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

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**EVIDENCE**

**Tuesday, October 26, 2010**

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**Chair**

**Mr. Joe Preston**



## Standing Committee on Procedure and House Affairs

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• (1105)

[English]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** We'll call the meeting to order. This is meeting 27 of the Standing Committee on Procedure and House Affairs.

We are talking today about our study on the Referendum Act. We have a special treat for all of you, because we have Jean-Pierre Kingsley with us today. He's an old friend of this committee; he used to spend his life sitting at that end of the table. At least some of us remember that time as we studied the Chief Electoral Officer's recommendations each year.

It's great to see you back and it's great to see you looking well rested.

Many of the members sitting at the table today, Mr. Kingsley, are new to the fact that we're doing this study, even though many of us were here or some of us were here for the start of the study of the Referendum Act. The Chief Electoral Officer, Monsieur Mayrand, handed it to us and asked us to look at it and try to match it up with the Canada Elections Act. We've done a fair bit of work. After your testimony today, we'll be spending some time looking, for the newer members of the committee, at what we've already studied and see how close we are to reporting on it and if indeed that's where we'll go. So you're going to help us a little with that today. We're going to let you give an opening statement and then we're going to ask you questions in this hour. I want to remind members that we'll rotate questioning.

Some of the members may be having lunch while you're speaking. We're not trying to be rude; it's that time of day for us and we may not get a chance to stop if that's the case. As you know, we're always on these things. Again, it's not a matter of ignoring what you're saying; we've learned to multi-task.

Sir, I'll let you go ahead and start. Please pardon the dimness of the room today. I've found I can keep the members calmer if we keep it a little dark. If they start acting up it will get darker and darker in here. When we can't see each other we can no longer fight, so it sounds like the right way to go.

Mr. Kingsley, the floor is yours.

**Mr. Jean-Pierre Kingsley (Former Chief Electoral Officer, As an Individual):** Thank you, Mr. Chairman.

I notice that both you and I are in the light.

**The Chair:** Yes.

**Mr. Jean-Pierre Kingsley:** Mr. Chairman and members of the committee, as usual I will make the first half of my remarks in French and the second half in English. There will only be one switch, other than right now.

[Translation]

I'm very pleased to be back before the committee which I attended for 17 years. The last time was almost four years ago already. My remarks will only take about 10 minutes. With regard to the time, I wasn't able to draft the same kind of text I used to, when I had people to help me, but with regard to the text of my presentation, I can tell you that I spent a lot of time poring over it.

This review of the 1992 Referendum Act was imposed by legislators like you. The law demands that you conduct this review.

I'm grateful for this opportunity to exchange a few observations that might interest you, I hope. I will not hide my satisfaction and pleasure in rereading my report to Parliament entitled *The 1992 Federal Referendum: A Challenge Met*. I hope you all have a copy of it; I noticed here that I forgot mine.

I remain very proud of what Elections Canada accomplished during the 1992 referendum and of the faithful testimony about this event presented in the report. This is why I will only discuss the main themes of the report while trying to elucidate a few issues in response to the questions that you raised with Mr. Mayrand, the current Chief Electoral Officer, Professor Louis Massicotte, and Mr. Neufeld, who until recently was the Chief Electoral Officer of British Columbia.

Holding two referenda that ask the same question and take place on the same polling day invariably causes major problems. The main one, to my mind, is the fact that some 10,000 Canadians were deprived of their right to vote because they became Quebecers less than six months before polling day and therefore did not satisfy the requirements of Quebec law to be eligible voters. The Haig decision by the Supreme Court confirmed, seven to two, that the Chief Electoral Officer of Canada could not have them vote from their former address.

At Elections Canada we had developed a detailed plan, involving the newspapers, that allowed us to reach them and register them in case of a judgment of this nature by the Supreme Court. In a way, we appeared to want to lose the case, but we won it, and 10,000 Canadians were deprived of the right to vote.

Moreover, I'd made a speech at Collège Ahuntsic in Montreal listing the consequences of holding two referenda before the decision to hold two was made. That decision was made by two first ministers.

Another major negative effect resides in the fact that the key dates for these essential activities differ from one act to the next, which causes confusion in border areas where regional media do not respect geographic limits. I'm thinking of this region, where Ontario and Quebec are neighbours, as well as the region where New Brunswick and Quebec are neighbours. In border areas, the media do not respect those borders; a francophone newspaper published on the Quebec side may be distributed in Ontario and vice versa. So there was no way of having advertising without confusing people. Elections Canada talks to them or Elections Quebec talks to them, but how are they supposed to take into account the differences when it comes to early registration dates, review dates, or advanced polling?

In another connection, there was the problem related to the fact that one could not know whether there would be six questions or just one. Nor could we know the length of the text that may accompany the ballot because at one point, the idea of giving a text to each voter had been considered.

The answer to these questions necessarily resulted in three different scenarios: printing ballots, therefore the quantity of paper required, as well as the counting process. If you have to take into account six decisions, the counting takes an enormous amount of time and it's risky. You end up with three times more counting on the same night. The dynamics at the polling station also presented a problem because people take more time if they have three or six choices to make rather than just one.

The federal referendum cost some \$105 million but it only addressed three-quarters of the Canadian population. The federal government reimbursed \$35 million from the Consolidated Revenue Fund, not under the authority of the Chief Electoral Officer, pursuant to the Referendum Act. It was the Consolidated Revenue Fund that paid the Government of Quebec, following a government decision and not one by the Chief Electoral Officer of Canada. Of the \$42 million that the Chief Electoral Officer had spent in order to manage the Quebec referendum, they received \$35 million from the federal government.

• (1110)

I will now continue in English.

[English]

It is my distinct impression that both Alberta and British Columbia would also have held a referendum under their provincial legislation—they were bound to do so for a constitutional question—had they known that the federal government would reimburse them as it did Quebec. When both chief electoral officers contacted me at the time, I was not aware of any plan to reimburse the Quebec government, and told them so.

There are several positive aspects to the Referendum Act. The first concerns the whole apparatus or scheme concerning referendum committees: their need to register, to reveal their principals, their sources and amounts of funding, and their expenditures, all related to

the right of electors to know who is intervening in the referendum process, all the while recognizing the rights of free speech of Canadians. This practical experience with referendum committees led to the present regime governing third parties under the Canada Elections Act, which puts Canada, in my view, at the forefront internationally when it comes to the matter of money in politics and elections in Canada.

The second positive aspect concerns the attribution of free time on broadcast media, radio and television: 90 minutes each to the yes committees and to the no committees who make a request to the broadcasting arbitrator once they are registered. To me, this constitutes the great equalizer between proponents of the yes and the no sides. This made the difference between the two. We know that the amount of money spent was quite out of whack between the yes and the no sides, but the great equalizer was the free broadcast time, allowing all shades of yes and no to express themselves, as opposed to being caught under umbrella committees.

By the way, the broadcasting arbitrator recommended that the law be changed to give committees seven days, as opposed to only two, for coming up with their ads to be broadcast on free time. This is in the report to which I alluded earlier.

Another positive measure concerned the need for the referendum question to be made available in aboriginal languages, following consultation with representatives of aboriginal associations. Every polling station in Canada had available, in the same format as the official ballot, another ballot containing the same question in 21 aboriginal languages. It was never before seen in Canada. I am so proud of that.

With respect to the desirability of melding the two laws into one or keeping them separate, I would like to offer the following. In the first instance, a decision must be made on whether referendums will consider constitutional matters only, as is the case at this time, or other matters as well. Obviously this will affect the frequency of federal referendums. If there are only constitutional ones, then one should wonder if it's necessary or useful to meld the two laws, except in several respects.

In the second instance—that is to say, a broadening of the Referendum Act to include topics other than constitutional ones—it behoves a committee, should the decision be made to broaden the scope of federal referendums, to consider seriously the possibly and desirability of containing within the same statute an election alone; a referendum alone; and a joint election and referendum. In the latter case, by the way, I once wrote to Mr. Preston Manning, who was then leader of the official opposition, because he had made a written request to me, and I answered that a referendum held at the same time as a federal election would add some \$10 million to the cost of an election, as opposed to \$140 million, which a federal referendum applied throughout the country would cost. This is in 1993 dollars.

