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# Standing Committee on Procedure and House Affairs

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EVIDENCE

**Tuesday, November 24, 2009**

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**Chair**

**Mr. Joe Preston**



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•(1105)

[English]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** I'd like to call to order the 27th meeting of the Standing Committee on Procedure and House Affairs. Today we're again reviewing the Referendum Act.

We have a small amount of in camera committee business at the end of this meeting, so we will excuse our witness before our allotted time is up, but let's give him his due and let him answer a lot of questions.

Thank you, Dr. Boyer, for all the help you've given so far. In my spare time I've been trying to read your books, and I'm thankful for the number of pictures in some of them. But thank you very much for that.

We will start with an opening statement, if we could, please—the shorter the better, because the members all have questions for you—and we'll move on from there.

**Mr. Patrick Boyer (As an Individual):** Thank you very much, Chair and members of the committee. It's an honour to be back on Parliament Hill and to be invited to appear before you.

The work you've undertaken with reviewing the Referendum Act, when I look at the proceedings already held, indicates that a lot of the effort is focused on dealing with technical aspects of the existing law and bringing matters up to date in terms of regulations.

My main submission this morning is that busy MPs who have many demands on their time have a fundamental decision to make—that is, whether your work in the coming weeks and your recommendation flowing from this committee to the House will be merely one of addressing regulations, technical updates, and tinkering with the existing 1992 act, or rather, whether you'll take this opportunity on behalf of the people of Canada, and indeed the Parliament of Canada, to move to do a larger act that will serve our country as a democracy far better, far longer, and leave you with a sense of accomplishment for the time you've spent, that you have not simply worried about knitting together regulations and technical details but have in fact equipped this country with the democratic infrastructure for consultation with the citizens on fundamental ballot questions.

It's very important that this review is being undertaken by your committee, because not only does it mean that Parliament is no longer in violation of one of its own statutes—a time limit for in fact carrying out this review—but, far more important, what is required in putting together legislation to affect the democratic processes is

best carried out at a time of calm deliberation. Too many times the laws governing referendums in this country have been enacted by provincial legislatures, and by Parliament itself, on the very eve of those contentious issues coming before the electorate, a time when feelings were heightened and judgment was influenced by the temperature of the hour.

Nothing could be better than this time that you have now in the coming weeks for careful deliberation. That is why I would submit that a possibility for the committee is to consider a recommendation for a comprehensive Canada referendum act, rather than a short act that you're looking at now, the 1992 act, with significant cross-reference to the Canada Elections Act, extraordinary delegation of powers to well-intended and well-functioning officials who nevertheless are saddled with delegated power, trying to work these sections together. It will serve the country, the election officials, and parliamentarians themselves so much better to have the Canada Elections Act, a current up-to-date statute governing elections to our House of Commons, and, parallel to that, a second separate statute, the Canada referendum act, which will be a complete, self-contained code for governing that process, with its many similarities to provisions under the Canada Elections Act but also great differences.

Moving quickly, Chair and members of the committee, because I know you have questions, I appreciate the ruling of the chair that allowed me to see in advance of this morning's hearing the brief prepared by Michel Bédard from the parliamentary information and research branch. The fundamental point there that I want to recommend is that a single statute that is comprehensive will in fact address many of the points raised in this work—from umbrella committees, to spending levels, to the exercise of democratic rights, harmonization with provincial referendum acts, and so on—and we can get into the details of that.

•(1110)

To conclude, I would like to say that what you have before you in the form of the 1992 Referendum Act—and the version I have here is chapter 30 from the 1992 Statutes of Canada current to October 28 of this year—would appear to be a slim statute. There's no particular merit in being large or small. The real merit is in the comprehensiveness, clarity, and efficiency of the legislation. In fact, this is not the Referendum Act you have before you.

This is how big it is, but once you get the consolidated version with the regulations, it's the same 32 pages of the present Referendum Act. This was the consolidated version under which we had the Charlottetown Accord referendum; all the rest of it is the Canada Elections Act, regulations, and cross-references. I invite any person to say that the one with a lot of cross-references is any better than this one, which is in fact the same size.

This was the private member's bill I introduced in the House of Commons in July 1988. It's a comprehensive statute that was reintroduced September 26, 1989, and in every new session of the House, so again in May 1991, and, determined as I was, again on September 23, 1991. This was what Senator Eugene Forsey endorsed on the first introduction. This is the same bill that, as opposition leader, the Honourable Jean Chrétien endorsed, recommended, and urged Parliament to enact because some legislation was needed to be in place for the national referendum.

If there's not time to read it into the record, I would at least refer members to the six origins. This law was drawn from six different sources, which appears in a book some of you may have, called *The People's Mandate*.

I will conclude with this, Chair, if there's time, but it's to point out and put on the record that this comprehensive statute of 1992—and so things have changed a bit—was drawn from these six sources.

First is the British Referendum Act of 1975, which recognized the important concept of having two umbrella organizations: one for the no and another for the yes side on the question.

Second is Quebec's Referendum Act, which is admirable for its simplicity and clarity of expression, similar to Quebec's Election Act and many other statutes of the National Assembly in the past several decades. It not only picked up the British idea for umbrella organizations, *la Loi sur la consultation populaire*, but also added important Canadian context elements regarding financing and registration of referendum groups.

Third was the earlier bill that had been introduced in 1978 in the House of Commons by the Honourable Marc Lalonde on behalf of the Trudeau government. That dealt with many essentials for nationwide voting in Canada, such as preparing the voters' list, conducting the vote, broadcasting rules, campaign financing, offences, and time zone differences.

The fourth source I drew on for this bill were several ideas I came across when writing a book I did not inflict on you. This was a 1982 book called *Lawmaking by the People*. That includes the legal provisions by which citizens themselves can initiate a referendum. This is the initiative process.

Fifth, I added some provisions, such as those for the publicity pamphlets, drawing from the 1912 Saskatchewan Direct Legislation Act. That's where both sides have equal say in a publication that the chief electoral official sends to all citizens so they all have information from both sides of the campaign. Those were incorporated in the bill.

• (1115)

Sixth, and finally, were provisions from the amendments the Mulroney government had proposed, major amendments in 1986 to

the Canada Elections Act dealing, essentially, with equality rights provisions. Unfortunately, they were not enacted at that time. As well, I picked up a number of recommendations from the Chief Electoral Officer of Canada, Jean-Marc Hamel

So all of that was incorporated in that bill. When it came time for the government, finally and reluctantly, to realize that with three provinces going to have referenda on the Charlottetown Accord—Quebec, Alberta, and B.C.—it was inappropriate to have two classes of Canadian citizens: those who could vote to ratify the country's Constitution and those who could not. That was when Prime Minister Mulroney realized it was necessary to have in place legislation for a national referendum. That was the time when the bill that you are now considering became a stripped-down version, by private member's bill, limiting it to constitutional questions alone, not including umbrella committees, not effectively dealing with spending limits, and otherwise reflecting an inordinate reluctance on the part of the government—and even more than the government, the Ottawa political culture that favours control and secrecy and directed government—to have a referendum only as the last resort. That was the genesis of the bill you have before you.

