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**Official Report
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(Hansard)**

Monday 5 February 2007

**Journal
des débats
(Hansard)**

Lundi 5 février 2007

**Standing committee on
the Legislative Assembly**

Electoral System
Referendum Act, 2007

**Comité permanent de
l'Assemblée législative**

Loi de 2007 sur le référendum
relatif au système électoral

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY**

**COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE**

Monday 5 February 2007

Lundi 5 février 2007

The committee met at 0932 in room 151.

**ELECTORAL SYSTEM
REFERENDUM ACT, 2007**

**LOI DE 2007 SUR LE RÉFÉRENDUM
RELATIF AU SYSTÈME ÉLECTORAL**

Consideration of Bill 155, An Act to provide for a referendum on Ontario's electoral system / Projet de loi 155, Loi prévoyant un référendum sur le système électoral de l'Ontario.

The Chair (Mr. Ted McMeekin): Ladies and gentlemen, welcome. It's great to have you here for public hearings on this very important piece of legislation. We appreciate ever so much the enthusiasm that's being expressed right across the province and obviously today, with the significant number of presenters who have indicated a desire to speak, so that's great.

SUBCOMMITTEE REPORT

The Chair: The clerk instructs me that we first need to deal with the report of the subcommittee. I believe Ms. Mossop will read that into the record for us.

Ms. Jennifer F. Mossop (Stoney Creek): I shall. Thank you, Chair.

Your subcommittee met on Monday, January 15, 2007, to consider the method of proceeding on Bill 155, An Act to provide for a referendum on Ontario's electoral system, and recommends the following:

(1) That the committee meet for public hearings on February 5, 6 and 7, 2007, at Queen's Park as per the whips' agreement.

(2) That the committee meet from 9:30 a.m. to 4:30 p.m. (subject to change).

(3) That the clerk of the committee place an ad for one day in the Toronto Star and L'Express.

(4) That the clerk of the committee post information regarding public hearings on Bill 155 on the Ontario parliamentary channel and the committee's website.

(5) That the ministry provide the committee with technical briefing binders on Bill 155 prior to the start of public hearings.

(6) That interested parties who wish to be considered to make an oral presentation on Bill 155 contact the clerk of the committee by 5 p.m. on Friday, January 26, 2007.

(7) That if all witnesses cannot be accommodated, the clerk provide the subcommittee members with the list of witnesses who have requested to appear by 5:30 p.m. on Friday, January 26, 2007, and that the caucuses provide the clerk with a prioritized list of witnesses to be scheduled, by 12 p.m. on Monday, January 29, 2007.

(8) That the deadline for written submissions on Bill 155 be 5 p.m. on Wednesday, February 7, 2007.

(9) That all witnesses be offered a maximum of 15 minutes for their presentation.

(10) That for administrative purposes, proposed amendments should be filed with the clerk of the committee by 12 p.m. on Friday, February 9, 2007.

(11) That the committee meet on Tuesday, February 13, 2007, for clause-by-clause consideration of Bill 155 as per the whips' agreement.

(12) That the research officer provide the committee with background information referendum in Ontario and BC prior to the start of public hearings; also, that the research officer provide the committee with a summary of public hearings by Thursday, February 8, 2007.

(13) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Okay. All in favour of the report? Carried and so ordered.

FAIR VOTE ONTARIO

The Chair: We have the first of our presenters up this morning. I'd like to welcome, from Fair Vote Ontario, Joe Murray, who I understand is the chair. Mr. Murray, you have 15 minutes to make your presentation. If there's any time remaining, it will be equally divided amongst the three parties here, unless it's a very small amount, in which case we'll go one party sequentially. Go ahead.

Mr. Joe Murray: Thanks. We're going to try to keep our presentation very short so that there is ample time for discussion afterwards.

I'm very pleased to have with me here today Dr. Patrick Boyer. Dr. Boyer is a former parliamentarian who has published three books on referenda and he will be speaking to the question of the threshold. That's a major concern of ours. Patrick is on the national advisory board of Fair Vote Canada and has agreed to help us out here today in Ontario.

I'm going to deal with some other matters very quickly. I'll have to refer you, given the time limitations, to the document which you should have in front of you at this point.

Our big concern is the adequate education campaign that we hope to see here in Ontario so that there is an informed discussion and an informed vote on the referendum. I realize there's no clause in the act before you, but we do feel that it's essential that the government provide adequate funding to sustain a public education campaign.

In British Columbia the select committee found that there was inadequate money paid for a public campaign and, as a result, about half the voters had no idea as they headed into the polling stations that there was a referendum. About two thirds had no idea about the proposal they were voting on, and that's simply inadequate.

The amount of money that was spent in BC would be equivalent to a bit under \$4 million here in Ontario, given our difference in population size. We think that you need to do at least what New Zealand did in their second referendum. They were already way more informed than our Ontario population will be. They spent about the equivalent of 13 million in 2007 Canadian dollars. That is our very strong recommendation to the committee and we hope that that makes its way into your report.

There are some other things I'd like to mention in our written submission to you. The first is the drafting of the referendum question. We think it should follow the practice that was set in British Columbia, where it was the citizens' assembly rather than the government that set the wording of that. They're going to be quite knowledgeable about their proposal and we think that it's most important that the integrity and perceived integrity and even-handedness of the process be maintained and that having a single party that some might perceive as having a vested interest in a certain result in any proposal either passing or failing be avoided. As a result, we'd strongly encourage the committee to suggest that the wording not be set by regulations by the minister and government but that it be the work of the citizens' assembly. Failing that, perhaps some sort of other all-party mechanism, but basically we really think that you should follow the BC model.

A couple of other things I just want to mention: access to the list of electors. If you want to have a good back-and-forth in debate, it makes sense that we should see the referendum campaign talking to voters. Right now, there's no provision for the referendum campaigns to get the list of voters. We don't think there's any reasonable concern around privacy if the Elections Ontario folks can use the list of electors that has been provided by, for example, Revenue Canada, when people tick off on their tax returns that they're allowing their information to be released. If you're going to have that for both elections and referenda, that they can do that, then those lists can be provided to the campaigns. Either it's good enough for Elections Ontario and the campaigns or it's not good enough for either.

Finally, I'd just like to suggest that scrutineers should be cross-appointed; otherwise, we won't see any adequate scrutineering of the count. We have quite a bit of detail in our written submission on that. I'd like to now turn it over to Patrick Boyer for our major concern, which is the referendum threshold.

0940

Dr. Patrick Boyer: Thank you. Chair and honourable members, I sincerely urge you to recommend deletion of section 4 from this bill and then to fight for that recommendation. Section 4 says that a vote on this question has to be approved by 60% of the voters in 60% of the ridings. Where has this principle come from? It has not come from members of this Legislature, because the select committee of this Legislature studied this question and made its recommendation that a proposed change in the electoral system of the province should be voted up or voted down by the electorate with 50% plus one.

Citizens of this province have previously voted in ballot questions to prohibit the sale of alcohol and then to repeal the sale of alcohol, 50% plus one. Citizens of this province, along with those from other provinces, have voted on ballot questions on the issue of conscription, which was about forcing people to put on the uniform of this country and to go into battle with their lives at risk, 50% plus one. Citizens of this province, together with those of other provinces, voted on wholesale amendments to the Constitution of Canada, in the Charlottetown accord, 50% plus one. This bill, hopefully with section 4 deleted, will be approved in the Legislature by you on a vote of 50% plus one. When you're voting, you might look around at your fellow members and ask, "How many of us are here with 50% or more of the votes in our riding?" Many members don't even receive a majority because of our multi-party system. I do not see any measure, Chairman McMeekin, that's saying that members to be elected to the Legislature need 60% of the votes in the riding and in 60% of the polls.

This proposal, if you allow it to go through, is going to create such a firestorm at the ground level with citizens in this province that you will not want to reap that whirlwind—I assure you of that—and not only with the kind of cynicism that we all, who have held or now hold public office, lament, but because—to see a government that has made advances for democratic renewal. The fixed date for elections: a small reform that brings huge benefits, and that is a great accomplishment. This current effort to upgrade the electoral system in our province—a province that, since 1919, when a coalition government was elected of farmers and labour, has been a multi-party system and yet for 80 years has not adjusted the electoral system to see that the proportionate share of votes of the people is reflected and who gets to sit in the Legislature itself.

When I talk about the cynicism that will arise from this bill in its present form with section 4 in it, going forward, that is because there's a genuine risk here of this being seen as a most elegant ruse, holding out the promise of electoral reform and instituting a whole pro-

cedure with the constituent assembly to set in motion recommendations grounded outside the political system but by people who care about it, and then setting a threshold this high that risks the promise never being achieved in reality.

So when the committee of the Legislature that studied this and recommended 50% plus one came to that view, I ask you, members, what happened? Who is in charge in the Legislature of Ontario? Is it the elected representatives of the citizen, or is it people behind the ministry who craft legislation based on I don't know what, but it's certainly not any understanding of democracy in Canada. But 50% plus one—50% plus one—that's the rule. It's implicit in everything we do. The Referendum Act of Canada doesn't even state anything about a threshold. Why? Because it's understood that for questions put to the people on a ballot question, a simple majority will suffice.

I've made my point. I urge you to do the thing that is consistent with what you have already recommended through the select committee. Now this is legislation that has been brought back for study, and you must ask yourselves, who's in charge? What kind of elected representative of the people am I, to sit in the chamber and see legislation brought in that contradicts an express recommendation of a legislative committee of all parties that examined this, that had witnesses come and sit before it in this room, sincerely trying to craft legislation through the interaction and dialogue of a democratic society? Ask yourself that, and have the courage to recommend deletion of section 4 and to fight for that recommendation. I assure you that there will be others on your side in that battle, not least of whom are grassroots citizens across this province, but also those who reluctantly would take recourse to the courts in a constitutional challenge against section 4 as being incompatible with the Charter of Rights and Freedoms that talks about and guarantees the democratic rights of citizens of this province, subject only to such reasonable limitations as can be demonstrably justified in a free and democratic society. Section 4 of this bill—Chair, honourable members—assuredly is not a restriction that can be justifiably demonstrated to be worthy of a democratic society like Ontario.

The Chair: Thank you. We have about three minutes, so a minute for each party. Go ahead.

Mr. Norm Miller (Parry Sound–Muskoka): Thank you very much for your presentation this morning. Patrick Boyer, of course, is a former federal Conservative member, but his father was also the member for Muskoka, from—

Dr. Boyer: For 17 years.

Mr. Miller: For 17 years, up to 1971. So, certainly some strong connections to the riding I now represent.

That was a very impassioned presentation for a 50%-plus-one threshold. I can't say as I remember your father ever getting quite that impassioned about things, but I'm sure he did. But my question is this—you used the words “elegant ruse” for the process we're going through. Why

do you think the government has chosen a 60% threshold for the referendum?

Dr. Boyer: I think the government has been unduly influenced by what has been done elsewhere. Being a lawyer myself, Mr. Miller, I know about following precedent. So the example of what happened in British Columbia and then was picked up by Premier Binns in his government in Prince Edward Island has now come for its third visitation here in the province of Ontario. The fact that Gordon Campbell, who gave leadership on this issue in British Columbia, had subsequently to deal with problems in his caucus that gave rise to this compromise, basically saying: “All right, we'll hold it out there, but we'll make it so impossible to get that nothing will really change”—that those internal, crazy problems in the caucus of one party in British Columbia should now become public policy in Ontario is a scandal that I think speaks not to the political smarts of any elected representative in this province, but to the people who are spending too much time studying what's going on elsewhere and not looking at the real precedent, which is our own political history in this province on many prior ballot questions held with 50% plus one in Ontario.

0950

The Chair: Okay. Deferring to the presenter, I went a little bit over. You have about a minute, Michael.

Mr. Michael Prue (Beaches–East York): Okay. Thank you.

I support 50% plus one. In fact, it was my motion in the committee, which every Liberal and every Conservative and every member of the committee supported. I think what has happened here, though, is what happened in BC, and I'd like you to comment on that. In BC, when the select committee went there, one of the learned people told us that it was widely known that the government set the rate so that it would fail, and indeed it did.

The Chair: Dr. Boyer, you have about 50 seconds.

Dr. Boyer: If we're going to learn from British Columbia's history, let's really learn from British Columbia's history, because what's happening in BC? They're going back to the polls for a second time on the same issue in another referendum on the electoral system. The political impetus in this country to upgrade the electoral system is so strong that it can't be denied, and even in British Columbia they are going to have to go back. So in Ontario, why send the voters twice to the polls? Why not get it right the first time?

The Chair: Thank you very much for your very good presentation here.

Mrs. Linda Jeffrey (Brampton Centre): Mr. Chair, may I get a minute?

The Chair: No, sorry. My apologies. In deference to the presenter, he obviously wanted to take longer to answer the first question, so that's fine.

GUY BABINEAU

The Chair: We'll invite Mr. Guy Babineau to make his presentation. Welcome back, Mr. Babineau. It's good

to see you again, sir. You know the procedure fairly well. You have 15 minutes, and if there's any time left over, we'll begin with the government side. Go ahead, sir.

Mr. Guy Babineau: My name is Guy Babineau. It's a pleasure to be here again. Thanks for the opportunity, Chairman and members.

My concern with the bill is not so much the fact that—there might be a good idea behind it, but it's the procedures that the government has taken. It tends to try to commit another Parliament to act on a proposal that has been voted on, and to me it lies at the root of, no Parliament can commit a subsequent Parliament to enact legislation.

The other thing that I'm concerned with is, the fact that the Lieutenant Governor would attend to this bill would commit him to attend to the other one. To me, it would be an infringement on his discretion. How could he, especially if it was the same Lieutenant Governor, say you have the right to go to the vote, you have the right to do that, and then the second act comes, to implement it, and say, "I can't implement it because it had bound another government"? I think those are valid things that should be taken into account.

I have some problem as well with referenda that commit the government to act. We elect a government to have the backbone to take action. I don't think the government should go to the public and ask, "What do you think we should do?" We elect you to use your best judgment to represent us.

I think as well that, if my conclusions are correct, based on the Operation Dismantle case, where we can question the wisdom of Parliament, it would be sad, if a case went through and was successful, to say you abdicated your responsibilities. I think that I made some strong submissions in my written representation. I had the pleasure to speak with one of the presenters—not to speak, but to e-mail with one of the presenters—around the question of the preamble to the Constitution and changing the way the election would be done. I'm on very shaky ground on this one and I don't think it would be wise at this time to put that argument forward.

I will leave myself open to any of your questions.

The Chair: Okay. Thank you. We have about 10 minutes, so three or three and a half each, beginning with the government side.

Mrs. Jeffrey: Thank you for coming today. You've clearly done a lot of work on your presentation, so I want to thank you for doing that and being here today. It's very helpful.

Mr. Babineau, do you have any affiliation with any of the groups that are here today, like Fair Vote? Are you part of that organization, or are you here independently?

Mr. Babineau: Could you speak a little bit louder, because I'm hard of hearing; my battery's down.

