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Chair

Mr. Gary Goodyear

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•(1105)

[*English*]

The Chair (Mr. Gary Goodyear (Cambridge, CPC)): Good morning, everyone, and thank you for coming this morning.

I would like to remind members that this meeting will be held in public today, so please remember that.

The purpose of the meeting today is to begin our discussions on Bill C-16, An Act to amend the Canada Elections Act. We have a lot of ground to cover today, so I ask for the committee's diligence. We've invited the Government House Leader and his officials to appear today at this meeting. As well, we have invited the Chief Electoral Officer to appear following the minister.

I also remind the members that at our business meeting last week we agreed that the questioning rounds would be limited to five minutes. I will be watching and trying to assist committee members in keeping their questions short so that we can actually leave ample time for answers from the witnesses, as that, of course, is the point. As usual, our round of questioning will begin with the Liberals, then the Conservative Party, then the Bloc and the NDP, each having five minutes. We will certainly keep track, or try our very best to keep track, of members who have put up their hands. Please make sure you leave your hands up until either the clerk or I see you. That way we won't miss anyone at all.

The only other thing I want to mention is that we have divided the time. If necessary, the minister will have the first hour, if in fact that is needed, and be followed by Mr. Kingsley, who will take up the balance of time if that much time is necessary.

Finally, I'm going to ask for five minutes of committee time at the end to discuss future business.

That just gives you an idea of how I would like to conduct the business of the meeting today.

Without any further ado, I'd like to take this opportunity to welcome the Honourable Rob Nicholson. I appreciate your taking the time on such short notice.

As members know, Mr. Nicholson is the Leader of the Government in the House of Commons and Minister Responsible for Democratic Reform. He is also, of course, the sponsor of Bill C-16. Minister, I thank you very much for taking time out of your busy schedule to appear before the committee today to discuss Bill C-16. I would like to ask you to start by introducing your team. Then, by all means, go on with your opening statement, and we'll follow that with questions.

Hon. Rob Nicholson (Leader of the Government in the House of Commons): Thank you very much, Mr. Chairman.

With me are Warren Newman, who is general counsel for constitutional and administrative law; Kathy O'Hara, deputy secretary to the cabinet, machinery of government; and Dan McDougall, director of operations, legislation and House planning.

[*Translation*]

Good morning, colleagues. I'm very pleased to appear before your committee to talk about Bill C-16 relating to fixed election dates. I will begin by describing the present system for calling general elections and I will mention some of the difficulties it creates.

[*English*]

I also want to talk about why the government chose to draft the bill the way it did, and why the route we took was both necessary and effective.

Finally, I would be happy to respond to any questions.

Today, as you know, it is the prerogative of the Prime Minister whose government has not lost the confidence in the House of Commons to select what he or she regards as a propitious time for an election to renew the government's mandate. The Prime Minister then requests dissolution of the House from the Governor General, and if the Governor General agrees, he or she proclaims the date of the election.

What we have is a situation where the Prime Minister is able to choose the date of the general election—not necessarily what is in the best interests of the country, but conceivably what is in the best interests of his or her party. Bill C-16 will address this situation and produce a number of other benefits.

As set out in the government's platform, this bill is modelled after existing provincial fixed-date elections legislation. The legislation is similar to the approach used by British Columbia, Ontario, and Newfoundland and Labrador. British Columbia just had its first fixed-date election on May 17, 2005. Ontario, and Newfoundland and Labrador, will soon have their fixed-date elections October 4, 2007, and October 9, 2007 respectively.

In British Columbia, there was certainly no evidence of what some critics have called a lame-duck government, and certainly no evidence that the legislation was in some way illusory or ineffective.

The government's bill provides that the date for the next general election will be Monday, October 19, 2009. Of course, this will be the date only if the government is able to retain the confidence of the House until that time. This bill does not affect the powers of the Governor General to call an election sooner if a government loses the confidence of the House. For example, if the government were to be defeated tomorrow, a general election would be held according to normal practice; however, the subsequent election would be scheduled for the third Monday in October in the fourth calendar year after the next election. That is the normal model that would be established by this bill. General elections would occur on the third Monday of October in the fourth calendar year following the previous general election.

We chose the third Monday in October because it was the date that was likely to maximize voter turnout and the least likely to conflict with cultural or religious holidays or elections in other jurisdictions. This raises an additional feature of the bill that I want to bring to your attention, which provides for an alternate election date in the event of a conflict with a date of religious or cultural significance, or an election in another jurisdiction.

In the current system, the date of the general election is chosen by the government, so it is rare that a polling date is chosen that comes into conflict with a date of cultural or religious significance, or with elections in other jurisdictions. However, with the introduction of legislation providing for fixed-date elections, there is some possibility that in the future the stipulated election date will occasionally be the same as a day of cultural or religious significance, or an election in another jurisdiction.

The Ontario fixed-date elections legislation provides that if there is a conflict with a day of cultural or religious significance, the Chief Elections Officer may recommend an alternative polling date to the Lieutenant Governor in Council up to seven days following the date that would otherwise be the polling date.

Using a variation of the Ontario legislation providing for fixed-date elections, our bill empowers the Chief Electoral Officer to recommend an alternate polling day to the Governor in Council should he or she find that the polling date is not suitable for that purpose. The alternate date would be either the Tuesday or the Monday following the Monday that would otherwise be the polling date. Allowing alternate polling days to be held on the following Tuesday or Monday is consistent with the current federal practice of holding elections on a Monday or a Tuesday.

Fixed-date elections will provide numerous benefits to our political system. With fixed-date elections the timing of general elections will be known to all, which will provide for greater fairness. Instead of the governing party having the advantage of determining when the next election will take place and being the single party that may know for up to several months when it will occur, all parties will be on an equal footing.

• (1110)

Another key advantage of fixed-date elections is that this measure will provide transparency as to when general elections will be held. Rather than decisions about election dates being made behind closed doors, general election dates will be public knowledge. I think they will allow for improved governance. For example, fixed-date

elections will allow for better parliamentary planning. Members of parliamentary committees will be able to set their agendas well in advance, which will make the work of committees and Parliament as a whole more efficient.

Another reason for adopting fixed-date elections is that this measure will likely improve voter turnout because elections will be held in October, except when a government loses the confidence of the House. The weather is generally favourable in most parts of the country at that time of year, and fewer people are transient. So for example, most students will not be in transition between home and school at that time and will be able to vote. Moreover, seniors will not be deterred from voting, as they might in some of the colder months.

Now, it should be noted that the weekend before the third Monday in October is Thanksgiving weekend. This would be the weekend of advance voting, as advance voting is set in the Canada Elections Act for the tenth, ninth, and seventh days before polling day. That would be the Friday, the Saturday, and the Monday prior to the election date. I believe that having Canadians discussing the general election during part of a Thanksgiving weekend is not a bad thing. And if some Canadians wish to spend a few minutes voting in advance polls that weekend, all the better.

For your information, only 10.5% of those who voted in 2006 voted in the advance polls, while 2.8% voted either at a returning office or by postal ballot. The vast majority of voters, 86.7% in 2006, cast their votes on polling day. So those who would have to staff the advance polls, which are open from noon until 8 p.m. in fewer than 3,000 locations, would be aware of this responsibility before they accepted the position.

Some members have indicated that the bill is illusory in that the Prime Minister can call an election at any point up until the fixed election date. All I can say is that this view does not reflect the way our system of responsible government actually works. The Prime Minister has to retain his or her prerogative to advise dissolution to allow for situations when the government loses the confidence of the House. This is a fundamental principle of our system of responsible government.

It has been suggested that the government should insert a clause into Bill C-16 constraining the Prime Minister's ability to request dissolution of Parliament to certain circumstances. Let me be clear. Including a clause that attempts to constrain the Prime Minister in requesting dissolution of Parliament would, in our view, present a risk, which we should not ignore, that the legislation would be found unconstitutional if challenged in the courts. Why? Under the rules and conventions of responsible government, the Governor General's power to dissolve Parliament has to be exercised on the advice of the Prime Minister. The Governor General's legal power under the Constitution and the exercise of that power on the advice of the Prime Minister are fundamentally and inseparably linked. If one limits the Prime Minister's ability to advise, one risks constraining the Governor General's powers in a way that would be unconstitutional.

An amendment in relation to the powers of the Office of the Governor General would require, of course, the consent of the Houses of Parliament and of the legislative assemblies of all provinces, and I think with respect to this piece of legislation, it is unnecessary and unwanted.

It has also been suggested that governments should insert a clause into Bill C-16 that would define very specifically what constitutes a vote of confidence. This would, it is argued, prevent governments from engineering their own defeat in minority situations. Again, constraining the Prime Minister's power to advise the dissolution of Parliament except in certain circumstances would risk being declared unconstitutional and fettering the Governor General's powers. Moreover, if the bill were to attempt to define confidence or to provide criteria for when confidence is lost, the whole concept of confidence itself would risk becoming justiciable in the courts, something that would run contrary to the fundamental constitutional principle of the separation of powers between the legislative, executive, and judicial branches and the appropriate role of the courts in our constitutional system of parliamentary democracy.

