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Chair

The Honourable Albina Guarnieri

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• (1530)

[English]

The Chair (Hon. Albina Guarnieri (Mississauga East—Cooksville, Lib.)): I will call the meeting to order this afternoon.

Pursuant to the order of reference of Wednesday, February 13, the committee will resume its study of Bill C-20.

Thank you, everyone, for being on time. I know we will want to give the maximum time possible to learn from our special guests today.

We are joined today by a man who might well be preoccupied with preparation for another national consultation process, but today we are focused on the Senate, and we hope the presence of the Chief Electoral Officer of Canada will help us identify practical issues with this proposal.

Monsieur Mayrand is joined by a familiar face to those of us on Parliament Hill. He is joined by Diane Davidson, deputy chief electoral officer, and Monsieur Stéphane Perrault, senior general counsel and senior director. Welcome.

Without further ado, I will turn it over to Monsieur Mayrand.

Mr. Marc Mayrand (Chief Electoral Officer, Elections Canada): Thank you, Madam Chair.

I'm pleased to appear today to speak on Bill C-20, the Senate Appointment Consultations Act.

Bill C-20 represents a significant change from at least three perspectives. First, it potentially represents a major reform of Canada's parliamentary institutions by creating a method of consulting Canadians on the recommendation for the appointment of senators. Second, it represents a significant electoral policy choice through its proposed use of a single transferable voting system for the first time at the federal level. Finally, the bill can be seen as raising novel administrative and operational issues related to the conduct of a democratic consultation in conjunction with a federal or provincial electoral process.

My focus today will be on the latter perspective, the administrative and operational issues raised by the bill.

My intent is to raise some matters that the committee may wish to consider in its discussions respecting the bill. In addition, my office has identified other areas that the committee may wish to review for possible amendment.

With your permission, Madam Chair, I will leave a list of all these issues with the members of the committee at the end of my

appearance. Since I will not discuss them, I would ask that they be entered into the record of the deliberations of the committee. Thank you.

There are three key matters that I wish to raise for the committee's consideration. First, I will point out the substantive challenges that could be encountered if a consultation were held in conjunction with a provincial election. Second, I would like to discuss the complex problem of harmonizing the existing political financing regime in the Canada Elections Act with that created for Senate consultations. Third, I wish to share with you my concerns about the operational feasibility of the coming into force provisions of the bill.

Before I do that, however, given the novelty, in Canada, at least, of the STV voting system, I will give a very brief description of this voting system.

STV allows electors to rank the candidates in multi-member districts. They do so by indicating their preferences—one, two, or three, and so on—on the ballot beside the names of the candidates. The result is determined through a series of counts. At the first count, candidates who have collected more than a specified quota of first preference votes are immediately selected. This quota is based on the number of available seats and the number of valid votes.

In second and subsequent counts, all votes of elected candidates in excess of the quota are redistributed according to a weighted formula to the next available preference on the ballots.

If after any count no candidate has obtained the quota, the candidate with the fewest ballots is eliminated, and his or her ballots are redistributed to the next available preference. The process continues until all available seats have been filled.

The application of the process is not as easy as its description and there are many complicating details, but what I have provided here is a simple overview of how STV works.

Going back to areas of concern, the first matter I would like to discuss is the possibility that a Senate consultation may be held in conjunction with a provincial election. If such a consultation is to take place, the Chief Electoral Officer is authorized by the bill to enter into an agreement with the provincial electoral body. In that case, he would be required to adapt an element of the Senate Appointment Consultations Act for the purposes of holding a joint event.

If an agreement cannot be reached, two separate processes would be held on the same day in different polling locations, using different workers and applying different rules. This does not appear to me to be a viable option, and it would likely create elector confusion and frustration.

It would therefore be essential to reach an agreement with the provincial electoral body. To achieve such an agreement, it is very likely that the province would require that the Senate consultation run according to rules that are as close as possible to the provincial election rules, including those regarding residency requirements, identification at the polls, polling day registration, vote counting, and political financing.

For example, as no province currently uses STV, such a consultation would likely not take place using that voting system if held during a provincial election. This would also mean that the Senate consultation process could be conducted differently depending upon the province in which it is held. This is something that may be acceptable from a policy perspective and on which I express no opinion. However, decisions as to how to adapt important federal rules to allow their implementation by provincial authorities could result in controversies and possibly legal disputes. As I said earlier, I do not believe this is a viable solution.

• (1535)

Rather than providing for a regime that requires a complex mixing of federal and provincial electoral laws, it may be better to provide in the bill that a consultation process be held according to federal rules, except in a case where a province has legislation that creates a process for a consultation. If such a provincial statute exists, such as Alberta's Senatorial Selection Act, the consultation would be conducted by provincial electoral authorities in accordance with provincial law.