Mrs. Jeffrey: Are you part of any other organization, like Fair Vote, or are you here independently?

Mr. Babineau: I'm here independently.

Mrs. Jeffrey: Okay. Can I ask you some questions, because we heard a little bit from the earlier delegation

with regard to the campaign itself, and I haven't read enough of your proposal but I guess I'm wondering about the imposition of some registration requirements on those who wish to campaign, should the referendum occur. Do you have any opinion on that?

Mr. Babineau: My opinion on that is that the question of participating in any kind of election—if you try to restrict that, then there could be grounds for a constitutional challenge. If you try to restrict who can put money—if I want to campaign on my own behalf and I don't have the support of either side for the positions that I want to bring forward, then I'm stuck if I cannot seek to invest my own money into putting my view forward. So that could be one problem that would arise that might give rise to a constitutional challenge.

Mrs. Jeffrey: Thank you.

The Chair: You have another couple of minutes on the government side if you'd like to avail yourself of it.

Mrs. Jeffrey: On the same issue, do you support the imposition of some spending limits, then? You don't want to restrict people participating, but do you support some contribution limits or any kinds of requirements that way?

Mr. Babineau: Well, initially—can you repeat your question? I didn't get it.

Mrs. Jeffrey: Do you support the imposition of spending limits? Should those who are campaigning on either side of the referendum have—just like in any election, should there be a limit as to how much money you can spend on a Yes or a No campaign?

Mr. Babineau: You're asking me to answer a question that, by my own basis and by my own presentation, is moot, because if the referendum cannot go, then any question that would deal with financing the participation of it would defeat the position I am taking. If I answer that question, I am defeating my position.

Mrs. Jeffrey: Thank you, Mr. Chair.

The Chair: Mr. Miller, you have three minutes, sir.

Mr. Miller: Thank you very much, Mr. Babineau, for your presentation this morning and your interest in this issue.

My first question has to do with the threshold that this bill would be enacting, which is the 60% threshold on the question of electoral reform. Do you have an opinion on that threshold? I guess the question is 60% versus 50% plus one.

Mr. Babineau: I sincerely think that if the government goes ahead with it, it will be wasting the people's money, the taxpayers' money, if any is invested into it, because it will never make that threshold. I think that threshold is unfair. I support, on that basis, the people who presented before me is that 50% plus one should be the guideline. I think that if you go beyond that, you'll keep coming back to the electors time and again until you build enough momentum to get it at 60%.

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There have been governments elected with almost the full size of the House. In New Brunswick, for instance, when McKenna came in, he had the full place, so you can

have 100% of the people in the House. You can have that kind of thing. But that takes time and it takes a position where there's so much animosity built up that you will get your 60%. But I don't think that there's that much animosity at the present time that it would be fair to the electors to say we need 60%, or the conditions set in section 4.

Mr. Miller: So you're saying basically that we're just going through the motions and it's going to be a waste of money having the 60% threshold. So why do you think the government chose the 60% threshold? Is it, as the last presenters stated "an elegant ruse"? Why do you think they chose that threshold?

Mr. Babineau: My honest opinion on that?

The Chair: You would only give us an honest opinion on that.

Mr. Babineau: I think that they don't want the referendum to succeed.

Mr. Miller: So you're saying they're trying to look progressive, look like they're embracing electoral reform, but they don't really mean it. They just want to look progressive, but they don't really want it to come about.

Mr. Babineau: That's my opinion.

The Chair: Okay, thank you. We'll move to Mr. Prue.

Mr. Prue: Now, on a slightly different issue, because I think the first one has been canvassed enough, you are arguing that this Parliament and this referendum cannot bind the next Parliament. I'm just wondering, in terms of referendum, how would you suggest it be held then? After the next election? Before the next election? If a referendum was to take place, when would you suggest it be held?

Mr. Babineau: I think that if the government seeks to bring some change, it should bring it early in the game so that they could act on it in the given Parliament.

Again, I have a problem as to the way that the question would be set. If the question is set inasmuch as binding the Legislature, I think a strong objection could be raised. If they seek a consensus and, based on that consensus, then reserve the right to legislate, I wouldn't have any problem with that. But if you're putting a referendum that is going to take away the members' right to choose and dictate what action should be taken, I think that could raise some grave constitutional questions.

Mr. Prue: So what you are suggesting in putting both of your comments together is that it would be 50% plus one, that the results should be given to the new Parliament and that the new Parliament should deal with it but not be bound by it when the new Parliament returns after October 4, 2007.

Mr. Babineau: I think that would be the best way of getting around it. As I said in my opening remarks, if you're going to commit to an action, I don't think that would stand. But if you seek a consensus on what should be done and then, based on that consensus, act on it—to me, one of the major problems is the choice of words in the act that I have referred to in my presentation. The fact that the referendum is binding, I don't go so well with that.

And the other thing, too, an issue was raised in an e-mail about the fact that, although this act would pass this time, the next government could decide to repeal it and therefore wouldn't be bound by it. But I think the fact that if the act is passed, if it violates any constitutional conventions or any principles, then it should be attended to.

The Chair: Okay. Thank you very much, Mr. Babineau.

MONTE McMURCHY

The Chair: I'll call on Monte McMurchy, please. Welcome, Mr. McMurchy.

Mr. Monte McMurchy: Just give me a moment or two, please.

The Chair: Okay.

Mr. McMurchy: I want to thank the committee for allowing me to make several comments in dealing with what I consider to be a very essential piece of legislation, for many reasons. In terms of my own background, since 1989 I have participated in at least 30 international elections on behalf of the government of Canada, the United Nations, the Commonwealth, the Organization for Security and Co-operation in Europe and the Council of Europe, on several of which I have acted as the chief executive officer. That included my 10-month sojourn in Liberia with the United Nations. I have seen many traumatic situations.

Before I offer my opinion, I would just like to make several comments. Fifty pages have been deposited on the website of the citizens' committee, the commission on electoral reform, under my name. So that is an extensive brief. But I would like to make several comments before going into what I consider to be the germane aspect of Bill 155, which deals with the threshold.

I can identify four criteria for evaluating electoral systems: the degree to which they promote political, governmental and regime stability; accountability of elected officials; high voter turnout—which I consider to be absolutely paramount for many reasons; and a thorough deliberation of public policy, which in a sense is concomitant with the voter turnout.

Elections perform two primary tasks in constitutional democracies. The first is to provide a means of popular control of government. The second function of the electoral system is far less obvious and more subtle. Elections provide a means not only for the citizens to direct and control their government, but also for the government to direct and control the mass citizenry. By producing public acquiescence to the act of governing, elections empower governments to act. Elections also produce political order out of potential chaos. Elections stabilize and regularize popular participation in government and can provide decisive results about which leaders will direct government. Elections remain the indispensable links between the public and government.

My concern begins with the sober realization of the limited knowledge and interest most citizens have in the political process and procedure. Given an uninterested

and uninformed public, frequently possessing inconsistent policy preferences, elections cannot really function as an exercise in public issue deliberation. The shortcomings of the initiative reveal the folly of demanding too much time and attention from the electorate for such matters. Social choice theory exposes the futility of defining elections as meaningful expressions of the public policy preference. Elections do not make policy. Elections elect leaders to deliberate over policy on our behalf. An electoral system must provide voters an effective method for holding these leaders accountable. Our electoral system will function well if we become realistic about what it can accomplish, which now leads me into Bill 155.

My experience has provided me with the insights of what elections are, almost a form of transfiguration of the social connection ethos between those who are being elected and the electors. For those people who do not participate, for a wide variety of reasons—and I would submit that one of the highest reasons is called ignorance, and I'm not talking about ignorance of lack, but they lack a connection. They don't believe that they're part of the process. There's a distance, there's a void, there's a lack of what I call an emotional, ethnological connection, which begins with what I call education. I'm absolutely adamant that education starts at age three. When young people become more involved, however, on a very facile system or element, then the family or the parents will become more engaged. That is part of the process.

1010

Elections are so indispensable that to change them for an arbitrary number, say 50% plus one, I think would create potential chaos, because it's not the equivalent of selecting an ice cream. It's not the equivalent of adding some chrome to an automobile so that perhaps it would entice people to drive the automobile. Elections can only do a limited aspect, and I subscribe in terms of when you say "organization," you say "oligarchy," and in terms of public interest, in terms of different models, that the human animal, being what it is, prides itself in terms of organizational aspect, notwithstanding.

Participatory democracy is wonderful, but it's actually a myth. I recommend Carole Pateman's book on participatory democracy, which was one of the seminal works published in the 1970s. It basically exploded the premise of active participation. Participation is important; I applaud participation. But we are engaging in what I consider a very integral process. It's very, very important.

I think the debate over what type of referendum can be used, if done appropriately, as an educational instrument. But I am on the record for saying that the threshold ought to be at a high level. Not that I wish to maintain the status quo, but rather, if we are going to affect a change, it must be done in such a manner that the vast citizenry are aware of the consequences, and that has been explored, different aspects. No system is ideal, no system is perfect, but to have a simple—what I call a "simplimator," one extra vote to change radically, to me is not what I call sustainable because of the collateral damage which I have witnessed in other regions.

In Kosovo, where I've spent part of the summer as an adviser, they had 31 political entities running for the local parliaments. The citizen voter turnout has declined because the citizens are disengaged: "Why vote? No ministry will take responsibility because they can't govern."

In conclusion, based on my type of experience in terms of election process and procedure, what is absolutely essential, what you need, is an educated citizenry on all levels. I'm not talking about everyone being politically active animals, because that would create a form of dissension so that there would be no change. It would be ossification. But rather, you want to have people who are alert and at least engaged in voting, because by the simple act of crossing an X or making the checkmark you become part of the process and you're taking responsibility—however, on whatever means.

The threshold ought to be at the level of at least two thirds, because to affect what I call the "fundamental systematic change," it ought to be more than just the simple majority. You need to have a healthy debate. You need to have a healthy dialogue. If you're going to radically change the system, the majority of the people ought to at least come out and vote and make the change.

Thank you. Do you have any questions or queries?

The Chair: Thank you very much. We have about six to six and a half minutes. We'll begin with the government side for two minutes.

Mrs. Jeffrey: Thank you for your delegation. Do you have anything written today that we can have? I'm just trying to follow along.

Mr. McMurchy: I can certainly e-mail to the clerk a copy of today's presentation.

Mrs. Jeffrey: Thank you. I was listening and trying to write at the same time. It was very educational. Thank you for being here today and thank you for coming. We appreciate it.

Are you affiliated with any other group? Are you here as an independent?

Mr. McMurchy: I'm here on my own behalf, as an active citizen.

Mrs. Jeffrey: Okay. I wondered, because you started out with talking about how voters don't feel like they're part of the process and that they feel "disengaged"—I think that was the way you described it. How do you feel that the citizens' assembly process has worked? Do you think that's helped people feel engaged? Do you think there has been enough consultation in that forum? Do you think it has been user-friendly? Has that helped in helping people participate and feel like their opinion matters?

Mr. McMurchy: This term is so short, and then the term when they offer their recommendation to the point when the question is put, to me, does not allow enough time.

I think it's important—from my limited participation, the turnout has been actually quite vocal and, on many levels, quite articulate. This goes back to what I call the "educational system" in the sense that it may be laborious, it may be long term—because I recognize that gov-

ernments operate on short-term cycles. What is the first aspect of government? To be re-elected. So making the tough calls is not necessarily what they do in terms of what I call leadership or being statesmanlike. But, rather, they're short-term in terms of principle avoidance.

But in terms of having an active citizenry, it means that they will not be afraid to call their local member of Parliament or their municipal councillor or their federal member and say, "I have a problem. I have issues. I'm not afraid to talk."

Then there is what I call reciprocity, and this is outside the mandate, obviously, but changing the role and function of the backbench MP in terms of enhancing the role and then making a minister of the crown, as they would say, being in trade; that you would then just have people who are experts. Many people would not want to be part of the ministry because they'll be so involved in their own collateral activities as private members with their own research staff and dealing with their constituents.

The Chair: Okay. Mr. Miller, please.

Mr. Miller: Thank you very much for your presentation. I was part of the select committee on electoral reform that travelled to BC, and one of the recommendations in terms of education for the purposes of a referendum in BC was that—their experience was that they didn't educate the public enough. I gather that's one of your key feelings in terms of increasing voter participation in elections, that there needs to be education and much more long-term education. Have you recommendations for what other things you think we should be doing?

Mr. McMurchy: I have spoken to the two ministers who have the file and have provided certain briefing. In terms of civics, it's half a credit course for grade 10. I believe that civics and history and geography and social affairs ought to commence in daycare and go right through the whole system, because when you have a citizen—respect for rule of law, respect for one's elders, respect in terms of social justice—these are qualities which ought to be inculcated. Many families don't have the resources. Many families are disenfranchised; there's not a father figure. I'm not advocating that the schools take that responsibility, but the point is that we live in a very fractionated society in terms of what I call fiduciary duty and obligation.

For instance, my son—when I was in Kosovo about three years ago and when I talked to him, the first question he asked was—I believe he was eight or nine—"Dadda, who won?" I tried to explain that it was a balkanized, fractured system, that no one won. He said, "That's so silly. You need someone to govern." He has been in more voting booths in Canada; he understands that mystical aspect in his own puerile element because he has been constantly engaged and discussed. He can name the local member of Parliament, he knows who the mayor is, he knows who the MP is, in a sense, the various other members, because we talk about it. But this, again, is part of our system. As the government and as members of the Legislature, I think it's something which is non-

partisan. This is something that ought to be done because the ramifications are reducing the crime.

But these are issues which go beyond the four-year cycle and what I term leadership, taking effective responsibility. If I were the leader in Ontario and I said to you, "all-party," how could any other member of Parliament, regardless of which party, say, "No, I don't want an active citizenry. I don't want us to be more engaged"? Then why are they running for public office?

The Chair: Okay. Mr. Prue, please.

Mr. Prue: You started off by saying that average citizens may not be engaged because they are ignorant, because they don't understand the process, they don't understand the changes. Should this be left up to parliamentarians? The reason I'm asking this question is, I think this government set up the process, they ran on this mandate, and they set it up to do it BC-style.

We doubled the franchise in the 1930s by allowing women to vote. It was the right thing to do. And we allowed Chinese-Canadians to vote after that, and then we allowed aboriginal Canadians to vote after that, and we did all of that without a referendum.

Is this something that may be beyond the comprehension, in your view, because you raised this issue, of ordinary Canadians, or can they be educated to the point where there will be a turnout of 70% or 80%, like we can expect in some federal elections?

Mr. McMurchy: That's a fair question, and I thought about that, not trying to be elitist, because you're dealing with nuance. It's not whether you elect to maintain the status quo, which is first past the post, or make an election to modify the system, because the ramifications may be very subtle in terms of the fractionation along ethnic lines, let alone in terms of having no party, whether a minority government is the most effective. These are questions which will only have the response decades later.

