back in 1992 if Mr. Manning and Mr. Trudeau and others had been forced to be part of the same committee.

In your opinion, do you believe in setting up the system of umbrella committees whereby all those on the yes side would be under one umbrella, and all those on the no side would be under another umbrella? Or do you prefer a system in which there would be as many committees established as deemed necessary?

I'd be interested to hear your views on that.

Mr. Louis Massicotte: Okay. I have to be consistent with what I said earlier. I said that when the act was discussed, this was the hottest issue. We've read the debates of that time, and this was one of the main issues debated. Of course, the Quebec model was put forward in those days as a possibility. It was rejected at that time for various reasons, many of which were legal. Apparently the government had a preponderance of legal opinion on the issue that suggested that this would not stand well with the courts.

I think there were deeper reasons for that. I mean, I have the impression that they feared that following this model would probably be impossible at another level. My instinctive preference—you know, I come from Quebec, so I'm proud of what we have done—is for the Quebec model, but you have to be careful before transferring to an arena something that is quite appropriate in another arena. Quebec is a smaller society. It's more homogenous. It's probably easier to force everybody to be on one side or the other, and we have been able to do it successfully so far.

By the way, our system survived the test of the courts in the Libman case, subject to a few amendments that were not basic in nature. Whether the same system would work on the wider Canadian scene, I'm less convinced. When we were discussing the issue in the abstract in 1992, we did not know what kind of referendum would follow. If I had known through some divine revelation that we would end up with the kind of alignment we had, and the strange scenario you've mentioned, I would probably have been very reluctant to advocate the Quebec model in these circumstances.

A further reason I was not so insistent on taking the Quebec model was that I was not convinced 100% that spending more than your opponents really made the difference. There was an assumption at that time—I think it has been shattered beyond repair—based on the 1982 referendum in Quebec, that you could literally buy the outcome of the referendum. I was not convinced at that time, based on the literature. And with the kind of campaign we had in 1992, I'm even less convinced that money can buy the outcome of a referendum.

We have a bizarre system, by the way. We have almost a free-for-all when it comes to referendum committees. On the other hand, when it comes to distributed time—you know, free air time on TV—it's the rule of equality that prevails. "Yes" has 50% and "no" has 50%. They have to agree among themselves to share that among the various committees. On the whole, we have a free-for-all. It's probably the system that is the least problematic given our circumstances, the complexity of the country, and the fact that one issue may be seen very differently in one province compared to the others.

You know, most of the campaign was along these lines. You went to Quebec, and you would tell people in Quebec, look, it's marvellous; we have 25% of the seats in the House of Commons in perpetuity, which is extraordinary, and the Senate that is proposed is toothless and probably will remain very weak. Now, the same people, if they had to go outside Quebec, had to say, well, 25% for Quebec is not that important, and we have an equality of seats for the provinces in the Senate, and that's great.

Probably it's best to leave some flexibility in the system.

● (1205)

The Chair: Thank you, Mr. Lukiwski.

Monsieur Desnoyers.

[Translation]

Mr. Luc Desnoyers (Rivière-des-Mille-Îles, BQ): Thank you, Mr. Chair.

Welcome, Mr. Massicotte.

You talked about referendum legislation in various provinces. You mentioned British Columbia and other provinces. Can you tell us a bit more about this? I will then come back to the Quebec legislation.

Mr. Louis Massicotte: The situations are very different from one province to another. In the case of Quebec, a framework act was enacted in 1978 that allows for various referendums to be held. I mention it because to start with, referendums are not a normal method of governing. When a referendum is held, it is because there is a genuinely thorny problem. In 1898, it was prohibition, and the fact was that Canadians did not have the same opinions about it. In 1942, it was conscription. So in those cases, to highlight the completely exceptional nature of the referendum in a democracy that was fundamentally representative, special legislation was enacted that laid out all the details of the referendum, and then the legislation was forgotten about.

Quebec wanted to adopt a framework act. Quite frankly, not all provinces have made the same choice. In some cases, there is still ad hoc legislation today. Which provinces have framework acts? I admit that you kind of have me there. I am trying to remember. British Columbia has one. I think Saskatchewan has one. Prince Edward Island has one too, I'm certain. Quebec has one. I don't know what the situation is for the other provinces. I would have to check.