• (1115)

The government has followed the broad approach of British Columbia, Newfoundland and Labrador, and Ontario, which is an approach that works. If one looks for other examples within the British parliamentary system where fixed-date elections are in place, such as New Zealand, Scotland, and Wales, none of them has provisions like the ones that have been suggested by certain members at second reading.

The government is committed to making this modest but important change to improve Canadian democratic institutions and practices, but this change must be done in a way that is respectful of our Constitution, our great heritage, and the principles of responsible government.

In conclusion, I would like to point out that the third week in October is National Citizenship Week in this country, a time when we celebrate what it means to be a citizen of Canada. It is fitting, then, that the general election date will be set for the third Monday in October—a most fitting and functional expression of our citizenship.

Fixed-date elections will provide for greater fairness, increased transparency and predictability, improved policy planning, and, I believe, increased voter turnout. In June of this past year, Ipsos Reid released the results of a poll that showed 78% of Canadians support government's plans to provide for fixed-date elections. I hope you will join me in voting in favour of this important and widely supported measure.

Thank you, Mr. Chairman.

The Chair: Thank you, Minister. I appreciate all the comments.

Now we'll open our first round of questions. Again, I remind members that we agreed to five-minute rounds starting with the Liberal Party.

I don't have any names from the Liberal Party. Is there a spokesperson?

Mr. Owen, I will let you go as long as you want, but I'm going to try to keep the questions short so that we'll have more time for answers. This is just a kindly reminder.

Mr. Owen.

Hon. Stephen Owen (Vancouver Quadra, Lib.): Thank you, Mr. Chair. I'll try to make this as brief as possible.

Welcome, Minister, and thank you for your opening remarks.

My question is quite specific with respect to proposed subsection 56.1(2). I'm looking for your assessment of the effectiveness of this proposed subsection. It really sets out in this wording two propositions that appear to be internally inconsistent, and therefore, as a matter of statutory interpretation, I'm wondering whether the proposed subsection would actually be voided because of uncertainty. As you see, it reads, "general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election", and then it goes on to set that date as October 19, 2009. But of course, in the fourth calendar year after the last general election it would be the third Monday of October 2010, not 2009.

I'm wondering what the impact of that might be.

• (1120)

Hon. Rob Nicholson: We had a couple of thoughts, Mr. Owen, with respect to that.

It seemed to me that if we set the first possible election date in 2010, the voters would have had a period of time of almost five years since the prior election, and the somewhat unusual circumstance that the past election was held in January. So we felt that for the commencement of this legislation coming into effect, we would identify the first election as October 19, 2009, which admittedly is a little bit less than four years.

But again, these are fixed dates for the elections, and the term itself will not be identical in the case of a minority Parliament. It begins then, but it would roll over, presuming, for instance, that there was a majority government, exactly four years beyond October 19, 2009, unless of course we were into another minority situation. Then you'd be back into this.

Hon. Stephen Owen: I assumed that was the intention. I'm concerned not with the intention, which seems sound to me, but only with the actual legal effect of the proposed section worded as it is, which appears to be internally contradictory. I wonder if there's a—

Hon. Rob Nicholson: It may be. As I said, in the election after this, this section comes into force. I think it's fair to identify when the first one is. All things considered, if this Parliament lasted until October 2009, that would be one thing—and we could debate the chances of that—but it seemed to me that to set it almost five years after the last one.... It was not as good an idea as four years.

Hon. Stephen Owen: I have no difficulty with actually setting the date. It just seems to be inconsistent with the other half of the clause. I'm just wondering whether it will have legal effect or not. Can we actually achieve what you're trying to achieve with this wording? It's really graphic, but—

Hon. Rob Nicholson: I believe we can, but perhaps I'll have Mr. Newman comment, if you don't mind.

Mr. Warren Newman (General Counsel, Constitutional and Administrative Law, Department of Justice): Thank you, Minister, and to the chair, and Mr. Owen.

It will have legal effect. At face value, it's quite clear what the clause is attempting to achieve. It is setting a rule that will, of course, recur henceforth with a tail end that is, in a sense, the start-up of the provision. Once 2009 comes around, assuming the legislation operates according to plan, that part of the provision will simply be spent thereafter. I think the legislative intent is, on its face, quite clear that the general rule will be that every four years there will be an election on the third Monday of October, but for the first election, for the reasons given by the minister—and he has contextualized them—this particular date, which occurs before the four-year mark, has been chosen.

Hon. Stephen Owen: I put on the record only that I don't at all dispute the intention. I do have some real questions on the legal implications of it. I'd hate to see us, as a Parliament, come to a conclusion that this is appropriate and then have our intention challenged on a legal and statutory interpretation basis.

The Chair: We actually had seven seconds left in that round, but I think you'll agree that we can't possibly use them.

I'm going to move on to the Conservative Party—

Hon. Stephen Owen: Go ahead, take them.

The Chair: —and I have Mr. Preston.

Mr. Preston, go ahead, please.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): Mr. Minister, Bill C-16 sets the elections on the third Monday in October every four years, commencing in 2009. You stated in your remarks that the time will not conflict with any holidays or anything they can call then. I find it very appropriate that you stated that National Citizenship Week is the third week in October, and I think that's a great time to have elections.

You did then go into a little bit about how Thanksgiving might conflict with the advance polls. Can I first of all have your assurances that there are no conflicts with the part about the third Monday? Then could you talk a little bit more about how we think Thanksgiving may conflict in some of the years when Thanksgiving is that late in the year?

• (1125)

Hon. Rob Nicholson: I don't think there would be a conflict between Thanksgiving and the date of the federal election, since Thanksgiving is the second Monday in October.

Getting back to the first part of your question, we looked at the different seasons and the different months in which an election could be held. We used a process of elimination. There were valid reasons why we might not want to have it in winter or the summer, so that leaves you with the spring and the fall. There is the estimates process, during which estimates are tabled in the House of Commons, and there is the studying and the budgetary process of the Government of Canada. It seemed to suggest that the fall would be a better time.

That being said, the department considered all reasons that this might not be a good date in terms of various religious or cultural

feast days, or holidays, or days of recognition. It seemed to me that this one in particular would work. I have indicated to you that there is some flexibility. If some time in the future there is some reason why that Monday wouldn't be perfect, the Chief Electoral Officer could recommend that it be moved to the Tuesday or to the following week.

That being said, because of the provisions of the act, the advance poll would take place approximately one week before that, which would mean at Thanksgiving. Quite frankly, I can't think of a better time to find Canadians at home if they have to vote in the advance poll. If they're not going to be home on election day, it's probably highly likely that in fact they might be there on the Thanksgiving weekend. Our job is to facilitate Canadians' voting, which they have a right to do, and to make it as accessible and easy as possible. So I think having an advance poll would work, and I think that was one of the other advantages of this piece of legislation.

We wouldn't want to go any further into the year, in case the suggestion to do so is made. If we made it one week later, you could have the conflict that you had last year, for instance, with Halloween. We wouldn't want the chaos that might result on Canadian streets, with millions of people going out in their cars, and kids going door to door, and that sort of thing. This date seems to work, and I hope it's the one that Parliament will accept.

Mr. Joe Preston: Along those same lines, you mentioned that the level of voter apathy has been growing in Canada, and I tend to agree with you. Could you give me your views on how you feel that fixing the election date to the third Monday in October will also help with the process of voter turnout?

Hon. Rob Nicholson: I guess if people can plan when they're going to vote, that is a benefit. I think all of us have had people over the years tell us how they want to make plans to go away, but they're conscious of their responsibility to vote as Canadian citizens. I remember individuals asking me, in the fall of 1988, when the election was going to be; they were going away and didn't want to miss the election. I told them that as a backbencher I wasn't privy to that information. Very few people knew exactly when, or even if, the election would have been called in the fall of 1988. So in terms of people planning their lives, I think it would be helpful for them to know when an election is going to take place.

In terms of voter apathy, Canadians, when they get motivated, get out to vote. In the election that took place in January, despite predictions to the contrary, the voter turnout was greater than it had been in the 2004 election. If people get motivated and want to come out to vote, they'll vote. But I think we should accommodate them to the extent we can, and I think the piece of legislation does that.

[Translation]

The Chair: Thank you, Mr. Preston.

Mr. Guimond, you have the floor.

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

Mr. Minister, we know that the objective of this Bill is to try and prevent in a way what the Liberals made us go through with the three elections before the last ones in January 23, 2006. In 1997, Jean Chrétien called general elections in June, 2 1/2 months after the election of Gilles Duceppe as leader of the Bloc québécois. In 2000, Mr. Chrétien used the same stratagem in calling general elections in November, 5 months after the election of Stockwell Day as leader of the Official Opposition. In 2004, Paul Martin played the same game when he called the elections in June 2004, 3 months after the election of Steven Harper as leader of the Conservative Party.

The Liberals deliberately took advantage of the arrival of new leaders, perhaps because of divisions within their own party, to pull a fast one on us, if I may use that expression. With this Bill, you want to make the process more democratic. Polls tell us that 76% of Canadians and Quebecers agree with the principle of a fixed election date. Here is my first question.