Now we go back to that model of a statute. One section of the statute would contain the electoral procedures common to both elections and referendums—for example, the list of electors, the ID requirements for electors, the poll worker selection, how the count is to be conducted, and so on and so forth. These commonalities would be one section. Three other sections would deal with what is singular to each of the three scenarios that I raised above.

• (1115)

With respect to third parties and referendum committees, should there be a joint statute, they could both continue to exist under separate guises if they're separate statutes, and would coexist during a joint event, all the while reinforcing the anti-collusion articles in the statute. In other words, if you're setting up a referendum committee, you cannot be a third party. The principals cannot be the same. That would be anti-collusion, to prevent that from happening. Consideration would have to be given to harmonizing the legal requirements concerning them, such as thresholds for registration, limits on spending, and reporting requirements, as well as timeframes for doing all these things for them.

As in British Columbia, as Harry Neufeld related to you, referendum expenditures by parties and candidates would be reported as election expenses—end of story—and the ceiling would remain the same. So if a candidate for the House wishes to comment on a referendum or campaign, the expenditures fall under his or her campaign ceiling.

To address a concern raised by a member of the committee, consideration should also be given to the extension to third parties and referendum committees of the rules under the present statute governing contribution limits and sources. I'd like to elaborate on that if there are questions.

Last, with respect to the need for public financing—because there's none now for referendum committees—as a result of these tightening measures, I would submit that an enrichment of the free broadcast time to both sides may well suffice, given that the new rules applicable to them would seek only to control advertising expenditures at any rate.

Thank you, Mr. Chairman.

**The Chair:** Thank you.

We will have questions and comments from members.

Go ahead, Madam Ratansi.

**Ms. Yasmin Ratansi (Don Valley East, Lib.):** Are we going through the normal rounds?

**The Chair:** We'll do a normal seven-minute round.

**Ms. Yasmin Ratansi:** Thank you, Mr. Kingsley.

I'm new to the committee and perhaps I'll need clarification for some of the things you have said.

The last federal referendum that took place was in 1992, and you said referendums are compulsory. I suppose it's part of the Constitution that a referendum is essential or can be done by the government. Is there a statute that says they have to be reviewed every three years? The Referendum Act had to be reviewed after the first referendum. Is there anything in the act that says so?

**Mr. Jean-Pierre Kingsley:** First, referendums are not compulsory. To be more precise, it is a decision—

**Ms. Yasmin Ratansi:** It was a statement. That's why I picked that word up.

**Mr. Jean-Pierre Kingsley:** Okay. The decision can be made to hold a referendum, but at this time it can only be on a constitutional question. Okay?

**Ms. Yasmin Ratansi:** Okay.

**Mr. Jean-Pierre Kingsley:** Now, the second question was...?

**Ms. Yasmin Ratansi:** I was asking you if there was anything—

**Mr. Jean-Pierre Kingsley:** It was about the review.

The present statute says that Parliament was to review the Referendum Act by 1995. This being 2010, it's taken 15 years to get to this stage, and I want to congratulate this committee for having undertaken it. It's an important matter.

**Ms. Yasmin Ratansi:** You mentioned perhaps expanding the Referendum Act to allow public opinion on matters of public interest, but then you said that would require an election law, a referendum law, and a mixture of the two. Could you explain what you said, please?

**Mr. Jean-Pierre Kingsley:** My understanding was that the committee was considering whether there should be referendums and elections under one statute. If there were to be a joint statute, one statute to cover all eventualities, I was elaborating on what the various scenarios would be like. That's what I was doing, because you can put all of the above under one statute. I was also saying that if you intend to do only constitutional referendums, you might not want to spend a lot of time doing one statute alone. You might want to have two statutes.

• (1120)

**Ms. Yasmin Ratansi:** Okay.

That's an interesting way that you've put it, because if you look at the public interest and if you were to allow a referendum on, say, public interest, then first of all you have to put the horse before the cart. You have to first get your Referendum Act in order for that to happen. How long would that take? What do you perceive, in your expert opinion?

**Mr. Jean-Pierre Kingsley:** In my view, if I were to estimate off the top of my head, I would say that once the directive was given by the government to the Department of Justice, it could take up to six months to draft a good statute here.

**Ms. Yasmin Ratansi:** Okay.

At the moment, the referendum question is always a constitutional question. But provinces like Saskatchewan have allowed a referendum with a minimum of 15% of voters. Would you think that is a good idea?

**Mr. Jean-Pierre Kingsley:** That's one question I haven't given a lot of thought in terms of this appearance, but I've given it some thought in the past.

The whole issue is whether people want to go for more direct democracy as opposed to representative democracy. Constitutional referendums have one thing in common: they are divisive. They pit family members against other family members. It creates difficulties. Other referendums may not be as expensive to society. As we move towards addressing the public's concern about participating in democracy, then perhaps we should be looking at the possibility that if people wish to get together to sign a petition and a certain number or threshold is reached, then maybe a referendum should be obligatory under those circumstances. I would see advantages to that. There are some disadvantages, but I would see advantages.

**Ms. Yasmin Ratansi:** If you're talking about participative democracy, what percentage would you want? If 15% of the population had really one issue they were interested in that was not representative of others' issues, how would you balance that?

**Mr. Jean-Pierre Kingsley:** Well, the threshold becomes the magic number then, and I don't have a magic answer.

**Ms. Yasmin Ratansi:** Oh, and I thought you did.

**Mr. Jean-Pierre Kingsley:** No, I have an answer to many questions, but not all of them.

**Ms. Yasmin Ratansi:** The other question I have is about the time between issuing the writ and the referendum, which is 36 days. Is that sufficient time? The reason I pose the question is that we had a provincial referendum on another issue, proportional representation, and the population was absolutely confused. So in referendums you need an educational component. Otherwise, everybody follows the bouncing ball, thinking I'll follow her because she knows better and she can propose to be an expert, and I'll listen to her. People get carried away. We find that happening. What is your opinion? Is 36 days enough? Should it be increased?

**Mr. Jean-Pierre Kingsley:** Thirty-six days is ample. If it's enough for a general election, it's enough for a referendum.

**Ms. Yasmin Ratansi:** The last question I have is on the referendum committee and financing. You said that public finance for a referendum is not available at the moment?

**Mr. Jean-Pierre Kingsley:** At the moment it's not available. There's no tax credit, there's nothing if you make a contribution, there's no reimbursement of referendum committee expenditures, and I'm saying that should remain the same.

**Ms. Yasmin Ratansi:** If it should remain the same, should we reduce the limit to \$1,100 to match with the Elections Act? Because the contribution, the maximum anybody can make, is \$1,100....

**Mr. Jean-Pierre Kingsley:** This is what I was alluding to, that consideration should be given. What you should be aiming for is a greater simplicity in terms of what a referendum committee and a third party can do and what their obligations are.

There might be a slight variation, in that under a referendum scenario or a joint scenario where two are being held together, it might be possible for a union, a corporation, or an association to form a referendum committee but not be able to make any contribution to it. Others would have to make contributions to it, but under the same scheme, only its advertising expenditures would be controlled. So you don't really care how much they spend trying to get organized. If they want to spend their money foolishly, that's up to them. Right now, under the third party regime, all you control

are advertising moneys. That's all you control. That's because a decision was made, which I think was a wise one, to only control that.

• (1125)

**Ms. Yasmin Ratansi:** Thank you.

**The Chair:** Thank you.

Mr. Lukiwski.

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

Welcome, Mr. Kingsley. It's good to see you back again.