I think that referendums as a tool have still not become part of our customs today. I would note that your act is another of the framework acts, in the sense that it allows for more than one referendum to be held.

That is all I can tell you about this. We could try to give you—

● (1210)

Mr. Luc Desnoyers: Regarding 1992, you referred to an aspect of the Quebec act. You said that residents who arrived six months before the referendum was held did not have access to the vote, which is a technicality, to use the word you used right at the beginning. I don't know whether this was raised in Quebec in relation to the application of that act, but historically, what the Bourassa-Mulroney agreement did, and I would like to hear your thoughts on this, was to put referendum structures in place throughout Canada, ultimately, so that each province could adapt it as it chose. In fact, Canada is an immense country where there are significant differences from one end of the country to the other. So when referendum legislation can be enacted that people can more easily make sense of, it very probably allows for the objectives to be achieved. The 1992 referendum is an example.

Consider the 1995 referendum. You referred to finances and the stringency of the Quebec act, particularly the financial aspect, as compared to the federal Referendum Act, which is less stringent. Certainly this was felt in the 1995 referendum, when everyone loved us and all the advertising posters were reserved on all the highways. You said that money did not play an important role; I'm not sure that was the case in 1995. Yes, money played an important role.

I would like to go back to my questions about the development of referendum legislation in Canada as a whole. This has brought a new and important aspect to how each community, each province, is able to make its voice heard.

Mr. Louis Massicotte: In 1992, that flexibility did mean that everyone got what they wanted. In 1992, Quebecers were convinced that their approach was preferable. That is the approach that won out. I think there was also another reason.

Politics is funny: you never know exactly where you are going to end up. When the decision was made to consult people by referendum, the belief in the Canadian political class was that it was going to be a cakewalk. There were no speeches from Mr. Trudeau or tape recorded late-night indiscretions from certain people. So they were sure it would pass. I also think that people in the federal government told themselves they had to be careful, if the referendum was held in Quebec under a law that in fact allowed people to spend what they wanted and it passed, the losers would say it was illegitimate. While if the referendum took place under a much more stringent law in that regard, the result would have to be accepted by the losers.

In fact, that isn't how it happened, but personally, I didn't have the impression that money played a very big role in that regard. I know there are cases... Sometimes the one who spends the most wins, that can't be denied. What I dispute, however, personally, is the idea that all you have to do to win is spend money. I think I have seen otherwise.

Mr. Luc Desnoyers: I would like to hear some of your thoughts on the whole flexibility aspect. I think that exists in the federal Referendum Act.

• (1215)

Mr. Louis Massicotte: It exists. I am not going to jump off a cliff if you keep it. The only thing I am saying is that it seems to me that it is not illegitimate for a government to put the same question to all voters in the country. I would note that the same question has been put and the vote was held on the same date. That is a factor for unity.

There is also another reason why I have doubts on this selectivity question. You know what the result of selectivity was in 1992, and you don't seem to have been unhappy with it.

Professors have to have good memories. I remember very clearly the context in which selectivity was introduced. It was introduced during Mr. Trudeau's time, in the late 1970s. At that time, when there were federal-provincial negotiations, this is how Mr. Trudeau saw things: he represented all Canadians, and Canadians agreed with him on the goals. Unfortunately for him, there were always two or three hardheads among the provincial premiers. In his eyes, and this can be seen in black and white in public documents, the referendum was almost a punitive expedition against a recalcitrant province. In other words, he said to himself that if they stood up to him, he would hold

a referendum not in the provinces that agreed with him, but in his adversaries' province, to show them they did not have the support of voters in their province. In other words, he wanted to show them up in front of their own people.

Obviously, this was a pressure tactic. I have never liked that approach. Personally, I am not a hardcore centralist, but I think that saying it is legitimate for the government of a federal country to consult all of the people on a question doesn't mean falling that line, and that as far as possible there have to be very strong reasons not to do it.

That being said, I appreciate the reasons why you would decide differently and I acknowledge that they are shared by quite a few people.

[English]

The Chair: Thank you, Professor.