If the Bill is passed, will the Prime Minister still have the power to recommend the dissolution of Parliament at any time before the prescribed date?

Let's take an example. Let's leave aside the fact that we now have a minority government and suppose that we have a Conservative majority government. If the Bill is passed, will Prime Minister Harper still be able to call general elections before October 19, 2009? It's an easy question and you can answer yes or no.

• (1130)

[English]

Hon. Rob Nicholson: You certainly had a long preamble to that question, Monsieur Guimond. You made it very specific to the Liberal Party, but the confidence conventions and the prerogative of the Prime Minister to advise the Governor General for the dissolution of Parliament is open to all political parties that may happen to govern this country. I myself was a part of a government in the early nineties that went almost the full five years. Believe me, there were those who asked me years later why we didn't go after four years. I mean, why would you go after four if your electoral prospects are as dim as I believe the government's were in 1992? You hang on and hope that things will turn around. That's open to everyone.

So if Mr. Chrétien went at three, and Ms. Campbell went at five, that was the existing state of law. I think this is a fair way to do that. This is crafted in a way that the prerogatives of the Prime Minister to advise the Governor General, and the Governor General's prerogatives, are in no way diminished. That being said, it seems to me that a Prime Minister who has indicated a certain date to the public would be very hard pressed to unilaterally pull the plug for no other reason than that he or she felt there was an electoral advantage.

You probably are aware, Monsieur Guimond, that conventions are something that build over time. Having legislation like this—that again in no way constrains the Governor General—will begin a new convention about when and how Canadian elections will take place. But this is not in any way meant to fetter those prerogatives that exist in our current system.

Did you want to add something to that, Monsieur Guimond?

[Translation]

Mr. Michel Guimond: Let's leave the parties aside and suppose that all the party leaders are present. If I understand correctly, the Prime Minister would...

[English]

The Chair: I'm sorry, our time is up on that round. Perhaps there will be time in the second round.

We're doing really well here.

I'll move to, Mr. Dewar, please

• (1135)

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Mr. Chair, and thank you to our guests.

I will just state for the record that as a party we support this. In fact, it was part of the ethics package of my predecessor, Mr. Broadbent. We're still looking for a couple of other things, such as floor crossing, and in fact the whole idea of real democratic reform and proportional representation, but we'll save that for another day.

Let's turn to Bill C-16. There's a paper attached to my package from the Library of Parliament about the history of the private members' bills vis-à-vis fixed election dates. It provides some interesting ideas, and one of them in fact is from our very own Prime Minister. I guess this dilemma we have is whether we are going to deal with the C word—not wanting to open up the Constitution. I think most people would concur that it probably wouldn't be helpful to open up the Constitution to get this done. But I think if you take a look at Mr. Rowland's private member's bill in 1970, the concerns that have been presented before us are addressed.

I'm wanting this to go through, and I'm supporting the bill, but do we actually believe there is a point where we will deal with the constitutional reform? Does that need to be done in the future? If we do this, at some point could we take a look at that? Would it be possible? I'll leave that to you.

The second thing I would ask is how this affects the government's plans for Senate reform.

Third, please explain to us...because I don't think this should be called fixed election dates, they are flexible fixed election dates. Mr. Milner provided that language. I think it's important that we say that, because it confuses the electorate. They think, oh, no matter what, we'll have these fixed dates. That will undermine the idea of the minority Parliament.

My last point is that citizens should understand that you won't have a campaign for four years, that there will be some boundaries around when you're allowed to start campaigning. Perhaps you can give us some insight into that, because I think a lot of people are quite rightly concerned that we'll have campaigns going on forever—and no one, not even us, would like that.

Hon. Rob Nicholson: Thank you very much, Mr. Dewar. You hit the nail right on the head. You said it wouldn't be helpful to open up the Constitution at this point or on this particular issue, and I would suggest to you that it's unnecessary to do so, inasmuch as we have legislation that doesn't overly complicate the question but is very doable.

You asked if this was in any way tied to our reform or to changes in the Senate. It's not. It's independent of that. It's an incremental change and an improvement in our particular system. And you're quite correct; the individual who wrote that article, Mr. Milner, said that what we have is a flexible fixed-date system. And this is what I indicated to you earlier. It's a little more complicated within the British parliamentary system to actually fix a date for an election. It's a little easier in.... Many examples were given to me: Latvia, Mexico, the United States. Those are slightly different systems that don't have a confidence convention built into them, as we have. So ours is flexible but fixed-date at the same time.

With respect to the campaigning, we'll have a front-row seat to see how it goes in the province of Ontario. They have an election scheduled for October of next year, and we'll see whether they spend the whole year campaigning. My guess is that they won't.

You have a situation now where if you think the election will be any time between three and five years away, you could indeed be campaigning all the time and worrying about that. But in terms of nailing down things like campaign offices, ordering signs, and all that, I think it can be done in a much more orderly way. Yes, there will continue to be rules that govern distribution, publicity, and fundraising. All those things will continue to be in effect. But overall, I think this is an improvement on the situation we have now.

The Chair: Thank you, Minister.

I have to congratulate everybody. We're keeping right to the five minutes, despite the fact that some of the questions are pretty long.

We are going to go to round two now. I would offer up that people can share their time if they want. We have a lot of names on the list and limited time.

The first-round pick is Mr. Proulx, for five minutes. You can share your time if you like.

• (1140)

Mr. Marcel Proulx (Hull—Aylmer, Lib.): Thank you, Mr. Chair. It depends on the answers. I'll be quick and blunt.

Thank you for being with us this morning, Minister.

Number one, has there been any consideration to the day of the election being Sunday, to assist Elections Canada and everybody in ridings to find proper sites—proper venues—for the polling stations? We do it, on a provincial basis, in the province of Quebec, and it helps us to use schools, school gymnasiums, and so on, instead of puny, incompatible, incorrect private rentals during the week. That is number one.

Number two, I know that Mr. Kingsley will be one of our witnesses later this morning, but I want to hear it from you. Is one of Elections Canada's motivations for having a fixed-date election scheme to save money?

Third is along the same lines as that of my colleague Mr. Guimond. I want to hear from you. Is there any mechanism to avoid a majority government voluntarily arranging for a defeat on a confidence vote, whether it be a budget vote or whatever, so that it could force an election before the four years? In other words, I can understand that under a minority government the Governor General

could be very hesitant, but under a majority government, if that majority government decided to voluntarily arrange for a defeat, I think it would be very difficult for the Governor General to say no to an election, seeing that it's a majority government.

Hon. Rob Nicholson: We actually didn't consider a Sunday as a possibility. Traditionally federal elections are held on Monday, and if the Monday is a holiday—for instance, I believe in 1984 the election was called in the summer and held on the Tuesday after Labour Day—it is postponed one day. But there was no consideration to put it on Sunday, which is consistent with the tradition of holding federal elections on a Monday.

You asked if one of the reasons was that Elections Canada would save money. It seems to me that's a worthwhile byproduct of moving ahead in this area. I believe it would make a difference to Elections Canada, first in trying to nail down space for their offices. As it is now, if they think an election is going to be called, they might have to reserve a place or cancel the lease, and so on. It would take out some of the guesswork, and I think that would be a useful byproduct.

Now, you said in the case of a majority government...I guess that might be the least of a majority government's problems. If they were in a situation where perhaps half their members were voting against a budget, they would have to explain to the Canadian public why they could not present a united front to Parliament—and that would take some explaining.

But the more likely situation perhaps would be the one, which is reputed to have happened in 1974, where the government of the day tabled a budget that was unacceptable in one part to the New Democratic Party and in another to the then Progressive Conservative Party. There are those who believed that the government of the day engineered its own defeat. Nonetheless, it would be the decision of the House of Commons and Parliament to proceed on that basis.

Again, I don't envision a situation where a majority government splits or falls apart. If so, it would have a lot of explaining to do to the Canadian public.

Did you want to add anything to that, Mr. Newman?

[*Translation*]

Mr. Warren Newman: I would like to add a comment. Under our Constitution, there are limits to what can be put in a piece of legislation. It would depend very much upon our conventions and our wish to respect our constitutional conventions. In our system, taking into account the principle of responsible government, it would be difficult to go further than what's in this Bill.

• (1145)

[*English*]

So I would simply say that this legislation contains a directive to officials, to the public at large, and to all those associated with the elections process that there will be an election on this date. It is always subject to the formal powers of the Governor General, and those powers, as we know, are exercised on the advice of the Prime Minister. That is part of our constitutional framework, and we must work within that framework.

The Chair: Moving on to Mr. Hill, please.

Hon. Jay Hill (Prince George—Peace River, CPC): Thank you, Mr. Chair.

Thank you, Mr. Minister, and to your officials, for appearing today.