I submit to you that you do have an opportunity to now go back to the higher level and give this country, and the citizens of this country, enabling legislation for direct citizen consultation by ballot whenever and if ever that occasion should present itself.

Thank you.

• (1120)

**The Chair:** Thank you very much for your informative opening statement.

Madam Jennings, you're up first today.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Thank you, Mr. Boyer, for your presentation. Thank you for agreeing to the invitation of the committee to appear before us.

I have not had an opportunity to read your private member's bill, which you tabled in successive years. My question would be, if you had it to write today, would you draft exactly the same private member's bill? I will take an opportunity during the course of the hearings of this committee to actually read, study, and review your PMB.

What, if anything, would you change in your PMB?

**Mr. Patrick Boyer:** Thank you for the question.

Essentially, I think having drawn on those six sources, I was grounding it very solidly in the tradition of Canadian political and parliamentary and democratic practice. Probably two areas would stand out, though, that would be different in 2010 from 1992.

One relates to the fact that we increasingly function in Parliament, and parliamentarians increasingly function, within cyberspace. Indeed, one of the questions the Chief Electoral Officer, Marc Mayrand, has put to the committee is a problem about printing these ballots for overseas use. When we get to that in later questioning, I think there's a solution to that that is of paramount simplicity, simply relating to the Internet. I would say that yes, that's one area where some of the methods that were talked about in 1992 have been supplanted by the advance in technology, and also the equipment that Canadians have as empowered citizens, with access to much better information. All that should be tapped and not ignored.

The second area would be with relation to the finances. I had recommended and drafted in my legislation before, the requirement for umbrella committees, the need to have even-handedness spending on both the yes and no sides, as in the Quebec act—for example, the Referendum Act in Quebec. Since then, I would endorse the initiatives primarily taken by Prime Minister Chrétien and followed on by Prime Minister Harper to constrain even further the sources, to limit sources simply to voting citizens; in other words, no corporate donations, no union donations, simply those who can vote in the referendum in Canada able to also contribute financially to the support of their chosen side.

**Hon. Marlene Jennings:** If I'm not mistaken, on the issue of finances, the referendum statutes, as they now stand, are not in alignment with Elections Canada. I could be mistaken, and I would welcome correction if that is the case. If a referendum were being held today, corporations would be able to contribute to the various campaigns. If I am not mistaken, if my reading is correct, you would be recommending that whether it be a completely separate legislative framework for referenda, its own act, or whether it would be a section within the Elections Canada Act that would deal with part III, or whatever we would want to call it, the financing provisions for referenda be harmonized with the existing legislative requirements under Elections Canada for elections.

**Mr. Patrick Boyer:** Yes, that is correct.

**Hon. Marlene Jennings:** Okay. Those are my questions for the moment.

**The Chair:** Thank you.

There is about a minute and a half left on that, so now we will swing over.

Mr. Lukiwski.

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

Thank you, Mr. Boyer, for appearing. I appreciate your comments very much. In fact, I tend to agree with a lot of your observations. My personal assessment, after being involved with the discussions at this committee for the last several meetings, is that we need a separate referendum act. We need a legislative framework separate and apart from what we have now, and it needs to be more highly defined.

I have a lot of questions and only a short period of time, so I will focus on one right now, which is financing. I've put this question to other witnesses who have come forward. Currently there are no limits on the amount of money that a referendum committee or

committees can receive. There are limits on the expenses. It would be conceivable, because we've seen this before in other provincial jurisdictions, that the same referendum question could be asked in successive years. In British Columbia, for example, they've had the same question on the method of voting held several years apart.

My question is, if there is no limit on how much a referendum committee or committees can receive in terms of contributions, what is your view if, say, the pro side of a question received \$10 million in contributions and their initiative was defeated, if the no side actually won? Would that pro side committee or committees, in your opinion, be allowed—could they be allowed, should they be allowed—to spend whatever is left from the \$10 million over the course of succeeding years to try to continue to promote their position in the hope that that question would come back at a future date?

• (1125)

**Mr. Patrick Boyer:** My answer would be no. The reason would be to the extent we are trying to match up the provisions in the Canada Elections Act and the Referendum Act that deal with financing, for the Referendum Act to track the Canada Elections Act there would have to be, first of all, a limit on the amount that anyone could contribute; and second, a limit as to the source of that, namely voting citizens. Then, as you all know very well because you've recently received the audit reports from the last election in October, in terms of what happened to the excess amount that any of you may have been fortunate to have had coming out of the campaign, the options were to give it to the crown, give it to the party, or give it to your riding association, and not to spend it on another election for a period, because what we have under the Canada Elections Act is this very clear timeframe known as the elections period. That is a focused time when special rules apply. That includes the spending of money and soliciting support and actually playing this game.

In my view, if we can tolerate that for the election of people's representatives, then we should tolerate the same regime when it comes to people voting on a ballot question.

**Mr. Tom Lukiwski:** I'm just wondering about process. It's quite clearly defined in the Canada Elections Act where the money goes back to if you have an oversubscription of money coming in contributions. How would you do that in a referendum act? Because there is no riding association or political party, to whom would you give the money back?

**Mr. Patrick Boyer:** Well, that's a good point. You can't go back to the donors.

Mr. Chair and members, here's something for you to consider. The reason it can't go back to donors under the Canada Elections Act is because a tax receipt has already been issued and the money has been aggregated, and you can't sort out between all the donors, pro rata, how it would go back. In 1974, when Parliament enacted the Election Finance Reform Act, it said it can't go back there; that's impossible. But your question is excellent, because in this case you don't have riding associations, for example.

I would just defer on that point to what you and other experts might say. I assume you'll certainly be hearing from the chief electoral officer of British Columbia, who's had experience not only with those two referenda that you mentioned, but there was a third one dealing with aboriginal land claims in British Columbia.

Usually, in my experience in the referendum campaigns, there's not been a lot of money left at the end to worry about, but there has been in some cases. The choice basically, then, I guess, would be to forfeit it to the crown. But if there had not been tax receipts issued, then there would have been a possibility for that money, pro rata, to be returned to the donors.

• (1130)

**Mr. Tom Lukiwski:** On the issue of tax receipts, you're speaking of a marriage of rules contained in the Elections Act to also be contained in the Referendum Act.