We'll move on back to Mr. Proulx for the sequel.

[Translation]

Mr. Marcel Proulx: Thank you, Mr. Chair.

You said earlier that the parties would probably line up on one side. In other words, all or a majority of a particular party would be on the "yes" side or the "no" side, regardless. I don't necessarily agree with you, and that complicates my life even more when it comes to spending.

I come back to the question of election spending as opposed to referendum spending. If the parties were completely lined up on one side or the other, with a line down the middle, we would probably not need a referendum, let's be clear.

I will explain my problem again. My neighbour in the next riding, who may be in the same party as me in a general election, is not necessarily on the same side as me in a referendum.

Mr. Massicotte, you said earlier that if I give an interview and I tell a journalist that I am in favour of the "no" or the "yes", whatever, there is no spending associated with that. You're right. But in theory, if I travel from my riding in Hull—Aylmer and I go to Montreal to help a colleague in the general election campaign and give interviews relating exclusively to the referendum, I have to split my expenses. That brings us back to an accounting problem.

In that respect, I am having a lot of trouble understanding how we could do it, to genuinely split the expenses equitably between a candidate in a general election and one of the referendum committees.

• (1220)

Mr. Louis Massicotte: Your reasoning is ingenious, Mr. Proulx, but I think...

Mr. Marcel Proulx: Could you sign your statement please?

An hon. member: That's the first time he's heard that.

Some hon. members: Ha, ha!

Mr. Louis Massicotte: It's on tape. And there are a lot of witnesses on all sides.

It is ingenious reasoning, but in the reality of politics I'm not sure it would happen like that, that is, that if the candidate in Hull—Aylmer supports a certain camp in the referendum and the candidate in the next riding for the same party supports the completely opposite option, I don't think one would be mounting a big campaign for the "yes" and the other for the "no". I think what would happen is that the candidate in Hull—Aylmer would get instructions from high up in the party so that their colleague's opponents in the next riding couldn't use the candidate's position to bolster their own. You see kind of what I mean.

What would probably happen is that in both cases the candidates would be urged not to say too much because they don't agree on the subject, and if either of them stated their opinion publicly the effect would be to embarrass both of them. I think that is what would happen.

Politics is your department, not mine. I think that in the example you cite, the parties would make sure their candidates did not say too much in expressing their opinions on the referendum. What happened in British Columbia and Ontario, where the candidates and members stayed silent on the referendum, illustrates that this is probably not a hypothetical scenario at all.

Mr. Marcel Proulx: In that case, if memory serves...

[English]

The Chair: You have less than a minute for the question and answer.

[Translation]

Mr. Marcel Proulx: ... it was about a question regarding an election method, which is a touchier subject.

If companies and unions could not contribute financially to a referendum campaign, the government would have to make up the shortfall. How could that work? At present, in the case of an election, it is based on the previous results, a candidate receives so much per vote, etc. How do you see it in the case of a referendum?

Mr. Louis Massicotte: Before answering, just to...

[English]

The Chair: Please give a very short answer. Mr. Proulx' time is up, so we'll let you answer very quickly.

[Translation]

Mr. Louis Massicotte: Then I will get straight to the point.

I simply think you would have to measure it by the number of voters, fund the committee based on the number of voters in the riding where it is operating. As to the amount to be provided, I am going to leave that to the technicians.

[English]

The Chair: Thank you.

Mr. Albrecht.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

And thank you, Mr. Massicotte, for being here today.

You referenced your situation in the 1992 referendum, when you had lived there just barely long enough to participate, and yet others

who were there less than six months weren't able to. I wonder what your comments are in terms of the legal framework surrounding a national referendum. What could have been done to mitigate that situation, or are there steps we could take to avoid that problem?

Mr. Louis Massicotte: I don't think anything could have been done, because it was a decision made by the Government of Canada at that time, not by Parliament. The government decided the referendum would be held in all parts of the Canadian territory but Quebec. So in Quebec, they elected to use the provincial statute, and that was it. The provincial statute was like this. The federal government had no authority to alter the statute, and therefore, if you accept that the provincial rules apply, you have to accept all the provincial rules, including those you dislike.