The second matter I wish to highlight is the political financing regime created by the Senate consultations and the impact those rules may have on the existing political financing provisions found in the Canada Elections Act.

Much has been done in the bill respecting the challenge of harmonizing regimes for the two events that will, in many cases, take place at the same time. For example, many of the financing rules in Bill C-20, including those related to the disclosure of financial transactions, would mirror those imposed on candidates during an election campaign. In addition, the bill seeks to prevent contributions to a Senate nominee from flowing into the electoral process by providing that surplus funds of nominees must go to the Receiver General.

However, there are some areas in which the financing regime proposed by Bill C-20 may not be in harmony with the existing political financing law. If it is the will of Parliament that there be no spending limits for the campaign of Senate nominees, as proposed in Bill C-20, it would be important to minimize the impact the proposed financial regime could have over the one governing elections.

Spending by nominees could impact the political financing regime in the Canada Elections Act in several ways. For example, the fact that there is no prohibition against a person being both a candidate

under the Canada Elections Act and a nominee in a Senate consultation raises the possibility that unlimited spending under the Senate regime could undermine the candidate spending limits for a person registered as both a nominee and a candidate.

Similarly, there is nothing preventing a person who is running as a candidate in an election from registering as a third party in the Senate campaign. Doing so would allow for spending over and above the candidate's spending limit.

I also note that although, for the most part, the bill seeks to impose a distance between political parties and nominees, subclause 87(2) provides that registered parties and registered electoral district associations may transfer unlimited goods and services other than advertising to nominees. The capacity to pass goods and services to nominees again brings into question the efficacy of party spending limits.

Finally, difficult questions may arise as to the appropriate treatment under the two laws of spending by a Senate nominee who promotes his or her party platform. It is not my intention to suggest that the political finance rules of Bill C-20 must be the same as those of the Canada Elections Act. While we must recognize that perfect symmetry is not possible, Parliament may wish to ensure that the rules for Senate consultations do not have an unintended impact on the financing regime under the Canada Elections Act.

This appears to be the intent of the bill, and I would offer the following points for your consideration to stimulate discussion as to how best to achieve that intent:

(a) consider prohibiting a person from being a registered Senate nominee and a candidate in a federal general election at the same time;

(b) consider prohibiting a candidate from incurring advertising expenses as a third party in a Senate consultation held at the same time as the election in which he or she is a candidate;

• (1540)

(c) consider ensuring that the provisions relating to collusion and prohibiting various entities working together to circumvent spending limits are sufficiently strong in the bill and in the Canada Elections Act; and, finally,

(d) consider prohibiting all non-monetary transfers from registered parties and associations to Senate nominees.

[*Translation*]

A third matter I wish to raise today is the operational feasibility of the coming into force provisions, as provided in the bill. The requirement to prepare for Senate consultations will be a substantial undertaking which we will need to accomplish in addition to our ordinary activities, which include always being prepared for a general election.

New tools and systems will need to be developed to conduct the consultations and to support an electronic method for counting the ballots under the STV system. In addition, we will be developing training materials and an information and education campaign for parties, other participants and, especially, the voting public.

I anticipate that these problems can be dealt with and that the appropriate systems can be designed. However, I have concerns about the feasibility of doing so within the two-year period. We asked IBM Canada to conduct an external review of the technological developments required, given the implementation timeline provided for in Bill C-20. The firm concluded that a two-year timeline has an extreme risk of failure. On the other hand, it found that a three-year timeline for implementation appears achievable. A three-year coming into force period is therefore essential to Elections Canada to ensure the success of this endeavour.

The coming into force provisions also provide for an interim form of consultation that may be held in a period between one and two years after royal assent. An interim consultation would use a multi-member plurality voting system—that is to say, one in which electors do not rank nominees, but simply place an “X” besides the applicable number of nominees.

As such, Elections Canada would also be required to design systems and materials, and conduct voter education campaigns in preparation for this potential event, at the same time as preparing for the coming into force of the preferential balloting system. There would be a need to prepare for an interim consultation, even though there is no certainty that one would be held during the interim period. The resources required to prepare for one type of consultation would reduce those available for preparing for the full coming into force of Bill C-20.

In my opinion, the impact on readiness for other events, the confusion caused to electors and the cost of preparing for an event that may or may not happen in a one-year window, do not justify this interim method.

I would therefore recommend that the interim method of holding consultations be removed from the bill.

In addition to the three key matters already discussed, I wish to raise two other points for the consideration of the Committee—one, more encompassing, and the other, more technical.