1020

What I mean by an educated citizenry: I'm talking about a group of people actively saying, "I'm engaged. I may not know, but I'm not afraid to ask the questions. I'm not afraid to phone up my member and have a dialogue, whether it be with the support staff." By coming out and by having a large group of people engaged, basically what I call devolving the responsibility, no one can say, "I didn't vote because I did not believe in any system, so my vote is negated," and there's a response to that as well. I fervently believe in educating an active citizenry, in having an understanding and saying, "I will make a choice."

The Chair: Thank you very much for your presentation and your perspective.

GARY SHAUL

The Chair: Mr. Gary Shaul, please. Welcome, Mr. Shaul.

Mr. Gary Shaul: Good morning. I'll just get this going here. I indicated to the clerk that I would e-mail my comments in.

The Chair: Great. You have 15 minutes to get going and to go and to respond, so whatever you take, you take.

Mr. Shaul: I'm a computer professional, but I couldn't get my printer working.

I also work for the Ontario Ministry of Education, although, of course, I'm not representing that, and I'm also a member of Fair Vote Ontario, and I'm not representing them as well. These are my comments this morning.

I have been working with the province for over 20 years and I have seen at least four transitions, I think, from one party to another and the shifts in public policy that have resulted from that.

I'd like to thank the government for taking the initiative to establish the select committee, the Democratic Renewal Secretariat and the Ontario citizens' assembly. I'd also like to thank the other parties for their support in the process to date.

I think this is a truly exciting initiative because of the degree to which the public is being engaged in the process and in examining and perhaps improving our electoral system. This is unprecedented in Ontario, although the second such process in Canada. There are few other examples that we can point to, really, in the world of such bodies like the citizens' assembly.

In that respect, the eyes of the world will be on Ontario should the assembly recommend change and there be a referendum. I'm confident that if the assembly can reach a strong consensus for a new voting model for Ontario, there will also be strong public support in the referendum for such changes. Public opinion polling over the last several years shows that there is an appetite for reform of our electoral system in Ontario and in Canada.

Most political observers recognize that there is a growing cynicism and distrust of citizens toward political parties, politicians and sometimes even government. It is not uncommon to hear people say that their vote doesn't matter or doesn't count. There's a growing disengagement as voter participation continues to drop, and I think you're probably all familiar with those statistics.

While most people have a difficult time putting their finger on the problem, because most citizens don't see themselves as political scientists or political animals—only about 1% of Canadians, I believe, belong to political parties—there is a growing awareness that our first-past-the-post voting system is one of the problems when it comes to accountability and fair representation.

It doesn't take a mathematician to explain that many MPPs and MPs are elected with 50% plus one voting for someone other than the person elected, and that every government elected in Ontario since the 1930s has had less than 50% of the popular vote.

There are a lot of provisions in Bill 155, and I'd like to focus on two—the threshold and the public education campaign. I think the two go together.

First, simply put, majority rules. It's well understood—some might argue that it's well ingrained—that a majority means 50% plus one. If any party were to achieve 50% plus one in an Ontario election, most ob-

servers would label that as a decisive, clear majority. It would be highly desirable that any change embraced by the electorate be as high as possible—70%, 80%. The BC experience showed that there was a large appetite for change, even as all the details of the proposed STV system were not well understood.

The government has set a double threshold of 60% plus one of the overall electorate, and the main rationale provided is that a proposal to change the electoral system is foundational, and therefore the universal standard of 50% plus one shouldn't apply. While it's true that there is something foundational about this—or there could be—it is still without precedent except for BC and PEI. However, governments themselves have the power, and have frequently exercised that power, to make foundational changes using a simple majority of parliamentary representatives. Sometimes those changes occur even as the government of the day has less than 50% of support of the people. The great free trade debate of 1988 is one of those examples that come to mind federally. That change affected the foundation of our economy, as we saw hundreds of thousands of manufacturing jobs disappear.

On the provincial front, we've seen governments implement foundational changes to our political system. For example, Bill 36 in the late 1990s, and the Fewer Politicians Act, resulted in the establishment of a permanent voters list and the reduction of the number of ridings by more than 25%. Yet the government of the day had less than 50% of the support of the voters. In fact, no change to our electoral system will take power away from elected governments to make foundational changes to Ontario or Canadian society. We are a parliamentary democracy and that is how it works. What may change is that governments of the future may require support from 50% plus one of the electorate in order to establish their mandate.

As for the second threshold, on the number of ridings that must support the referendum—which is 60% of the ridings having a simple majority of 50% plus one—I believe that that's unnecessary. We all hope that there will be support for change from every corner of the province, but the fact remains that all Ontarians, in my view, are poorly served by the current system. This is not about urban versus rural versus the north or the east; this initiative is about making every vote count, no matter where the voters live. This is really not about ridings. Why should ridings be able to exercise a veto over the majority of the electorate? The solution is to have a fair referendum where those in favour of or opposed to change can put their ideas on the table and have the debate with the voters, not with ridings. This provision can open the door for increasing regional tensions, when, in fact, the problem is not a regional problem or a riding problem but a problem faced by voters everywhere.

This ties into the second point about a public education campaign. All that I really want to say on this is that I hope that the government will allocate the resources required to ensure that every Ontarian has the information they need to make an informed decision,

should there be a referendum. Let's have a fair debate and a fair referendum, and that will lead to a fair result that will be accepted by the public.

The Chair: Thank you, sir. We have about six minutes. We'll begin with the government side.

Mrs. Jeffrey: Thank you, Mr. Shaul. I appreciate your being here. You volunteered that you were a part of Fair Vote. Are you part of any other group that you represent here today?

Mr. Shaul: No. And I'm not representing Fair Vote.

Mrs. Jeffrey: Oh, I understand; you just volunteered that you were part of the group that—

Mr. Shaul: I'm a member of the group.

Mrs. Jeffrey: A member.

Mr. Shaul: I'm a member of other groups, but I'm not representing anyone other than myself.

Mrs. Jeffrey: Okay; I just want to be consistent. I ask that of everybody.

You talked about the public education process, and I wanted to delve a little more into that and what you feel about any regulations, should we have to create them as a result of the citizens' assembly's recommendations and a referendum. Would you support the registration requirements of those groups, or any kind of spending limits that those groups might have, in the course of educating the public about the referendum?

Mr. Shaul: I think there's two parts to that. One is a public education campaign which is undertaken by the government to ensure that information gets to every citizen. The second part would be Yes and No campaigns, also doing public education as well. All I really want to say is, I don't think anyone should be able to buy the referendum, if I can use that kind of terminology, so I wouldn't be averse to the idea of reasonable spending limits. I do think there should be allowed to be a multiplicity of Yes and No campaigns.

Mrs. Jeffrey: Do I have more time?

The Chair: You have another 20 seconds.

1030

Mrs. Jeffrey: I was interested in your conversation that you raised near the end about regional representation and the conflict. How do you see the requirement of the number that we've indicated we need in order to have that threshold in each riding—why do you see that causing a conflict? Can you elaborate a little more on that?

Mr. Shaul: Really, I see the voting system as being about the voters. That's the basic unit I see. Ridings is one way that we organize ourselves to elect members to represent us, but I don't see that ridings, in and of themselves—and especially when we don't know what the proposal is. There may be a proposal that doesn't even affect ridings. So I'm not sure why ridings in and of themselves should have a vote.

The Chair: Mr. Miller.

Mr. Miller: Thank you very much for your presentation. In it you talked about the cynicism that's out there, and I would say that a lot of that cynicism is created when a government gets elected saying they are going to do one thing and then doesn't act on what they

told the voters they were going to do. The last election was a good case for that, especially when the Premier comes out and says he won't raise taxes, gets elected—there's actually a law on the books that requires a referendum if he wants to bring in new taxes and raise new taxes, and he just changed the law so that he didn't have to have a referendum.

I guess my question is: In the process we're involved in, what needs to be done to reduce that cynicism that's out there amongst the voters?

Mr. Shaul: I do think that the voting system itself is only one component of the cynicism, and you're probably right. What the public sees is what governments do once they're elected, and those kinds of flip-flops. I think we need a voting system where the public feels there is more accountability from the people they elect and the governments they elect to the promises that they make. There are also issues around spending limits or election financing. I think some of those have started to be addressed. So voting reform isn't the panacea for all that ails us.

Mr. Miller: I think that's exactly what the select committee on electoral reform found, that how we elect people won't necessarily solve all the various problems we have, including voter cynicism.

Mr. Shaul: But I do think it will go a long way towards starting to rebuild voter engagement.

The Chair: Mr. Prue.

Mr. Prue: Voter education: There's a couple of ways of doing this. One is for the government, or through the government agency Elections Ontario, to send out pamphlets and brochures, which is what they did in British Columbia, I think not too successfully. The other is to have Yes and No sides and to fund them, as they do in Quebec. In my view, that gets a little bit more lively debate. Have you given any thought as to how the public should be educated? At the point in May when this comes down, we're going to have 103 educated people, and then the rest of us are going to have to be educated on what they come up with. How would you do it?

Mr. Shaul: I think one of the interesting innovations here is the use of TVO in the process and having the citizens' assembly plenary sessions open to the public. While the public hasn't been flocking to that, and I think you have to go on the TVO website to access the deliberations, there are a number of ways—I haven't given a lot of thought as to whether there should be public funding for a Yes and No side, but I do think that on the government side there has to be adequate funding for getting the message out to households through mailings and advertising and that kind of thing.

The Chair: Thank you very much for your presentation.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: I call on Leah Casselman, please.

Welcome. I think you know how the process works. You have 15 minutes to make your presentation, and if

by chance there's any time left, it will ideally be equally divided amongst the parties.

Ms. Leah Casselman: Thank you very much. My name is Leah Casselman and I am president of the Ontario Public Service Employees Union. Good morning. With me is Tim Little, who is our legislative liaison with OPSEU.

OPSEU represents 115,000 people in Ontario. A lot of them are Ontario government workers, workers in the community colleges—hopefully soon, with the good graces of the government, the part-time workers in the community colleges—and the broader public sector. But one thing that all of our members have in common is that they are voters, and more so voters, I think, since the Tories were in power; they certainly pay a lot more attention to politics.

Thank you for the opportunity to speak today about Bill 155. I'll keep my remarks brief and look forward to your questions afterwards. We believe the time for electoral reform in Ontario is long overdue. The current model of our first-past-the-post voting system is severely flawed. The current system alienates and under-represents women, minority groups and young people. For more than 60 years, it has unjustly granted majority status to a political party in the Legislature even though the majority of voters have supported other parties in every election since 1937.

The executive board of OPSEU adopted five principles for electoral reform. They are:

(1) The threshold for changing must be a simple majority of 50% plus one. We reject the Liberal proposal of a so-called "super double majority."

(2) Electoral reform must recognize geographic representation and regional diversity.

(3) Each vote must be of equal weight. Let's abandon the legacy that majority governments are elected by only a minority of votes.

(4) A reformed electoral system must be easy to understand.

(5) Most importantly, Ontario must adopt some model of proportional representation. The current system of first past the post is undemocratic and outmoded. Except for Canada, Britain and the US—and no one wants to be with those parties these days—virtually every Liberal democracy in the world has adopted a form of proportional representation.

By and large, Bill 155 is a solid piece of legislation, setting out the rules under which a referendum will be governed. Notwithstanding our profound opposition to the status quo voting system, we can, in Ontario, take pride in the fact that our elections have been administered in a manner that meets an exemplary level of professionalism. In this respect, we anticipate that a referendum would be no different.

Bill 155 does contain some egregious weaknesses and oversights, and I urge the committee members to make the appropriate amendments. OPSEU believes subsection 3(1) should be amended. The actual wording of the referendum should be passed by the Legislature—not left

to an order by the Lieutenant Governor in Council, otherwise known as the cabinet. This ensures that the wording will be, as the bill says, "clear, concise and impartial."

As I mentioned a moment ago, electoral reform can be achieved by simple majority, 50% plus one. This threshold is the essence and historic standard applied to democratic decision-making. We firmly reject the Liberal government's proposal for a so-called "super double majority" as contained in section 4, clauses (a) and (b). The super double majority is not a standard we apply to other legislation. Why, then, is it being proposed here? Is it because, as many of us suspect, this government does not wholeheartedly endorse electoral reform and therefore is setting the bar so unrealistically high as to thwart the will of the people? I sincerely hope not. Experience in British Columbia two years ago showed how this can be used to stifle the will of the majority.

Under subsection 8(1), we believe the responsibility of scrutineers must be reconsidered by the committee. We see no harm in allowing scrutineers for the political parties to also serve as scrutineers for the referendum count. Recruiting inside scrutineers is difficult enough for parties; recruiting thousands of additional referendum scrutineers could prove very problematic and costly.

Under the proposed legislation, the Lieutenant Governor in Council is granted broad powers to make regulations respecting and governing the referendum and referendum campaign financing. In fact, too much regulatory discretion is put in the hands of cabinet. For example, campaign finance rules should be incorporated into Bill 155, just as election financing rules for general elections are contained in the Elections Act.

Because a number of discretionary regulations are left up to the cabinet, the bill is deliberately vague on several issues relating to financing, such as: What is the status of "in kind" donations; are donations to registered referendum groups tax deductible; when are registered referendum groups allowed to begin fundraising and to start their campaigns? These are issues not addressed in the bill.

1040

OPSEU is also troubled by what seems to be a minimal effort by the government to conduct a public education campaign in support of a referendum on electoral reform. Apart from the referendum on the Charlottetown accord almost 15 years ago, which was conducted by the federal government, most of us would be hard-pressed to recall the last time the people of Ontario voted in a province-wide plebiscite of any sort. A referendum is not just another exercise in election polling. It is a rare event that most people are unfamiliar with. Minimal advertising is not sufficient. For that reason alone, we are calling on the Ontario government to formally commit itself to a well-financed public education campaign that would explain to the people of Ontario what the referendum is all about and the importance of getting the vote out. We believe the government should commit itself to a minimum of \$2 per eligible voter that would be dedicated to a public education campaign.

OPSEU strongly supports electoral reform and looks forward to the final recommendations of the citizens' assembly. We are troubled, though, by this government's foot-dragging on electoral reform which seems evident in parts of the proposed Bill 155. It bears repeating: Too much regulatory authority rests in the hands of the Premier and the cabinet. OPSEU believes this authority more properly rests with the Legislature. Final reading of Bill 155 should be a bridge-building exercise linking all three parties at Queen's Park.

We are approaching an historic moment in this province. We are on the cusp of reforming our dysfunctional electoral system and opening new possibilities to minority groups, women, young people and those who live great distances from the centres of power. If so recommended by the citizens' assembly, Ontario is about to begin a great debate about our future way of voting. Let's do it right. Let's make the referendum exercise as open and transparent as possible. Let's educate our citizens on the importance of participating in a referendum.

I call on committee members to incorporate the changes to Bill 155 that I have put forward today on behalf of the Ontario Public Service Employees Union. It is our contribution to making this a better bill and a better province for all Ontarians. Thank you very much.

The Chair: Thank you, Ms. Casselman. We have about six minutes, two minutes each, again beginning with the government side.