First, I want to say, maybe in response to Mr. Dewar's comment that he's still looking for real democratic reform, that this is real democratic reform. I had the misfortune of sitting in Canada's Parliament and listening to some things over the last 13 years that certainly upset and annoyed me in the field of democratic reform. I remember the former Prime Minister, the Right Honourable Paul Martin, saying that he refused to initiate some reforms because they would have been piecemeal. In my opinion, any reform is worthwhile, and this is an important step forward. So I congratulate you for bringing it forward, and certainly the Prime Minister for making this attempt at this point—it's only an attempt to relinquish some of the power and control, which he has willingly relinquished.

As Mr. Dewar noted, we are also pursuing some Senate reform, the limitations on terms for senators.

I want to return to Mr. Guimond's approach, because I do believe—and I think you explained this very well, Mr. Minister, in debate in the House of Commons and again this morning with your opening comments—that although for constitutional reasons we cannot define confidence or non-confidence, or restrict it to a great extent, in the court of public opinion once this becomes law, woe befall a Prime Minister or an opposition that precipitously force an election before that date, unless they can go out and defend it to the Canadian people. So I think it will be an important step forward.

I put that forward and ask whether, in the time remaining, which is very short, you want to elaborate further on this whole business that somehow the bill should define what constitutes confidence or non-confidence, and restrict that? I think quite the contrary, that once the date is set, it would be very difficult for any Prime Minister, unless he wants to defend the reasons in public to an angry electorate.

Hon. Rob Nicholson: I don't think there's any question about that in terms of public perception. Ultimately, whatever we do is subject to the Canadian voters. They get the final say on that.

You raise an interesting point, because once you try to set down on paper what exactly constitutes confidence, it is very difficult. One of the members suggested to me that it would be very clear. It might include the Speech from the Throne, the budget, and any money bill. Once you say that, you also have to ask, what if this country were deciding to go to war?

I think there is a convention developing now that Parliament will get a say on where we will deploy our troops or engage Canadians overseas in conflict. I would make the argument that once you have the definition, you've left out something else. Deciding whether Canada goes to war or not, for instance, is far more important than many money bills might be in the overall good of this country.

So it's difficult to define and put down on paper, and that's one of the reasons there has been reluctance to do that. You might find yourself in court arguing what does or doesn't come within the constitutional convention of confidence. We want to have a separation of the different areas of government, so it is important to do that.

In terms of electoral reform, Mr. Dewar said he would support it because it's doable and an improvement. It's not an attempt to completely overhaul the whole Canadian parliamentary system, because quite frankly it doesn't need a complete overhaul. We have the best system in the world right here in Canada. The Canadian system that has been adapted over the years is the best, but that doesn't mean it should be static. Nothing should be static. We should always be looking at ways we can improve our system, and I believe this is a step in the right direction.

• (1150)

The Chair: You have about 20 seconds left.

Hon. Jay Hill: I have a quick question then.

The other issue that keeps coming up is that somehow this will create lame duck governments. The point I made during debate is that we only need to look to the last government to see a lame duck government. I mean that in the sense that I know all of the standing committees were reluctant to start substantive work because there was always the fear that an election was imminent.

I would ask that you address that either now or—

The Chair: Perhaps you could answer that on the next round. I'm sorry, we're out of time on this question.

Hon. Jay Hill: Just leave it hanging then.

The Chair: Okay.

Monsieur Guimond.

[*Translation*]

Mr. Michel Guimond: My question is for you, Mr. Newman.

You've mentioned section 1 of the Bill referring to subsection 56.1 (1) of the Canada Elections Act which bears on the powers of the Governor General. Here is what it says:

56.1 (1) Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion.

Since Confederation, in 1867, has it ever happened that the Governor General has taken the initiative of dissolving Parliament or of not accepting a request of the Prime Minister to dissolve Parliament?

Mr. Warren Newman: Yes, Mr. Guimond, there was a case in 1926 which is well known by political scientists. That is when Governor General Lord Bing refused the request of Prime Minister Mackenzie King to dissolve Parliament and to call general elections. The Prime Minister had to call on the leader of the Opposition, Mr. Meighen, to form a new government.

There has been a lot of controversy about that. Even experts cannot agree on whether the consequence was to reinforce the powers of the Governor General or whether it reinforced the notion that the Governor General should not do that kind of thing, that is to say to act against the advice of the Prime Minister.

Mr. Michel Guimond: On November 28 of last year, when Prime Minister Martin went to see the Governor General, could she have refused to dissolve Parliament?

Mr. Warren Newman: Strictly speaking, the Governor General always has the power to accept or refuse to dissolve Parliament because that's his or her legal power. However, this power is framed by very strong constitutional conventions according to which the Governor General normally acts on the advice of the Prime Minister.

Mr. Michel Guimond: I want to refer to the interviews with the Governor General that were broadcast by all the media last weekend. In a few days, she will celebrate the first anniversary of her appointment as Governor General. She has stated that her most difficult decision over the past year was to accept the advice of Paul Martin to dissolve Parliament. We cannot question her about that but I have to say that her role in this matter was simply that of a rubber-stamp. The 1926 case has indeed created a lot of controversy.

Even with a majority government, the Governor General has the power to refuse to accede to a request of the Prime Minister to dissolve Parliament if she believes that it would not be timely to have elections and that the government should carry on until the end of the legal mandate to established by this Bill.

Is that your position?

Mr. Warren Newman: Legally speaking, you're right: the Governor General has full power and discretion as far as that is concerned but one must add that this power is framed by conventions that are not legal but rather political.

• (1155)

Mr. Michel Guimond: Thank you.

[English]

The Chair: You actually have one minute left, Monsieur Guimond.

[Translation]

Mr. Michel Guimond: No, thank you.

[English]

The Chair: Thank you.

We will have time for one more round if you can each keep it to three minutes. Is that agreeable?

Some hon. members: Agreed.

The Chair: Perfect.

Mr. Dewar.

Mr. Paul Dewar: I just want to return to the whole idea of criteria of confidence. Just as an observation, one of the things that people were concerned with most recently was the vote we had in front of us certainly on the Afghan mission. It was stated beforehand that it would be a confidence vote. It's evolving, I guess, and you could ponder on it, but it was also stated that regardless of the vote, the executive power would kick in. So I think that's something we're still grappling with, if you will.

I'll just turn to the whole idea of setting criteria, because it was mentioned in your brief that this would be problematic. I want to explore that a bit more. Some would say that some of the reforms we're engaging in.... Again, I support this, and I think it's part of democratic reform; I'm simply saying that it's not the end, certainly.

If we're going to have reform done—and we see this in Senate reform—without engaging in constitutional change, this over time can be problematic. I simply look at Eugene Forsey's opinion in the past, that our Constitution is something we need to respect and to be vigilant about. I guess what I was saying before, and my question directly, is that this is a pragmatic approach, which I support for the short term, but should we not address it in our Constitution at some point? And is there anything in front of us that would preclude us from at some point addressing constitutional change in this area, or maybe in Senate reform when we get to that?

Hon. Rob Nicholson: Certainly, as part of some constitutional program, this subject of course could be addressed. There is no question about that. Would it be necessary to address it? I'm suggesting it's not necessary, but certainly it can always be revisited.

As it stands now, it's a piece of legislation of Parliament. Parliament can change its mind. That said, conventions do develop and traditions develop. It doesn't mean they can't be changed. Again, I think this is an incremental change, it can be done by legislation, and it's one that should be done.

Mr. Paul Dewar: I'd just like to follow up, Mr. Newman, on your opinion with regard to having criteria set within the dimensions of what confidence would mean, or for that matter, criteria around a statute—because we're not going to open the Constitution, clearly—about the power of the Prime Minister or, I guess, some directive and guidance to the Prime Minister. I understand you wouldn't want to have that in the bill, but I'd like to explore that a bit more. You were referring to a legal consequence, and I'd like to know a bit more about that.

Mr. Warren Newman: The Prime Minister—and I hope the current Prime Minister will forgive me for saying this—is a creature of convention. The Prime Minister is not really, under our formal constitutional structure, a recognized actor, but he's very much an actor in the real world of politics. And the genius of our system is that it combines the formal world of the Constitution Act of 1867 with the evolution of our political framework and the values that accompany that framework, and that's really done through constitutional convention. So when the Prime Minister says he's going to call an election, he's really meaning, in legal terms, he will go to the Governor General and advise the Governor General that he recommends it. In law, the decision is with the Governor General, so the Governor General holds the power on behalf of the Crown. One could just as easily say it's with the Crown as with the Governor General. There are several sources in our Constitution for this power to dissolve, but they're all legal powers that are retained by the Crown, and of course the Prime Minister is a minister of the Crown, so an advisor to the Crown.

I don't know if there's anything I can add to that in an encapsulation. It is something that should be explored with nuance, of course, but as the minister has indicated, attempting to translate into rules of law flexible rules of constitutional convention that evolve in the political sphere has its own downside in terms of the role of the courts, justiciability, turning what are appropriately political roles into legal roles. So we may not want the rigidity.

• (1200)

Mr. Paul Dewar: If there is a way for Canadians to have in this bill—and it's a political test in the end to the people of Canada—some understanding of what the intent is so that by way of rider or by way of criteria set that would be doable, I think that would be helpful. How we do that I leave to others.