The first relates to the fact that, in many instances, the bill states that key provisions of the Canada Elections Act shall apply to a Senate consultation with any adaptations as are necessary. For example, clause 46 states that the ordinary, advance and special voting provisions of the Canada Elections Act apply with such adaptations as are necessary. Clauses 95 and 96 provide that many of the political financing provisions of the Canada Elections Act apply to a Senate consultation with any adaptations as are necessary.

I understand and agree with the approach that many elements of the Canada Elections Act are to apply to Senate consultations. To the extent that the rules of the Canada Elections Act are well known and respected by participants and Canadians at large, the choice to apply the same rules to a Senate consultation is required and will simplify the administration of both types of events. However, the nature of the instrument by which these rules will be made raises concerns. Indeed, the bill does not provide for any legal instrument, such as a regulation, in which these fundamental rules, as adapted to the circumstances of a Senate consultation, will be made known.

A relatively simple fix to this problem is the approach taken in the Referendum Act. Section 7 of that Act gives the Chief Electoral

Officer the authority to make a regulation adapting the Canada Elections Act for the purposes of a referendum. Once made, that regulation is referred to committees of both houses for their comments. The creation of a legal instrument codifying the rules applicable to a Senate consultation would reduce potential confusion or uncertainty. This is desirable for many reasons, but perhaps most important when one considers the matter of enforcement.

Indeed, the Commissioner of Canada Elections has raised concerns with me about the impact of the uncertainty engendered by the absence of a document that has the force of law, setting out the offence and its punishment in the context of a consultation. I therefore recommend that, if Parliament wishes the Chief Electoral Officer to adapt the Canada Elections Act for the purposes of a Senate consultation, a regulation-making power similar to that found in section 7 of the Referendum Act be created to achieve certainty in the law and ensure its enforceability.

•(1545)

The final point I wish to raise today relates to clause 33, which requires the Chief Electoral Officer to compile and distribute information about nominees in the form of an elector guide. The publication of this guide may, in some cases, oblige Elections Canada to become the arbitrator of its contents. There is a fine line between what is perceived as the mere provision of information, and what may be perceived as advocacy. Elections Canada's responsibility for publishing this guide may, therefore, affect perceptions of its neutrality. I would ask, consequently, that this responsibility not be entrusted to Elections Canada. To the extent that the publication of this guide is intended to reduce the costs a nominee faces in making his or her message known throughout the province, an alternative solution might be to provide a subsidy, such as reimbursement of this particular expense to nominees.

In conclusion, I wish to emphasize, once again, that the implementation of Bill C-20 is a significant challenge, but one that I am fully prepared to undertake. That said, the complexities of the proposal should not be underestimated. As this Committee is only beginning its study of the matter, and as the bill has been referred after first reading, I have not gone into details about technical drafting and implementation issues, or the costs of implementing this bill. I would, of course, be happy to come back to discuss these or any other matters when the Committee is more advanced in its study of the bill.

That concludes my remarks, and I would be happy to take your questions. Thank you.

•(1550)

[English]

The Chair: Thank you, Mr. Mayrand.

We will now start our round of questioning.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Madam Chairman. Thank you very much, Mr. Mayrand, [Translation]

and your team. I have lots of questions, but very little time.

Of course, I am from New Brunswick, a bilingual province where many people are proud to be Acadian. My concern is that, when an election campaign is being held across the province, in every riding, this new system will compromise the representation of Acadians or Francophones in my province. I am obviously well acquainted with my province. I share the concern expressed by Mr. Bélanger, as spokesperson for Franco-Ontarians, and I know he is also concerned about this.

[English]

You raise a very interesting question that goes to the root of why the government is bringing this legislation in. What are we going to have, at the end of the day, if we have two houses of Parliament fully elected by popular vote? Is there going to be a clash of the Titans? I note, just by way of background—because I'm getting to your information obligation, or the one you now don't want, I guess—that if we were to inform the public about this new process, we would be saying, would we not, that your selected Senate will have the same power as the elected House of Commons?

Are we going to put in the information that it's a selection process and that ultimately the selection is made by the Prime Minister, so that it's not quite equal to the House of Commons? What kind of public relations nightmare can you envisage if we left the duty of information and, as you say, of what may be perceived as advocacy? What would you advocate? That the two houses at the end of the day have equal power? How would you wordsmith that, and is it a nightmare you're not looking forward to?

Mr. Marc Mayrand: I never look for nightmares.

I guess there are two things. The section 33 I was referring to contains the requirement for Elections Canada to publish a guide regarding information on candidates. I believe clause 5 of the bill provides for education programs concerning this new regime of consultation. Our approach would be very similar to what we do for House of Commons electoral events, wherein we focus on informing electors how and where they can vote, making sure they get onto the list of electors or that they get information on the day of polling. Our focus is much more on the process itself. We do not discuss the role of the House of Commons, for example, in any of our educational material.