Mr. Harold Albrecht: Okay.

You referenced a number of different jurisdictions that have held referendums at the same time as elections. I think you mentioned Australia as one that has had referendums at the same time as elections at least seven times.

• (1225)

Mr. Louis Massicotte: Yes.

Mr. Harold Albrecht: I do know there is a little more pressure brought to bear on Australians to participate in a national election. I think there are some financial obligations there.

I wonder about the fact that Australia has repeated this practice at least seven times. There seems to be a pretty good track record of success there. Have you observed any negatives in that process?

Mr. Louis Massicotte: The last time Australia held a general election as well as a referendum on the same day was 1974. Plenty of referendums have been held. The last time was in 1999.

I have systematically checked the dates. The years were 1906, 1910, 1919, 1928, 1930, 1946, and 1974. This suggests that maybe they had a few problems, because it hasn't been done for a quarter of a century.

Mr. Harold Albrecht: Then to follow that up, are you aware that Australian residents are also obligated to participate in referenda? I'm not exactly sure what the tax rules are.

Mr. Louis Massicotte: You bet I'm aware.

Mr. Harold Albrecht: Are they obligated as well to participate in the referenda?

Mr. Louis Massicotte: Absolutely. Indeed, I've been told that in 1999, if voting had been voluntary instead of compulsory, the outcome might have been positive. The reason it failed is that lots of people who are politically less motivated were drowned out at the polls by the fear of fines and they probably tipped the balance.

Mr. Harold Albrecht: That's an interesting observation.

We had the chief electoral officer from British Columbia here earlier this week, and he pointed out the fact that in the referenda that have been held there, there are often or almost always the two different criteria for measuring the results: one being the overall criterion, percentage; and then one divided by riding across that particular province.

In your opinion, if there are future federal referenda, would it be wise to have a three-part system: one with an overall criterion; one that is provincial, for a certain percentage of provinces to come on board; and also one at the local riding level to avoid the undue influence of the large urban centres? Could you comment on that?

Mr. Louis Massicotte: The answer to your question is found in section 3 of the act, which clearly states that this is consultation and not a decision by the electorate. Our referendums are consultative, and that's the reason no criterion for victory is indicated in this case.

The difference with the B.C. scenario and also with the Ontario scenario is that they were binding.

Mr. Harold Albrecht: Okay. That brings up another question that I hadn't planned to raise, but help me understand the difference between the terms "referendum" and "plebiscite", or is it simply semantics?

Mr. Louis Massicotte: Let me put it this way. The classic distinction in the English language is this: a referendum is binding; a plebiscite is not.

To make things difficult, in French it is not the case at all. Indeed, I have a recollection that Mr. Patrick Boyer, an authority on referenda, wanted in 1992 to put this distinction into the legislation. He wanted what is now known as the Referendum Act to be called the plebiscite act. I understand his motion was rejected.

Clearly I think the best way to avoid the problem is to ban the word "plebiscite"—which, to make it worse, has very negative connotations in French—and to say this is a "binding referendum" or "non-binding consultative referendum".

Mr. Harold Albrecht: But the act, the way it is currently worded, is non-binding.

Mr. Louis Massicotte: Absolutely.

The Chair: We will be having Mr. Boyer here, so you can ask him yourself.

Monsieur Laframboise, I believe you are next.

[Translation]

Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ): Thank you, Mr. Chair.

Mr. Massicotte, I understand that we are analyzing the Referendum Act at the federal level, but earlier my colleague raised a very important question about money and spending. Certainly you can think that money has no influence, but nonetheless the whole tale of the sponsorship scandal proved to us that there was overspending during the referendum campaign in Quebec. How can we combat this overspending?

Mr. Louis Massicotte: In fact, do you know there was a tribunal in 1980? When the government of Quebec enacted the Referendum Act in 1978, it very clearly wanted the two camps to be able to spend. But we now know that it knew what I am going to tell you. It knew perfectly well that as Canadian law now stands, that prohibition was purely hypothetical. We discovered that in 1980 with the Mediacom decision, a decision of a Quebec tribunal, the Conseil du référendum.