Hon. Rob Nicholson: I'm not sure how we could do that, Mr. Dewar, quite frankly. I've indicated the problems of trying to define exactly the confidence convention, and I think Mr. Newman has indicated that it has to be flexible.

The Chair: Thank you, Minister.

We're going to go now to the third round, keeping it to three minutes if we possibly can, and then we'll be able to do this full round.

We'll start with Madam Jennings.

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

One, I understand that given proposed section 56.1, we're talking more about flexible fixed elections because the Governor General's authority and discretion to take the advice of the Prime Minister at any time preceding the fixed election date could in fact see Canadians in a general election.

My point is that much has been made of the idea that fixed election dates would counter voter apathy, would see possibly an improvement of voter participation. I would just like to know what studies have been done that show that fixed election dates do in fact show higher voter participation than we normally see in jurisdictions, mostly parliamentary systems, where there is no fixed election date. Also, how do the fixed election dates that we see in the United States and here at the municipal level measure up in terms of voter participation? As well, have studies been done to look at the correlation between voter participation and the fact that some jurisdictions that do have fixed election dates actually make it a legal mandatory obligation to go and vote, and if one doesn't vote, depending on the jurisdiction, there's either a penalty to be paid or it could go up to imprisonment?

Hon. Rob Nicholson: We don't have any studies on that, Mrs. Jennings. It actually is relatively new within the Canadian system. As you know, we are looking to both Ontario and Newfoundland. Their elections are coming up. British Columbia has just had theirs. It's very difficult. Who would have guessed that voter turnout would have gone up in an election at the end of January? Again, it's the motivation of the people.

Looking at the fixed or flexible fixed dates within our parliamentary system, it's still relatively new within that system. You can't really compare, for instance, to Mexico, the United States, Latvia, or various countries that have a completely different system, that have always had a rigid fixed date, as to whether it's better.

We've had a pretty good record in this country of voter turnout. It has been declining over the last forty years. We saw a reversal of it in January. Again, I can't see how it wouldn't help improve the situation where people are trying to make plans, who take the responsibility as Canadian citizens seriously to be able to know when it is exactly that they're going to vote. I think it would be helpful.

Hon. Marlene Jennings: I don't want to interrupt, but the short answer is that you don't have any studies that make these correlations that some have used as arguments for fixed election dates.

I'll turn the rest of my time over to my colleague.

Hon. Rob Nicholson: I am making the argument because I believe intuitively that it will help.

The Chair: Sorry, we don't have any more time. I apologize for that.

Mr. Lukiwski, please.

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

Thank you, Mr. Minister.

I want to ask a question about the flexibility of the dates themselves. You mentioned that you have provisions within the act so that even though the date has been set, if there were a cultural or religious event you would have the flexibility to move the date back a week, or something like that. I would anticipate that in the case of a cultural or religious conflict, moving the date of the fixed election back a week would avoid that conflict.

But what would happen—and I'm sure this will occur sooner rather than later—if there were another election in a provincial jurisdiction at the same time that the federal election was purported to be held? If you're running two elections at the same time—one provincial and one federal—that is bound to cause an awful lot of confusion and other logistical problems on a number of different levels. An example would be the ability for provincial and federal parties to gain advertising time on television if they were both vying for a limited amount of time.

I'm not asking what the bill says, but how would you see resolving that conflict when the eventuality does happen that you have two elections occurring in two different jurisdictions within a week or two?

• (1205)

Hon. Rob Nicholson: It's a tricky business. We have 13 jurisdictions in Canada besides the federal government, and they all hold elections. There are municipal elections as well. Within each jurisdiction you can have two sets of elections, so there could be 26 different elections.

That being said, it's impossible to make sure that whenever the federal government sets or calls its election, there is no election in any one of the jurisdictions that make up this country. In 1988, I remember that there was a provincial byelection in my area and a municipal election, and the federal election was piled on at the same time. People were looking at signs for three different levels of government. They were challenged, but people managed to get through that and sort it out.

Monsieur Proulx has indicated that not all of them choose Monday, which happens to be the day of the federal election. He indicated that the date is sometimes on a Sunday in provincial elections. I know that Ontario likes to go on a Thursday.

It seems to me that once having set the federal election date, other jurisdictions might not want to have their elections coincide exactly with when they know the federal election is going to take place. It's impossible to guarantee there will never be any overlap between us and the other 26 jurisdictions that could be holding elections.

Mr. Tom Lukiwski: I wasn't looking for a guarantee, but I thank you for your answer. I think your assessment is correct that once the convention happens every four years, other jurisdictions will avoid it.

The Chair: Excuse me, Mr. Lukiwski, your time is up.

Thank you very much.

Monsieur Guimond.

[*Translation*]

Mr. Michel Guimond: I'd like to add a brief comment for the members of the committee. My colleagues, Mr. Proulx of the Gatineau region and Mrs. Jennings of the Montreal region, know that we have fixed dates in Québec for municipal elections.

If the next elections are held on October 19, 2009, there will be tons of signs on telephone poles because, at that time, more than 2200 municipalities will be in full election mode.

[*English*]

The Chair: That's the end of your questions.

We'll move to Mr. Dewar, please.

Mr. Paul Dewar: Just as a quick point, far be it from me to help the government in terms of making its argument, but if you take a look at Ms. Jennings' question, if you look at studies, you can certainly look at jurisdictions where they have adopted a flexible fixed date. I'll point to the one that I know the best, which is New Zealand. They have seen an improvement in voter turnout. So if that is sourced and brought forward, it might be helpful.

But I have to say that when we look at Mr. Milner's paper, when we look at the example of New Zealand, I really want to underline the point that, notwithstanding that it's a move toward democratic reform, it really isn't the end of the equation in terms of what we've seen particularly in New Zealand, where it was coupled with other democratic reforms. I would hate to see this being the end of the story. Hopefully it is just the beginning, because I can tell you, when you look at the case of New Zealand—and they are in the Westminster tradition—it was coupled with other reforms. I simply wanted to make that point.

There are jurisdictions outside of Canada that have adopted fixed election dates, and it seems to be a positive thing.

Hon. Rob Nicholson: I think you are right, but again, how you measure that is very difficult. Somebody could print a paper saying the best time to have an election is in January because it would reverse a trend that has gone on for 40 years of relatively declining voter turnouts, and we had one at the end of January. It seems to me that, quite apart from that, we should try this. Let's see how it works in the other provincial jurisdictions. New Zealand has had a tradition. It's by convention that they have theirs every three years, I believe. And you're right, others in the Westminster tradition are having a look at it.

I think it is a step forward, and it is a positive one.

• (1210)

The Chair: Thank you, members. I appreciate that. It was a very productive round of questions.

I would simply remind members that if there are any other issues, we do have the option of inviting the minister back if we feel that it's necessary. We have a number of other witnesses coming up. As well, we have the option—

Ms. Redman.

Hon. Karen Redman (Kitchener Centre, Lib.): I was just going to ask the committee's indulgence. I didn't get to ask. May I go on record as asking two questions? Or I can submit them in writing to have them responded to.

The Chair: Please. That would be the opportunity to do that. If you could submit them in writing, that would be fine. Thank you.

We have the option also of having parliamentary secretaries, and so on, available as we go to clause-by-clause.

I know I simply asked the minister to come for one hour, and that time is up.

I appreciate your time and your coming here as quickly as you did. Thank you and your team for doing so.

Hon. Jay Hill: On a point of order, Mr. Chairman, my colleagues and I were just talking, and certainly we have no objection, and I don't think the minister would have any objection, to quickly hearing Ms. Redman's questions and having a quick response from the minister.

On our side, at least, we'd have no problem with that. I don't know about the other side.

Mr. Marcel Proulx: We're not sure.

Mr. Michel Guimond: Let's have a caucus meeting on that.

The Chair: Order.

I've been trying to keep time tight here. We're having some jovial time here, but the chair is willing to concede to the wishes of the committee. We did our three rounds, and I'm just sticking to the rule.

Are there any objections to allowing another three minutes for Ms. Redman?

Seeing no objections, that will absolutely be permitted.

Hon. Karen Redman: Thank you very much. Again, if the answers are long, I don't mind getting them in written form.

I actually wanted to ask Ms. O'Hara or Mr. Newman these questions.

Notwithstanding the discussions that have happened, in a perfect world, would the best way to effect this be to have a constitutional amendment?

Hon. Rob Nicholson: I'm not sure which perfect world we're living in, but it seems to me that this is the best way to go about this. It's an act of the Canadian Parliament. It's the least complicated way. It's straightforward and very doable, and I think when you consider all of those, that's the best way to do it.

Hon. Karen Redman: I appreciate that, and that is the political answer. I was looking for somebody who was more expert—

Hon. Rob Nicholson: I'm quite sure they will probably have the same answer as I had.

Hon. Karen Redman: Because they're very smart.

I have to say that I fundamentally do have huge personal problems with this, but why I find that I could support it is that I don't think this changes anything. In substance, you still have the ability of the Prime Minister of the day to go to the Governor General and ask for an election, so I think this is more window dressing than reform.