**Mr. Patrick Boyer:** As far as it can go, and I don't think it can go all the way. The tax receipts could not work.

**Mr. Tom Lukiwski:** I can't see it either.

**Mr. Patrick Boyer:** You need the discipline of the party structure, the nominated candidates, and the official agents to make that system work. Those tax receipts are basically the Government of Canada saying these people out here can create money—

**Mr. Tom Lukiwski:** True.

**Mr. Patrick Boyer:** The donors can deduct that from money they're otherwise going to pay on their taxes. But you could never work that through the improvised structure of a referendum campaign.

**Mr. Tom Lukiwski:** You've clarified my point about whether or not a committee that had access money in its coffers could continue to promote its particular position, let's say, between elections or between referendums. Your recommendation would be, no, it should be restricted only to the period of time the referendum is being considered.

So this begs the question, how long should that timeframe be? For example, if a referendum is to be conducted during the same timeframe as a federal or provincial election, should that be the only timeframe allowed for discussion on the referendum—36 days in the case, say, of a provincial election, or 45 days federally? Or do you believe referendum questions should be considered over a longer period of time?

**The Chair:** A quick answer. Mr. Lukiwski's time is up.

**Mr. Patrick Boyer:** First, I don't believe that referenda should be held at the time of general elections, not at all.

Secondly, the time can be even shorter than that for general elections—30 days would be plenty. The main requirement is the technical one, how long it takes the election officials to get everything in place.

The third and final point is on this question about returning the money and so on, about excess funds at the end of the campaign. In considering that, committee members, I think it's important to have to relate that to other provisions that you may or may not want to address, such as spending limits, because they're all woven together.

**The Chair:** Thank you.

Monsieur Guimond.

[*Translation*]

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

Professor Boyer, you were a Progressive Conservative member of Parliament from 1984 to 1993. You represented the party that was the forerunner of today's Conservative Party. I have a question for your more progressive side. In truth, there are no longer any Progressive Conservatives here, only Conservatives, as evidenced by their bill. My question concerns the right of inmates to vote. As we know, in the Sauvé ruling, the Supreme Court of Canada struck down the provision in the Elections Canada Act prohibiting inmates sentenced to two or more years of imprisonment from voting. This provision was deemed to be unconstitutional.

What is the situation with respect to referendums? According to our interpretation of this provision, inmates are still not able to vote in a referendum. As a Progressive Conservative, what is your take on this issue?

**Mr. Patrick Boyer:** In my opinion, inmates should have the right to vote, just like other citizens. There has been a major shift. In the past, a person sentenced to prison was considered dead under the law. Gradually, certain rights were granted to inmates. Today, we take a different approach, which is reflected in the public policy of the country in which the inmate is being detained. Inmates must now be rehabilitated. To my way of thinking, allowing inmates to participate in the country's electoral process is a very important step in the rehabilitation process. There is nothing unusual about this. In fact, it's quite simple. Inmates were allowed to vote in a referendum held in P.E.I.

• (1135)

**Mr. Michel Guimond:** You've come here to share your opinion with us, but ultimately the committee will decide on a final report and recommend amendments. However, if I understand correctly, you believe the Sauvé ruling should also apply to the referendum process, that inmates should be allowed to vote in referendums. Am I right?

**Mr. Patrick Boyer:** Yes.

**Mr. Michel Guimond:** You are no longer actively involved in politics, but since you have worked as a journalist, as an academic and as an expert on referendum issues, you are aware that in 1995, Quebec held a referendum. Prior to the actual referendum, we witnessed a three-day love-in. Canadians came from around the country to tell Quebeckers how much they loved them and to chant slogans like "Canada, stand together, understand together". We witnessed an outpouring of affection. Here, we regularly get to see just how much Canadians love us.

However, there were problems owing to the expenses incurred by third parties. Canadian Airlines and Air Canada offered return flights from Vancouver to Montreal for \$99. Of course, it was 1995, but even back then, these tickets cost more than \$99. Trains were chartered from Ottawa and Toronto to give Canadians an opportunity to come and tell us they loved us. Telephone calls were made. All of these expenditures exceeded the allowable limit.

In your opinion, should specific provisions be adopted to address expenditures incurred by third parties during a referendum campaign?

**Mr. Patrick Boyer:** Yes, I do think specific rules need to be adopted respecting expenditures. That said, there is no question that Canadians do love Quebecers. And why not? I'm from Ontario. Ontario was carved out of a part of Quebec. At one time, the two provinces were like sisters. When an issue is so deeply linked to the future of the country and Canadians' sense of belonging to one country, it affects everyone, from coast to coast. Therefore, I can understand why, under the circumstances, Canadians living outside Quebec felt compelled to travel to Montreal or other communities.

Nevertheless, I do think that some rules should apply to the referendum process.

**Mr. Michel Guimond:** Because this outpouring of affection—

**Mr. Patrick Boyer:** As I was saying 10 minutes ago in response to another question, a referendum campaign period is similar to that of an election campaign. From a legal standpoint, we need a system in place to control expenditures and participation. The Canadian Charter of Rights and Freedoms must also apply. It is possible to combine rules to allow a free and equal general election, but controls must be in place as far as participation is concerned.

If candidates and parties must adhere to certain rules during this specific period, how can a third party be allowed to enter the same arena without being subject to the same rules? The same is true in the case of a referendum. There must be clear rules in place governing this process, because an even bigger process is underway in the country. The effectiveness of the process must be safeguarded.

• (1140)

**Mr. Michel Guimond:** So then, the—

[*English*]

**The Chair:** Thank you.

Mr. Christopherson.

**Mr. David Christopherson (Hamilton Centre, NDP):** Thank you, Chair.

**The Chair:** Welcome again today.

**Mr. David Christopherson:** I appreciate that, Chair.

Welcome back to you, sir. You got comfortable again in that chair really quickly. That's good. It bodes well for the rest of us in the future.

I want to follow up on your position that any referendum ought to be held separate and apart from a general election. That is different from what we've heard from some experts, who have said that while there are some complexities, the efficiencies involved make that worthwhile. I assume—and you can speak for yourself, of course—that your view is the other way around, that the overlapping confusion, with different rules applying to different aspects, makes it worth spending the extra money to have the clarity of process.

Can you expand on that for us?

**Mr. Patrick Boyer:** Thank you. Your final comment summarized my position, which is that a general election is an all-out, all-inclusive event. You can't keep anything out of a general election,

and it's all about personalities, parties, policies, their past, their present, their future. It's everything.

The referendum is a specific ballot question on one issue, and it will be by its nature, or should be, a transcending issue, something that will affect a positive principle of the state and how people live. But it's one clear issue, and it's an issue beyond that which the parties or the candidates themselves really could cope and decide in a way that over time is going to allow the citizens of the country to feel they're part of that process, that it's not another case where some decision has been made.