You will probably recall that the federal government spent fairly significant amounts at that time, estimated first at \$2 million, then \$5 million. Someone has even suggested that it spent \$17.5 million. I haven't checked, but whatever it was, it was a lot more than the amount that was supposed to be spent. Myself, I don't have the impression that this is what won the day for it. Everyone has their own opinion about this.

The director of political party financing in Quebec, that being how the law was enforced at the time, said it was illegal. He took the case to the Superior Court to get an injunction, but he was told that he had got the wrong tribunal, as was the case. He then applied to the right tribunal, the Conseil du référendum, and he was told he did not know the law. Under a provision of federal interpretation legislation, no statute affects the rights of the Crown unless the Crown expressly consents. In fact, this Crown privilege also exists at the provincial level. Fortunately it doesn't happen, but if a provincial government wanted to get involved and play the same game, it could do that. That is not entirely desirable, but that is the situation we are in.

As a result, there was more or less a legislative paper tiger in 1980, in the sense that it was circumvented, even though, in my humble opinion, that may not be what made the difference. What I want to say, essentially, is that there is no way to enforce that kind of watertight provision. In my opinion, the weight of public opinion is the best way to avoid the overspending you allude to. If the public thinks it is completely indecent and appalling to do it, public opinion will be apparent. Governments have to take it into account because, after all, it is our money being used to influence an outcome.

• (1230)

Mr. Mario Laframboise: Could there not be a reciprocity procedure in each statute, in a Canadian statute and in the provincial statutes, to compel it?...Would that be too difficult in legal terms?

Mr. Louis Massicotte: If you are able to get the two governments to agree on the rules for a vote that might require one of them to stay out of Quebec, so much the better.

The solution I was thinking of myself was a constitutional amendment. Given the situation that was created in 1992 in Charlottetown in particular, we both know that saying that legislation calls for a constitutional amendment is another way of saying it will never happen.

Mr. Mario Laframboise: So in reality we can't prevent overspending, other than by the public opinion route.

Mr. Louis Massicotte: That is kind of what I think.

Mr. Mario Laframboise: In a lot of cases we learn about the facts after they have occurred.

Mr. Louis Massicotte: Ordinarily, though, if the money is spent, it will be noticed in one way or another. Leading up to the 1995 referendum, we knew perfectly well that the travel by people who came to Montreal represented expenses. But we did not know what the total cost was.

In that case too, I talked about that. When I was in Montreal, I had the privilege of being surrounded by better experts in voter behaviour. There was never any conclusive evidence that the rally benefited the "no" camp. In fact, a lot of people thought the opposite, that it had a backlash effect, that it was seen in such a bad light by the public that if it influenced people, it was in fact in the opposite direction.

That being said, I am the first to agree that no scientific opinion on a subject like that is absolute and final. We can't conduct experiments in a laboratory.

Mr. Mario Laframboise: But we did see afterward that all the media propaganda had been interrupted along the highways. We discovered a lot of things.

You Liberals paid the price and you're still paying it. There's no problem in that respect.

Le président: Mr. Reid.

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

[English]

I'm just so pleased that you're speaking both official languages now.

The Chair: I'm attempting my best, Mr. Reid.

• (1235)

Mr. Scott Reid: And you're getting better all the time.

I was actually in Australia in 1999. I'm not sure I agree with you on the comment about mandatory voting being the decisive factor, unless the assumption is that you would have had voter participation that was perhaps half of what it was actually. Every state in Australia rejected the constitutional option except the Australian capital territory. Anyway, that's completely irrelevant to what I was going to ask you, and I just wanted to put that in for no particular reason.

What I did want to ask you about is this. When you hold a referendum at the same time as an election, there are times when I can see it being an effective thing to do. In Australia, for example, the referendums are always on whether some amendment should be made to the constitution. The referendum is the final step. So the amendment occurs, assuming you get a positive vote, automatically, regardless of what happens to government.

But there is another example of a referendum in Australia that was held at the same time as an election where the election effectively obviated the result of the referendum, and there have been examples in Canada as well. I'm thinking of the case in Australia when western Australia voted in either 1934 or 1935 to secede from Australia, but the government that had proposed the motion was defeated at the same time as the referendum was adopted. Even though it had a two-thirds vote in favour of secession from Australia, the consequence was that the new Labor government followed through without much enthusiasm and basically ensured the defeat of that proposal.