Fundamental for me, if we did go to a constitutional amendment to actually effect this so that it would have real teeth, would be the fact that members of Parliament are appointed and are really responsible to the House of Commons. So for a government, especially when we seem to be going for minority governments, to either reach an impasse or truly lose the confidence of the House, I don't see this accommodating that. To me, that's where the real accountability lies, in being responsible to the electorate. I don't see that being accommodated if this in fact substantively did fix it at a four-year interval.

Hon. Rob Nicholson: I'll go back to the first part of your question. This is very careful in its wording in that it does not in any way fetter the discretion or the prerogatives of the Governor General and the Crown; nor would we want it to, because those powers are very, very real.

You would probably remember, back in 1985, in the provincial election of that year, that the Conservative Party, which had been in office for over four decades, had a plurality of seats in the Ontario legislature. Mr. Miller, the premier at the time, had the absolute right to meet the Ontario legislature at that particular time, but there were those who figured that this raised an interesting constitutional dilemma. If Mr. Miller, having met the Ontario legislature in a minority situation, had been defeated, it would have been within the prerogative of the lieutenant-governor at the time to refuse him a dissolution of the Ontario legislature and to then canvass, at that time, Mr. Peterson and Mr. Rae to see whether they in fact could have formed a government.

So yes, there are conventions that take place, but those conventions are circumscribed by the powers that reside in the Crown, and I think that on occasion they're used.

That being said, I say woe betide the Prime Minister in a majority government—to use Mr. Proulx's example—after one year deciding that he wanted the Governor General to dissolve the Canadian Parliament. He probably would find that he wouldn't get the response that he may be looking for. With legislation on the books indicating that the election would be four years hence, he would be hard pressed to get the Governor General to use his or her prerogatives.

• (1215)

Hon. Karen Redman: I do appreciate the indulgence of the committee.

So I guess if this goes through, we have a guarantee that Mr. Harper will serve until the next fixed election date.

Hon. Rob Nicholson: You probably have more to say about that than we do, quite frankly, and you can talk to your colleagues in the opposition. We're governing on a month-to-month basis. Each session, we're putting forward a program, and we hope to continue with that program. So I'm asking for your support. Help us get through that program, and no doubt we'll get to 2009.

The Chair: Thank you very much, members, and a special thank you to the minister and his team for coming today.

I might suggest that we take a one-minute break so one team can move out and our next team of experts can move in, and then we will resume.

• (1215)

_____ (Pause) _____

• (1220)

The Chair: Ladies and gentlemen, we'll reconvene the meeting. Thank you very much for keeping your break as short as you did.

I would like to welcome Mr. Kingsley and his team. It's a pleasure to have you before the committee again. It's worth noting that you received short notice to come before the committee, and we certainly appreciate that you have taken the time to prepare yourself and be here this morning.

Would you kindly introduce your team? Then we'll have a 10-minute opening statement, and then we'll proceed with the same round of questioning as we had in the first hour—five-minute rounds and as many of them as we can get in.

Mr. Kingsley, welcome.

Mr. Jean-Pierre Kingsley (Chief Electoral Officer, Elections Canada): Thank you, Mr. Chairman.

Good afternoon, everyone. I'm accompanied today by Mrs. Diane Davidson, deputy chief electoral officer and chief legal counsel; and Mr. Rennie Molnar, senior director of operations, register, and geography.

Members of the committee may recall that when I appeared on June 13 of this year I expressed my agreement with the idea of fixed-date elections. The proposed legislation would facilitate many aspects of Elections Canada's planning and operations. On June 13, I submitted a written summary of those benefits, and I have brought copies of that document for you today. I understand they've been recirculated.

I will comment on some aspects of the proposed legislation from the perspective of electoral administration, which the committee may wish to consider. As it stands now, my office plans for general elections incrementally through the setting of regular readiness dates throughout the election cycle. The frequency of these dates is necessarily greater in minority government situations. The moment there is a majority government in power, elections on a date set by statute would enable Elections Canada to plan more securely in four-year cycles, with contingencies for delivering general elections that could still occur outside the fixed date.

There are a number of operational benefits associated with fixed election dates. For example, at the issue of the writ, returning offices could be up and running with communications technology installed and staff hired and trained. This is not small. This would allow for better service to electors, and a fixed date would also allow my office a greater advance opportunity to identify and secure locations for polling stations. This would include firm commitments for access to sites that are accessible, thus resulting in improved locations and greater convenience for electors.

Knowing the date of the election in advance would also permit targeted updates of the national register of electors, done in close consultation with members of Parliament, political parties, and electoral district associations, to be performed in the month leading up to the writ being issued. It is not automatic that we would do this, but it's a possibility. This would result in a more up-to-date preliminary list of electors for candidates at the start of the election and fewer revisions to the list during the electoral period.

[Translation]

Holding elections at a fixed date would also be beneficial for our outreach and education programs, as well as for our advertising, which could be implemented more effectively before and during general elections. From an operational point of view, the fall—particularly the month of October—is a good time of year to have an election. It may well be the best.

It should be noted however that should the polling date fall on the third Monday of October as proposed, this would result in the advanced polls falling on the long Thanksgiving weekend.

From 2000 to 2006, turnout at advanced polls has more than doubled, from 775,000 voters to 1,600,000. This means that such a decision would probably have a real impact.

Subsection 56.2(1) of Bill C-16 provides that the Chief Electoral Officer may, if he thinks that the polling date is not suitable, including by reason of its being in conflict with a day of cultural or religious significance or a provincial or municipal election, choose another day to recommend to the Governor in Council. Should the recommendation be accepted, the Governor in Council would have to make an order to that effect before August 1st in the year in which the general election is to be held. You're all well aware of this provision.

Currently, the Chief Electoral Officer does not have such discretion. The authority to recommend an alternate polling day could rest with Parliament directly. Further, if the date of the election has to shift beyond a Tuesday, it would be preferable to have it moved to the next day rather than the following Monday as currently proposed.

I would like to add a few words on the current advertising practices. Treasury Board already imposes a ban on certain types of government advertising during the election period. To quote from the Government of Canada Communications Policy:

Advertising is only permitted when: an institution is required by statute or regulation to issue a public notice for legal purposes; an institution must inform the public of a danger to health, safety or the environment; or an institution must post an employment or staffing notice.

The committee may wish to consider expanding the timing of this ban to four weeks before the issuance of the writ of election. It might be deemed appropriate as well to subject political parties to this restriction.

To conclude, the proposed legislation would improve our service to electors, candidates, political parties and other stakeholders.

My officials and myself will be pleased to answer your questions.

● (1225)

[English]

The Chair: Wonderful. Thank you very much, Mr. Kingsley.

I have no one on the list. Mr. Owen.

We are going to stay with the five-minute rounds, just to remind everybody. We probably won't have time for three rounds—for sure, two. You might want to consider that in your decisions about questioning.

Mr. Owen, please.

Hon. Stephen Owen: Thank you. I'll try to be brief.

Mr. Kingsley, Ms. Davidson, Mr. Molnar, thank you for being here.

One of the most frequent concerns that come up about fixed election dates is the spectre of an American habit of having a year-long campaign and/or a year-long lame duck period, and I'm wondering if there are recommendations you can make with respect to campaign financing laws. You have made a suggestion here with respect to government advertising, and perhaps expanding it to include announcements by political parties, but can you describe a way in which those laws could be used to effectively limit at least the full-scale campaigning to a writ period?

Mr. Jean-Pierre Kingsley: Mr. Chairman, I think one has to take into account the differences between the American system, fundamentally, and the Canadian system. We don't have a system of primaries, and that triggers a lot of what they're doing. That's why they get involved a year ahead of time, or even more, because the primaries start to set in. We don't have that.

We do know in Canada, when it's a majority government, when the election will take place, generally. We know that it will reach the third year, generally. What we didn't know, and what we still don't know, is whether it's going to be the first six months of the fourth year or the last six months in which the election will be held. And I don't think we've seen parties precipitate themselves into advertising, even though they know it's going to happen, within that six month or the 12 months. We haven't seen that, and I don't think we'll see it because we fix the election date.

I think money is an issue, but I think there are also the mores and the fact that there's not the need for primaries to be taking place. And in the United States it's also important to remember that there are gubernatorial races, and half of the Congress, or a third of the Congress, flips over as well as the presidency. And because it's a presidency, there are also a lot of differences that would make me think there is not a major issue to be addressed here, other than for what, in my view, would be four weeks before, in terms of government advertising and possibly political party advertising. Those are the only two issues.

I think that looking at the possibility of banning that for the four weeks before would be sufficient, and it's all that will be taken. There's no need to change anything about the electoral period, the amount of moneys to be spent during the period, nothing like that. Just keep that period wholly as we do it now, or whole, as we do it now.

Hon. Stephen Owen: The government practice now is in Treasury Board directives, as you've noted, so if we want to have that apply to opposition parties and, in effect, the government in law, we would put that in the Elections Act?

Mr. Jean-Pierre Kingsley: With respect to the Treasury Board directive, the committee could let it be known to Treasury Board that this is its view, and I suspect the Treasury Board will adopt that, if this were the committee's view.