Mrs. Jeffrey: Thank you for being here and for such a thoughtful presentation. It's very practical. I wanted to ask you some quick questions—I don't have a lot of time—about the campaign finance rules that you mentioned here, the donations and the registered referendum groups. This is our chance to hear from you what you would recommend. What would your recommendations be in this regard?

Ms. Casselman: Before I turn it over to Tim, I think the simple answer is to apply the election campaign rules that you folks are working under as well. There's no point in creating a separate system that's more convoluted and different and all that kind of stuff, and even more confusing for people. So just apply the same rules that we do currently to your elections.

Mr. Tim Little: I want to emphasize the same point. There's obviously a great deal of detail in the bill about all the nuances of how a recount is to happen, who handles ballot boxes, who is to be a scrutineer and who is not, and yet the whole question of the financing of any Yes and No campaigns is left to the complete discretion of the cabinet. We think you should read entire sections of the Election Act into the bill so that it's clear and democratically decided on by all parties what the limit of a contribution is. Basically, that's the essence of it—what contributions can be, perhaps a spending ceiling—but explicitly what is democratic on the financing.

Mr. Miller: Thank you for your presentation this morning. I note your point that the actual wording of the referendum question should be decided by the Legislature. That was, in fact, the recommendation of the

select committee on electoral reform: "The committee recommends that responsibility for the referendum question(s)—including the wording and number of questions to be asked, and the number of referendums to be held—rest ultimately with the Legislature, acting on the advice of the citizens' assembly."

So that was the position of the select committee. I'm not sure why the government didn't decide to follow that.

I have a question. You started out your presentation and you said that one of the reasons you want electoral reform is to get better representation, for example, by women in the Legislature. I guess my question is, how will the way we elect people bring that about?

I know the parties can certainly play a role under the current system. Our party, under the leadership of John Tory, has actively tried to get more women involved. In fact, in the last two by-elections our members were women, and in the current three by-elections two of our candidates were women. So we've made a definite decision to try to recruit excellent, qualified candidates we hope will win. I'm wondering how you see changing the electoral process will bring that about.

The Chair: In fairness to Mr. Prue, you have about 35 seconds to answer that.

Ms. Casselman: I think it all depends on the model recommended by the citizens' assembly, but there are some models in there where you'll have some elections and then you'll have a list, and clearly the parties would then have an opportunity to make sure the population has more well-balanced representation in the Legislature. That's certainly what we're looking for.

The Chair: Thank you, Mr. Prue.

Mr. Prue: I just want to correct one small error here. You say, "Except for Canada, Britain and the US, virtually every liberal democracy in the world has adopted a form of proportional representation." In fact, Britain, both in the Scottish and Welsh Parliaments, has proportional representation, and they've increased the number of women there to 50% in just one shot.

Ms. Casselman: Fabulous.

Mr. Prue: That's what happens, just so you know.

My question really goes to the referendum question being debated in the Legislature. I am in complete agreement with what you have said here. In British Columbia, the two parties that exist in that Legislature sat down and argued out and came to a compromise on the referendum question. Here it is going to be the sole prerogative of the Lieutenant Governor in Council. I doubt very much even the backbench Liberals will have any say in how this question is going to be made. How do you think that's going to impact the public's mood in terms of it being a fair question?

Ms. Casselman: I think there's a real interest in Ontario for electoral reform. Everyone is kind of frustrated with the current system, whether you're sitting in power or not; at some point, you're frustrated with the current system. I would suggest that if the electorate sees the three parties debating this issue, coming to a consensus on a question, then it takes it out of the political

realm of saying, "Oh, this is just the Liberals' way of doing things or the Tories' way of doing things or the NDP's way." It's actually, "We want the citizens' input on electoral reform, so we're jointly going to draft this question." I think that brings it up to a higher standard, where people kind of go, "Wow. I guess they're all serious about this. Maybe we should pay attention and maybe have a really good discussion about this." That's my issue for trying to get all three parties on the same page on this: Take the politics away from it, because it's such a critical issue for us as voters.

The Chair: Thank you very much.

Ms. Casselman: Thank you.

GORD GARLAND

The Chair: Is Mr. Gord Garland here, please? Welcome, Mr. Garland. You've been here for a while, so I think you know how we proceed. You have 15 minutes, sir. I understand that the opinion piece "Public Inquiry Needed into '99 Election" is from you as well.

Mr. Gord Garland: Yes, and the companion piece, with the cartoon, "How the Decks Were Stacked Against Democracy."

The Chair: Very good. Thanks.

Mr. Garland: I'd like to begin by thanking the Legislature, the government and this committee for holding public hearings. I'm told that I have 15 minutes, so I'll try to restrict my presentation to 10 minutes and then allow five minutes for questions.

The Chair: Good.

1050

Mr. Garland: I want to comment on the bill in two respects: firstly, what is in it, specifically the threshold for acceptance; and secondly, what is not in it—and what is not in it is the full enumeration of all eligible voters.

But before I do that, I'd like to set the stage for why we're beginning to engage in a great debate about democracy. I don't come to this topic lightly. The most radical change in election laws in the past 50 years was actually instituted by the Harris government, and it was Bill 36, the Election Act changes, and a companion piece of legislation called the Fewer Politicians Act, which reduced the number of ridings by 30 seats in Ontario and basically took the boundaries of federal ridings.

I just want to talk briefly about how Bill 36 was actually passed. It was passed by a majority government that had significantly less than 50% of the popular vote but significantly more than 50% of the seats. It was rammed through the Legislature in three sittings over 15 days in June of 1998. It established a permanent voters list; got rid of full enumeration of all eligible voters; it reduced the time periods for elections by about 25%; and it instituted larger ridings, again the companion Fewer Politicians Act, which meant that ridings were now 25% larger. So if you have 25% less time to cover ridings that are 25% larger, what it really means is that the candidate at the local level has 50% less opportunity during an election to actually meet voters. So this is one of the most

fundamental changes in Ontario's election laws in the last 50 years. It's rammed through the Legislature in three sittings over 15 days in June of 1998, no public hearings or opposition party amendments allowed.

"How the Decks were Stacked Against Democracy" is the article that I wrote for the Toronto Star so that the public would actually be informed of what was taking place in this Legislature when question period was even reduced to a sideshow circus that took place in the evening.

When we look at electoral reform, what are we really trying to accomplish? I think we're trying to accomplish a system of elections that actually reflects voter preferences. The simplest model of electoral reform is basically correcting the imbalance between seats won and the percentage of the popular vote. Simply put, it's a corrector model. You don't even have to change riding boundaries. All you have to do is add 25% more seats to the Legislature, which would basically be recouping the 30 seats that were in a sense lost through the Fewer Politicians Act, but those 25% of new seats would be for at-large members that correct for the imbalance between seats won and the proportion of the popular vote. One example: a party gets 35% of the popular vote and only wins 30% of the seats. Under this corrector model, simply put, if it was 100 seats at the riding level they would get five seats from that corrector pool to compensate so that they actually have 35% overall of the seats in the Legislature because they had 35% of voter preferences in their favour.

So electoral reform doesn't mean a radical restructuring of riding boundaries. In its simplest form, it basically means an add-on that corrects for the imbalance between seats won and percentage of the popular vote. But there is a bias in it in favour of ridings. So, for example, if a party received 30% of the vote and won 35% of the ridings, there is no subtraction, because in essence the voters have spoken at the riding level. So in a nutshell, electoral reform doesn't have to be radical; and if it isn't radical, why does it require a double super majority?

I want to comment on the bill in two respects: what is in it, the threshold for acceptance; and what is not in it, the full enumeration of all eligible voters. I actually took the opportunity to read through the select committee on electoral reform report and made a number of notes as I went through. I want to read to you the notes that I made on the cover of the report after considering it in some depth. The actual report itself is 48 pages. The appendices to the report are 44 pages. Actually, the appendices, because they reveal factual information about various systems of electoral reform as they are actually practised in different jurisdictions, I found actually more revealing about what the implications of changing an election system are.

The key thing in terms of a criticism of the committee's report is that they don't make the case of why we need electoral reform. They do mention declining voter participation, and basically voter participation over a little more than 10 years has declined from 64% of

eligible voters to 58% of eligible voters. I believe it's a fundamental right of every qualified elector to be on the voters list, and the only way to ensure that happens is a full enumeration of all eligible voters. If you want to increase voter turnout, simply put, ensure that everybody is on the voters list, and ensure that that takes place when the election campaign begins or the referendum campaign is in full swing.

So let's deal with the threshold of acceptance. We have this dual threshold that's being recommended: 60% overall, and 50% plus one in 60% of the ridings. If you look back—

The Chair: You have about five minutes now.

Mr. Garland: Okay. If you look back historically, there has been no political party in Ontario that has been elected as a majority government with 60% of the popular vote. It seems to me that you're establishing a standard so that the referendum is designed to fail, and it's a standard that you don't even accept for yourselves. So maybe it's a double standard.

The second thing is about the ridings. If there's no fundamental change in riding boundaries, why have a 60%-of-ridings qualification? Fifty per cent plus one in 50% of the ridings, I think, will do it, and the reality is that if that's achievable, it clearly demonstrates a standard of acceptance that is far above the standard of acceptance for majority governments.

In terms of what is not in the bill is the full enumeration of all eligible voters. If this referendum is important, I think it's important that you ensure that everybody has the full opportunity to participate. I did an analysis of the 1999 election results for a report that was done by a professor at York University using two pieces of factual information: the Elections Canada statement of data quality, and the chief election officer's report on the 1999 election.

The analysis showed that there were 1.2 million eligible voters left off the initial register; in other words, the permanent voters list. Of those, approximately half, 618,000, were added to the final list during the election, and the remainder, 623,000, were not added and thus could not vote. It would be a large mistake to discount the impact of over 600,000 eligible voters. They would certainly have affected the final outcome of the 1999 election. Some 600,000 eligible voters ultimately missed, times the participation rate of 57% in that election, gives us a low estimate of 360,000 votes that never took place. In that 1999 election, the first election with a permanent voters list and the first election with these radical changes by Bill 36, the difference between a majority and a minority government was a total of about 10,000 votes in eight ridings. You figure it out.

Thank you very much for the opportunity to speak with you, and I'd be pleased to answer any questions.

The Chair: We've only got about a minute left, so it's going to be hard to ask questions. Would you like to speak for another minute?

Mr. Garland: No, I'd like to give you the opportunity to ask a question, and I can answer it in 30 seconds if you can deliver it in 30 seconds.

The Chair: Okay. We'll go to the government side, then, for one minute.

Mrs. Jeffrey: Thank you for being here and for your thoughtful presentation. It was very interesting. Do you support the idea of the referendum at all?

1100

Mr. Garland: Well, I think a referendum gives people an opportunity to express their opinion on a specific topic, and there's no doubt that electoral reform, if that's what is being recommended by the citizens' assembly, will require informing the public and actually canvassing their opinion, because it's one thing for a group of 103 people to propose something, and it's another thing for a group of five million to accept it.

The Chair: Mr. Garland, thanks so much for taking the time to be with us today and to share your views. We appreciate it.

Mr. Garland: It was a pleasure being with you.

JOHN DEVERELL

PETER ROSENTHAL

The Chair: Mr. Deverell, please.

Mr. John Deverell: Thank you, Mr. Chair. First of all, may I ask the clerk, do the members have this document? Thank you.

My name is John Deverell. I am a journalist with a long-standing interest in Ontario politics and voting reform. I am an officer of Fair Vote Canada, although I speak on my own behalf today. I've brought with me, because we are discussing a legal dimension of all of this, Peter Rosenthal, who is a University of Toronto professor and a barrister and solicitor, one of his areas of specialty being election law. So I hope he'll be able to help you with the high-powered questions.

I won't take you through what the charter says, but it is arguable that the current first-past-the-post electoral system contravenes the fairness required by section 3 and also contravenes the equality rights pursuant to section 15 of the Canadian Charter of Rights and Freedoms, which of course legislators should always have in mind as they are drafting legislation. Several groups and individuals are contemplating taking this question to court in connection with the Canada Elections Act, but the implications would apply to the provincial acts, which are modelled on the federal one.

The Ontario government has promised to hold a referendum on any alternative its citizens' assembly may recommend. However, after that assembly was appointed, we got the announcement of an unusual high double threshold for the success of the referendum. It's disappointing to us to see this undemocratic double threshold proposed in a Legislature which deems itself democratic. As other delegations, other speakers, have pointed out here today, few MPPs have received even a simple majority of the votes cast in their ridings, yet MPPs receiving less than half the vote find themselves competent to pass laws and claim that they have a

mandate from the people. Why do those elected with such slim support choose to set the referendum bar so high?

The sponsors of Bill 155 justify the high double threshold by saying the voting reform decision is “foundational.” It is true that it’s important. It does not follow, however, that this requires biasing a once-in-a-lifetime referendum in favour of perpetuation of a pre-charter and almost prehistoric voting system which no living Ontario citizen has ever had the opportunity to choose or reject.

In this building, MPP Linda Jeffrey, parliamentary assistant to the minister responsible for democratic renewal, said on November 16, “For the first time in our province’s history, Ontarians are being asked to participate in a full, open debate on our electoral system. This won’t happen again.” If it won’t happen again, it is crucial that it be done fairly this time. A full, open debate is a charade if the bar to change is set so high as to make it almost impossible to achieve. There is no legitimate reason to structure the referendum vote so as to strongly favour the status quo.

I have also offered the committee an article called “Making Democracy Constitutional,” published in a book from the Institute for Research on Public Policy, in which constitutional law professor David Beatty of the University of Toronto argues convincingly that the charter entitles citizens to equal, effective votes and that the current provincial voting system—in this case he’s arguing about the federal voting system, the same system—is far from fulfilling that charter entitlement.

There is a better alternative. He says, why not just refer the question to the Supreme Court—again, in the federal context. There is a better way of deciding these questions, and we’re on that path: the citizens’ assembly and a referendum is the democratic way of addressing a fundamental question about how we run the democracy. But then there is the undemocratic standard set in the threshold. If 59%, of voters say yes to electoral reform, there will still be no reform. A minority of the voters can deny the majority their once-in-a-lifetime opportunity to switch to a democratic voting system.

Under Bill 155, two No voters can thwart three Yes voters. In effect, it issues No voters ballots worth 50% more than the ballots issued to Yes voters. The bill gives No voters super-votes, and with them a substantial minority veto power and a strong incentive to turn out and vote.

It has been recognized by the courts that members of the Legislature and of Parliament have a vested interest in the electoral system that elected them. As Justice Louise Arbour wrote for the Ontario Court of Appeal in a case—I won’t read that for you—there is a conflict of interest when you’re asked to examine the rules by which you achieve office.

The requirement of 60% for affirmation of any change in that voting system is a limit on the franchise, which is constitutionally forbidden.

The 60% threshold will have the consequence not only of encouraging no voters to turn out, but possibly dis-

couraging some people who would like to see electoral reform would not turn out because they regard the barrier as too high.