Similarly, in the early 1980s the Conservative government in Saskatchewan put forward a referendum or a plebiscite on public funding for abortions, I believe. The public voted against public

funding but elected a New Democratic government, which then set aside the results.

I see that kind of problem, and I'm not sure I see how to overcome that in our environment, where it actually is very difficult to have a genuinely binding referendum wherein the referendum itself is the final step, and the law simply takes over and starts operating as a result of the vote. Am I correct in my surmise in that regard?

Mr. Louis Massicotte: Ours is basically a representative democracy, and the idea that the people could... Usually when you throw an issue to a referendum, it is because it is a hot potato that you don't know what to do with—prohibition and conscription were exactly that—or you need the support of the people of your own province in your dealings with another level of government, as I think is the case of our Quebec referendums.

I wasn't aware that the election in 1933 in western Australia had been held simultaneously with a referendum. I understand indeed that secessionists, who had a whopping 66% of support, had a very bad surprise when they arrived in London to show their petition. They were told by the British lords that the Commonwealth was an indissoluble union and therefore that the petition could not be dealt with. That was a major factor. I understand that some federal money that was given to the state thereafter helped to reignite Australian fervour among the people of western Australia.

Look, the issue of whether we should have binding referendums or non-binding referendums is basically a political issue on which I do not pretend to be very informed. It seems to me the instinct of most parliamentarians is to have flexibility in this area and to assume that referendums are non-binding.

I would also add that the distinction is fine in theory, but when it comes to political practice, think of it. Can you imagine, for example, Mr. Mulroney having swallowed the outcome of the 1992 referendum, brushing it aside, saying, this is the verdict of the taverns of Moose Jaw and the brasseries of Roberval. It isn't the considered view of the Canadian electorate, and we decide to pass Charlottetown nevertheless. It's very difficult to conceive, anyway.

So it means that although I acknowledge the distinction is there and that there are examples indeed, as you suggest, that politicians can ignore some referendum verdicts... The last time was 1999 in New Zealand when 79% of the people voted for a reduction of the number of members in the assembly, in the House of Representatives, but the number of assembly seats has remained exactly the same. So some outcomes can be brushed aside, but my view is that when referendums are held on an important issue, and when, obviously, the outcome reflects what people really feel, any politician who dared to ignore this outcome would be very imprudent indeed.

• (1240)

Mr. Scott Reid: Do I have any time left, or are we out?

The Chair: You're done, I'm sorry. I was intrigued by the conversation. I let you go an extra minute.

Mr. Scott Reid: *Merci beaucoup.*

The Chair: Mr. Lauzon.

[Translation]

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Thank you.

Mr. Massicotte, in your presentation, you mentioned that in the case of a referendum, if we banned companies from giving money to either camp, the government would have to supply the money. Can you explain a little more about what you mean?

Mr. Louis Massicotte: It's quite simple. I will give you an example. In 2003, when Parliament decided to eliminate the ability of companies and unions to give money to political parties, more than half the parties' funding came from those sources. When you take away such significant revenue sources from political parties, the tap has to be turned on somewhere, because there is no word from on high saying that individuals are going to make contributions to fill the void created by the ban on corporate contributions.

What happened at the federal level in 2003 was that a very large subsidy was created—I don't know how much per voter—that was paid to the political parties, with the result, and it was Mr. Kingsley, the former Chief Electoral Officer, who told me, that nearly 80% of the funding the parties relied on came from government subsidies.

Mr. Guy Lauzon: If the rules are the same for both camps, the "yes" camp and the "no" camp, it will be equal.

Mr. Louis Massicotte: It will be equal...

Mr. Guy Lauzon: Is it necessary to have more money to...

Mr. Louis Massicotte: If you think that too much money is spent in politics, and that if the parties' resources are reduced, it is better because they will spend less, that's correct. But I have the impression that the parties might tell you that politics is an expensive business.

Mr. Guy Lauzon: I'm talking about referendums.

Mr. Louis Massicotte: They will tell you that a referendum is an expensive business, because the positions have to be developed, they have to be publicized, leaflets have to be printed, messages have to be presented on television. That's expensive.