Now when you get to the odd situation where you have a general election going on and a referendum at the same time—and we have had a number of them, with some real problems—the first problem would be what you do, because you're an elected MP and you would presumably have an opinion. Maybe not all MPs—some might want to take a neutral position on the question—but most parliamentarians would want to be pro or con on the issue. But what if your party has taken a position on that issue that's contrary to the one you hold? How could you be going through an election campaign? Party unity? Oh yes, I'm supporting the blue team or the red team or the green team or the orange team—whatever team—but meanwhile, over here, I'm different from what the team says.

So this is a way of highlighting, just in the case of 300 MPs alone, the invidious position you create in our country when you try to have these two events side by side. What are the arguments for having them together? Well, it will reduce the cost. Right. What else? Well, it will increase the turnout because more people will be going to vote anyhow, and while they're there, they can cast their ballot on their own.

This is certainly what influenced Premier Grant Devine, I guess it was, in Saskatchewan, when his government—someone here will know this history better—was not doing at all well in the polls and they added a couple of ballot questions relating to funding for abortions and one other what might be termed “hot button” issue. They were thinking those issues would move people to come out to the polls, and, secondly, that those people who would have strong enough feelings to be motivated to come to the polls, by the way, when they were there, would be casting a vote for the Progressive Conservatives, by and large, provincially.

Now when you get too clever with that political calculus in trying to decide if this is a ballot question that ought to legitimately go to the people in a referendum, then you can see how the process itself is compromised. That's another reason why I think it makes the greatest sense, because we're doing this for the people and for citizen participation, to segregate the general election from the issue that has to be decided for the longer-term importance of the country, and to hold that separately.

• (1145)

**Mr. David Christopherson:** At the earlier meeting, I thought Tom made a really good observation along this way, that the parties are going to take positions on these issues. They're going to pour money into it, so how do you separate money that normally should be identified only for the referendum from money that is just for the election, when the two are being merged?

If I can get one more question in—I know I'm running out of time—in 1992, was one or more of the provinces allowed to use its own provincial referendum legislation? Am I correct in that?

**Mr. Patrick Boyer:** Yes. What was happening was that three of the provinces, Quebec, Alberta, and British Columbia, had all said the people would have a chance to ratify the constitutional changes. Alberta, quite precisely, in fact, said the members of the legislative assembly up in Edmonton wouldn't vote on the issue until the people had voted on it, so it was going to be kind of like an in-province ratification that way. The way it played out, once Prime Minister Mulroney had Canada's Referendum Act passed, Alberta and British Columbia folded their votes into the national vote so that in those two provinces in fact the provincial referendums didn't take place because the national one supplanted it. In the province of Quebec it was the same day, the same issue, but it was held under Quebec's Referendum Act. That was smart for Quebec because it's a better act.

**Mr. David Christopherson:** I assume you wouldn't perceive anything like that in the future, or would you? Do you think there could be a provincial option, providing the provincial legislation meets certain standards or criteria or similarities, or do you think this has to be blanket and it's just going to be one of those Confederation issues that we're going to have to make happen?

**Mr. Patrick Boyer:** It's a good question, and I know it's also in the materials that have come from the research branch.

I think in a way the circumstances in 1992 were unique. Secondly, there were anomalies between who could vote under the Quebec Referendum Act and who could vote in the rest of the country. So what do you do about that?

First of all, if now you recommend that we create the Canada Referendum Act as a comprehensive statute, you have the opportunity, in the process of doing that, to make sure that it harmonizes as greatly as possible with provisions in other provinces. It's rare, though, that there would ever again be all referendums at the same time like that. The main thing is simply paying attention to what the charter requires in terms of the guarantee of democratic rights to citizens. Beyond that, getting as much uniformity as possible, I think we do live in a federal state and there will inevitably be some inconsistencies, but as long as they're at a small level and not affecting fundamental rights, that should not be a great problem.

**The Chair:** We've had a great first round and a lot of information has come out.

We're moving to a five-minute round. Please try to be a little more concise.

Madam Jennings, you're up.

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

To come back to the issue of holding a referendum at the same time as a general election, you're clearly opposed to that. You've also mentioned that the period in which a referendum campaign is actually being run could at times be shorter than what we have for a general election.

Could you give us your thoughts on what would be reasonable grounds to justify a referendum period that is less than 36 days, for instance, and what would be reasonable grounds for a longer period, say 45 days or possibly 60 days?

• (1150)

**Mr. Patrick Boyer:** Thank you.

I think 30 days ought to be ample time. An issue that's going to go to the public in a referendum is already an issue that has some attention to it, so there will be some preconditioning of the public and the political mind around it.

Secondly, we're living in an age where communications in this country are overwhelmingly fast. I invite you to come with me back to Joe Ghiz's office when he—the father of the current premier—was premier on the Island, and he asked me to go. They were holding a plebiscite on the fixed-link crossing; that was the term for the bridge. They had a lot of time allowed for the campaign. It started in the fall. The voting was going to be on through the winter. Everybody had said everything they could possibly say for or against the fixed link in the first couple of days. Then they had to sort of comment on what somebody else had commented on, and on and on. Premier Ghiz said to me, "Patrick, thank God for Christmas and New Year's"—because they came in the middle of that and distracted people and gave them something else to talk about. That was before we were where we are today with our communications.

I think the biggest limit would simply be what Elections Canada requires to put in place, the mechanism for conducting the vote. Again, time is not required for the nomination of candidates, all of that sort of thing. A lot of what we're used to thinking about in terms of general election campaigns, getting the publicity out, is so much more streamlined for a referendum campaign. I think it would help us as a maturing democracy, a parliamentary democracy, to be able to have referenda questions referred in an efficient and expeditious manner.

**Hon. Marlene Jennings:** Would you also be supportive if we as a committee recommended that there be a comprehensive, single statute to deal with referenda, with a mechanism that would provide citizens with a process for requiring the government to hold a referendum on a particular issue?

For instance, we know that in B.C. they have such a mechanism. We know that at the municipal level in Quebec, and possibly in other provinces as well, citizens have a process under which, if all conditions are met, the municipal government must launch a referendum. Do you see this as a help in promoting citizen engagement and as a legal possibility within the legislation?

**Mr. Patrick Boyer:** Yes, I do. For the reasons you've already mentioned, it would be a good idea. By and large, the power on the part of people to initiate something under the public agenda takes place through their elected representatives and the political parties, but not always.

In other jurisdictions, where the right of initiative was available, important changes have been made. In Italy, for example, where the Roman Catholic church has a certain position on the issue of abortion, and the mainline parties agree with that way of seeing the issue, it was only because of the right of initiative that women in Italy were able to bring about a ballot question to deal with the abortion issue.