How should your bill be fixed? Easily and simply, the provincial threshold should be set at the democratic norm, 50% plus one, just as you have set it in the bill’s standard for the decision in each riding. If it’s good enough riding by riding, why isn’t it good enough overall?

Any court judging our current electoral system—and this judgment will eventually come—will have to consider whether the question of reform should properly be left to Parliament and the Legislatures. Should the 60% threshold remain in place, it will be strong evidence that legislators’ self-interests are preventing them from allowing fair determination of the proper nature of our voting system. The consequence will be that the courts must do the job that the Legislature can’t do and bring us a truly democratic voting system.

Thank you for your attention. Peter and I would be happy to answer any questions you may have.

The Chair: We thank you very much. We have about nine minutes, three minutes each, so we’ll begin with Mr. Miller.

Mr. Miller: Thank you very much for your presentation this morning. I should point out that I have a conflict on this because I knew Mr. Deverell in my past life as a resort operator, because he was a guest for a number of years with his family at our lodge.

Mr. Deverell: And a good time we had.

The Chair: What happens in Muskoka stays in Muskoka.

Mr. Miller: Also, I note that it’s a family affair. Your daughter was involved with the student citizens’ assembly. In fact, I was up at the Deerhurst Resort, where it was occurring, and she introduced me as a panellist at that event.

My question: You used the term “charade” for the process we’re going through. A previous presenter said that this is an elegant ruse we’re involved in, basically because of the 60% threshold. Why do you think the government chose the 60% threshold for this?

Mr. Deverell: I don’t have any inside insight; I just have the sense that any of us would have, looking from the outside. The threshold has been set to make any change very difficult to adopt. The threshold has been set to maximize the possibility that the present voting system will be retained.

Can that threshold be exceeded? It’s possible. They came awfully close in British Columbia: Without very much public advertising, the vote was 57.5%, I think. So it’s not that it’s impossible to get over this threshold; it’s that it’s very difficult, unfairly so and unconstitutionally so. Why a government would choose to introduce legislation which is probably unconstitutional, I think the government has to explain.

1110

Mr. Miller: You started out by saying that section 3 of the Charter of Rights—I think it was the fairness

section—and also the section on equality rights might be unconstitutional. I guess I'll ask Mr. Rosenthal. It's probably a difficult thing to answer in 30 seconds, but what's the likelihood of success of a charter challenge on this?

Mr. Peter Rosenthal: Well, it's hard to estimate the chance of success. It's certainly a very arguable case, in my view. There has been reading into section 3 of the charter, by the Supreme Court, a degree of fairness that seems to be inconsistent with the first-past-the-post system.

There is also, as Mr. Deverell read, this striking sort of passage—he didn't actually read the passage, section 3 of the charter—that the courts have to give special scrutiny to because, as Justice Arbour said, “The right to vote must be protected against those who have the capacity, and often the interest, to limit the franchise.” In other words you people, because you do have a vested interest in the electoral system, a very personal vested interest.

It is my view that keeping this 60% threshold would be a very powerful additional argument for you to make. If we're bringing this case to court, which I do expect to do if the referendum isn't done fairly, I think it would be further evidence that the legislators cannot be trusted with the electoral system if they set such a high threshold.

The Chair: Thank you.

Mr. Prue: I have a couple of questions. I believe that all members got a letter from a member of the citizens' assembly. I certainly know I got one, and it said it was being sent to all members. The member of the citizens' assembly, one of those lucky 103 people, has written to us and she says to us quite categorically that the citizens' assembly members are dismayed at the fact that this Legislature may set a bar of 60% and feel that they may be going through this exercise for nothing. Would that, in your view, have any impact on the quality of what they might produce or their willingness to go the extra mile or to do the best job?

Mr. Deverell: I think it's possible, but it's very difficult to estimate. If we were in their position—you take the job thinking you know what it is, which is to make a recommendation and there will be a referendum. You would probably assume that that would be done the way most referendums have been done in this country, by the usual method of 50% plus one. So you would know your task and you would know the bar that you were thinking of. Then this extra-high barrier is introduced.

Now, how does one respond to that? Does one start to try to diminish the arguments you'd otherwise make to try to make your package more acceptable to more people? And is there actually any way to do that? I think it creates some confusion and apprehension in the minds of the citizens because they've got two different concepts to work with: What would be good enough for a simple majority, and is there anything that would be good enough for 60% of the people? But I think it's all speculation, because there are 103 people there, brought together for the purpose. They do not have any group ideology other than trying to serve the public interest.

Mr. Prue: But it is not without the realm of possibility, though, that people, such as this one elector who's working away, may influence the kind of decision they're making, to water it down to make it more—rather than something they really want to do because they're looking at this supermajority.

Mr. Deverell: I think it's fair to say that it's made their task more difficult because they have to try to reach a consensus. This must make it more difficult to reach a consensus.

Mr. Rosenthal: Yes, I would certainly agree with what Mr. Prue said. There's no doubt that's going to have to be in the minds of some of the 103 people. We don't know them all, but if they're reasonable people, some of them are going to have to be thinking, “How can we try and get something to squeak through this impossible threshold?” It's going to dilute the discussions in a serious way. It's also going to lead to some people not voting at all, some people just turning off from the whole matter, within the 103, within the populace of Ontario. So I really hope that this committee recommends that the assembly reject that threshold and put back 50%. What's the problem? Suppose 50% vote for a change? Let's have a change. Let's see what happens here.

The Chair: Okay. Gentlemen, thank you very much. We appreciate your perspective.

DAVID RAPAPORT

The Chair: David Rapaport. Welcome, Mr. Rapaport.

Mr. David Rapaport: Thank you.

The Chair: It's good to have you with us. You, sir, have 15 minutes. Make yourself comfortable and please share your views with us.

Mr. Rapaport: Thank you very much. I was listening to the last presentation and a bit of the one before, so I'm not sure that I'll be adding all that much, but a certain perspective that I consider my own, of course. Thank you for this opportunity.

Electoral reform is long overdue in Ontario. The current system is not working. It is not democratic. Parliamentary majorities rarely get electoral majorities in our multi-party system. I think the last one was in the 1940s, if I'm not mistaken. The current slide towards electoral cynicism and non-involvement can be mitigated by making real democratic electoral reform. I applaud the government for moving down that road, or trying to move down that road.

Like many Ontarians, I feel left out of the formation of new Parliaments with our first-past-the-post system. If my candidate does not win—and it does happen—and the successful candidate gets less than 50% of the vote—which does happen—in my riding, then I feel that democracy has not been served and that my voice has been muted, and that's not unusual. Sometimes governments receive parliamentary majorities with electoral minorities and still make radical reform. One government even reduced the number of ridings from 130 to 99. That was in the first Conservative mandate. The election was in

1995 and they got about 44% to 45% of the vote and they went ahead and made some very serious changes to our electoral system.

That brings me to the main point of my presentation: I do not support the proposed 60% threshold for making change and accepting the question on the referendum. It is ironic that the proposal requires more than 50% plus one to make change and that a minority can hold back change. Again, we are looking at tyranny of the minority. Why not include the less than democratic status quo on the referendum and require 60% to maintain that status quo, which is widely criticized? That's to be consistent with everything else that's being presented, including the proposed change that we're expecting. Democracy means 50% plus one no matter how you might try to spin the number. There is no way around that simple fact, particularly when trying to reform an undemocratic system that actually permitted a government with 45% of the vote to reduce the number of seats, and, some would argue, to their advantage. If the results of the referendum are that 50% of the voters agree to electoral reform and the threshold remains at 60%, once again I will feel burnt by the system. Once again it will cause more Ontarians to feel more cynical about the electoral process.

I just want to touch on a few other matters as well. Enumeration: The Chief Electoral Officer of Ontario should do a complete enumeration of voters before the referendum in October. This has not been done for quite a while and the time is long overdue. Too many voters might be excluded from the lists and the process, particularly younger voters and tenants in urban areas who move around more frequently.

1120

Public education: There should be extensive education on the electoral reform and the question before the referendum. Democracy means informed participation. Let there be a full and stimulating debate and discussion prior to the actual referendum. It can actually be quite fascinating.

Finally, the recommendations from the citizens' assembly should serve as the basis for the question being posed in October. The citizens' assembly is engaged in a democratic consultation process and discussion with Ontarians. They are hearing the views of folks who want to move this forward. I participated in that process about a week and a half ago in Etobicoke, and I was impressed by the level of debate and the passion of people's views. They, the citizens' assembly, are closest to the issue, and those who took the time and the effort to participate in that process should be respected. Thank you for your time.

The Chair: Thank you. You've left plenty of time for questions, about nine minutes. We'll begin with the government side.

Mrs. Jeffrey: Thank you for being here, Mr. Rapaport. I appreciate your thoughtful suggestions and your brevity, because some of the issues have been covered today. Can you tell me if you're part of any organization here today? Are you part of Fair Vote or any other organization here?

Mr. Rapaport: I am an executive board member of the Ontario Public Service Employees Union. I'm not speaking on their behalf, but my views coincide with the union's views, and I see that Leah Casselman was here earlier doing that. So I'm speaking on my own today.

Mrs. Jeffrey: Okay. Thank you. Do you support the process that we have undertaken to engage people with regard to the citizens' assembly?

Mr. Rapaport: Oh, yes. So much so that I actually took the time and the effort to produce a brief, which I did present.

Mrs. Jeffrey: Oh, okay.

I think what we've heard this morning is that we're setting up a referendum that's designed to fail, with such a high threshold. I would argue that, in a sense, we feel the threshold is a testament to the work that the citizens' assembly is doing and its importance and its fundamental change that could occur, should they recommend a big change. You speak also about your dissatisfaction with that threshold. Do you feel like it's going to discourage the voter, as we heard from the earlier presenter? There isn't any proof that that will discourage the electorate, but do you have that sense that it will?

Mr. Rapaport: It could discourage voters in the sense that, "Oh, here we go again; some votes are worth more than others." I don't know what happened in your riding, but you could have ridings where 38% or 39%, or even less, in a very close three-way race can determine the outcome. So the voters who went with the winning side—their vote is going to be worth more than those who went with another side. I think my concern is more what happens afterwards. Let's assume the citizens' assembly comes up with a proposal—which they will, I assume—and let's say 58% of Ontarians agree with it, and of course that sort of happened in British Columbia. So once again, 42% are going to trump 58%, which, as I said in my presentation, can result in increased cynicism about the electoral system. A democracy means a majority—that's my understanding—particularly something as important as this. So if I was on a citizens' assembly, I would feel unhappy about that 60%.

The Acting Chair (Ms. Jennifer F. Mossop): Thank you very much. That wraps up the time for the government side. Mr. Miller.

Mr. Miller: Thank you for your presentation today. I guess my question is about the 60% threshold, to begin with. Do you think the government was serious about electoral reform when they picked this 60% threshold?

Mr. Rapaport: I thought that they were serious when they embarked on this path and they were talking about the process that they were going to do, but I would have to say that that view got somewhat mitigated by the 60%. I would hope that, in the event that it does go over 60%, that will be respected. So are they serious about it? Well, I don't see it as a black/white thing so much—let's just say, less serious than I would've hoped.

Mr. Miller: I sat on the select committee on electoral reform. We travelled to BC, and one of the concerns with the process they went through there was education after

the citizens' assembly had made a recommendation. Do you have any thoughts on education and how much public money should be involved, and should both the Yes and No sides be funded? Any particular thoughts on that?

Mr. Rapaport: I think education is very important. I think it should be front and centre in people's minds when they do go to the—I mean, other than elections that you folks are going to be engaged in, of course. That's a joke.

This should really be front and centre. They should engage in public education through the media, through any kind of mechanism that can be available. How much money should they spend? I'm in no position to put a price tag on it, but I would say it should be substantial. This is so important, from my point of view, from lots of people's points of view. It should be a significant debate that's out there.

The Acting Chair: Very good. Thank you. Mr. Prue?

Mr. Prue: In British Columbia, one of the key people from the No forces, who opposed the change that was being recommended, openly bragged to the press that he was going to win even though he knew that the other side was going to get more votes. Do you foresee this happening in Ontario where the No forces, even if they're out-gunned and even if they're going to lose, only have to get 40% plus one to pull it off?

Mr. Rapaport: Well, I don't know. I hope that doesn't happen, where somebody who is going to oppose the change is going to engage in that kind of bravado. I think that would just add to the cynicism that goes on. But getting back to the basis of it, the proposal of the threshold actually gives some wind in the sails, I suppose, of those who are actually going to oppose the referendum. They're going to feel a sense more—it's like going into a hockey game, I suppose. If one side has to score more than the other side to actually win the game, then the side that is going to have to score fewer goals is going to feel like they have a really big advantage in terms of the outcome. The way I've been raised and the way I think, that's something I don't think is really fair. Let's hope that the legislation is changed.

Mr. Prue: Now, in terms of public education—I asked this question earlier. I don't know if you were in the room. There are two ways, really, of doing the public education: the way that British Columbia did it, by having their electoral commission send out a flyer to every household a few weeks before the actual voting day, outlining what the democratic reform was, or the way Quebec holds their referendums, by funding both the Yes and No sides, making sure that the documents are fair; there is some role for the government to make sure they're fair, but then letting the Yes and No sides go out and make the public arguments and to engage. Which one do you think would better inform the public?

Mr. Rapaport: Again, I would think the one that actually promotes citizen participation in the discussion. It could be a dry discussion or it could be a rich discussion. I'd like to see it go forward. The problem that

you had in Quebec with the referendum, if I remember this correctly, is that it opened up room for some kinds of abuse that took place. I think it was the federalist side that was actually getting more money; I'm not sure exactly. But it does open up that door.

Whatever it is, if they do decide to go there, I hope it's a 50-50 arrangement, unlike the threshold situation. But if you ask me, I would prefer seeing a public debate conducted through the media.

Mr. Prue: Is there still time?

The Chair: Somebody has up to another minute.

Mr. Prue: Okay. I have another question, then, on enumeration. We have not been properly enumerated in this province in a number of years.

Mr. Rapaport: Nine years, I think.

Mr. Prue: Yes. In that entire period, in every election I have had to go register again because in every election I am not enumerated. I'm an MPP, and before that I was a member of city council and before that the mayor. If I have to do it, I think tens of thousands or hundreds of thousands of people are just like me, and some probably don't bother. Should we be going back to that system of enumeration?

1130

Mr. Rapaport: Absolutely. In my house, where I live, I sometimes have tenants. People who were living there two, three years before the election was called and have since moved are still on the list, and I have to have them removed. So it works the other way as well. Sometimes people are listed in places where they shouldn't be. I would recommend strongly that there be enumeration.

The Chair: Thanks so much.

UNIVERSITY OF VICTORIA

The Chair: We now have Professor Dennis Pilon by videoconference. Welcome, Professor. We look forward to hearing your views. You have 15 minutes.

Dr. Dennis Pilon: Thank you. My comments will be directed specifically toward clauses 4(a) and 4(b) of the bill, the decision rule for the referendum to have mandatory effect, as well as the stated rationale of the government for this rule, namely that changing the voting system represents a "foundational change to Ontario's democracy," one that requires a "solid majority of Ontarians across the province."