Mr. Guy Lauzon: And funding all that is a government responsibility?

Mr. Louis Massicotte: Ah! In both cases, it will be the government that...

Mr. Guy Lauzon: That's what I'm saying. That is your position.

Mr. Louis Massicotte: I think that this is what will happen. If you allow companies to finance referendum committees, the government will probably not have to get decisively involved. It will not have to provide money.

Mr. Guy Lauzon: It won't be possible for individuals to finance this?...

Mr. Louis Massicotte: In any event, for political parties, that is certainly not what happens. I can tell you, on a side note, that I think it will be increasingly difficult, for reasons I would prefer not to expand on, to persuade large numbers of individuals to give enough money to political parties for them to be able to carry on their activities. In my opinion, there may be parties that will succeed in financing their activities that way, but there will be others that will have more difficulty.

When the federal government decided to limit the right to finance parties to individuals in 2003, there was a reason why it felt a need to turn on the public tap at the same time, because it said to itself that if it didn't do that the parties were going to be short of money.

Mr. Guy Lauzon: They couldn't maintain the same level of funding.

But if both sides cut their spending?

Mr. Louis Massicotte: Right. That may not be a bad idea. Maybe there is too much political spending. On that point, your opinion is as good as mine; maybe there really is too much spending.

Mr. Guy Lauzon: You mentioned that the amount of money spent is not necessarily...

Mr. Louis Massicotte: That's possible. In fact, I think that because it is political parties that make the laws about this, they might want to protect themselves against funding shortfalls. That is also not impossible.

Mr. Guy Lauzon: Right. Thank you.

• (1245)

[English]

The Chair: I have no one else on my list. If there's anyone else... Mr. Reid, if you'd like just another couple of minutes, we'll be happy to do that.

Mr. Scott Reid: The idea has bounced around a bit that there might be merit under federal law to have a version of the umbrella committee idea that's used in Quebec legislation. My impression is that there are good arguments on either side of this question.

One of the features of Quebec's legislation is that the leader of the yes side in any referendum is the premier, and the leader of the no side is the leader of the opposition. It seems that there could be cases in which this is problematic. Had there been a referendum under this model in Canada at the federal level when the Bloc Québécois was the opposition, you would have had, effectively, an opposition representing only one province, despite the fact that it was conceivably a minority government in which other parties from other provinces could have participated. Even today, if we had such a system, we could have a situation in which the leader of the Liberal Party would be the head of the no committee, and the Bloc and the NDP, who are legitimate opposition parties, would be in some way not represented.

In 1992, I think Mr. Bourassa said that if they didn't get a constitutional deal that they could present to the people, they'd have a referendum on whether Quebec should secede. He would have been the head of the yes committee, and Mr. Parizeau would have been the head of the no committee, and you could not have spent money on behalf of the no committee without Mr. Parizeau's say-so. That strikes me as being inherently problematic.

Am I missing something?

Mr. Louis Massicotte: No, you are flagging a very interesting issue. What Quebec's referendum provides for is that once the referendum question has been passed by the members of the Assembly, members of the Assembly are invited to join either the yes side or the no side. What happened, of course, was that all the members of the Liberal Party went on one side, and all the members of the Parti Québécois went on the other side. There were a few third parties, which were not very numerous at the time.

What happens under this model if parties have no opinion on the merits of the question? What will members do? Indeed, the Quebec legislation foresaw this problem. It said that if no member of the Assembly joins a side, then the Chief Electoral Officer is instructed to find people to staff the national committee.

Indeed, this model, this umbrella committee, as provided by the Quebec legislation, is different from the umbrella committees of the British type, which were more flexible. This system has been devised on the assumption that politicians would have a definite opinion on either side, and that parties would join a side en masse.

What happened in 1992, I remember, is that Monsieur Parizeau headed the no committee on the Charlottetown accord. But Mr. Libman, who was the leader of the Equality Party, was also opposed to the Charlottetown accord. I understand that he had to campaign under the umbrella of Monsieur Parizeau. This apparently worked. Apparently, they found a *modus vivendi*. Of course, it was a union, an illustration that politics makes strange bedfellows. But it worked. To my knowledge, Mr. Libman did not complain of being shut out. Indeed, Monsieur Parizeau had every interest in broadening the appeal of the no side, whatever the inner motives of those who voted no might have been.