In the state of California, where all the parkland, that beautiful, irreplaceable Pacific Rim, was succumbing to developer after developer, neither the Republicans nor the Democrats at the state level were doing anything, because both were receiving substantial campaign contributions from the developers. It was environmental and naturalist groups that moved to protect this heritage. They forced a ballot question that created the great Pacific Rim national park in California.

These are instances in which the political parties serve as a checkpoint for what citizens themselves might feel. The citizens aren't dictating; they are only triggering a mechanism whereby the issue can get ventilated. Then all citizens have an opportunity to vote and choose a course.

• (1155)

**The Chair:** Thank you.

Mr. Reid.

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

It's a delight to have you here, Mr. Boyer. I remember looking back and reading the books you distributed to all of us many years ago. Thanks to your sending out new copies, I now have one set for my constituency office and one for my Parliament office.

**Mr. Patrick Boyer:** No home or office should be without a set.

**Mr. Scott Reid:** Absolutely not. They make excellent Christmas gifts.

**Mr. Patrick Boyer:** Thank you.

**Mr. Scott Reid:** You touched briefly on the peculiar way in which our Referendum Act is structured, in that it permits ballot questions to be held in some provinces and not in others. I think the purpose of this back in 1992 was to take into account that Quebec and potentially other provinces might want to hold parallel processes on the same question. But my impression is that it's actually a useful thing to leave in the statute, because we have an unusual amending formula. The Referendum Act deals with constitutional questions, and section 43 of the Constitution permits constitutional amendments that affect one or more provinces but not all of them. One could imagine, for example, a boundary adjustment between two provinces that would affect just those two and not others.

Do you agree with me that it makes sense to leave this provision in the act, allowing referenda to be held in some provinces but not all?

**Mr. Patrick Boyer:** Yes, I think it does. There could be an issue relating to Coast Guard matters that would not affect Saskatchewan, Manitoba, or Alberta. There could be some other issue within a particular region on the Prairies that's only germane to that area. This is a federal state. It's not a uniform state, and we have a lot of diversity. This device is simply a democratic instrument to assist governments and the people, and their elected representatives, in coming to an informed decision on a specific policy. The more freedom, the more opportunity for freedom's intelligent application, the better.

**Mr. Scott Reid:** I had a second question relating to the nature of the way we answer questions. The Referendum Act requires that every question has to be in the form of a yes versus a no, and it

seems to me there are some issues to which this is ill suited. When we had the referendum in Ontario on multi-member proportional, MMP, versus first past the post, I thought it was a good example of a question that's not well suited to a first past the post response system, in that there are multiple alternatives to the status quo.

I actually spoke with the folks at Fair Vote Ontario and indicated that I thought the appropriate way to deal with this question would have been to have some kind of preferential ballot, in which you see at the top a couple of or maybe three alternative options to the status quo, plus the status quo, and are asked if you can rank them preferentially. That's on the assumption that in the end there will always be more people who don't favour any particular system and who are willing to game the system in the hope that their alternative, such as STV, will come up, rather than vote for the alternative.

That's just my own opinion and I may be alone in having it. Do you think there's merit to the idea in allowing in certain circumstances for a preferential ballot? Or ought that to be avoided at all times, in your opinion?

**Mr. Patrick Boyer:** Well, Mr. Reid, I think this question is one of the most important ones the committee will grapple with, and that is the question, because that's the heart of the referendum.

In my books, I say that not all issues—a lot of economic and social policy questions—are ones that can be easily reduced to yes or no answers. However, you will be voting in the House this week, and all of you will be voting. We've had votes that always come down to.... No matter how complex the issue, somebody has to make a decision. Do the troops stay in Afghanistan, yes or no? Do we have a trade treaty with the Americans, yes or no? Do we continue to build the program for nuclear powered submarines, yes or no? On and on, with all the complexity that's there....

Ultimately, whoever is sitting around the cabinet table, whoever is voting in the House, or whoever is Prime Minister, has to decide: we're going to do it or we're not going to do it. That's an important thing to bear in mind.

It's just like how you have to focus your attention to give a 45-second statement in the House. You sometimes have to really get the ballot question precise. In one of the referendums in Quebec, the wording of the question was over 100 words long. This is not a way of making it clear to Canadians.

I think it's very important, if I could submit this to you. You really want to address section 5 of this present act, which deals with the question and the vote on it by Parliament. It goes on for a page and a half. It's all about details and technical things behind the scenes. If section 5 were describing the inner workings of a clock, great, but there are no hands out there telling the time.

What needs to be said is a form of the question. Many statutes do that: "Are you in favour of such-and-such, yes or no?" The British vote on the Common Market was as simple as that. And all these big questions....

So I think it's important that a lot of attention be paid, not to, as section 5 currently does, the back of the rules of procedure on how the vote's going to come about and what's going to trigger this, but to the wording and the process for it.

I'll just end with this. I submit that this is where it's very important that parliamentarians really grab hold of this idea that although the term "direct democracy" has been in our political culture since a century now, what we're really talking about is semi-direct democracy. Although the citizens are voting on a ballot question, first of all it is parliamentarians who have enacted the law and set the legal framework under which the process takes place. Secondly, it's parliamentarians who have debated and enacted the ballot question. Third, if the measure carries and people say, "Yes, we want that to happen", then it doesn't just happen; it falls to parliamentarians to implement it, to debate the legislation, and to enact it. This really is the highest partnership that citizens and their elected representatives could have, and this is why this system is not alien to a parliamentary democracy, but rather an integral part of it.

• (1200)

**The Chair:** Thank you.

Madame DeBellefeuille or Monsieur Guimond, do either of you have a question?

[*Translation*]

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

Mr. Boyer, we have barely begun our study and so far, you are the first person to acknowledge the importance of a referendum, that it is different from an election and that it deserves special attention. When the decision is made to consult the people, generally an important matter is involved, one that will bring about major changes to the way things work.

Your testimony touched me because to date, all of the arguments presented to us had to do with cost and the fact that voter participation needed to be encouraged. As you know, voter turnout is a major problem and the level has dropped considerably in recent elections. First, I was moved when you advised us to proceed in two distinct stages, that is to start by consulting people by way of a referendum and to refrain from holding a referendum and an election at the same time. Your comments about the importance of doing this really resonated with me.

I would imagine that every province has enacted its own referendum legislation since 1992. Let's suppose that the federal government ordered another referendum and that several provinces wanted to ask the same question, but wanted to proceed through their own legislation. Would it not be to our advantage, as we consider updating the Referendum Act, to harmonize the federal act as closely as possible with the various provincial acts, to try and do away as much as possible with the major differences that could be prejudicial to voters?