Although you were always very forthright in your discussions with us, when you were last here as the Chief Electoral Officer of Canada, obviously you had to be somewhat circumspect in offering any opinions. I don't think you have any constraints in that regard now, being a private citizen. So I'm very interested in your honest opinion on a couple of questions, because you were the only Chief Electoral Officer who administered a referendum—there's only been one since 1992—and you have intimate knowledge of both the Referendum Act and referendums themselves. These are questions the committee has dealt with and continues to deal with.

Do you think referendums should be expanded? Should they be broadened to include referendums in the public's interest, as opposed to merely issues of the Constitution? Secondly, are there any specific changes to the Referendum Act that you would recommend, based on what you've seen and how you've worked with that act over the years?

**Mr. Jean-Pierre Kingsley:** The first country I visited when I was Chief Electoral Officer was Switzerland. They hold referendums until they're blue in the face—50,000 people can.... What they were using it for, really, was blocking legislation, because you could overturn legislation. It made progress very difficult. I wouldn't like to see referendums go that far, but I think there is room to try to get to the dissatisfaction, or the seeming dissatisfaction, as I alluded to in my previous answer. I think we could successfully extend referendums. We might even have forms and numbers of signatures. If you can gather 15% of the electorate on a particular topic, you've got a pretty significant number of people here. Fifteen percent of 24 million is not easy to get. So that's a possibility. I don't know if 15% is good, maybe it's 20%, but you get my idea.

With respect to changes to the statute, I abhor the thought that more than one referendum is being held at the same time on the same question but with different rules. I especially abhor the fact that 10,000 Canadians were deprived of their right to vote. That really upset me to no end. I made a public speech about it, and Mr. Macdonald from the CBC reported it, but nothing happened. Under our Constitution, I found that quite reprehensible. It's either that or we let the provinces run a national referendum, but each under their own rules if this is what they want, and if this is what we want politically. But if we're going to have a referendum.... You can't have a provincial referendum but the City of Regina has its own rules, in Saskatchewan.

So the other one is there are slight amendments, as I indicated, about the number of days for committees to establish themselves. Those were the main concerns that I would address if I were to change anything.

**Mr. Tom Lukiwski:** I just want to clear this up. Are you suggesting then that the national referendums should take place from time to time, not just on matters of the Constitution but in the matter of the public interest? How would you set the standard for that? In other words, is it strictly if you get a 15% uptake on a petition regardless of what the issue is, or should there be some parameters and criteria governing a question that is considered to be in the national or public interest?

**Mr. Jean-Pierre Kingsley:** I'm not even sure that 15% would be it.

**Mr. Tom Lukiwski:** Whatever—

**Mr. Jean-Pierre Kingsley:** Whatever the quota.... That might be one way, but certainly the other way is for the government to make a decision. Then there's a debate in the House and a resolution to hold a referendum. There's a vote in the House, and it says yes, we want to hold a referendum on this particular question, and the question is there. I think this would be a very legitimate way of deciding what question to put, other than a constitutional one, even though a constitutional one is also the object of much consideration by Parliament, in both houses.

So this is the way I would see it.

**Mr. Tom Lukiwski:** I tend to agree with that, and perhaps it could be a combination of both, for example, if the percentage of Canadians signing a petition was sufficiently high.... You could say, for example—an either-or situation—if 35% of Canadians signed a petition on a particular issue it automatically triggers a referendum, or if in a vote in the House of Commons the majority of parliamentarians determine that there would be a referendum on a particular issue of interest, then that would also trigger one.

Would that be a viable option, in your view?

• (1130)

**Mr. Jean-Pierre Kingsley:** Yes, it would, in my view.

**The Chair:** Madame DeBellefeuille, you're talking first?

[Translation]

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

Good morning, Mr. Kingsley. This is the first time we have an opportunity to have an exchange as I've only been sitting on this committee for a short time. I had to exercise my memory because our work on the Referendum Act started about a year ago.

You didn't discuss this in your presentation, but I imagine that you probably agree with the other witnesses on the issue of inmate voting, namely that this is provided for in the Elections Act but not in the Referendum Act.

Do you feel that we could immediately make a recommendation to amend the act in order to correct this anomaly and make sure that inmates have the right to vote during referenda?

**Mr. Jean-Pierre Kingsley:** I was surprised when I read that this was a consideration. I think that it was Professor Massicotte who raised this. I was surprised because during the 1992 referendum, inmates obtained the right to vote and for the first time we set up a voting system for inmates in federal penitentiaries and required that this be done in provincial prisons. The definition of a voter is not contained in the Referendum Act. It is stated in the Elections Act and the Chief Electoral Officer adapts the Elections Act when it comes to those clauses. I was a bit surprised by that. I might be wrong, but I recall that this was the first time that inmates were allowed to vote.

**Mrs. Claude DeBellefeuille:** During the Chief Electoral Officer's testimony as well as that of Mr. Massicotte and other witnesses, a problem was raised and it was stated that it was an error not to have allowed inmates to vote. So I'm very surprised by your response.

**Mr. Jean-Pierre Kingsley:** Their position surprised me. This is why I will pursue this further. I didn't do so, because I thought that my memory served me well, but this issue does need to be clarified. As a matter of fact, I clearly remember a discussion I had with the attorney general of one province in particular who objected to inmate voting. I had had to tell him that referenda were federal, that federal law applied and that the inmates in his province were going to vote. I won't tell you which province it was, however.

**Mrs. Claude DeBellefeuille:** I have the note before me. It was in 2002 that the Supreme Court invalidated the Canada Elections Act. That's all right, we will check this.

If we were to allow this to be broadened, by that I mean if we were to amend this and allow Canadian referenda on subjects of public interest, do you think it would be a good idea to twin such referenda with federal general elections?

**Mr. Jean-Pierre Kingsley:** This is more or less what I was saying earlier when I said I agreed with the member who spoke before you and with the committee in general, and when the lady also raised the question. I know that this goes beyond what's being done right now. I know there is an advantage when an election deals only with members of Parliament and electoral issues, but I think that Canadians are sufficiently sophisticated now to allow us to say that we could do these things. And if there are some ambiguities, then so be it.

**Mrs. Claude DeBellefeuille:** If we're talking about referenda in the public interest, one can perhaps understand that this could be twinned. But if we maintained the current situation and did not amend the legislation, keeping referenda only on constitutional questions, for example, it seems to me that it would be difficult to twin a general federal election with a Canadian referendum dealing with such issues. I think that this is not the same thing at all. It's completely different.

**Mr. Jean-Pierre Kingsley:** I agree. That's why I said that if the committee said that the only acceptable subject for a referendum was a constitutional question, two laws would have to be maintained. In my opinion, it's no use having a single law for both and I don't see the point of holding a federal referendum at the same time as a federal election.

**Mrs. Claude DeBellefeuille:** If there were a Canadian referendum soon dealing with constitutional questions, I have no crystal ball, but I would bet that some provinces would demand the right to use their own legislation to administer their referenda. That decision is a political one which is not managed by the CEO.

Do you agree that this is a political decision that should not come under the CEO?

• (1135)

**Mr. Jean-Pierre Kingsley:** Of course it's a political decision, because if I had had to make the decision, I would have taken a different one. I am saying this very honestly. That's why I disagree with this section of the legislation. However, I'd like this to be very clear, as soon as a federal referendum is being considered, all provinces should be entitled to the same treatment. I would like to see all those who want to hold the referendum separately be given the right to do so and that they get the same reimbursement from the federal government; not just one of them being entitled to this under a separate agreement.

**Mrs. Claude DeBellefeuille:** You stated that there had been a serious problem in dates: namely that the dates were not all the same, which created confusion among the electorate. In two neighbouring provinces, there could even be confusion about the dates. If each province held its own referendum, under its own legislation, would it still be a good idea to agree on some amendments so that it at least be held on the same date, which is important when there's a vote?

**Mr. Jean-Pierre Kingsley:** I can tell you straightaway that this is well nigh impossible because Ontario would have to agree with Quebec to change its dates, as then would Saskatchewan, etc. The legislatures could not respond in time; that couldn't be done. It would have to be planned well in advance and I don't see how that could be done because the decision to hold a constitutional referendum can be taken at the very end of the process as was the case last time. The decision was made in May or June.