Have I answered your question?

Mr. Scott Reid: Yes, very well.

I gather, then, that had the first referendum, the one that would have occurred had the Charlottetown accord not been developed—

• (1250)

The Chair: Mr. Reid, you're going over your time. and I feel that another question will put us well over.

Mr. Scott Reid: In that case, thank you very much.

The Chair: Monsieur Blais, we'll hear a quick question from you.

[Translation]

Mr. Raynald Blais (Gaspésie—Îles-de-la-Madeleine, BQ): Thank you, Mr. Chair.

Good morning, Mr. Massicotte.

I am jumping in a bit here, but the discussion you had with Mr. Lauzon prompts me to ask you a question. I have the impression that your opinion about party financing must be very interesting.

You say that when political parties' funding sources are cut off, it is to the benefit of the government or Parliament to turn on the tap, as you put it, to make up for the shortfall, to arrive at an adequate funding level or one that resembles what they had before. Once organizations, corporations, can no longer contribute, the general public can do it.

The general public can take a variety of forms. It might be, for example, a denomination, a religion, that asks its adherents or its group to support one party over another. There is a form of corporation and financing that sets in and ends up more or less vitiating the system that is meant to ensure that the general public is financing political parties.

Mr. Louis Massicotte: Yes. Based on the indiscretions that have been going on for 20 or 25 years and that are becoming increasingly common and specific in recent years, including recent months, recent weeks, that is more or less what is going on in Quebec. There is even a court case about this. A law firm will tell its various associates that it is in the collective interest for each of them to donate \$3,000 to a particular party, and maybe, as an insurance policy, to give \$1,000 to the other party. So there are 40 contributions of \$3,000 on paper for naïve people like me who read the reports, who look at that and think it looks just fine: 40 people decided, of their own accord, to donate money to a political party. But what we are told by people who are closer to the situation is that we are innocents abroad, that what is really going on is that companies are financing political parties, but doing it by evasive methods that are in fact contrary to the principle of the law, the law we think is so fine. Be careful! I am not telling you that all contributions in Quebec are like this, but we have to acknowledge that this is happening, because there are not enough individual, disinterested contributions by individuals to enable parties to stay on track financially.

I got some figures to illustrate the change. In the late 1970s, about 200,000 people a year, based on the figures filed under the legislation, contributed to political parties. Today, again going by the official figures, the number is something on the order of 50,000. In other words, there was a situation in the 1970s that meant that politics was fairly exciting and people were fairly motivated to go out and give money in \$10 and \$20 amounts. Politics was working well.

What I see, and I take no joy from, I will say straight off, is that political activity at present is not seen in a very positive light. And I think the number of people who care enough about politics to give money to parties without some self-interest in the back of their minds is not as high as it used to be. That is why somewhat more self-interested motivations are emerging, and they are doing it within the framework of the legislation, that is, while people are pretending to abide by the letter of the law, they are certainly not abiding by its spirit, because there are contributions that are *de facto* corporate, although they are formally individual. That is why government could emerge as the only solution, because government money comes with no strings attached, to use the English expression.

Mr. Raynald Blais: Thank you.

• (1255)

[English]

The Chair: Professor Massicotte, I'd love to thank you for being here today. I love a man with passion for the subject with which he deals.

Your passion comes through in what you shared with us today. You shared much with us on the Referendum Act and politics in general. I guess we'll attempt to be less boring and see if that helps.

Mr. Louis Massicotte: If I may, Mr. Chairman, I'm a former servant of Parliament. I was a research officer in the Library of Parliament. It's always an honour for me to come to Ottawa, where I lived for about 12 years, and if possible to throw some help to your proceedings, which I believe are important.

The Chair: Thank you, and I can assure you that the quality of the researchers in the Library of Parliament has certainly not waned in your absence. We continue to have great researchers there.

I thank the committee for its work.

We're adjourned for today. We'll see you all on Tuesday.

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