Mr. Brian Murphy: I know elections to the House of Commons have been around since 1867, for the four founding provinces anyway, and maybe voters implicitly know the importance, or, depending upon their views, the unimportance of electing a member of Parliament.

My question is this. In three years' time, let's say, if we follow your suggestion, it will be a new process for voters. I'm not so much concerned about the pamphlet on the information regarding candidates, which you refer to in clause 33, but to be clearer on clause 5, I can't imagine your doing your first round of information and public education and not mentioning that this is the first such selection and putting in some phrase about how important it supposedly is. How would you grapple with the words about why it is important? Are these elections as important as House of Commons elections, or would you simply say they would vote here at these times and this is your franchise? Surely you would envisage saying something about the fact that this is the first time you have asked

citizens to select—maybe, if the Prime Minister goes along with your choice—members for the Senate, a group they've never elected before.

As I said, in the white paper in the U.K., they made it very clear they favoured—this is a Labour government paper, and let's get real here, they're not exactly fans of the House of Lords—maintaining a mix of appointed and elected members to keep the balance to the more undemocratic of the two Houses to make it clear, by inference, to the public that the Commons still rules, that the Commons is still the major chamber.

I've yet to hear anyone from the government say the Commons will still be superior to the selected Senate. How would you deal with that from a public information point of view, as your duties in clause 5 of the proposed act seem to indicate to me you would have the duty to do?

• (1555)

Mr. Marc Mayrand: For sure there would be an education campaign regarding this new feature of our democracy.

Again, at the end of the day, it will be for electors to establish whether there is a weighting factor between the choices they are being asked to make. I would only stress that my understanding of the bill, especially the preamble, is that it doesn't touch per se on the relationship between the House and the Senate. As an electoral officer, I would not get into that territory.

Mr. Brian Murphy: I have time for a very short question.

We have seen some literature about other processes, but are you aware of any other countries that have members of an upper House appointed following such advisory or selection elections?

Mr. Marc Mayrand: No. Personally, I'm not aware.

Mr. Brian Murphy: Then we are really inventing something here, I would say.

[Translation]

The Chair: Thank you.

Mr. Paquette, please.

Mr. Pierre Paquette (Joliette, BQ): Thank you, Madam Chair.

Thank you, Mr. Mayrand.

I was surprised by your presentation because I discovered very interesting details that I hadn't noticed, although I was expecting you to refer to Bill C-16. A lot has been put on your plate at the same time. This is a very major change. In my opinion, the tone is the same as in Bill C-16.

For the time being, Bill C-16 remains a work in progress. It is intended to increase the number of advance poll votes. Is it realistic to ask you to simultaneously implement Bill C-16 and all the work that will flow from Bill C-20, with all the changes you are suggesting? You talk about a two-year timeline, but the first suggested change already seems quite problematic. You noted other problems that add to the difficulty. For example, since Bill C-16 provided for advance poll dates, one of which is intended to take place the day before voting day, it is expected that you would need additional election workers. And, here you are being asked to organize another consultation.

Is it realistic to introduce all of these reforms over a period of more than two years—in other words, within the next three, four or five years?

Mr. Marc Mayrand: We believe we will need at least three years to be able to properly implement Bill C-20, particularly as a result of the single transferable vote.

In my comments, I obviously did not consider the fact that, if memory serves me, there are six bills relating to the electoral process currently before Parliament.

Mr. Pierre Paquette: Some are less costly than others, like Bill C-6.

Mr. Marc Mayrand: That is one of the reasons. But there is also the matter of... If voting days have to be added, as I have already had occasion to mention, it will be even more difficult to recruit election officers than it is now.

Mr. Pierre Paquette: In the case of Bill C-16, you did prepare a costing. I understand that it was easier to do that, because it was simply an extension of your current activities. Do you have any costings for a consultation of this type, as provided for under Bill C-20?

Mr. Marc Mayrand: We prepared some very preliminary cost estimates when Bill C-43 was introduced. But I want to emphasize one thing: they were very preliminary. We estimated that implementation would cost between \$100 million and \$150 million.

● (1600)

Mr. Pierre Paquette: How much does an election, such as the ones we're familiar with, normally cost?

Mr. Marc Mayrand: It costs about \$300 million.

Mr. Pierre Paquette: So, it costs \$300 million for a regular election, and we would be adding \$150 million.

Mr. Marc Mayrand: I just want to point out that, when I talk about costs of between \$100 million and \$150 million, that refers, not to the organization of the event *per se*, but to implementation of all the systems that would be needed to hold that event. We have not yet begun calculating the cost of a specific event.