**Mrs. Claude DeBellefeuille:** Ideally, there should be one referendum per province and each province could administer it under its legislation and report the final result which would be the federal position. That might be simpler and would respect the legislation of each province.

**Mr. Jean-Pierre Kingsley:** I don't think it would be simpler, but at least the provinces should have the choice. That would be better than giving this choice to only one or two provinces, through a special agreement that is not made public.

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

[English]

**The Chair:** Mr. Christopherson, you're up.

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

Thank you very much for your attendance today. It's good to see you.

I want to clarify a couple of things. One is the issue of holding a referendum. Your position is that we ought to use one piece of federal legislation. One of the issues in front of us is whether we should do it by province, and then have a provincial total that then creates the national total, or do it with one legislation. Is it your recommendation that it be a federal piece of legislation and that national referendums be held under that?

**Mr. Jean-Pierre Kingsley:** Yes, it is, sir.

**Mr. David Christopherson:** Is it your concern that to do it the other way is just impractical in terms of trying to keep them all equal?

**Mr. Jean-Pierre Kingsley:** It's also unfair.

You get 10,000 Canadians. You would have a higher number, because there's a six-month residency requirement in every provincial statute for the right to vote. There's none at the federal level. If someone went from Saskatchewan to Manitoba and was not a resident there for six months beforehand, that person would lose the right to vote. You would compound that 10,000 by a factor of probably four. Now we have 40,000 Canadians who don't have the right to vote.

**Mr. David Christopherson:** It would be just because of the bad luck of when they moved.

**Mr. Jean-Pierre Kingsley:** They have absolutely no inkling when they're moving that this will have an impact on something, and you know, those Canadians took us, the federal Elections Canada, to court. The court said that I was right in interpreting the statute. I was hoping I would lose the case, but I won the case. If they had taken the Quebec chief electoral officer to court, it might have been a different result, but who knows?

**Mr. David Christopherson:** There is also the issue of whether referendums should be held simultaneously with federal elections, or not, as a matter of policy, as opposed to just happenstance. If I recall correctly—and I don't have the greatest memory—there have been pretty strong arguments on both sides. One is that it makes all the sense in the world for a small country like this to be able to do it at the same time. It's more efficient and it saves money. The other argument is that if you do them both at the same time, you're going to skew one of the two results because either the referendum question or the general election will become paramount in the minds of the parties and in the media, and it wouldn't do justice to either one. You need to keep them separate.

You probably touched on it, but could you again state your thinking on that issue?

•(1140)

**Mr. Jean-Pierre Kingsley:** My thinking is that in Canada we're now sophisticated enough in terms of democracy to be able to handle two questions at the same time, one dealing with the election and the other dealing with a referendum question.

There may be some confusion and there may be some overlapping with a particular issue that one particular party is more associated with, but through the rules on financing, you can create a level playing field and maintain a level playing field. I alluded in my remarks as to how you can achieve that. Therefore, I think it's highly feasible to hold two at the same time.

**Mr. David Christopherson:** I want to pursue that a little bit, because it's one of the things the committee is going to have to grapple with. In the relatively recent experience in Ontario, where the politicians even made commitments that they weren't going to comment on the referendum, there are some people who, in reviewing what happened, believe that holding the two of them at the same time was not good, that there wasn't a sufficiently thorough debate about the referendum question because the politicians weren't engaged in it. They had agreed not to speak to the issue. Some of the review was of the opinion that had the two of them been separated, we'd have gotten a more focused public and we'd have gotten a more intelligent decision, or a more thoughtful decision. Again, what are your thoughts?

**Mr. Jean-Pierre Kingsley:** Provincial legislation cannot control the airwaves. Federal legislation can. And free broadcast time is very attractive. It's not print media that convey the messages today; it's free broadcasting time. We have the advent of the Internet and all the social networks now, and I know social networks existed for the provincial referendum, but in my view, if you can facilitate the creation of referendum committees and they gain access to 90 minutes right now, and it is fairly apportioned among them, they will do ads and they will invade the networks. It will compete with the election, obviously. I think what would happen between the two events would be more a matter of confusion than a matter of not knowing.

**Mr. David Christopherson:** Would you limit the number of referendums you would allow at one time?

**Mr. Jean-Pierre Kingsley:** That is something to be considered. We don't want to be caught like California—

**Mr. David Christopherson:** The Americans had this crazy—

**Mr. Jean-Pierre Kingsley:** —with 130 referendum questions, and people decide they will only answer 65 that day. I mean, how do you do that in an intelligent way?

I think that initially we should be concerned with one referendum at the same time as an election and see how that works. I think we're ready for it, but we'd see how it works and then see if we wanted to hold two or three at the same time.

When we do that, by the way, it will be time for us to go to voting machines so that the count can be done easily. One or two decisions can be done through a visual count at the end of the polls, but I wouldn't go beyond that. That's a separate issue.

**Mr. David Christopherson:** Could you help me understand something? With regard to the rationale for stand-alone legislation

for the Referendum Act and to whether we're going to leave it pertaining only to constitutional matters or whether we're going to broaden it, is it your notion to have one piece of legislation that covers the three scenarios of a regular election, a regular referendum, and two at the same time? Is that correct? Is that where you are?

**Mr. Jean-Pierre Kingsley:** Yes.

**Mr. David Christopherson:** If it's only the constitutional piece, why wouldn't you still go with your notion of the one legislation in three pieces, even if it was only for constitutional matters?

**Mr. Jean-Pierre Kingsley:** I don't see a real need. I mean, we're going to hold another constitutional referendum 50 years from now.

**Mr. David Christopherson:** Okay. Let me just play devil's advocate—

**Mr. Jean-Pierre Kingsley:** That's our history. Every 50 years we've held a federal referendum.

**Mr. David Christopherson:** Okay.

The response to that would be that we have an opportunity to frame the best legislation we can. If it makes sense to put three in one to do broader referendums, would it not still be an improvement in governance legislation while we're in there digging around anyway?

**Mr. Jean-Pierre Kingsley:** Well, I can easily think of an advantage to doing it that way. Even though I'm not Machiavellian in makeup, I can see that it certainly would ease the transition towards referendums that go beyond constitutional matters.

**Mr. David Christopherson:** If we take that step down the road, we've done the homework.

**Mr. Jean-Pierre Kingsley:** Yes.

**Mr. David Christopherson:** So that's a good argument, actually, to go with your recommendation, regardless of whether we broaden it or not.

I'm probably getting close. Thank you, Chair.

•(1145)

**The Chair:** You're all good. Your timing is really good today. You're looking up at the chair right at the seven-minute mark. I'm very proud of all of you.

Ms. Foote, let's see if we can do it again.

**Ms. Judy Foote (Random—Burin—St. George's, Lib.):** Well, just watch me blow that one.

**The Chair:** Yes. Oh, sorry, this is five minutes now.

**Ms. Judy Foote:** Oh, well, there you go.

Thank you, Chair, and thank you, Mr. Kingsley; it's good to have you here.

I'm new to the committee; I've not had the benefit of your expertise, your advice, or your experience, so bear with me.

I'm looking at the aspect of financing referendum committees. I acknowledge that it's clear here that there's no limit to the referendum expenses or to the number of committees that you can have on any one position. To me that just seems to be a recipe for...

**An hon. member:** Disaster.

**Ms. Judy Foote:** It may be disaster, but it's certainly being unfair. Where does the responsibility lie? Who does the responsibility lie with to ensure that if you're going to have a referendum, there is a balanced approach to ensure that both sides of the issue are front and centre?

**Mr. Jean-Pierre Kingsley:** In my view, the free broadcast time is the level playing field in the Referendum Act. I like the fact that you can have multiple committees, because there are shades of yes, shades of no, and sometimes they oppose one another. They could access free broadcast time, and not all the free time was accessed the last time, so there's room there.