• (1205)

**Mr. Patrick Boyer:** I agree with you, Mrs. DeBellefeuille, that federal and provincial legislation should be harmonized to the greatest possible extent. That is why, for this bill, I found certain models, such as the Quebec Referendum Act, the bill drafted by the Trudeau government, as well as certain measures brought in by Saskatchewan.

We derive certain benefits from the federal system, namely control and experience. In certain provinces, the process is more advanced

than in others, and there are lessons to be drawn as to what works well, and what does not.

As I said at the outset, we have been able to benefit from relative periods of calm in Canada's Parliament to work together in an atmosphere of cooperation and to give this matter more thought, all with a view to ensuring that the interests of Canadians are taken into account.

**Mrs. Claude DeBellefeuille:** You are probably well versed in all provincial referendum laws, having studied them. To your knowledge, should we look to a provincial act for inspiration as we work to improve this particular piece of legislation? Is there one in particular that is more advanced or more inspirational, since you did say that all referendum acts are not equal, that some are more advanced?

**Mr. Patrick Boyer:** I would have to say Quebec's Referendum Act, first because it articulates clear principles. The provisions governing the actual process are quite clear, but not as specific as they are in section 5 of the federal act. The Quebec legislation is a model, not just in terms of clarity of expression, but also because it broaches the essential question of two committees. We do have some questions about the Charter, about citizens' rights, and so forth. The federal Referendum Act reflects a certain amount of timidity on the part of the government of Prime Minister Mulroney as far as the Charter is concerned. In the years since the act's adoption, the Supreme Court has explained, in a case that came out of Quebec, how legislation can address both sides of an issue in a way that is mindful of the system's integrity while at the same time, awarding the maximum possible and respecting the rights of citizens.

**Mrs. Claude DeBellefeuille:** Thank you.

[*English*]

**The Chair:** Merci.

Mr. Christopherson, I know you're antsy, so let's get one more quick question from you. I will be trying to get everybody in.

**Mr. David Christopherson:** It will be quick, and I'm only antsy because I have another meeting that I'm now late for, but I want to clarify this, because it's really important that I get it straight in my mind.

I wrote down that you said we should try to harmonize to the greatest extent the provincial and the federal.... I'm coming back to this business of the national referendum. It's easy, if we have a national referendum law that is consistent, or rather, put the other way, if provincial legislation is consistent with the federal. It's not a problem. You give the provinces the option: if you want to run the show, go ahead; or we'll do it—whatever you want, it's no big deal. But what if it is not harmonized? What if there are a couple of key issues—funding, umbrella groups, who gets to vote, something that is fundamental? It's still a constitutional question, and one province can call it one way, one province can call it another, and the feds ultimately decide to call it one of those two ways or yet another way.

How do we come to grips with that? How do you see that working when there isn't a nice, easy lineup? It's a federal referendum, but for whatever reasons, political, jurisdictional, whatever, there are provinces saying they don't want to play that game, but want to do it their way. How would you suggest we approach that federally?

●(1210)

**Mr. Patrick Boyer:** It's an excellent question, and thank you.

I think the way to deal with that is to establish two or three fundamental criteria that the committee would feel, going into this, are the overriding principles that really matter. One could be in relation to the citizen's ability to be included in decision-making wherever these are transcending issues, wherever the citizen herself or himself is going to have to live with the consequences of how they're decided. You always keep the citizen at the centre of this process as you're making the rules, the same as you would if you want a patient-centred health care system or a student-centred education system or a citizen-centred government system. Keeping the citizen at the centre, I think, is a good starting point.

A second would be to have respect for the requirements of the charter when going through this. Some provinces have already gone further down this road—the Province of Quebec—in finding the golden mean to balance upon, but the main thing in harmonization that you would be looking for is not whether it dovetails with every other statute that's out there in the provinces, but rather whether it conforms with the fundamental Constitution.

**Mr. David Christopherson:** I appreciate that you would line up some of the biggies and that they have to be on side, but something that could be relatively small in the scheme of things could, when you're talking about charter rights, still be a major determinant for someone on a political scale, e.g., finance levels, the amount of money you can contribute, the amount of money you can spend. That's not a huge charter issue, but it may make a difference to a province, such that it might want to be under its own, instead of... How do we build in a law that deals with that?

**Mr. Patrick Boyer:** Ultimately this is an act of Canada for Canadians. So where there are lessons to be learned from provinces, why would we not learn them? But at the end of the day, this is not a provincial legislature; this is the Parliament of Canada. The law has to be created and crafted as best as it can be to serve the whole nation.

**Mr. David Christopherson:** So you would suggest that we do line up all those, however many there are, key fundamental issues, and if we have some relative harmonization, then you could build into the law sort of an opt-out clause, if you will, or a provincial clause that allows them to do it. And if they don't meet each and every one of those, or 90% of those, then it has to be on the federal side and you deal with the politics of that afterwards?

**Mr. Patrick Boyer:** Yes. Harmonization is interesting. We've had in this country since at least the 1920s the uniformity commission, where they're trying to get uniformity in provincial statutes, whether it's the securities legislation, company law, or so on. That's not really what we're talking about here—well, your committee may not be considering uniformity. I forgot for a moment which side of the table I was on.

**Voices:** Oh, oh!

**Mr. Patrick Boyer:** Really, it's called best practices. Some provinces have gone down this road and have the scars and got the court cases to decide it. I don't think there are that many issues, frankly, to be concerned about.

What is a real issue is the political culture, and that is the real problem in Ottawa. Members of this committee, you are a minority group. There are 300 elected representatives in this city, and countless thousands of others who are running the Government of Canada. I think highly of the public service. They're dedicated. But they're operating within an Ottawa culture of secrecy and control.

It is on record that many senior public servants consider Parliament to be an inconvenience—an inconvenience. Certainly the work that you will be doing and the recommendations you will be making in the coming weeks relating to referendums will get a lot of cold water poured all over them and you.

In 1992 a briefing book was put out, for government members, anyway, on how to go and sell and deal with the referendum question. This was a briefing book on the proposed legislation enabling a federal referendum on constitutional reform, which I subtitled “The government's crafted speech modules for dumbing up the referendum topic”.

**Voices:** Oh, oh!

**An hon. member:** That was the short title.

**Mr. Patrick Boyer:** Yes—dumb it up.

Everybody was enjoined to never waver from the two key messages. One, this legislation is a precautionary measure. That number one message about the 1992 Referendum Act from the Government of Canada, that it was a precautionary measure, tells you all you need to know about the political culture of our national capital.

Joe Clark, who was a former Prime Minister and who was carrying this file, did not want a referendum. He said that if we have a national consensus we would not need a referendum, and if we don't have a national consensus we wouldn't want a referendum.