Mr. Pierre Paquette: I really liked what I read on page 9. We wondered about this as well, since there is no spending limit and there are two election rules. On page 9, you make a couple of suggestions that are extremely important, if we are interested in changing the Senate, as opposed to abolishing it outright:

- a. prohibiting a person from being a registered Senate nominee and a candidate in a federal general election at the same time;

I hadn't thought of that, but it was probably obvious.

- b. prohibiting a candidate from incurring advertising expenses as a third party in a Senate consultation held at the same time as the election in which he or she is a candidate;

- c. ensuring that the provisions relating to collusion and prohibiting various entities working together to circumvent spending limits are sufficiently strong in the bill and in the Canada Elections Act;

- d. prohibiting all non-monetary transfers from registered parties and associations to Senate nominees.

In your bullet d., you completely rule out the possibility—provided for in the bill—of registered parties and riding associations providing services to candidates.

Mr. Marc Mayrand: I believe that should be considered.

Mr. Pierre Paquette: I think you're right.

I think what you say in bullet c. is also important. Supposing senators are supported by established parties and the war chest of a political party, which has Senate candidates running as well, has reached its limit, in terms of the election spending it is entitled to, because limits are proposed. Is it possible that, implicitly or explicitly, that party could ask potential donors to contribute to the Conservative or Liberal senators' election fund, since they are subject to the rules relating to individual donors, but have no spending limit and, therefore, are not required to abide by any objective limit? The reason I say Conservative or Liberal election funds is that the NDP and the Bloc are more in favour of abolishing the Senate, so that it would be fairly contradictory for them to be putting up Senate candidates. But we will see what happens with that in due time.

Mr. Marc Mayrand: As would be the case for someone running in a regular election, a Senate consultation nominee is the only one that can receive contributions through his or her agent. The same rules would apply. Of course, candidates are not allowed to receive contributions with the intention of giving them to someone else. That has to be clear for the contributor.

Mr. Pierre Paquette: For example, could the Conservative or Liberal Party—because that is a more credible scenario—explicitly ask donors, who are only allowed to give so much, to make donations to Liberal or Conservative Senate nominees, beyond a certain monetary level has been exceeded?

Mr. Marc Mayrand: I don't think that would be prohibited—at least not according to my reading of the current provisions. The legislation prohibits the transfer of funds from one party or entity to a nominee.

Mr. Pierre Paquette: So, they could invite contributors to do this individually, while still abiding by the rules.

If elections for both the House of Commons and the Senate are to be held at the same time, and they have a common platform—because the Senate nominees would be running under the same party label, in my opinion, that would contravene the spirit of the legislation.

Mr. Marc Mayrand: It does raise some difficult issues.

Mr. Pierre Paquette: Such as the fact that there is no spending limit.

Finally, there is a matter of air time. You did not refer to this, and I know that the legislation provides for public air time in the case of federal elections. Could that also present a problem? Is anything provided for in that regard? I am asking you the question without knowing the answer.

Mr. Marc Mayrand: That is a very interesting question. I do not remember seeing any provision whatsoever dealing with that. If that were to happen, it would have to be done *mutatis mutandis*. Would the provisions of the relevant part of the Elections Act apply? And, how would they apply to a consultation?

Mr. Pierre Paquette: We would still be facing the same problem: some Senate nominees would be running under the banner of a political party that would also be taking part in general elections for the House of Commons.

Mr. Marc Mayrand: Yes.

• (1605)

Mr. Pierre Paquette: If there is air time given... So, although you didn't raise this, it could be a very real problem.

[English]

The Chair: Go ahead, Mr. Angus.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you very much.

I'm very pleased that you are here today to help us work through this process. You've certainly provided a very interesting perspective for us as we try to understand exactly what this consultation process would look like and what impacts it would have.

We've looked at other Senate models around the world. There are some countries that have abolished the Senate, there are some that have elected the Senate, and there are some—very few—that believe it should be based on the peerage.

What we're looking at here is not so much electing a Senate but setting up a consultation process that may or may not be enacted. The Prime Minister may choose to bring forward a process or he may not, and the person who wins the popular vote may not necessarily be the one chosen.

Are you aware of any other system in the world that has a democratic election based on such a principle?

Mr. Marc Mayrand: Personally, I'm not aware of other systems like this.

Mr. Charlie Angus: I see.

Involving Elections Canada in such a consultation would certainly bring a lot of credibility. When Elections Canada puts its imprimatur on something, it's as legitimate as it can get.

Have you looked into the legal implications of a candidate who spends \$300,000 or \$400,000, wins the popular vote in a process that is declared by Elections Canada to be a de facto election, and then is not chosen? Have you looked into the legal implications? Would there be a possible challenge?

Mr. Marc Mayrand: Do you mean if a selected nominee is not appointed? I haven't looked at that. That's where my jurisdiction would end, I believe. That would be an issue, because that decision

remains with the Prime Minister—the Governor General, in fact, on the advice of the Prime Minister.