I've also alluded to the fact that there is now quite a fictitious limit on what a committee can spend. It's 74¢ per elector, which is humongous. I've alluded to the fact that they should be caught with the same limits as third parties now. So then you're into a maximum of 400,000. I believe that's the present limit, or something like that. If they only go for certain ridings, then you base it on the ridings. There's a limit per riding right now under the statute, with a maximum limit, I think, of 400,000, but I can't remember.

Therefore, if you do that, you start to level the playing field at the spending end as well. That's why I said you should harmonize the rules with respect to referendum committees and third parties in terms of registration, in terms of limits, and in terms of everything else.

**Ms. Judy Foote:** Whose responsibility would it be to do that?

**Mr. Jean-Pierre Kingsley:** It would be the Chief Electoral Officer.

You see, under the statute now, under the Canada Elections Act, if you intend to spend more than \$500 in advertising, you have to register. If you don't, you're breaking the law. People will see that you're doing ads, and one thing I really liked is that Canadians watch the system. When I was in charge, they would write and complain. We had 500 written complaints at every election. They watch. They watch what you report in your expenditures. They watch when events are being held and they ask if this event was reported or not. Some of it is for political reasons; some of it is purely out of concern for the integrity of the system. It was really quite gratifying to see that.

**Ms. Judy Foote:** I'm looking at and acknowledging your position that you believe we're at a point where we could actually have a referendum question being conducted at the same time that you would have a federal election. It's interesting, because of course municipalities do this all the time, albeit on a smaller scale, but the principle is the same.

From your perspective, I would expect that one of the benefits of holding it at the same time would be a considerable cost savings.

**Mr. Jean-Pierre Kingsley:** I alluded to that, but I want to be more precise. I appreciate the question.

When I wrote to Mr. Manning I told him it would cost \$10 million extra. This is as opposed to \$140 million, so there's a savings of \$130 million if you hold a referendum at the same time as a general election.

My colleague who is in charge now may have slightly different numbers, because I'm talking about 1993, but in terms of proportion,

it gives you a fair idea. The savings are humongous because the whole machinery is there already. You don't have to re-hire the people; you don't have to re-train. It's all done; it's all there. So it's a net additional cost and it's not a lot on a \$300-million cost, or whatever it is now.

**Ms. Judy Foote:** Basically the same individuals would be utilized, the same buildings, everything.

**Mr. Jean-Pierre Kingsley:** The same machinery. Everything would be the same because we run it on a riding basis. We run it with the same polls. We run it exactly as if it were a general election. By the way, when that law was being studied this committee went on TV for the first time. That was when the referendum was being held. That was good.

**Ms. Judy Foote:** Based on your experience, can you think of any disadvantages to doing it?

**Mr. Jean-Pierre Kingsley:** There are the disadvantages to which you've alluded. You're as aware of this as I am, if not more. What does it do to the election? Does it work? On the other hand, if it's an important topic it should be part of the politics of the day. During an election is when important topics should be discussed. It's perfect.

• (1150)

**The Chair:** Mr. Albrecht.

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

Thank you, Mr. Kingsley, for being here today.

I just want to follow up on this idea of having them together, because I think it makes common sense to all of us that it would reduce our need for extra resources. You mentioned earlier, if I heard you correctly, that there's no tax deduction for groups that are registering either on the yes or no side of any particular question. Is that correct?

**Mr. Jean-Pierre Kingsley:** That's correct.

**Mr. Harold Albrecht:** Is it possible that if you were doing the two simultaneously and a candidate was safe and he didn't have to spend much of his maximum for election purposes, he could divert a significant amount of those resources into the referendum question? Would that be a back-door way of getting a tax credit for the referendum question? And therefore is that something we need to adjust if we go that way?

**Mr. Jean-Pierre Kingsley:** If I were a member of Parliament, obviously, that is a question I would ask, but at the same time I would also take into account that your ceiling is \$80,000, or whatever—it's in that vicinity. If you're caught advertising outside your riding, if you're meddling into somebody else's, you have to report that expenditure on the other side.

**Mr. Harold Albrecht:** Correct.

**Mr. Jean-Pierre Kingsley:** If you're doing it within your riding and it's an important topic, well, yes, so be it.

**Mr. Harold Albrecht:** That was my question. Would that be a significant factor in making our decision as to whether we should actually go with a simultaneous election and referendum? If you don't think it's a significant factor, that's what I wonder.

**Mr. Jean-Pierre Kingsley:** I don't think it would be. I've been around members of Parliament for some time, and there are not that many who are unwilling to spend just because they're sure they're going to win. It's nice to be spending on a certain thing, but not to be saving on a certain thing.

**Mr. Harold Albrecht:** I have another question. I should know the answer to this, but the question always comes up, at least for those of us who haven't been in the political world forever, of the difference between what we used to refer to as a plebiscite or a referendum. What is the binding or non-binding nature of the referendum that we conduct? Or can we identify that on a case-by-case basis?

**Mr. Jean-Pierre Kingsley:** That can only be done politically. You decide whether a plebiscite is binding or you decide if a referendum is non-binding. You say beforehand and that's what it is.

**Mr. Harold Albrecht:** That's on a case-by-case basis.

**Mr. Jean-Pierre Kingsley:** That's the way I would view it, because the two terms have become so interchangeable and so confusing that you can no longer say you're holding a referendum and therefore you're bound by the results, or you're holding a plebiscite and therefore you're not bound by the results. That's not what this is all about.

**Mr. Harold Albrecht:** So you identify beforehand.

**Mr. Jean-Pierre Kingsley:** Yes. You tell the people that this is what happens here: 50% plus one carries the day. And that was said before. In some places, they said that 60% plus one vote was required for this. But you make it known beforehand.

**Mr. Harold Albrecht:** But is it also possible, just to go a step further, and say that this is seeking the opinion of the people, and based on that the legislative body would make the final decision?

**Mr. Jean-Pierre Kingsley:** Yes, and a government could easily say, "We're very happy to disregard the advice that we've just been provided by the Canadian people." They can do that.

**Mr. Harold Albrecht:** Especially if it was a turnout of only 12%.

**Mr. Jean-Pierre Kingsley:** Well, that becomes a reason, and hence the importance of turnout in these things.

**Mr. Harold Albrecht:** I think that's the importance of keeping that flexible.

**Mr. Jean-Pierre Kingsley:** Yes.

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

**The Chair:** Mr. Albrecht has left a minute and a half for one of his colleagues.

Mr. Hoback? Mr. Reid?

Hey, I'm not forcing people.

**Voices:** Oh, oh!

**Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC):** Well, actually, it does give me a chance to ask a question.

You mentioned that 50,000 Canadians were disenfranchised back in...?

**Mr. Jean-Pierre Kingsley:** Ten thousand.

**Mr. Scott Reid:** Ten thousand: was that the people who had recently moved to Quebec?

**Mr. Jean-Pierre Kingsley:** Yes. They had not stayed there for six months, and therefore they did not meet the residency test under the statute about who's entitled to vote.

**Mr. Scott Reid:** In your mind, just the nature of the way that played out, that's never actually been constitutionally tested as to whether that was unconstitutional, withholding their...? Or am I wrong?

• (1155)

**Mr. Jean-Pierre Kingsley:** It was constitutionally tested that my office could not make them vote. That judgment was upheld by the Supreme Court. It was not constitutionally tested if Quebec had the right to deprive them of the right to vote in a referendum held under the special guise of a federal referendum at the same time. That was not constitutionally tested.

**Mr. Scott Reid:** Right. And if one wanted to test that now, one would have to do so by means of a reference case or something of that nature.

**Mr. Jean-Pierre Kingsley:** Yes. Mr. Haig took my office to court—hence the "Haig" judgment—and he did not take the Chief Electoral Officer of Quebec to court. He had to decide between the two, I guess, or these things are expensive. I don't know what happened; I'm not aware.

**Mr. Scott Reid:** Okay. That answers that question.

Thank you.