Out of his own words comes the most precise statement you'll ever get as to the political culture of Ottawa, which is at best that we'll tolerate the people's elected representatives, their inconvenient questions, and their scrutinizing of public spending, but it will be a long day in the minds of the senior mandarins and those who advise the ministers, the Joe Clarks of the world, the Lowell Murrays, who spent three years frittering away time while the Meech Lake Accord went down to defeat, instead of holding a referendum on it shortly after the premiers had all signed it.

That's the culture you're operating in. So that's why it's very important that this mandate really focus on the citizens and your role in representing them, I submit.

●(1215)

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

Mr. Albrecht.

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

Thank you, Mr. Boyer. It's obvious, the depth and breadth of your knowledge of this issue, one I certainly don't ever expect to have as great a grasp on.

There are a number of terms that are thrown around when we discuss referendums—plebiscites, binding referenda, non-binding. In your book you talk about the different percentages for this and that.

If we come up with a new referendum act, do we in fact have to define within that act what we're talking about? There is all of this misunderstanding: what is a plebiscite, what is a referendum, do you have to define it as binding in each case? I would like your thoughts on some of those questions because they're certainly confusing to me.

**Mr. Patrick Boyer:** They're confusing to everybody. You could do a great service to the nation if you actually could define it in the act.

You know, this is Canada. What we call a “taxicab” is called a “taxi” in Britain and a “cab” in New York. We say “tin can” in Canada. In Britain they say “tin of fish”. In America they say “can of beans”. We're so used to mangling words and putting them together. We can't quite decide what they should be.

In Newfoundland, where it's the Referendum Act, all that ever happened under that was plebiscites. In the Loi référendaire du Québec, those were non-binding. They're both the same. They're questions on a ballot answered by a yes or a no, given to citizens who are qualified to vote.

The process is all the same, but what's the legal significance? If you go back in law, originally a plebiscite was a non-binding vote and a referendum was a binding one. However, not only in practice and terminology but also in the actual statutes of our country, three of the jurisdictions have now used the opposite meanings.

That's why I think it's easier, generally, to refer to a ballot “question”—it's just more generic in terms of what the process is—rather than define whether you prefer the Greek word, “plebiscite”, or the Roman word, “referendum”, to describe something that's very Canadian.

In my act, which I had drafted and presented to Parliament, I referred to “public consultation”. I referred to it largely as that.

To answer Marlene Jennings' question, there's a third thing I would change. I would refer to it as “citizens' consultation”, not “public consultation”—

● (1220)

**Mr. Harold Albrecht:** But prior to having that actual vote take place, should the citizens not be informed on whether this is binding, non-binding, consultation, or seeking their input? Otherwise, what value is there in holding it in the first place?

**Mr. Patrick Boyer:** Yes, they should. And you can provide that in the act. My private member's bill talked about the need to declare whether this was going to be binding or non-binding.

What actually took place in 1992 on the Charlottetown Accord, under the Canada Referendum Act, was in fact a non-binding vote, although everybody called it a referendum. When the results came in, it was as if it had been a referendum. It was that very night that Prime Minister Mulroney said, “The Charlottetown Accord is history.”

**Mr. Harold Albrecht:** I have a little bit of time left, and just a quick question.

You made a comment early on in your remarks that I appreciate. You urged us not to deal with just some technical details but with the broader democratic principles.

I'm not a lawyer, and I probably won't have time to go through your private member's bill word for word...

Even if I could, I wouldn't understand it—no reflection on you.

**Voices:** Oh, oh!

**Mr. Patrick Boyer:** I think you're underselling yourself, sir.

**Mr. Harold Albrecht:** Could you commit to putting in lay terms for me, and perhaps for the committee, a two- or three-page, maximum five-page, summary of the principles that you would urge this committee to consider as we move forward to hopefully come up with a report to Parliament?

It would help me to understand in lay terms what those key principles are that you think we need to grapple with. You don't necessarily need to tell us which way we should go, although I'd welcome that as well.

It would be really helpful if you could do that for us.

**Mr. Patrick Boyer:** Thank you.

Perhaps that's already been largely accomplished in this book, *The People's Mandate*. Pages 204 to 212 are more or less your five pages.

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

**Mr. Patrick Boyer:** That covers everything from the subject of the referendum to the creation of what I call the public consultation council. This is one of the things you'll be getting into—enforcement and arbitration of issues during the period of the referendum, the issuing of the writs, the polling divisions, the registered committees, expenses, qualification of electors, information for electors, political broadcasts.

I think that, plus what's already on the record from earlier this morning in these proceedings—

**Mr. Harold Albrecht:** That's very helpful.

**Mr. Patrick Boyer:** —the two plus one, the three changes, in answer to Marlene Jennings.

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

**The Chair:** Thank you.

Monsieur Guimond, do you have another question?

[*Translation*]

**Mr. Michel Guimond:** Yes. I will keep it brief, Mr. Chair. I simply wanted to wrap up my earlier comments about the expenses incurred by third parties in conjunction with a love-in, so to speak. Professor Boyer started off by saying that yes, Canada does love Quebec, that he loves Quebec, that as an Ontarian, he loves Quebec, and so on and so forth.

You agree with me that expenses incurred by third parties should be accounted for. That is what you said at the conclusion of your response. I simply want to make the following comment for your benefit, and for the benefit of committee members. An outpouring of affection should not give rise to any illegal acts. I'm not sure whether you have a son or a daughter. You love your children, you love to spoil them and to give them nice gifts, but I'm fairly confident that you wouldn't hold up a bank and steal \$100,000 to give to your children because you love them. In short, an outpouring of affection should not result in any illegal acts such as the ones committed in Quebec during the 1995 referendum.

• (1225)

[English]

**The Chair:** Okay. Agreed?

Mr. Lukiwski, I'm trying to give everybody a chance at the end, so try to keep it brief, if you can and we'll get in as many as you want.

Monsieur Godin, there's nothing for you? Okay.

All right. Go.

**Mr. Tom Lukiwski:** Thank you.

I have two or three interconnected questions. I recognize that some of this information is contained in your publications, Monsieur Boyer.

You said the referendum questions should be transcending issues, and I agree with that. If you were drafting a legislative framework—a new referendum act—what criteria and conditions would you include that would define a transcending act? In other words, nobody would want to see a frivolous question placed on a ballot. You gave the example in Saskatchewan. Whether or not public funding of abortion is a transcending issue could be argued. Regardless of that, how would you define a question—whether it was brought forward by a private citizen, a private citizens' group, or a government—that meets the conditions that would allow it to be considered in a referendum?

Secondly, once the question has been defined and agreed upon, what percentage of voter turnout do you suggest would be necessary, if it were a binding referendum, for government to be obligated to act upon the results? We've seen many times, even in provincial byelections and municipal elections, that it is not uncommon for voter turnout to be 20% to 25%. What would happen if a national referendum was called, voter turnout was 15%, and the yes or no side got 51% of that? In other words, 7% of Canada's population expressed an opinion, and the government said that was going to be a binding referendum. How would you deal with those issues that could quite conceivably come to pass?