The gist of my comments to follow will be that I can find no historical, legal or normative justifications to support either this rule or the rationalization offered by the government, and as such I'm appearing today to urge the committee to drop this rule and replace it with 50% plus one, period.

Before I begin, let me note that my research is directly relevant to this topic. My most recent major research project examined every instance of voting system reform in 18 western countries over a period of 150 years. I have also researched and published extensively on the past century and half of Canadian voting system reforms.

What that research can tell us is that apart from the recent PEI and BC referendums, no voting system change decision in Canada was ever subjected to a supermajority rule. In fact, the establishment of all Canadian federal and provincial voting systems was by a simple majority vote of the designers, and then all subsequent changes to provincial voting systems were by a simple majority vote of legislators. Those changes, which I've listed in my comments that I've forwarded to you, include 10 different voting system changes, including two different changes in Ontario.

When we turn to international experience, the same patterns hold. All western countries have seen the establishment of their voting systems or any changes in their voting systems handled either through a simple majority vote of Parliament or a simple majority vote in a referendum. Until recently, such referendums were few. We've got Switzerland in 1918 or France in 1946; both were dealt with by a simple majority. In recent cases, in Italy and New Zealand in the 1990s, they too were decided by a simple majority. A few western European countries have entrenched their voting systems in the constitution; thus, it would require a supermajority to change those voting systems now. However, in each case the decision to subject it to constitutional protection also involved a supermajority decision, which certainly wasn't the case in establishing Ontario's voting system originally.

Thus, historically and comparatively, I could find no precedents for the supermajority rules, as applied to voting systems, except where they were expressly constitutionalized, other than in the recent BC and PEI referendums.

In another issue, I think that legally the committee should be concerned about the potential charter implications of weighting votes differentially through the supermajority decision rule. The supermajority rule effectively inflates the voting power of those opposed to change while diluting the voting power of those seeking change. While the courts have been prepared to sanction some deviations from absolute equality of voting power as concerns the population size of electoral districts, they have in those instances insisted on clear and compelling rationales as to how such deviations would serve the public interest before they were prepared to go along with them.

I can see no such clear and compelling rationale for a deviation from voter equality in this case. Certainly the government comments justifying this decision, as they have appeared in government press releases and newspaper accounts, only vaguely refer to some foundational importance of the voting system. But if the voting system, as law, in Ontario has no superior standing to any other law, I can't see how that holds. It can be changed by a simple majority vote in the Legislature, as indeed it has been in the past.

I've got some other comments on potential problems in terms of how the courts might look upon this decision and what the results might be. Those are included in the comments I've forward to you.

Let me turn to the normative arguments that I think are implicit in the government's defence of this supermajority rule. The government has stated that a supermajority is required for this vote because changing the voting system represents a "foundational change to Ontario's democracy." The problem with such arguments, from a normative standpoint, is that the foundation being defended is a pre-democratic and elitist one. The voting system arrangements that were put in place in 1867 were not the product of public input. Indeed, Ontario in 1867 was not even a democracy, as the franchise at that time was so narrow that only the wealthiest of white men could vote. We had to wait until later for all adult white men to get the vote—about 1888—and of course women and other ethnic minorities came even later. Nor, I think, can the government rely on the Lockean notion that because people consent or have consented to use this ballot, they somehow approve of it. What we know from studying public opinion about voting systems is that the public doesn't really understand a great deal about how they work, or anything about it at all. Some might argue that the whole point of exercises like the Ontario citizens' assembly is just to open up that public discussion and debate and let people decide whether they really do want the status quo or something else. In such a situation, I think it's normatively indefensible to privilege one side of that discussion, as I think sections 4(a) and (b) of Bill 155 presently do.

Those are my comments.

The Chair: Thanks very much. We've a fair bit of time left. I'm assuming you're prepared to answer some questions, so we'll go to the government side. About three minutes each.

Mrs. Jeffrey: Sure, ask me to go first after such a thoughtful presentation. Thank you very much, Professor. I'm not a lawyer, and I'll profess that at the beginning. I'm going to ask you some pretty simple questions.

Do you have any affiliation with any other group—Fair Vote or any other group—or are you speaking independently?

Dr. Pilon: I'm speaking as a professor. I'm speaking from the basis of my research today; I'm not representing any other group.

Mrs. Jeffrey: Okay, thank you. Do you support the process that we've undertaken with the citizens' assembly? Do you have any problems with the process that has been undertaken so far?

Dr. Pilon: I think the process is excellent; it's very exciting. I think this is the way we should move forward in allowing citizens to have input on their own democratic institutions.

Mrs. Jeffrey: So why would you say—clearly, your main argument is with regard to the threshold. How do you see a threshold between 50% and 60% disenfranchising people and discouraging them from voting? You used the word "privileged." Why would a difference in the threshold make that difference?

Dr. Pilon: Well, I'm not speaking towards whether or not it will affect voter turnout. That's a separate question

entirely. But there's no denying that the threshold does privilege one side of the question and not the other. It inflates the value of the votes cast against any change and it dilutes the value of those—there's no disputing that; that's what the law is doing. So then the question is, why are we doing it? I haven't heard any good arguments about why these votes should be treated differently. I think the votes should be treated the same.

Mrs. Jeffrey: Do I have more time?

The Chair: Yes, you've got another minute.

Mrs. Jeffrey: In the course of your research, were you able to determine whether or not, in the case in Prince Edward Island—they had a stand-alone vote—how that influenced voter participation and turnout, rather than what we plan, which is to have it in concurrence with a provincial vote that's a fixed date?

Dr. Pilon: I think that in PEI there were a number of issues. The stand-alone vote was only one of them. Another was of course that there were very few voting locations open to voters and the government did not support a public education process that helped people to participate in that vote.

Having said that, I think that the recent “on” election suggests that off-term elections do not draw the same level of participation as an election in concert with the kind of mobilization that goes on for a general election. So I think having it with a general election is better for larger voter turnouts.

Mrs. Jeffrey: Thank you.

The Chair: Mr. Miller.

Mr. Miller: Thank you very much for your presentation. I had the pleasure to travel out to BC for just a couple of days to meet with people involved with the BC citizens' assembly. One of the questions we asked was, “Why did you pick a 60% threshold?” As I recall, the argument they gave was that in BC politics you tend to get—they didn't want the referendum vote, I guess, to be a vote to change the government or a reaction to the government of the day; they wanted it to be very clear.

Having said that, I think it was 57.7% of the population that supported change to the proposed system, which was a single transferable vote system, and you now have a dilemma, where more of the people supported change than voted against it. Can you tell us more about what's going on in BC at this time?

1140

Dr. Pilon: I think the situation in BC—of course it wasn't the citizens' assembly who decided on the decision rule, it was the government. The proposals by Gordon Gibson went into cabinet without a supermajority rule and came out of cabinet with the supermajority rule. Why that was the case, of course, is up for speculation. I'm not privy to those details. Of course, the idea that it would create clarity became a farce with the results itself when the government had, I think, 45% of the popular vote but had a majority of the seats, and then was going to pronounce on the validity of a vote that had gotten 57%. So this supermajority rule is taking you into a situation where the chance for a lack of clarity in the results

is quite high. In the case of judging what the voters wanted, again, I think the problem with this approach is that these systems were put in place with simple-majority rules. It does not make any sense to then insist that to remove them we require more than that. How is that in any way fair? I've made that argument here in BC. I would make that argument in Ontario. What's happening in BC now is that there will be another vote in 2009, though the same rules will apply again.

Mr. Miller: Any thoughts on public education once the citizens' assembly has come up with the choice of a possible change in the electoral system?

Dr. Pilon: Yes. I'm not sure the choices are merely between the government sending out a householder and funding the two different sides. I think if we look at New Zealand, which had a very successful public process, the key factor there was that their independent electoral commission was given considerable latitude to develop a number of ways of communicating with voters and creating deliberative spaces for voters to talk about this question. One of the things they really focused on was television and providing the resources to create television programs that were then repeated on public—

Technical difficulties.

The Chair: I'm told we may have lost the—you were down to nine more seconds anyway, Norm.

Mr. Miller: I think you're saying I can't get my next question.

The Chair: And it was such a profound question.

Mr. Prue: If you do get him back, I would appreciate my three minutes. You might not get him back so there's no sense in just sitting here.

The Chair: Is the committee agreed to that?

JUNE MACDONALD

The Chair: Is June Macdonald here? June, we'll hear from you. If the professor comes back on, could we stop your presentation for the three minutes and then—

Ms. June Macdonald: Yes, that's fine.

The Chair: Okay, please come forward, then. I appreciate your flexibility on that. That's very thoughtful of you.

Ms. Macdonald: I'd be interested myself to hear what Dennis has to say.

The Chair: We do appreciate your being here, and we'll start your 15 minutes now.

Ms. Macdonald: Thank you very much. I think you have a copy of my handout in front of you. I've timed it at 11 minutes so let's hope it works out that way.

I'm June Macdonald, a member of Women for Fair Voting, which is a subgroup of Fair Vote Canada, a member of Equal Voice, as well the Canadian Federation of University Women. But I am speaking here for myself. I have been actively working on this issue of changing our voting system for more than six years. As a result, this issue means a lot to me personally.

I got interested overall about 10 years ago when I attended an educational conference where Doris Ander-

son was speaking. She explained that she felt the reason there were more women in European legislatures, and therefore better policy for women, was due to widespread use of proportional representation. At that time I had no idea that we voted differently from most of the rest of the world. When the government announced a citizens' assembly process and a referendum, I was delighted: finally, an opportunity to improve the representation of women.

Fast-forward to October 24, 2006, the day that the supermajority for the threshold was announced: I was in Orillia giving a presentation on voting system change—

The Chair: Thank you. We'll come back to you.

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(continued)

The Chair: Professor, Mr. Prue has a couple of questions for you. Sorry for the disconnect there; I don't know what happened.

Mr. Prue: I hope you can hear my questions. What has happened in Ontario mirrors almost identically what happened in British Columbia: The all-party committee recommended 50% plus one; it went to cabinet and cabinet came out with 60%. Since then, I think literally almost every person who has spoken has spoken against what cabinet did. What kind of effect has that had on the support for cabinet since the election?

Dr. Pilon: Well, I can't speak to who or what support there is for cabinet, but I do—

Technical difficulties.

The Chair: Must be the weather, I'm sure.

JUNE MACDONALD

(continued)

The Chair: Ms. Macdonald, please continue. We got through the fast-forward and you were—

Ms. Macdonald: Yes. So that was the day the supermajority was announced. I was in Orillia giving a presentation on voting system reform. In reference to our upcoming referendum, one woman in the audience asked how other countries went about changing their systems. I said that in established democracies it is rare and that we have a lot to be thankful for, the farsighted view of our leaders here in Ontario for initiating this process and setting up the citizens' assembly. I said we were still waiting to hear the terms of the referendum, but I thought that it was doubtful that we'd go the route of the supermajority that was so disastrous in BC.

The next day, when I got home, I realized the supermajority had been announced just about the time I had said those words. I truly did not believe that a group of legislators who seemed to be so egalitarian would make such a decision so out of step with their goal of giving Ontarians a more democratic system. I looked at the vote and it appeared to me that substantial numbers of legislators from both major parties had voted for the bill on first reading.

So I wish to address the issue of the threshold specifically with my ideas surrounding what I think the impact of that will be—not that I think that what I say will have any effect, since I have already chatted with my MPP and I get the sense that you are fixed on this course. But, I recall a TV psychiatrist saying to Carmela, the wife of Tony Soprano, that she was enabling his criminal behaviour by remaining with him. The psychiatrist said flatly that now she can never say she wasn't told. I am not implying that the threshold is criminal but, through it, in my opinion, you may be enabling the survival of a dysfunctional system that no longer works for us and makes a mockery of our democracy. I suspect that after these hearings you will be unable to say that you were not told.

Nevertheless, I have decided in my advocacy work not to waste time discussing the threshold and to focus on educating women about what makes a good system for women so they can evaluate the assembly's recommendation critically. However, people keep bringing up the threshold issue spontaneously, and it is overwhelmingly negative.

I can understand the legislators' reasoning that re-vamping our voting system is a major change that will not easily be overturned, but I believe that most people do not see it in that light. They don't accept the reasoning of a unique change. They see the supermajority as a conflict of interest. They think that many of the legislators are seeing this as a way to keep the status quo if the assembly does recommend a change to a more proportional system and it gets a simple majority in a referendum. They are thinking, "Same old same old." Policy in the past has been enacted that has changed their lives substantially and there has been no way to undo many of these laws.

At least in New Zealand they had a chance to review their change of their voting system after a number of years. But for much of the current legislation that people object to that affects them, they are not given a similar second chance. They may never have got to vote for a given piece of legislation in the first place through their preferred party, since the true or popular majority are not making their decisions and their votes are wasted. For example, if you live in Toronto, you are basically voting Liberal, even if you prefer other parties. The tables are turned in other areas of the province, compliments of our voting system, not the people.

When you think that, since 1937, no government in Ontario has governed with the clear support of a majority, it is almost risible that a supermajority is being touted for the very change that would correct this democratic deficiency.

Regarding BC's outcome, I tend to agree with the pundits who say that BCers were voting for change, not necessarily for a particular system. There are strong advocates of STV versus MMP still, but they are united in their antipathy to the threshold and continue to carp about it even now. It makes one speculate that perhaps some voters were prompted into voting Yes in the refer-

endum by sheer annoyance with the threshold. In any case, you can be sure that the supermajority threshold is going to be a topic of some rancour whenever the referendum question is discussed. However, the government may have research to say that this is a low-profile issue, that the people do not care or just don't get it. You may be right, at least right now. But what a sad way for Ontario to go, and for you too, for you have in your hands the opportunity to give democracy in this province back to the people, even if there is no immediate political payback. I believe there will be positive payback for the parties to do this.

1150

Without a proportional system, it is highly unlikely that our Legislature will look like the population it serves. It is this attribute that I would like you to give pause in considering prior to placing your stamp on the super-threshold. Parties have promised to increase the numbers of women, but they have been stymied by the autonomy of the riding associations. Ontario is increasingly diverse, yet our Legislature looks mostly white.

Lijphart, a noted political scientist, stated in 1999 that women's representation in Parliament is an important measurement of democratic quality in its own right and can also serve as an indirect proxy of how well minorities are represented generally.

Two other researchers, Thomas and Wilcox, state, "Another reason it matters that women hold office concerns political stability. If all citizens are seen to have an equal opportunity to participate in the decisions that affect their lives, there is a greater likelihood that the polity will be stable and that citizens will have a reasonable degree of trust in and support for it."

Finally, Karen Bird says in 2005, "Some theorists argue that special measures to enhance the representation of women and minorities are justified by existing practices of representation in liberal democracies. For example, these practices already allow the representation of territorial interests, which are not all that different from the notion of group representation."