In terms of an interdiction for political parties to advertise, it is something that could be introduced in a statute.

Hon. Stephen Owen: Thank you.

The Chair: Monsieur Proulx.

[Translation]

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

Mr. Kingsley, you heard my question to the minister a while ago and you heard him say that he did not consider holding elections on a Sunday, which would help Elections Canada in organizing polling and in a finding appropriate locations on a regular basis.

What would you think of a holding elections on a Sunday?

•(1230)

Mr. Jean-Pierre Kingsley: Mr. Chairman, the Royal Commission that reported in 1992 looked at the possibility of holding elections on a Sunday but did not recommend it. It decided not to make that recommendation because of the reaction in various parts of the country where Sunday remains a religious day that people think should not be associated with elections.

It is more a political than an administrative issue. The problem for us is that it is more and more difficult to find locations—in schools, for example—to set up polling stations. We are beginning to resolve that issue by telling school authorities that we will set up at our expense any security measures that they want to have implemented on the day of polling. I know this is not a perfect solution and that my answer is not perfect either but I do not believe that there would automatically be benefits to holding elections on a Sunday.

[English]

The Chair: Thank you very much.

Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Before asking the two questions I have for Mr. Kingsley, I wanted to suggest to Mr. Proulx that perhaps one of the reasons we see increasing levels of participation at advance polls is precisely that they're held over weekends and that to some degree the benefit you are seeking via moving to a weekend is actually already occurring at the advance polls. That would suggest that if we want to deal with this, we ought to consider having more widely spread advance polls in more convenient locations, that kind of thing. It's only a thought, but worth pursuing.

Mr. Kingsley, actually on the subject of weekend voting, and in particular on the prospect of voting occurring over the Thanksgiving weekend, when young people in particular are likely to be back home from university, I note that as part of your role.... Subsection 18(1) of the act says:

The Chief Electoral Officer may implement public education and information programs to make the electoral process better known to the public, particularly to those persons and groups most likely to experience difficulties in exercising their democratic rights.

Clearly, young people participate less, which suggests they may have difficulties, the most obvious of which, from my perspective, is that their addresses change more frequently. They're harder to track down and send voter cards to than are people who stay in one place. Given this situation, given the fact that, in some cases anyway, they might still be registered to vote in the constituency they have lived in until the time they moved to university, do you have any thoughts as to how you could play a role in trying to ensure that we take advantage of the new circumstance in order to get a higher rate of youth and student participation in particular?

Mr. Jean-Pierre Kingsley: Mr. Chairman, if residency is the issue, whether the advance poll is held that day or not, when they're back home they can go and vote in the office of the returning officer at any time. That may not be as convenient, obviously, as an advance poll because of location, but that is one possibility that is open to them. Certainly, should the bill be maintained and have the third Monday of October as the fixed date for the election, we will do what we need to do to reach out to those students and make sure they appreciate...as we do now, but obviously with particular emphasis owing to the fact that that is now the reality.

I will say one thing. The main problem with youth is not only knowledge but the fact that right now I cannot get access to their citizenship data through the Canada Revenue Agency, the check-off on the form, because we have 700,000 youth who we know are there, who we know exist, and we cannot put them on the list because we cannot affirm citizenship.

That is the main issue that I think we need to overcome to help facilitate the youth vote.

Mr. Scott Reid: I have one other question to throw out at the same time. I actually want to ask you something further on this.

You said in your comments that if the day of the election had to shift beyond a Tuesday, it would be preferable to have it move to the next day rather than the following Monday, as currently proposed. However, you didn't offer a rationale, and I'd like to hear your rationale.

But before you do that, I'm wondering if most young people are going to be on the tax rolls in a way that will allow you to actually capture them if you get access to the CRA's data, given the fact that many would not have paid income tax yet.

• (1235)

Mr. Jean-Pierre Kingsley: Well, if most is 50% plus one, the answer is yes. We do know that it's several hundred thousand—I think it's around 300,000—youth we don't have because of that missing piece of information. There are also other Canadians, by the way, who fit in that category, but it's youth who are particularly affected. I find this particularly troublesome because they are the ones who have to get into the habit of voting, and we should do everything possible to enable them to vote at the first opportunity they are eligible to vote.

Mr. Scott Reid: As for the other question, you mentioned the preferability of moving to one day rather than the other.

Mr. Jean-Pierre Kingsley: In terms of management, if you're not able to hold the election on the Monday and you're geared for that, I find it preferable to do it on the Tuesday, which is what the law would say now. And if that Tuesday, for some reason, were problematic, in light of the other criteria involved, I'd prefer to flip it over to the Wednesday so that we're only adding two days to the electoral process instead of adding one week.

As people who have lived with you through the last election and know what it is to go beyond 36 days and start to hit the higher numbers...if we can restrict it to two additional days, I would find that much better than seven additional days.

The Chair: Thank you very much.

Monsieur Guimond.

[*Translation*]

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

I would like to ask you a question, Mr. Kingsley. It's not a trick question, I assure you. I only want to understand how things are done.

When the government leader wants to table a Bill amending the Elections Act, when are you informed? Are there any discussions with you or do you just become aware when the Bill is tabled in the House for first reading?

Mr. Jean-Pierre Kingsley: From my experience during the 17 years I have held this position, it depends upon the nature of the Bill and its substance. I'm going to answer the question directly...

Mr. Michel Guimond: How did it go with Bill C-16?

Mr. Jean-Pierre Kingsley: On this one, I was not consulted at all.

Mr. Michel Guimond: All right. You know that the Bill provides for holding the next elections on October 19, 2009, and one of the recommendations you made in the report you tabled after the last elections related to section 45 of the Elections Act. You recommended moving the polling date from October 15 to November 15. I suppose you see the problem.

Would you still make the same recommendation today? The committee answered your comments in June 2006. I refer to page 20 of the French version, at paragraph 2.15, where the committee

endorses your recommendation. Personally, I would not agree with November 15. I hope that my colleagues understand that there is a problem.

We should not agree with holding elections on November 15 because that would not take account of all the people who change residences during the summer. We should stick with October 15 or even earlier. Am I the only one to see a problem there?

• (1240)

Mr. Jean-Pierre Kingsley: I believe you are sincere in your understanding of what you have read but I want to ensure the committee that we would obviously include all the changes that we would have received during the election year. We would make even more efforts to ensure that.

The recommendation to hold the elections on November 15, which is aimed at giving you access to electoral lists, is still valid. During the election year, we would send a complete list of electors, including all the changes, on the day set for sending the preliminary list, which is day 31 of the election period, that is to say within one week after the calling of the elections, which would be well before October 15. You would receive the most complete list possible well before October 15.

Mr. Michel Guimond: Which means what date? If elections are held on October 15, what would Day 31 be? Would it be Day 31 of the campaign?

Mr. Jean-Pierre Kingsley: Yes. In other words, 5 days after the beginning of the election period we would send you the preliminary list of electors.

Mr. Michel Guimond: Would this list include all the changes that happened over the summer? In Québec, July 1st is not widely celebrated because it is our national moving day.

Mr. Jean-Pierre Kingsley: All the people who move...

Mr. Michel Guimond: Contrary to other provinces, it is a national moving day in Québec. Many people move on July 1st.

Mr. Scott Reid: It's one of your distinct characteristics.

Mr. Michel Guimond: Yes. We celebrate changing residences more than the creation of Canada. Would that be taken into account?

Mr. Jean-Pierre Kingsley: We will take that into account, Mr....

Mr. Michel Guimond: I want to ask more questions, Mr. Chairman, but not necessarily to Mr. Kingsley. Let's see if we have a good Parliamentary secretary, able to answer our questions, because I want to question him about the report. You may say that this is not directly related to Bill C-16 but, if we have to amend the Act, it's important to know when the changes will happen.

I could come back for the next round.

[*English*]

The Chair: We certainly will, and we'll follow up on that during clause-by-clause.

Mr. Dewar is next, and I have no other names on my list, so I'm looking for hands.

Mr. Dewar, please.

Mr. Paul Dewar: Thank you, Chair.

Thank you too, Mr. Kingsley, for your brief and for resubmitting some of the things you had mentioned in terms of a summary of the benefits of fixed election dates, as I didn't bring my copy.

One of the things that have already been noted is that this would help presumably in terms of the cost of elections. That's not to say that's the only reason to do it, but certainly that would hopefully be one of the outcomes—the cost of elections would actually go down as a result of having fixed election dates. I can assume there are many reasons for that, the least of which are predictability, securing space, etc.

One of the things many of us have been concerned about is the enumeration process. It is costly, but it also is one that has affected those of us—and I don't think it's particular to any political party—who have high turnover in their communities. Certainly my riding of Ottawa Centre has a high turnover. I'm wondering if you could help us a bit on how fixed election dates would change how we do enumeration, presuming that you're going to have time to do it before you normally would—that's the first point—and when that would occur. Could you tell us a bit about how we could improve enumeration? Presumably we'll have some savings and there'll be more money to put into enumeration.