Mr. Charlie Angus: I'm interested because it's not the Prime Minister holding this consultation, although he calls it. Elections Canada has been asked to act as a monitor to show the legitimacy of it, yet at the end of the day the Prime Minister can say he doesn't want that one and is going to choose this one.

Have you had any legal advice at all on the role of Elections Canada?

Mr. Marc Mayrand: We have not had any per se, not in that specific respect.

Mr. Charlie Angus: Have you had any legal advice on whether this consultation process is really skirting the constitutional line, in that if the Prime Minister did call it every time and if he had to accept the elected choice, that is certainly going beyond the prerogative that is laid down constitutionally. Have you looked at whether this would withstand any kind of constitutional challenge?

Mr. Marc Mayrand: No. I leave it to Parliament and to the government to design the legislation. My responsibility is strictly to administer it, and once it is adopted by Parliament, I apply it with the presumption that it is constitutional.

Mr. Charlie Angus: You had given us a figure of what it would cost you to prepare for one of these consultations. Is that to be always ready to go across Canada? How much is that figure? Could you repeat that figure?

Mr. Marc Mayrand: It's between \$100 million and \$150 million. It's to put the system and the process in place, and the tools. Again there are many variables there in terms of a specific event, such as whether it's run in conjunction with a provincial election, whether it's run with harmonized rules or with separate rules, or whether it's all in conjunction with the federal general election. Those variables would have a significant impact at times on the cost.

Mr. Charlie Angus: So the cost to set up a possible consultation would be between \$100 million and \$150 million, and whether to call it or not would be left to the prerogative of the Prime Minister?

Mr. Marc Mayrand: To be ready to run a consultation, we estimate you would need, with the STV system, between \$100 million and \$150 million.

Mr. Charlie Angus: So that's what we need up front. Now we want to go into one of these consultation processes. Have you figured out what it would cost, say, for the province of Ontario?

Mr. Marc Mayrand: We have not at this point. We're not that far ahead in our planning or costing.

Mr. Charlie Angus: Would you be able to come back at another point and give us those figures?

• (1610)

Mr. Marc Mayrand: Yes, absolutely.

Mr. Charlie Angus: Our concern is actually how such a proposed consultation would take place in a province the size of Ontario with no spending limits. As you say, it's not really legally codified for Elections Canada. There would certainly need to be monitoring. What kind of technical support would you need on the ground to ensure that—perhaps one elected senator for the entire province of Ontario—the consultation process that was under way was being done in some kind of open and fair system, so at the end of the day, even if the Prime Minister didn't choose the elected person, we could at least say it was a fair process?

Mr. Marc Mayrand: We can certainly come back with more specific—

Mr. Charlie Angus: Have you looked into any of those technical problems that you would face? Do you have any sense of that?

Mr. Marc Mayrand: I'm sorry. Maybe I missed your question.

Mr. Charlie Angus: You wouldn't be the first one. I'm interested in whether you have looked at the technical problems that would be faced trying to run such a consultation process in a province the size of Ontario if, for example, there was one opening.

Mr. Marc Mayrand: If it's run in conjunction with the federal election, and there are a number of vacancies in Ontario, and there's a consultation at the same time as the federal election, we will certainly borrow very much and rely very much on the logistics that exist for conducting the federal election.

Where there would be more uncertainty—because again there would have to be a fair bit of discussion—is if it were run in conjunction with the provincial election. That's a different animal—if I can say that—about which we have not really had any detailed discussion with other electoral bodies at this point in time.

Mr. Charlie Angus: I guess the issue in terms of an election in Ontario, where there are 100 seats and there may be three openings, is that it would be very difficult to run in conjunction with the federal election taking place in Ontario, because you have a whole series of other elements you have to look out for, even as far as ensuring there's some kind of transparency and fairness among potentially five candidates vying for three spots in 100 ridings goes. Have you looked at those issues?

The Chair: Your time has expired, Mr. Angus.

Mr. Reid.

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

Thank you, Mr. Mayrand and your team, for coming out to our committee and for your very thorough presentation.

I wanted to start with two comments, followed by two questions to you. First, I have a comment relating to something Mr. Murphy had raised. He expressed a concern that I think was misplaced, and he indicated, as I understand it, that he was afraid that in a province like his own, where there is a majority of English speakers and a minority of French-speaking residents, the majority would never elect a French-speaking person. I think that's an ill-placed fear. History shows, of course, that Louis Robichaud, for example, was able to get elected in New Brunswick. He was an Acadian, and it suggests to me there is no underlying problem in Canada. There are lots of other examples of people being elected who are not members of the local

majority. There's no problem in Canada with enlightened voters. I think he need not fear that.