Without some kind of proportional system, it is unlikely that women and other underrepresented groups will be able to increase their representation appreciably, at least in our lifetimes under our present system, and at least with an exclusive single-member riding situation such as we have right now. That is why this electoral reform process is so important.

Some may suggest that quotas are the way to go, that we can fix the existing system with quotas. In our culture, there is a deep antipathy to any kind of preferential treatment for any group, save perhaps the electoral subsidy to men, who get nominated 80% of the time in our single-member ridings. But that is not seen as preferential treatment.

You could legislate quotas, as is commonly done in non-democratic and semi-democratic countries. However, party-initiated quotas are more associated with democratic countries. Party-initiated quotas appear to be very successful in many European countries, and once a

party brings them in, there is a tendency for others to follow suit in a contagion effect. However, quotas are more easily applied to proportional systems, especially ones with a component of longer lists. A lot of that is discussed with a lot of work by Matland. He's with the international society for democratic advice, and the reference is at the bottom of your sheet.

If you do institute quotas for women, what about our many minority groups? The only natural and viable solution is to provide good-sized lists in a proportional system so there is opportunity for all to take advantage, depending upon a party's philosophy. We do not know if the assembly will recommend such a system, if anything at all. But if the assembly does bring forward a fair system, you will be making history, finally giving women and minorities an opportunity for greater participation. Discounting a referendum outcome that is greater than 50% plus one yet less than 60% on a good model would be against all our best interests. People want change. Both men and women want to see more women in our Legislatures. Most of us do not think we can continue much longer with the poor representation of minorities.

I urge you to put aside the adversarial need to beat the other party and work together to divest more power to the electorate in the form of a more proportional system. Our system works well with two parties, but the population seems to want more than two parties representing them. Put aside the issue of the supermajority. Both major parties will wear this, not just the Liberals. Liberals: Please use the phoney majority the voting system conferred on you to give us a fair system.

Thank you very much for your attention.

The Chair: We'll have about a minute each for questions, beginning with the government side.

Mrs. Jeffrey: Thank you, Ms. Macdonald. I'm sorry for the interruptions. You had a very interesting presentation.

It's important to remember that these hearings are discussions of Bill 155 and about the process, and I wanted to thank you for the work that you've been doing trying to educate the public, because it's an ongoing process. You can't do it just once; you have to keep doing it, and I think you spoke quite extensively about studying the process and the education campaign that took place in BC. We hope to learn and improve on that. What would your recommendation be to improve public awareness and knowledge of the referendum, should it occur?

Ms. Macdonald: I agree with the comment that Dennis made about the process they used in New Zealand. It was placed in the hands of an independent commission, and I believe it was adequately funded. My preference would be that there would be an independent body to look after that sort of thing and that there would be enough funding to make it a good-quality educational process.

Mrs. Jeffrey: Thank you.

The Chair: Mr. Miller.

Mr. Miller: Thank you very much for your presentation. I certainly gather you're against the 60% thresh-

old and you like some of the things that have happened in New Zealand. There they had a two-part referendum, two separate referendums, I believe, in the process they used.

I guess my question has to do with how changing our electoral system will achieve the goal of more women in politics. Certainly I think that parties have a big role to play in that. In our party, the last two elected candidates we've had in recent by-elections have been women, and in the current by-elections going on—there are three by-elections—two of our three candidates are from what I would call a minority group, and the other two are women. I would say there is a large role of the party deciding, "We want more women involved in our party." It's a definite decision we've made, and I think there is a role, and it can be achieved.

My question is, is there a certain system that you think results in more women being elected? That wasn't what we found in the select committee on electoral reform, so I'm wondering if there's a certain system that you would recommend.

Ms. Macdonald: I'm surprised at that, because all the evidence throughout the world is that, generally speaking, all things taken into consideration—culture and the rest of it—list PR systems statistically do show better representation of women. I agree with you that it's a complex topic, but if you look at all the parameters and even the comparative data, it shows that there are more women in a list PR system.

Now, I think that might be impractical for Ontario. My personal feeling is that a mixed-member system would probably be the best compromise, and that's not quite as good for women, but I think there is potential there for change. I think Mr. Prue pointed out that in Scotland and Wales, their new MMP system, mixed-member system—Scotland and Wales have between 40% and 50% women. There are a number of complexities to that system to get those numbers, but overall, changing the system had an impact.

The Chair: Mr. Prue.

Mr. Prue: Thank you very much, and you are right: The change in the system has a huge impact when it comes to the election of women.

You've been very strong on the 60%, but I think what you've done best is to tie in the potential change to something other than first-member-past-the-post to the 60%.

You write, "Without a proportional voting system, it is highly unlikely that our Legislature will look like the population it serves." Do you expect that the citizens' assembly will come up with a system which will allow for greater diversity within the Legislature?

Ms. Macdonald: Well, we can only hope for that. We have no idea which way they're leaning. I've sat in on a lot of the presentations. They've heard some of this information, and I'm hoping that whatever they come up with will be taking women and visible minorities into account and will not just depend on quotas to do that, but will actually use the voting system itself to do it in a natural sort of way.

The Chair: Very good. Thank you. Thank you again for being so patient with the interruption.

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(continued)

The Chair: We have the disappearing professor back. We'll go back to Mr. Prue. Sorry again, Professor, for that.

Mr. Prue, you were in the middle of your one question that we have time for.

Mr. Prue: Well, I asked the question and you only uttered two words that were legible. So please, you've had a long time to think about it. If you could just answer it, if you can.

Dr. Pilon: I can't speak to the results or how people see the cabinet in Ontario. I haven't been in Ontario for a few months now. But I can say that I think the legitimacy of this process is in danger. I think the government needs to be clear: If they think this is an important thing, they've got to come up with some clear and compelling arguments in favour of it. I have studied this process, historically and comparatively, quite extensively. I can't find any compelling arguments. I can find many compelling arguments against it. This decision is one that people have not had a chance to make before. The system was introduced by all the usual methods. No supermajority rule was required. It's kind of ironic that people who can get elected with much less than a majority are insisting not merely on a majority for this decision, but a supermajority. The potential for this issue not to go away I think is very high. A simple majority; let's get this done; let's find out what Ontarians think, and if they really like the current system, they'll say so in a vote. And if they don't, they'll say so. That will be a clear result, with 50% plus one.

Mr. Prue: You have said, I believe, as well as others, that there's a considerable amount of public cynicism around this process. I want to be specific, though. Is there cynicism amongst the 150 or so members who have served on the BC citizens' panel—cynicism about the 60%, what happened with their recommendation?

Technical difficulties.

Mr. Prue: It's aborted again.

The Chair: His time was up, too.

Mr. Prue: If this is Rogers, tell them we're not impressed.

The Chair: Maybe when they switch the channel it will—

Interjection.

The Chair: We've got to build in an extra 15 minutes any time we teleconference.

The Clerk of the Committee (Ms. Tonia Grannum): I think he's coming back.

The Chair: We'll give him 30 seconds to come back and then we'll take Mr. Prue's good advice and proceed on.

You managed to sneak in an extra question there, anyway, so that's fine.

Mr. Prue: How did I? I thought I had three minutes.

The Chair: Well, I guess when you add it all up—

Mr. Prue: I had a stopwatch. I'll guarantee you there wasn't three minutes' worth of time there.

The Chair: You and he had three minutes together. That was the problem.

Is he coming back, Madam Clerk? He's mute at the far end.

Let's let him know that we're not going to continue this, okay? Thank him very much for his legendary efforts to get through, and Mr. Prue, for your patience.

Do we have Huleta Benjamin here? How about Susan Smith?

SHARON HOWARTH

KAREN BUCK

The Chair: Sharon Howarth, thank you for coming and being with us today. I understand you had a bit of a drive in.

Ms. Sharon Howarth: No, that wasn't me. I'm from Toronto.

The Chair: Oh, okay; very good. Welcome anyway. You have 15 minutes to share your views. If there's any time left over, we will share that equitably.

Ms. Howarth: Thank you. I'm most grateful that the Liberal government has had the good sense to approve the citizens' assembly to look into election reform, electoral reform. I'm confident that with the education and the public consultation that was undergone by my Ontario neighbours who make up the assembly, they will recommend that the electoral system be changed to proportional representation and make the right choice for the type of system for Ontario.

To me it's blatantly obvious that the voters are disillusioned and have lost confidence in the present system of voting. This has manifested itself in voter turnout being the lowest it has ever been. It is unreasonable to believe that jaded eligible voters who have not exercised their right for numerous elections, and some have never even voted at all, will instantly become believers and invade the polling stations.

In order for the citizens' assembly's choice of voting system to be binding, Bill 155 recommends that a threshold of 60% of referendum ballots be agreed on. Political candidates have gained a seat with as low as 30% of the vote. Since members have found that they were perfectly comfortable to accept a seat with such a low percentage, it would only be logical and reasonable to have the threshold for the referendum ballot set at a 50%-plus-one simple majority.

Of the low percentage of eligible voters who at present do vote, that percentage will still have to be brought up to that 50%-plus-one mark. To put the effort, time and money to set up and administer the citizens' assembly, arrange for a referendum and all that's associated with that, it would be shameful to have the referendum defeated with a 57% vote, as occurred in the BC referendum. So I urge you to maintain the image of fairness

and recommend that a threshold of 50%-plus-one simple majority as being acceptable and binding.

When I was telling neighbours that I had asked for a seat to be able to speak and come here, they said, "We'll come with you." I said, "Okay. I'm just doing something very short." Karen was one of these neighbours and the other neighbour was Adriana, but her children were sick today. Karen might want to say something as well.

Ms. Karen Buck: I'm just here to say that I'm another voter. I do vote in elections and I am very supportive of a new proportional representation of some kind happening in Ontario. I also am very supportive of a 50%-plus-one simple majority being the threshold, not what has been put into Bill 155. Thank you.

The Chair: Can we have your full name for the record, please?

Ms. Buck: Yes, it's Karen Buck.

The Chair: "The buck stops here."

Ms. Buck: Yes, exactly. If we're going to spend the bucks on the citizens' assembly, as Sharon said, let's make it count.

The Chair: Okay, thank you. Well, we have about 10 minutes. Mr. Prue, since we gave you such a rough time the last time, we'll start with you. You can have the first three.

Mr. Prue: Thank you very much, and welcome to both of you coming. Karen, I haven't seen you for a while. Karen is very involved in all things to do with the environment, and here you are branching out a little.

The all-party committee recommended 50% plus one, but somewhere in that black box we call cabinet, they went in there and changed it to 60%. Have you read any of the reasons they gave for changing it to 60% and, if so, do you agree with the rationale?

Ms. Buck: Actually, I haven't read any of the reasons why they changed it to 60%. I didn't know that.

Mr. Prue: The reason is, they think it's an important vote so it should have 60%.

Ms. Buck: At one point a government in Ontario thought it was important to give us a vote on a referendum for amalgamation in Toronto and we hit 80% and that was denied. I think that this is even more important. We might hit the 60%—

The Chair: Just for the record, which government was that that made that decision?

Interjection.

The Chair: No, I don't know. I honestly don't know.

Ms. Buck: I think it was under Harris, when all amalgamations happened.

Interjection.

The Chair: No, that's good for you, right? Sorry, Michael.

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Mr. Prue: Go ahead. You had something you wanted to say.

Ms. Howarth: Yes, I have a comment on that. If they think that this is so extremely important, so is voting every four years. That's extremely important. You can ask voters, "Do you know why you're voting for this

party or this person?" "My father used to do it," or whatever. This is just as important. Again, I'll say that members accept the 30% wins that they get elected on, so 50% is more than reasonable.

Mr. Prue: Thank you.

The Chair: Okay, thank you. To the government side.

Mrs. Jeffrey: Thank you for being here today. We appreciate some average voters being here. Do you have any affiliation with any other groups—Fair Vote or any other group?

Ms. Howarth: No.

Mrs. Jeffrey: You're just here independently. That's good. Thank you.

I think we agree with you and we are grateful that so many people volunteer to be a part of the citizens' assembly because we do, contrary to public opinion, want people to come out and be informed voters. I think that makes better members of provincial Parliament, the smarter the voter is. I think that Mr. Prue has already recognized that—and having someone here who has experience with it and who has done the homework. So we appreciate that.

You spoke a little bit about the threshold, but I guess the piece that I've been kind of focusing on this morning has been on public education. What kinds of recommendations would you have to improve the education? If the voter is cynical and jaded and not open to the idea of voting at all, how would you increase the ability for us to get people out during an election to not only vote for their candidate, but also to consider a fairly complex idea possibly, should the citizens' assembly recommend it? Do you have any practical suggestions on how we can improve that?

Ms. Howarth: The easiest way to get the point across is tone. "This is all you have to do," instead of, "This is what you have to do and these are the reasons why"—just one statement. If they ask for more information, then certainly have it set out that the tone is going to be up, because it is simple, whether it was STV—"You just vote 1, 2, 3, 4, 5. Now you vote for one; now you can vote for as many as five or still down to one." So keep it light.

Ms. Buck: Don't have a butterfly ballot. I guess I would say that you just try to encourage people to come out and vote. They have another opportunity at the polls this time, and that is to change the voting system. According to the neighbours or the citizens' assembly, there is a good reason to change the voting system so that it becomes more meaningful for every voter now to vote. They have choices that will make it a more meaningful vote than in the past, which was first-past-the-post. For maybe thousands of voters who are disappointed because their vote didn't count at all, here's an opportunity where your vote gets to count for something other than just first-past-the-post.

Mrs. Jeffrey: Can I just get some clarification as to a butterfly vote?

Ms. Buck: That was the one in Florida that was so complicated that everybody got it wrong.

The Chair: Where is Chad when we need him, right?

Ms. Howarth: I have one other thing to add: pushing the idea that it was our neighbour Ontarians who have recommended this system—our neighbours. Sorry, there is a disillusionment in the government, so don't say it was the government's idea. The government allowed it to happen, so thank you so much. But it was our neighbour Ontarians, people like you and I, who worked so hard in the education. They went and started this process back in September, and it was they who recommended it: "Let's go for it."

The Chair: Thank you. Mr. Miller.

Mr. Miller: Thank you very much for your presentation this morning. A couple of things: first of all, on the 60% threshold requirement. We've had some presenters this morning say that the process we're going through is an elegant ruse, that it's a charade. Why do you think the government chose 60% versus 50% plus one?

Ms. Howarth: You're asking me why the government chose?

Mr. Miller: Yes.

Ms. Howarth: Just to be difficult.

Mr. Miller: So do you think they don't really want to see change happen when they're setting such a high threshold?

Ms. Howarth: It's "Look, we're letting it happen, but we've stuck all these conditions in there."

Mr. Miller: And as you said, they're spending a lot of money on it.

Ms. Howarth: Oh, lots of money. It's just kind of making it happen, sort of.

Mr. Miller: You're very politically involved and it's great you came in this morning. It's interesting to note that this committee hearing was fairly well advertised and yet there were only 11 presenters. We initially had three days set aside for public hearings and only 11 presenters in the whole country—at least one was from BC—came forward.