Secondly, you mentioned having some Treasury Board guidelines already there for putting some boundaries around the election itself. Are there other amendments required to make sure we don't get into the election for three or four months prior to the actual election date? If there are things you've thought about that you could lend to us to modify or make amendments to this bill, that would be helpful.

Mr. Jean-Pierre Kingsley: Mr. Chairman, with respect to the national register of electors, I've alluded in my introductory remarks to the fact that a fixed election date would allow Elections Canada to open the offices of returning officers earlier, something like a month before, to do targeted updates; that is to say, an equivalent of what is done at the start of the electoral period, which is targeted revision. It would be possible to manage it, in my view, more professionally and do it with MPs and known candidates and the representatives of parties if they don't have known candidates. To flip that over into the election and knowing when that date is would allow that to happen on a regular basis.

It's simply not possible to do it under the present system, and that is one of the advantages. There may be something that has percolated as an issue that needs to be settled, and when you know when the event is going to take place in terms of the register, you can tackle that in a particular way to solve it, rather than hesitate about doing it because you know you're not going to be able to finish it if the election is called that week rather than this week. It's somewhat nebulous as an answer, but I think people can appreciate what I'm trying to say.

With respect to other amendments, I have given you our best thinking about what would need to be amended. There are only two things. One of them is the Treasury Board directive on advertising by the government—four weeks before—and possibly political parties. This means, don't touch third parties; don't touch candidates and what they can do before the election; don't touch anything except the two things I've suggested. In my view, in light of the Constitution, I don't think anything else would be warranted with freedom of

speech, freedom of association, and all those other things. I don't think at this stage I have any indication that anything else would need to be touched in terms of the advertising regime or the financing scheme for the election.

• (1245)

The Chair: Thank you very much.

We're going to go to round two. If we can possibly keep this one to three minutes this time, that would give everybody an opportunity.

Monsieur Proulx.

[*Translation*]

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

Mr. Kingsley, you talked about the Treasury Board guidelines applying to government and, possibly, to political parties. I would like you to deal with the issue as far as individual candidates are concerned.

How could we make sure that no advertising would start six months before the beginning of the campaign and how could we make sure that any advertising expenditures made six months before the election would be considered as election expenses? I know that there are provisions in the Act but I want you to remind us what they are.

Mr. Jean-Pierre Kingsley: Mr. Chairman, I don't see what benefits the candidates could have in starting their advertising six months in advance. If some candidates wanted to do that and want to go door to door, I believe that it could only be beneficial to our democracy. I don't see why you would want to prevent this type of activity.

As far as advertising is concerned—and this is my personal opinion—I don't think that starting your advertising six months in advance would be as productive as starting during the campaign. I have absolutely no doubt about this. Anybody who buys advertising does so to have an immediate impact on people, the same day or the next day. Some may want to buy advertising six months in advance but I sincerely believe they would be taking a huge risk.

Mr. Marcel Proulx: So, you would not object to that?

Mr. Jean-Pierre Kingsley: No. As a matter of fact, your main problem during the elections is your lack of money to advertise outside of the electoral period. However, if you were to find lots of money, we would see if this is a serious problem or not.

The Chair: Mr. Guimond.

Mr. Michel Guimond: Forgive me to come back to the same issue, Mr. Kingsley, but I want to understand something.

If the election were to be held on October 19, Day 31 would be September 18, would it not?

Mr. Jean-Pierre Kingsley: Roughly, yes.

Mr. Michel Guimond: You've made the recommendation to postpone the annual distribution of electoral lists by one month, that is to say from October 15 to November 15. In our report, we say that the Chief Electoral Officer suggests November 15 because of the many changes of address that happen over the summer and which, in many cases, are not reported before September or October, which does not leave enough time for them to be included in the electoral lists.

With Day 31, if the elections were held on October 19, that would be doable. So, why did you recommend a postponement to November 15?

In fact, I know that all the lists are completely messed up and would not include the addresses changed during the summer. That's what happens during most election campaigns. We seem to be impatient and angry but we know that this is what happens.

•(1250)

Mr. Jean-Pierre Kingsley: Oh, you know the tune and the words.

During an election campaign, Mr. Chairman, Elections Canada would obviously make special efforts to provide lists that would be as up-to-date as possible. Knowing the precise date of the election would be useful since we could make special efforts to collect more information.

I repeat that we have frequent discussions with the Chief Electoral Officer of Québec—we have more discussions with him than with any other—about updating the lists and that we always try to update them as soon as possible.

However, if you wish, I could send you additional written explanations about what we are going to do to make sure that the system is effective.

[English]

The Chair: Mr. Guimond, would you request that the witness get back to us in writing?

[Translation]

Mr. Michel Guimond: Yes, that might be useful.

[English]

The Chair: Thank you very much.

Our final questioner will be Mr. Dewar.

Mr. Paul Dewar: Thank you.

I have a question about byelections and how this fits in.

My first question is this. Not to a dime, but what is a guesstimate on how much a byelection costs? If we look at fixed election dates, and if we look at byelections and how many have occurred within the last 18 months and the last 20 years, is there an argument that this would be a cost saving? How would byelections fit into this rubric?

My final question would be this. We've seen the example in B.C. Have you had an opportunity to do an evaluation of their experience? Presumably we would be doing the same in Ontario. Have you had a chance to talk to your colleagues in B.C. to find out what their experience has been?

Mr. Jean-Pierre Kingsley: With respect to the latter question, Mr. Chairman, the gathering of chief electoral officers in the Yukon last year—not this year—dealt specifically with this. My colleague Harry Neufeld reported back, and we had a good discussion about advantages and some disadvantages of fixed-date elections. We've taken that into account in what I've presented to this committee, so we're well aware of that.

We're in discussion with Ontario as well in terms of how they're going about getting organized for a fixed election date. They are doing what I was alluding to in my reply to Mr. Guimond, which is that they are doing things with the register that you don't do year in and year out because you know that something is going to happen at a particular moment. It allows you to do that without throwing the money away unnecessarily. That's what I was trying to answer, somewhat inadequately, to Mr. Guimond.

With respect to byelections, I don't see any need to change the present system. To be honest with you, byelections are not a problem for Elections Canada now. They can be turned around in no time flat. The last time I looked, it was about \$500,000 to \$600,000 for a byelection.

The Chair: Thank you very much, Mr. Dewar. You do have one minute left, if you wish.

Mr. Paul Dewar: No, thank you.

The Chair: Monsieur Guimond, given the generosity of the committee to Mrs. Redman's request, we will grant you the same.

[Translation]

Mr. Michel Guimond: Do you want me to ask on bended knees, Mr. Chairman?

Mr. Kingsley, you were supposed to give us an answer about page 32 of our report aimed at improving the integrity of the electoral process. We wanted to know if the practice of bingo cards was allowed under the Elections Act of Canada. I would like to know when you will give us that answer and how.

If you decide that it's allowed, will there have to be an amendment to the legislation or only an administrative amendment? That question is addressed to you.

I want to come back to the question I put to the Parliamentary Secretary to the Leader of the Government in the House of Commons. The government is supposed to answer the report we tabled in June before October 20. Does the government intend to answer before October 20? If so, will that answer include changes to the legislation which are not included in Bill C-16? The aim of Bill C-16 is to implement fixed election dates. However, if we wanted to improve other aspects of the elections process, would there have to be another Bill?

•(1255)

[English]

The Chair: I believe I could probably address that, but Mr. Kingsley, you're certainly welcome to.

This is future business, and there will be an answer coming from the government; it's on our agenda.

Did you want to respond as well, Mr. Kingsley? Please go ahead.

[*Translation*]

Mr. Jean-Pierre Kingsley: Mr. Chairman, I would like to answer that question. I will provide you with a written answer. The work has begun but I can't...

Mr. Michel Guimond: When shall we receive it?

Mr. Jean-Pierre Kingsley: Pretty soon.

Mr. Michel Guimond: When shall we receive it?

Mr. Jean-Pierre Kingsley: Even sooner.

[*English*]

The Chair: Thank you, colleagues, and a special thanks to our witnesses and experts this morning.

Mr. Kingsley, we very much appreciate your coming on short notice and giving your time. I want to thank you additionally for coming out at 11 o'clock. We did anticipate that perhaps the first part of the meeting would be shorter. As that didn't turn out, I want to thank you sincerely for your indulgence.

Members, this is a public meeting, and I need five minutes of your time to discuss future business.

Mr. Guimond.

[*Translation*]

Mr. Michel Guimond: Thank you, Mr. Chairman. I want to thank the committee for allowing me to put you my third and last question to the Chief Electoral Officer.

[*English*]

The Chair: It was indeed our pleasure. Not only was it a pleasure, Mr. Guimond, it was extremely enlightening. We will extend that courtesy as often as we possibly can.

We need to discuss a little future business.

Thank you again, Mr. Kingsley. We appreciate your coming.

Colleagues, we are going to discuss what is coming up in the next three meetings. I'm asking the committee whether you want to stay public or go closed. We're going to discuss what is coming up on Thursday, next Tuesday, and next—

Some hon. members: Closed.

The Chair: All right, the meeting will go into a closed session.

[*Proceedings continue in camera*]

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