My second comment relates to one of your suggestions, Mr. Mayrand, on the subject of having a regulation giving a power similar to that used under section 7 of the Referendum Act. This is a suggestion you made in your presentation. I think that's a good idea. I think that would provide a model that's already being used that might be very helpful. I'm glad you pointed that out, and I appreciate that. You can comment on that further if you wish, but I just wanted to indicate that I thought it was a good idea.

I turn now to the question you raised on page 12 of your presentation regarding the resources required for plurality voting. You indicated that if we have an interim system and a final system, the final system being STV and the earlier system being a kind of multi-member plurality voting, this would add time, which you think can be recovered, if it's not done. How much extra time are we talking about, in your opinion? I assume you got a recommendation from your consultants on this.

• (1615)

Mr. Marc Mayrand: For the STV it's three years. We would need three years from royal assent.

Mr. Scott Reid: And for the plurality voting system?

Mr. Marc Mayrand: The firm did not look at that.

I'm pointing out that what's being proposed is a transitional system that would be in place for a year, before the end of the second year, between year one and year two, with no certainty that a consultation would occur. The question arises as to whether the efforts to get ready for that are worth it. Even though it's a much easier system compared with STV, there are still all sorts of efforts needed in terms of technology, and in terms of training and making sure that candidates understand the rules, etc. The question is whether the efforts related to that are worth it, given that at the same time we would have to be ready for the STV regime, which would kick in the year after—again with no certainty that the consultations would be held in that interim period. So that's the point.

Mr. Scott Reid: I'm assuming that part of the time constraint you're looking at is based upon trying to come up with a system of having machine readable ballots. Am I correct in assuming that?

Mr. Marc Mayrand: That's one option we would consider.

I think the act is flexible enough to allow either human data entry or ballots that are scanned.

Mr. Scott Reid: One of the things that was suggested at the previous meeting of this committee by my colleague, Mr. Lukiwski—who isn't here today—is that instead of having a system in which voters assign a number to each candidate, we could achieve the same result by having a grid. On the X axis you would have the candidates listed; on the Y axis you would have, essentially, spots starting with number one through whatever the top number is. If you wanted to put Candidate Jones as your first candidate, you'd put an X into spot number one beside Candidate Jones' name, and so on for all the other candidates.

This would lead to something that I think would be quite easily machine readable. In terms of its physical size, it would be a large ballot for a large province, but I suspect it would not be any larger than a ballot in which numbers are listed off from one through to whatever, based on what I've seen of the Australian STV system for their Senate elections, and in larger states, such as New South Wales—which is, roughly speaking, the same size as Ontario.

I wonder if adopting the bill to allow for that would have the effect of making the process of coming up with machine-readable ballots easier and hence reduce the time constraints involved, from your perspective.

Mr. Marc Mayrand: It's an option that we would need to consider. There's a provision in the bill that asks us to publish the design of the ballot; before doing that, we would certainly examine various alternatives.

The only consideration there—and again, we need to learn a lot more about what's happening around the world in this area—is that if we have 16 registered parties, as we currently have, and there are, let's say, seven seats available, there could be a large number of candidates, and I'm not sure if the design could still accommodate that. Maybe it could.

Mr. Scott Reid: That's a good question. Those, actually, are roughly the numbers you'd be looking at in a place like New South Wales. You have, typically, six vacancies at a time. Good heavens, I'm astonished at the number of parties. It's a very, very large number.

I had one other question here. Just with regard to clause 33, you had some concerns about that, and in particular you said you were worried about the difficulty of being neutral in providing information to voters. You suggested that instead of putting forward a booklet or a pamphlet, a subsidy be provided to nominees in order that they could distribute information about themselves.

Respectfully, I think you've misunderstood what clause 33 calls for. Clause 33 is the subsidy to the voters. Effectively, the idea is to transmit a single document, a single booklet, to voters that contains information of a certain length. I assume the prescribed length would be determined by your office, but otherwise the content would be left up to the candidates, who could be as partisan as they wanted to be.

I'm just reading clause 33, which says, and I quote:

On the day after they are notified of their confirmation, a nominee shall provide information pertaining to the nominee in the prescribed form to the Chief Electoral Officer.

I assume “prescribed form” refers to length and probably to things like sending it to you in Word, as opposed to some other program.

Then:

The Chief Electoral Officer shall compile information provided by nominees into an elector information guide to be distributed to all households in the province.

There's no expectation of non-partisanship here. It's expected to be partisan information, on the model of the booklets that are distributed during referenda in California, for example, or the various Swiss cantons, where there's no attempt at neutrality. Your job would simply be to make sure that Candidate A can't provide a much larger quantity of information about himself than Candidate B is permitted to provide, and so on. But I think you can see how that would allow all the households in the province to be provided with information about all candidates, while still maintaining a modest minimum cost for those who are, for example, independent candidates or who are not able to raise substantial amounts of money.