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

Monsieur Laframboise.

[*Translation*]

**Mr. Mario Laframboise (Argenteuil—Papineau—Mirabel, BQ):** I'd like to get back to this question. Mr. Kingsley, things have changed since 1992. First of all, Quebec is recognized as a nation by the Parliament of Canada. It is understandable to some degree that in 1992, Quebec wanted to hold its own referendum. When you survey Quebecers, you see that 67% of them say they are Quebecers first and Canadians second. So that was inevitable. Moreover, we're used to referenda in Quebec, as you know.

I want to understand this correctly. Your position is that the law should apply everywhere without Quebec having the right to hold its own referendum as it did in 1992 for example, or all provinces should have this right. It's one or the other: either it's applied across Canada or each of the provinces would have the right to hold one. Is that what you're proposing?

**Mr. Jean-Pierre Kingsley:** The second option is already provided for in the current legislation.

**Mr. Mario Laframboise:** Yes, that's what allows a province to hold one.

**Mr. Jean-Pierre Kingsley:** Any province can hold its own referendum.

**Mr. Mario Laframboise:** That's right.

**Mr. Jean-Pierre Kingsley:** What I'm saying is that if there's an intention to work this way with a province and reimburse it, all provinces should be aware of that and each one should be able to make its own decision. Quite frankly, I consider that a second alternative that is less desirable than the idea of holding a federal referendum under a single act, throughout the country. The reason for this is simple. We have federal elections where a single federal law applies; we don't have a provincial law that applies to federal elections.

**Mr. Mario Laframboise:** Yes, but Mr. Kingsley, if Quebec has its own way of holding referenda, you can understand that for example if there is a voter's card in Quebec and there is none in Canada and a referendum was held, Quebecers would take out their voter's card. However, when there is a federal election, the voter's card is not valid because many people who do not have a voter's card would have the right to vote. I think that that would be a very significant difference in the minds of Quebecers.

The current legislation allows Quebec to hold its own referenda. What you're suggesting is that next time it not have the right to do so. In your opinion, that would be a simple way to do things. For my part, I can say that since that time, the Quebec nation has been recognized and each province should have the opportunity to hold its own referendum especially on a constitutional issue.

**Mr. Jean-Pierre Kingsley:** I fully concur that this will be a decision of the committee. I simply expressed a point of view about the management of all this. A way also has to be found to solve the problem of the 10,000 or 40,000 Canadians who would lose their right to vote. That does have to be settled too.

**Mr. Mario Laframboise:** If, for instance, there is an elector's card in a province and Canada finds it does not want that, obviously it makes a difference as to the number of people able to vote. But it is legislation! If Quebec legislation is valid, passed by the National Assembly in Quebec, I do not see how citizens could circumvent legislation from the National Assembly in Quebec.

**Mr. Jean-Pierre Kingsley:** Your argument is valid, as is the argument according to which federal elections should be held according to Quebec rules, as there is an elector's card there whereas there is none within the federal elections regime.

**Mr. Mario Laframboise:** No, because under the federal act, you can hold your own referendum. That is the reason why I would not want to see an amendment to the act regarding the provinces and their ability to take a position on referenda. Federal elections are federal elections. We understand full well that the federal government has the right to dictate standards on federal elections. Inevitably, there will always be problems on ballot day when you have to determine who has the right to vote and who does not. However, we are conscious of the fact that there is federal legislation governing elections.

What you want is to have federal referendum legislation on constitutional matters, preventing the province of Quebec from having the right to hold its own referendum. It needs to be said. You do not want provinces to have the right to hold their own referenda on this matter.

**Mr. Jean-Pierre Kingsley:** I said that it was preferable to do what you've just described, have federal legislation which would apply. If the committee takes another decision and grants this right to the

provinces, all the provinces should have the same right, including the right to be reimbursed.

• (1200)

**Mr. Mario Laframboise:** I agree with you.

**Mr. Jean-Pierre Kingsley:** That would be my second alternative. I am very direct, very honest in this respect.

**Mr. Mario Laframboise:** Despite the fact that Quebec is recognized as a nation, here, within the federal system.

**Mr. Jean-Pierre Kingsley:** Your argument is just as valid for elections as for referenda. That is where, once again, you see a difference, whereas—

**Mr. Mario Laframboise:** Very well. Thank you.

[English]

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

**Mr. David Christopherson:** Thanks, Chair.

Where we left off is where I'd like to pick up. I understand the point my colleague is making: If Quebec is making a determination about a national issue, and they have referendum legislation, they'd like to use their own. The other argument, I think, if I'm hearing correctly, is that there is one law for electing federal members of Parliament, and therefore there ought to be one law in terms of a referendum on a national question. Is that correct?

**Mr. Jean-Pierre Kingsley:** I'm saying that this is much more desirable.

**Mr. David Christopherson:** Right.

Obviously, the six-month issue is one you're most passionate about, because it's denying some Canadians the right to exercise their franchise. Setting that aside, what are some of the other complications of going with potentially 13 different pieces of legislation on one national question?

**Mr. Jean-Pierre Kingsley:** On the whole issue of the critical dates for revision, when does revision end? When do the advance polls take place? For example, you try to advertise that in the Ottawa area. You put it in *Le Droit*, and you get an ad from the Chief Electoral Officer of Ontario and an ad from the Chief Electoral Officer of Quebec, and the two dates are not the same. Everyone's going to vote on the same day. You're hoping that it's going to be the same question. That's the other thing. Is it the same question, exactly the same question, every word? That's number two.

Is the duration of the campaign going to be the same? Is Ontario 30 days? Is Quebec 36? What about New Brunswick, if New Brunswick is next? And what about the other provinces in Atlantic Canada? What about them? When you're advertising in Atlantic Canada, you're advertising in Atlantic Canada. It's difficult to advertise only in New Brunswick. This is what I'm alluding to, if it's a federation.

**Mr. David Christopherson:** I must say that I like the idea of one piece of legislation that deals with the three different scenarios. Whether we broaden the use of referendums or not, it just makes sense to me. The complications and the differences in the legislation have been pointed out by some. I assume that on things such as dollar limits and timelines, your recommendation would be that if we did one piece of legislation for three scenarios, there should be as much commonality, in terms of these thresholds, as possible.

**Mr. Jean-Pierre Kingsley:** Yes. The only exception would be for referendum committees. If the committee decided that it still wanted to allow unions and corporations and associations to form committees, I would suggest that you consider that. But they cannot make a contribution to the advertising portion. It's only the advertising portion that you're going to control anyway.

**Mr. David Christopherson:** What about the hiring of staff?

**Mr. Jean-Pierre Kingsley:** Let them hire staff. The only thing they're going to be able to do is put out advertising. The only thing that works is advertising. That's all that works. If you're going to be doing it and holding meetings among yourselves, it's a lot of fun.

**Mr. David Christopherson:** To be fair, if you're going to organize a public event, the more paid staff you have available....

Did you give me a nod, Chair?

**The Chair:** It sounds like committee work.

**Mr. David Christopherson:** We have a great committee member here, so I'll take advantage of him while he's here.

**The Chair:** You have a minute.

**Mr. David Christopherson:** It seems to me that doing them at the same time and allowing for referendums to be done by one piece of legislation, and there'd be similarities.... My concern is about the expenses. If you want to hold a rally, it's a lot easier if you have 15 organizers equipped with BlackBerrys, transportation, and the ability to corral people, because you're actually affecting the airwaves by virtue of wanting a big hit on the media. Conversely, somebody else trying to hold a major rally who doesn't have that kind of infrastructure may only get a trickling of people come out. Therefore they end up getting big media, big coverage. So I'm surprised you think that's the only thing that turns votes.

**Mr. Jean-Pierre Kingsley:** I think you've come up with a valid argument, sir, as other members have throughout my questioning. It's something the committee would have to look at. Maybe it's better to go with exactly the same scheme for referendum committees as you have for third parties, and as dollar limits—except for access to free time; that I would keep. That would be sufficient inducement to get people to organize themselves around that.