I, like you, always vote. I don't think I've ever missed any election and I'm amazed that people aren't more involved in the process. So I guess my question is, what do you think has to happen to get more people involved? My thought would be that a lot more has to happen in the schools from a very young age. Any thoughts on that?

Ms. Howarth: Oh yes, of course, in the schools and the mock voting system. I have voted, but, boy, sometimes I find it really hard to go. I've heard things that make it compulsory to vote, but people don't know what they're voting for. If they don't think it's fair and it's going to make a difference, then I can see why they don't vote, because I've certainly thought, "Why am I doing this?"

Ms. Buck: Just to fill a gap while she might be thinking of something else, I would say that they do hold a lot of mock voting in the school system. I think it would be very interesting, and it would have been interesting before the referendum was actually put it to the polls this time, to have mock voting to see what the difference was with different systems.

When I did go to the citizens' assembly, to one of their evenings of information, I was disappointed that they weren't presenting and allowing us to do a mock vote. I thought that might spur a lot of people in the audience to understand more about the advantages of a proportional type of representation. This may be just the beginning and there may be a lot of refinements that you, as political people, will want to see in the system. It could be just a beginning, and I think that's important too.

In British Columbia, where they had a similar program and their threshold was high and they didn't make it, I think it's a shame to have gone through this process and not have it actually initiated in the next vote. So I think it is important to just make it a simple majority and make sure that it does get implemented, just so that we can see what the change is.

The Chair: Thank you very much. Thanks for popping in from the neighbourhood to share this with us. We appreciate it.

Ms. Howarth: Thank you so much.

The Chair: Madam Clerk, are either of the other two presenters presently here?

The Clerk of the Committee: No.

The Chair: Apparently they're travelling in from out of town with some snow difficulties. What would the committee have us do?

Mr. Prue: I think the logical thing would be to break and come back at 1 o'clock, and if they're not here at 1, we'll know how to proceed.

Mrs. Jeffrey: I'm in agreement.

The Chair: We'll recess and come back at 1 o'clock. Is everybody in agreement?

Interjection.

The Chair: That gives them an extra 45 minutes. Agreed? We'll do that?

Interjection.

The Chair: Ms. Mossop and you as well came down through the whiteout. So we'll do that and we'll reconvene at 1 o'clock and if the presenters are here we'll hear from them, and if not, we will adjourn. We're recessed.

The committee recessed from 1219 to 1301.

SUSAN SMITH

The Chair: Okay, let's get started. We'll hear from Susan Smith, who's here. Welcome. Susan, we understand you had quite an experience coming in this morning.

Ms. Susan Smith: Thank you so very, very much for—

The Chair: We appreciate you making this special effort to be with us. As you know, we adjourned our hearings specifically so that we could see you. That's how important it is to us. You have 15 minutes to share with us.

Ms. Smith: Great; thank you very much. I'll introduce my friend Cortwright Acham, who accompanied me today just to make sure that we got here safely to be able to present to the committee.

The Chair: Thanks for getting both of you here safely.

Mr. Cortwright Acham: Thank you.

Ms. Smith: We both take electoral politics equally seriously.

The Chair: I should note, by the way, that member John Milloy also drove through the snow today, just for the record.

Ms. Smith: Well done.

Mr. John Milloy (Kitchener Centre): Thank you, Mr. Chair.

The Chair: Go ahead, Susan.

Ms. Smith: My points are brief. The genesis of them, of course, was looking at our copy of Bill 155, the first reading, dated from October, that was made available to me a couple of weeks ago by my MPP's office when I went in to pick up a copy.

I need to tell you, by way of explanation, I usually read documents back to front, reading the appendices first—a bit more of a struggle going through it in the French section. There were things that tweaked my interest reading the appendix because they struck me as going perhaps a little bit sideways from the more straightforward presentation of the bill.

First, to get to my points, I suggest that the ballots not be machine-tabulated. Probably since 1974 or 1976 I've worked as an election official in most elections and in every circumstance I would trust peers who are voters, citizens, to scrutineer ballots and I have every hesitation and concern about the process of the machine counting of ballots. I find it most unnecessary. I just couldn't express a more fundamental value of my participation in democratic voting than the security I feel knowing that the voter who is the last person to get into her poll at the end of the day, the last person at the very end of the final polling day to cast her vote, is willing to stay in the polling place and with deep curiosity or impartiality view as an extra set of eyes the counting of the ballots.

My personal experience has been that election officials, tired at the end of a long day, can make a declaration, a mistake, and it's very reassuring that a chorus of voices say, "No; it goes on that pile over there." That's the way the process, in my view, should work. There's a lot of validity and just plain accuracy to that, and that would be the most fundamental point. I'm not making my comments informed by anything we see in any political jurisdiction other than in Ontario. It's exclusively an Ontario election experience that I own.

My second point is, whether within or outside of any discussion on a referendum or the system of our election of people to Ontario's Legislature, my strongest suggestion is that the political party affiliation be printed on the ballot. Any concept of proportionality would have to be begged as to what proportions we're measuring. If not affiliation, then what? I could well represent vertically challenged people in the Legislature, but that's not a characteristic, a quality or a particular area in need of representation.

I also fundamentally suggest that the names on the ballot appear randomly and not be sorted alphabetically. My rationale for that is that Wanda Wildebeest should have every opportunity equally with Amanda Aardvark. I can't think of any reason why names need to be sorted alphabetically other than that's how it was done before.

That will certainly bring you to my fourth point: presenting the No option equally with the Yes option. No being presented first on the ballot in terms of the field in equal numbers with a Yes option should be fundamental to meeting the clear, concise and, in particular, impartial aspect of how the question is presented. I'm suggesting that that order of presentation of the question's response be a significant part of impartiality, so specific to the number of ballots provided for every single individual polling division within every riding across the province.

As I read it, my understanding is that there is a requirement for certain records to be retained for six years. Reading the particular section in the bill on repeal, it's not clear to me what happens to the requirement to retain the records. Perhaps I'm looking at that most with respect to aspects of retaining records for ascertaining media compliance with certain areas that will be open to the chief election official to determine periods of blackouts. If you repeal the act, what happens to the six-year period?

Point 6 is with respect to advertising. I am suggesting that only impartial informational content would be presented to the public on TV and radio, that there's no need at all for any aspect of promoting a particular result. The longer people have an opportunity to have access to impartial informational content, the longer they are likely to be able to deliberate the question, manipulate it, think about it, decide how much more information they want to get, and come to a final conclusion, although that will only be represented when a box is checked with either a No or a Yes response.

Briefly, there are aspects of the 1998 act—I see from the other presentations you've had today that I'm obviously not the only person concerned with aspects of that. As I went back and informed myself on that particular act and the amendments to it dating back to 1998, I hadn't really been given a lot of pause to rethink results of election campaigns conducted in this province since that bill. But now that I've looked at it—I'm a democrat. Living in this province where I've always voted, where I always will vote, there are manipulations in that act that disturb me deeply; to put it bluntly, that my grandparents never would have thought that the voting process in this province could get that twiggged and manipulated.

It's not fair to ask this committee for a justification of that bill. But not to put too fine a point on it, that bill is really now the genesis of how I would have to look at any aspect of what follows, other than to say that I began with the point, before considering proportional representation, which you really haven't heard me address yet, that I had to think about what really needs to be fixed on the Ontario ballot before that next iteration happens. So I

suggest that my six primary points stand as my input into that.

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The Chair: Very good. You've raised some new things for us. I appreciate that. We have about six and a half minutes. We'll begin with a couple of minutes from Mr. Prue.

Mr. Prue: First, I'd like to go to point number six, where you say that there "should be no advertising 'to promote a particular result in the referendum.'" I think we all agree with that, but then you go on to say, "Impartial informational content only should be presented to the public on TV and radio." Are you excluding print media?

Ms. Smith: No, I'm not excluding print media.

Mr. Prue: Okay, so what you're saying is, any form of media but it has to be impartial.

Ms. Smith: Exclusively informational, to the extent that what's in the bill can be put in what's called boilerplate form, whatever, and made as accessible as possible. I am of the opinion that a timeline—not a contracted but an expanded timeline—of information is what gives people more access to information, not less.

Mr. Prue: We have not held a referendum in this province for a long time. I think the last one was in 1923.

Mrs. Jeffrey: In 1927.

Mr. Prue: In 1927. So I don't think people would be that familiar with voting in a referendum. I'm just a little worried about your suggestion about putting the Yes and No randomly so that on some ballots the No might be on top and on some the Yes on top, because clearly the instructions will have to be fairly simple. If they go out and say that you have a choice—Yes or No, No or Yes, or however—I wouldn't want to see people confused. How strongly are you wedded to this idea of changing them around?

Ms. Smith: I'm absolutely wedded to it because, as I understand the material so far, presentation in both French and English is required for all information as well. I don't think that's going to complicate the fields of vision for anybody trying to make their way through the ballot paper that poses the question. I'm absolutely wedded to the concept of the No being presented with equal frequency first, if you assume most people are reading top to bottom and left to right. To me, it's absolutely critical that it be presented that way. Moreover, if the ballots are serialized and are in packets of either 25 or 50 ballots per booklet, I would expect each individual polling place to get a booklet of 25 with the No and Yes presented first in equal numbers. I appreciate how challenging this is. I'm not trying to build in a cost, but I'm guessing that the actual printing of it may get a bit more complex if you have numbers that in serial order are, first, 0 to 25, No; 25 to 50, Yes; 51 to 75, No; and so on—if I've explained that properly.

I certainly expect the opportunity to randomize the No response first as frequently as the Yes as properly as possible, because when you're measuring proportionality and when you're measuring anything voted, it would

make sense to randomize the first response all the way around. That's how Gallup does it. With any standardized 001 polling that's done, whether you call it an alpha sort or a numerical sort, you are always preparing your data so that you randomize the very first question you start at when you go through a menu. That's considered very elementary.

The Chair: To the government side.

Mrs. Jeffrey: Thank you, Ms. Smith, for being here today. We appreciate that you came through sleet, snow and storm to be here. It does help us to have you here.

Actually, you've provided a very interesting set of suggestions, and I had very similar questions to Mr. Prue's. I had never thought about the ordering as being an important component of this bill and the referendum. I had the same question, and I wanted to delve a little more into the—oh, before I begin, so I am consistent, do you have any affiliation with any other group, Fair Vote or anything?

Ms. Smith: No, I haven't joined any group.

Mrs. Jeffrey: Okay. Your suggestion that there be no advertising on the mass media: At the end of the day, I think we've heard from everybody today that the education of Ontarians is hugely important to their participation. If they are cynical and they are jaded about the election process, if we don't provide them with enough education to understand what they are voting about—how do you do that without mass media?

Ms. Smith: I guess the thing is that I define advertising as somebody paying for it as a third party. I should be clear: I mean no third party paid advertising. If there are Ontario government contracts that want to try to use primarily TVO to put information out there, or if you can contract with the CBC, newsprint media, newspapers—I'm personally not an Internet kind of person, but lots of people are. In terms of informational content, these days, that tends to percolate up from whatever people are reading and processing and informing themselves about. So that's why I consider impartial informational content to be able to appear to be whatever the ads put out by the Ontario government will look like.

Mrs. Jeffrey: Could I ask one last quick question? Do you support the process that the citizens' assembly is undertaking at the moment?

Ms. Smith: I think it's really interesting, yeah. I wasn't able to attend the meeting they held in London. I think what they are moving through is quite interesting. It certainly appears, based on the advertising, to have been very accessible to people, so I have no quibble with that.

Parenthetically I would say that I have always had a quibble with the political party affiliation not appearing on the Ontario ballot. It's just us and PEI that don't do it. As I get older, I continuously have a quibble with an alpha sort of choices, particularly on an election ballot. There's no rationale for it. Once candidates are duly registered and the registrations close off, there's no reason a returning officer can't pull names out of a hat to choose what order they're in. I quite sincerely mean, we have no way of knowing that Anna Aardvark has more

validity being an elected person than Wilma Wildebeest, but everything statistical will show that the first choice presented will receive a proportion of responses out of—and you can use different methodology to twig that out of your data.

The Chair: Okay, we need to move on to Mr. Miller, please.

Mr. Miller: Thank you for your presentation this afternoon. I hope you have a safe trip home and that there aren't too many blizzards to go through.

On your suggestion about education, I'm wondering how we educate the general public. We have heard from a lot of different people how education is important. You stated that a longer timeline is the best way to be able to get people educated. So in this scenario where the citizens' assembly makes a recommendation—and let's say they go like BC and they pick a fairly complicated system like the single transferable vote system—we have a from May to October to educate the general public on that new suggested system versus the first-past-the-post system that we currently have. How would you achieve that, then? You obviously want restrictions on paid advertising. How would you make millions of people out there aware?

Ms. Smith: Well, with respect, I'd say there's a window, and it's probably now and maybe two months from now, maybe the next eight weeks, where people have a bit of time to spend paying attention. I think after the May 24 weekend—if you had a fixed election date in Ontario, I'd suggest that it should be maybe by the beginning of June. There are just more units of light in the day. We're in a northern hemisphere, and people have more minutes in their day to get their stuff done. So, if you were to start putting print material out to give people that option, I think you are in a time frame where people will take the opportunity—

Mr. Miller: You were suggesting earlier that the citizens' assembly—I think it's mid-May, I believe—is going to make a recommendation. They could recommend staying with the current system; I doubt that they will. They'll likely recommend a new system. So basically mid-May until October 4 is the time frame.

Ms. Smith: But do you know what? I've met people—single parents—who have really busy lives, and there could be a by-election on in another riding in the municipality they live in, and literally I've come across people whose response is, "Oh, my God, today is the final polling day. I haven't gone to vote yet. I didn't remember there was an election." Well, you don't live in that riding, so you haven't received any literature at your door or phone calls, and you don't see signs.

I think people's response to participate can be very, very strong, and I think people will muddle through. In terms of if the choice is single transferable vote or multi-member proportionality, let's err on the side of not continuing to accommodate the privilege of members of this august assembly, because frankly, that is how the system is set up. There's a lot of privilege that goes to 103 members, to 103 people in the province of Ontario—

tremendous responsibility, but also tremendous privilege. I don't have a quibble with the system cracking itself wide open and getting a lot more input. I'm not worried. I don't lie awake at night worrying about what process the citizens' assembly is going to come up with. I know I'm going to show up to vote. I probably won't wait until the final polling day; I probably want to get the job done, and I'll vote in an advance poll. That's my take on it.

The Chair: Thank you all. Thanks, members of the committee. Again, I appreciate your coming in and braving it.

Ms. Smith: Thank you.

The Chair: Is Huleta Benjamin here?

The Clerk of the Committee: No, she won't be here.

The Chair: She won't be here. Other than to remind the committee members that amendments to the bill are due by noon on February 9, the committee will reconvene, Madam Clerk, on the 13th for clause-by-clause. Is that correct?

The Clerk of the Committee: That's correct.

The Chair: The committee stands adjourned.

The committee adjourned at 1322.

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