**Mr. Patrick Boyer:** Two questions, and the second one is a real tough one.

The first one is, what would be the appropriate subjects to have a ballot question on? When I was drawing up my act, I discussed this with a lot of parliamentarians and came to the conclusion, after a lot of thought, that it was impossible to draw a line down the centre of a page and put on one side subjects that should never be submitted to the people in a referendum and, on the other side, topics that must

always go to the people in a ballot question, no matter what. They were not watertight compartments.

Fine. So then I went to solve that problem another way. I looked back through Canadian history and the wider political history that informs Canadian thinking, and I was able to draw out five, six, or seven principles. In fact, they are summarized again in *The People's Mandate*, on pages 118 and 119.

For example, briefly, one of them comes from a speech that Prime Minister Arthur Meighen gave in 1924, where he said that if a subject is going to affect a positive principle of the state, then the people ought to be consulted on whether to make that change.

There is another example where an issue comes up that had never been discussed in the prior general election at all and it is not a trivial thing. It's not a housekeeping matter; it's something that is really major for the country and its future direction, but it hadn't been part of the debate in the election and therefore no party in government could say it had a mandate for it.

Therefore, prior to proceeding with that in a mature democracy, where you want to have the consent of the government and you want people to buy in and participate, be educated and informed and the government to respond accordingly, that would be a second appropriate instance for having a referendum.

As I say, there are about seven principles. One final example comes from *The Economist* magazine, when it was discussing a number of referendums in different countries. It said it could be that on a particular subject a country would want to have a referendum domestically in order to enhance its ability to deal with that issue internationally.

So it's like that. Basically we are here with the exercise of statecraft. It requires good judgment and good leadership. If it were otherwise, we wouldn't need parliamentarians and governments; it would all be run by robots and computers. This does require good judgment.

The second really hard part relates to voter turnout. We of course are all aware of generally declining rates of voter participation in general elections, as well as referendums. You almost want to say that a minimum turnout has to be specified, but you know in doing that you're perhaps creating a principle that is going to swallow the exercise. So you get to another point where you say, "Let's just hold this ballot question and see if anybody comes." If not too many do, they're the ones who make the decision. If what turns out to be a majority of people who stayed away don't like it, isn't that too bad, because you're a citizen and there was a voting day and you were on the list, you had all the rights and there was a lot of information out there, where to go and vote, and you stayed away. The decision was made without you.

I kind of think in my moderate middle age I am getting more bloody minded about that, where I would just say, set out the rules and those who get to play govern the country and help make the decisions, and those who stay away can go to Tim's and have another coffee and grumble about it.

• (1230)

**The Chair:** Thank you.

I have Mr. Reid for a short question to finish this portion.

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

I heartily agree with your comment regarding voter participation thresholds. I can see the merits of doing what the Australians do, saying you either vote or you get a \$200 fine. I can see the merits of accepting what the Swiss do, which is to say, if we get 30% voter turnout, that in its own way is a healthy thing because it indicates that people are voting on question A, which they understand, but on question B, which was also on the ballot, they're choosing not to vote because they think their lack of information would make them vote unintelligently and they would let others who understand it vote. Those are respected.

What you don't want to have, I think, is what Italy has done, which is to say you have to have  $x$  per cent vote in order for it to succeed, and then one of the messages that goes out from those who oppose whatever measure is on the ballot is just to stay home. In so doing, you will more effectively kill it than if you came out and voted against it and raised the threshold above a certain level. So inherently, under the Italian example, you de-legitimize referenda. That's just a comment.

With regard to the idea of epoch-making or defining issues, the one that comes to my mind most clearly is the Anti-terrorism Act in 2001. We were all elected a little less than a year before 9/11, with no mandate to act in any way at all on the fallout from 9/11. It struck me at the time that the Anti-terrorism Act, which of course suspended some fundamental civil liberties, and did so permanently, would have been a perfect item on which to have a referendum. I guess I'm inviting your comment on that.

Finally, I wanted to ask you about the idea of putting multiple questions on the same ballot. You mentioned that the Meech Lake Accord would have been a perfect item to put on the referendum ballot. The Meech Lake Accord, in practice, was going to involve five separate amendments to the Constitution of Canada. The one that required the unanimity threshold was arguably the least contentious of those, regarding the structure of the Supreme Court, ratifying the convention that three Supreme Court justices be from Quebec, whereas the most contentious, the distinct society clause, required only 7/50. Would that, by way of example, have been a good idea, to take that question and put it on as a serious and separate question on those separate amendments? Or would you think that would have been ill-advised?

**Mr. Patrick Boyer:** Thank you. You've covered a lot of ground.

On the last point, I think the agreements hang together as a whole entity. This was also what Prime Minister Mulroney said about the Charlottetown Accord, which had eight fundamental different areas,

from developing aboriginal self-government and so on...that the constitutional package was itself a compromise and you couldn't cherry pick among the parts. It's like when we had to vote in Parliament; it was the whole package, or not.

That is not to say there isn't thoughtful discussion going into the run-up to the voting. A lot of education does happen in that process. People do become more aware of the five or the eight component parts in coming to their ultimate conclusion.

As an aside, one of the very important things about a referendum process is not just about the ballots that are counted on the voting night; it's equally about the education process that goes on during the campaign period, which is when citizens become seized of an issue and the outcome. Any government in office is then going to be operating in a policy field with an electorate that's better informed about the issue.

With respect to the thresholds, obviously the committee is already well served to address that issue. I was despairing in answering your colleague about what you do in a democracy. When I was in Iraq working on the inaugural elections and advising on the constitution, it was a dangerous place to be. On the first day I was in Baghdad, three election officials were pulled out of their vehicle in front of the election office and murdered in the street.

But I met a young woman who came up to me and said, "I am going to vote. If they kill me...I am going to vote." I think about that attitude and determination from people who have lived under a repressive regime, and I sometimes wonder about the complacency of the expectation in this country that what we have so richly will be here indefinitely.

On your point about whether it was the War Measures Act or the legislation following 9/11, when civil liberties were curtailed in this country, a government will always invoke the urgency and the need to act today. But as we always see, whether it was in the long aftermath of the invocation of the War Measures Act at the time of the kidnappings in Quebec or it was in the long aftermath of September 11, 2001, there is ample time for the citizens to be involved in a consultation.

• (1235)

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

That's going to be all we have today. I will suspend for a couple of minutes while we move in camera.

Thank you to the witness for coming and being so entertaining today. It was great. Thank you very much.

*[Proceedings continue in camera]*









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