• (1205)

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

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

**Mr. Jean-Pierre Kingsley:** I want to make a statement, if the committee will allow me.

When I left office I appeared before this committee, but before that I appeared before the Senate committee. I explained why I was not able to tell them where I was going. Essentially, before Christmas the chairman of the board made me an offer that I accepted, so I resigned. But the meeting could only take place on January 5, when

the whole board of the organization could make a decision. This led to some speculation by one or two journalists that I was leaving because Prime Minister Harper had done something or had not done something.

I just want to put it on the record that my decision to leave Elections Canada had absolutely nothing to do with what Prime Minister Harper did or did not do. There was no such consideration at all. After 17 years, enough time had been spent, I had made my contribution, and I had a fantastic offer in my hands. That's all I did: I took advantage of an outstanding offer. It had nothing to do with the Prime Minister, or any other minister, for that matter.

**The Chair:** Or this committee...? You didn't mention this committee. I know sometimes you got a bit of a rough ride here.

**Mr. Jean-Pierre Kingsley:** I'll tell you that toward the end of this committee, whether or not I was part of it, there was some rambunctiousness related to it.

**The Chair:** There was a little.

**Voices:** Oh, oh.

**The Chair:** I'm here to make the same confession: I've calmed down.

Thank you so much for coming today.

**Mr. Jean-Pierre Kingsley:** Thank you so much for this opportunity to exchange with you. If I can be of further service, please let me know.

**The Chair:** I was just about to ask that, because we're not done this yet. In the next hour there's going to be a bit of an explanation of where we are so far, specifically to some of the newer members of the committee. So we're going to do that next.

Thank you for your time today. We will maybe take you up on asking further questions. You're the one who's done this before, and we're all just trying to fix it. As you said, after 15 years we're finally looking at the legislation, because it's past the three-year "look at it" stage. It's time we did it.

Thank you so much.

I'm going to suspend for a couple of minutes.

• (1205) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1210)

**The Chair:** I call the meeting back to order.

As we have discussed, the researchers are going to give us a bit of an options piece as to where we are on this study. Mr. Kingsley added some great stuff for us today, and that's why we wish we'd had him when we were doing the study, but this may actually bring this together a little bit more.

Again, team, we're not looking for an opinion today as to whether we'll carry on with this study. We're trying to bring everybody up to date. Once we've done Mr. Chong's motion on Thursday, we'll know the work of this committee, or at least have a better opinion of where we have to go. So let's not come to an opinion today of where we'll go, but let's just have the researchers make a presentation and we'll ask some questions.

We'll follow about the same format we followed last time. Please indicate if you have a question for the researchers, and we'll let them answer as we go along. That's probably the best way to do it.

We have Michel for only a couple more days—he's taking some more leave to be with his family—but while he's here we'll use his expertise to do some of this.

Michel, the floor is yours.

**Mr. Michel Bédard (Committee Researcher):** Thank you very much.

The chair asked me to present the referendum framework in Canada, so I'll present quickly the Referendum Act and give some information about the study that was conducted by this committee in the last session. Mr. Kingsley also referred to much of the information to which I will refer.

As you know, the Referendum Act was adopted in 1992, just in time for the referendum on the Charlottetown Accord.

The Referendum Act itself is not a comprehensive or exhaustive statute. It has only 40 sections. It refers to the Canada Elections Act, and it requires the Chief Electoral Officer to make the necessary adaptations to the Canada Elections Act so it can apply in a referendum context.

In June 2009 the Chief Electoral Officer sent a proposed set of regulations to this committee, which would adapt the Canada Elections Act. His document triggered this study, because the Chief Electoral Officer, in his submission, brought to the attention of this committee some of the problems with the current system.

One of the problems was that the Referendum Act was adopted in 1992, and following that the Canada Elections Act was completely overhauled in 2000. The schedules in the Referendum Act now refer to sections of the Canada Elections Act that no longer exist, so there is an inconsistency there. They also refer to amendments that have been made to the Canada Elections Act, which are very difficult to include in the referendum regime.

He brought these problems to the attention of this committee. He also brought to the attention of this committee the fact that the referendum regime is no longer aligned with the values of the electoral regime, in that there is no limit on contributions; there is virtually no limit on spending; corporations and unions can make contributions; and the punishment for an offence in the referendum context is different from the punishment for the same offence in an electoral context. So there is some inconsistency between the Referendum Act and the Canada Elections Act. Also under the Referendum Act, inmates serving a sentence of two years or more cannot vote. And I will provide more explanation on that later, because Mr. Kingsley made some comments in that regard.

• (1215)

[*Translation*]

In the Referendum Act, there is a provision mandating that a House of Commons and Senate committee proceed to a three-year study following the implementation of this act. The act entered into force in 1992. In 1995, a study was undertaken, but there was only

one preliminary meeting before Parliament prorogued. Further to that, committee study did not resume until last year.

To date Mr. Mayrand testified before the committee obviously, and so did several provincial chief electoral officers, including Mr. Blanchet from Quebec, Mr. Neufeld from B.C., Professor Louis Massicotte from Laval University, and Patrick Boyer, a former member of Parliament and rather prolific writer in the area of electoral and referendum-related issues.

A number of issues were identified by the committee. First of all, the legislative framework. Do we maintain the same legislative framework, in other words a partial referendum act along with regulations established by the Chief Electoral Officer, or, instead, do we opt for complete and comprehensive referendum legislation? A third motion would be to have a referendum act or provisions, a referendum regime which would be included within the Elections Act.

The committee also addressed the issue of the topic. At this point, the topic must strictly refer to constitutional matters, the Constitution of Canada. Would it be timely to broaden provisions so as to include all public interest matters as potentially being the subject of a referendum?

Another matter was addressed by the committee, and witnesses raised important issues: the holding of a referendum and of a general election at the same time. At this point, it is currently prohibited pursuant to the Referendum Act, as a referendum would be cancelled if ever general elections were called.

Obviously, there is the issue of the referendum finances, which I briefly raised earlier on. Do we want to keep the same regime or have umbrella organizations, like they have in Quebec, or should we perhaps choose something like what was presented by Mr. Kingsley, earlier on, where committees could be deemed to be third parties?

Another issue was that of simultaneous provincial and federal referenda, as took place in 1992 in Quebec and the rest of Canada.

Finally, another issue has to do with inmate voting. I noticed that Ms. DeBellefeuille asked a question of Mr. Kingsley on this matter, earlier on. Two judgments have been rendered by the Supreme Court. One of them, in Haig, was handed down in 1993, precisely in the wake of the 1992 referendum. Practically speaking, the finding was that article 3 of the charter, guaranteeing certain democratic rights, applies within the electoral context and not to referenda. So, even though the right to vote was granted to prisoners later on, in the context of another Supreme Court decision, this case law does not apply. In other words the Chief Electoral Officer, when the Elections Act was passed, had to maintain the disenfranchisement of inmates. There is no discretionary authority in this respect. The Supreme Court decision disqualifying them from voting in the context of elections does not apply to referenda. And that is actually Mr. Mayrand's position, he who in fact administers legislation in this regard.

Those were the main issues in the study. There are others, rather technical in nature, presented by Mr. Mayrand, but insofar as there would be a new legislative framework for referenda, these matters would be addressed and rectified. In essence, that is the referendum context and an update on the study.

[English]

**The Chair:** Good job.

Are there any questions from the committee as to where we are so far? Are there any questions for the researchers on the work they've presented to you today?

Madam Ratansi.

• (1220)

**Ms. Yasmin Ratansi:** I'm new to the committee, so what do we do going forward? We have everybody's input. We now have Mr. Kingsley's input. Some of what Mr. Kingsley has said really contradicts what Mr. Mayrand has said.

What is the next step? There are so many ideas floating around. What is the committee proposing to do with it?

**The Chair:** Well, I guess there are two or three things. One, we could carry on with the study and suggest other witnesses who would maybe help to balance testimony we've already heard. Two, we could simply stop where we are, say we've heard enough, and then write some sort of report—an answer to the Chief Electoral Officer on his recommendations for changes.

**Ms. Yasmin Ratansi:** If we were to do that.... For example, you put five professors in a room and they'll give you five different ideas; they'll capitalize on somebody else's ideas. The decision really is ours to say how we should be proceeding. Because you say this says this and this says that, so therefore what? Is "therefore" our decision?

**The Chair:** It's always the committee's decision.

**Ms. Yasmin Ratansi:** Okay.

**The Chair:** But we do have 12 people here who have to come to a similar decision.

Mr. Albrecht and then Madame DeBellefeuille.

**Mr. Harold Albrecht:** Mr. Chair, I agree totally that the matter is ultimately in the hands of the committee. But as you pointed out earlier, Mr. Chair, we're not going to make a decision today on which way we're going with this.

Before we make any definitive decisions on any of these sections, we should hear again from our current Chief Electoral Officer, to get his opinion on the various options our researchers have put before us. Maybe he sees a third option that we haven't considered. I think it would be wise for us to get his input now that we have the input from all the witnesses who have appeared before us.

We'll ask the Chief Electoral Officer to give his opinion on the current options, because these were not before us before today. That's my suggestion.

**Ms. Yasmin Ratansi:** By way of counter-question, basically you're saying you were not privy to what you've heard today and what the analyst has prepared for us, so you couldn't have asked Mr. Mayrand to explain if that would be something he would look at. Is that right?

**Mr. Harold Albrecht:** In deference to our Chief Electoral Officer, I think we owe it to him to look at the options we're considering now that we've done part of our study before we, as a committee, move blindly ahead and say we're going to choose option A in section A;

we're going to choose option B in section B, or option A in section B.

**Ms. Yasmin Ratansi:** But that's not what my understanding was.

**The Chair:** If I may, while we were doing this study, and it was quite a while ago—I did review most of my notes on this, and not at any great length, to tell you the truth—we said we would have Monsieur Mayrand come first and last, and in between we would gather all the facts we could. We thought Mr. Kingsley might be a pretty good person to gather some facts from, but because he was working in Washington at the time and it was very tough for this committee to get him. The fact that we could have him here today has helped us to hear his side. He has thrown out three or four things that we've not heard from other witnesses.

That was the thought of how that study would go. If we intend to continue the study that would certainly be up to this committee, but it had already recommended that before we write a report or make any recommendations we would have Monsieur Mayrand back to tell him we're leaning this way or that, and to ask him his views. He has been watching this testimony, too.

Michel.

**Mr. Michel Bédard:** The paper that was circulated to committee members on issues and options includes options that emerged from the evidence presented to the committee. Members may have other ideas, other options they want to put on the table, and Mr. Kingsley made some proposals today that were obviously not included in the paper, because it was presented before his appearance.

**The Chair:** Madame DeBellefeuille.

[Translation]

**Mrs. Claude DeBellefeuille:** Thank you, Mr. Chairman.

I rather agree with Harold. Whether or not we decide to continue the study and issue a report, we still need to take the time to hear from Mr. Mayrand in order to complete our work. It would be somewhat irresponsible on our part, having worked a number of times on this issue to set it aside without completing it. We did take the time to listen to witnesses.

Even if this subject is not urgent, granted, it remains our responsibility to review the act. I think it is lagging in some respects. I would agree to summon Mr. Mayrand and have that on our agenda, before we close. I found that it was challenging to hear from Mr. Kingsley today as it was far back in my memory. We had time to prepare, this morning, with Michel's notes, but it has to be said that it was tiresome. So, I think it would be important to complete our hearing of witnesses with Mr. Mayrand. Then, we can have a debate to know whether or not we should issue a report or continue our study in greater detail. We do need to close the loop.

• (1225)

[English]

**The Chair:** Mr. Christopherson.

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

I want to agree with my fellow Harold. He gets it. I think it's a great idea. There is another thing I would ask, though.

Michel, I thought you gave an excellent summary of the key issues we need to wrestle with. I know the material is in here. If I could suggest, Chair, through you or to you, that what would be really helpful, for me anyway, would be to take each of those issues as you presented them, but also where all the various expert witnesses fell, just even in point form: So-and-so agreed with this; so-and-so disagreed. Then provide, obviously where it would be helpful, a little bit of why they felt that way so that we can get a snapshot of not only what the issues are, but summarized underneath. You've done the summary by witnesses, and that's great, but it would really help me to have the issue, where each of them fell laid out nicely in point form, and then when we can bring in the Chief Electoral Officer. It would really help me to know the context.

I'll leave it with you.

**The Chair:** Good thought, and we'll ask if that can happen.

Further comments or questions? As I said, I'm not trying to come to this conclusion today. I'm asking you not to come to this conclusion today. So let's now wait. We have Mr. Chong and his motion on Thursday. We don't know how much work that will bring this committee. At the end of that day or the start of the meeting following, we'll be able to then spend a little time asking where are we putting our efforts, recognizing that we are also looking at a fair amount of work on the Chief Electoral Officer's recommendations, and there may be a bit emerging here. Maybe at the end of the day we could have him back on both of the topics, when we're done both topics, for a half an hour on one and three-quarters of an hour on the other, that type of thing. I'm just suggesting that might be a thought.

If we think we're close to being done with our work but just have some questions of the Chief Electoral Officer on the Referendum Act, it may be a way for us to spend one more meeting on it and complete it. But I hope I'm hearing from you that it's one more meeting.

**Ms. Yasmin Ratansi:** You sound reasonable.

**The Chair:** I try to be reasonable. Could I get a note from you for my wife?

**Ms. Yasmin Ratansi:** I said you "sound" reasonable.

**Ms. Judy Foote:** She doesn't live with you.

**The Chair:** Okay, now you're taking her side.

Mr. Christopherson.

**Mr. David Christopherson:** I wondered if you might be able to leave a couple of minutes after that presentation while everything is fresh in our minds and get at least some of our top-of-mind thoughts on where we proceed on that.

**The Chair:** It will be really up to this group as to how many questions you have for Mr. Chong. From my conversation with him,

he has some short opening remarks and then we're going to ask him some questions. It's fairly narrowly focused on question period changes. I would expect that he will also have some suggestions for us on other witnesses we might want to hear from, but I would guess that we would have time at the end of Thursday's meeting for us to do a bit of that, if that's what the committee would like.

**Ms. Yasmin Ratansi:** Do we have his private member's bill available, so we can ask him intelligent—

**The Clerk of the Committee (Ms. Angela Crandall):** It's a motion.

**The Chair:** We'll make sure you have it in both languages so you can ask questions on it. There's certainly been enough press on it. It's out there and we all know a bit about what it says, but I think it's grown larger than what it really does ask of this committee. But let's ask those questions of Mr. Chong on Thursday and decide whether we'll have witnesses on that.

Are there further questions of this committee today? Remember that this afternoon at 3:15 we have a delegation from Pakistan who wanted to speak to this committee. It's unofficial, it's in Room 256-S, and those members of the committee who can attend, it would be just great. So wander down right after question period and we'll move through it as quickly as we can.

It's nice to have visiting delegations who want to see us. They have some similar questions about how we deal with standing orders, how do we deal with our chief electoral officers, and that type of thing. They have a fairly similar set-up. So those of you who can attend, please do. I will be there.

Can I have a quick show of hands of those who think they might be able to spend some time with us?

**Ms. Yasmin Ratansi:** I'll drop by.

**The Chair:** Madame DeBellefeuille.

[*Translation*]

**Mrs. Claude DeBellefeuille:** I would not personally be there, but our caucus chair, Mr. Plamondon, will.

• (1230)

[*English*]

**The Chair:** That's perfect. That would be great too.

We'll just do what we can do with them; they've asked to see us.

Anything else for the good of this committee today?

Thank you very much. A great job today.

The meeting is adjourned.







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