• (1620)

The Chair: Thank you, Mr. Reid.

Mr. Mayrand.

Mr. Marc Mayrand: I understand the intent of helping all candidates. I think it's a matter of a level playing field, in some regard, ensuring that all candidates have the opportunity to share their message with all electors. My concern is with regard to the responsibility of Elections Canada. My sense is that there's not enough direction in clause 33 with regard to the content.

To what extent is there promotion of the candidate, promotion of the political message or the political platform? Is it okay to undermine a candidate in the information you present? There are all sorts of issues in which, for now, Elections Canada has never been involved. Again, I'm concerned that it brings us too close to the messaging, as opposed to, again, administering the process objectively and independently. That's why I was suggesting maybe it's better to leave it to candidates, with a reasonable subsidy to cover the expenses in that regard. That's another option.

If it were to remain in the act, I would certainly prefer that there be more direction, more clarity, in clause 33. Again, if there is advocacy in those guides, certainly we need to make sure that this does not represent the views in any way or form of Elections Canada.

The Chair: Thank you, Mr. Mayrand.

Madam Folco.

[*Translation*]

Ms. Raymonde Folco (Laval—Les Îles, Lib.): Thank you, Madam Chair.

Good afternoon, Mr. Mayrand. I am very pleased to welcome you and the members of your team to the meeting today.

I have two important questions for you. The first relates to the powers of the Prime Minister once people have been elected. As I understand it—and I do not have the specific clause in front of me—the Prime Minister has the option of choosing new senators from the list of those elected or selecting people who are not on the list.

Am I mistaken about that?

Mr. Marc Mayrand: From what I understand, that is correct. The Prime Minister is not bound by the choices made by the voters in the consultation.

Ms. Raymonde Folco: Indeed. Now, my question is this: if a Prime Minister has no obligation to choose from among the names on the list of elected nominees, what is the point of engaging in this kind of exercise all across the Canada? The result is not a certainty when, in actual fact, the names of those who were elected should automatically be placed on the list of senators, as happens for members of Parliament, where the list of elected MPs is exactly the same as the list of people seated in the House of Commons.

In this case, what would be the point of this whole election exercise?

Mr. Marc Mayrand: There is no legal obligation for the Prime Minister—at least, no legally defined obligation set out in the legislation, as currently worded. It is obvious—and I understand this—that for constitutional reasons, no such obligation is identified in the legislation, but I think one can expect that, if a consultation is held province-wide, it would probably be quite difficult for the Prime Minister or Governor General—as this remains the prerogative of the Governor General—to ignore the choice made by voters.

• (1625)

Ms. Raymonde Folco: I have a second question relating to financing. I am going to look at the flip side of the issue: we know, as elected members of Parliament, how difficult it is to raise enough money to pay for election expenses in a single riding. What Bill C-20 proposes is that people who want to put their name on a list of potential nominees travel all across their own province as part of their campaign. I suppose you could say that the Atlantic provinces cover a small area, so that it probably would cost less to travel across the region to meet with all the voters, but the fact is that when you're in Newfoundland or Labrador, it is very difficult to get around without having an airplane at your disposal. It costs a lot of money. And the same applies to the large provinces—Northern Quebec, Northern Ontario, not to mention Iqaluit and other regions of the country.

So my question is this: realistically, how would it be possible to control the amount of money a candidate could spend, given the fact that there is no spending limit provided for in the bill?

Mr. Marc Mayrand: You are correct when you say that there is no spending limit. I think one of the problems candidates may face is more likely to be with respect to funding their expenses. Because they are not allowed to receive funds if they are affiliated with a party—if they are independent, they are entitled to more, but if they are affiliated with a party, they cannot receive funds directly from the party—they have no choice but to engage in fund raising, in order to cover their consultation expenses.

There are some provisions in the bill that take that problem into account. That is why, in my presentation, I tried to bring out the fact that it is difficult to draw a line the sand exactly in the right place, and that this must be carefully considered.

One of the bill's provisions allows nominees to begin collecting contributions on the last day of the consultation. So, the day after the consultation, a nominee can begin collecting contributions, which

distinguishes him quite clearly from someone running in an election, who is unable to do that. He can also issue income tax receipts from that day onward. So, there is a certain amount of flexibility given in terms of financing and fundraising. Is it enough? Time alone will tell. It is very difficult to anticipate the cost of a Senate campaign.

The other dimension that I wanted to raise with you is that parties can provide goods and services. They cannot provide funding. That suggests that a party could provide staff, equipment, transportation and other services or goods of that nature in order to assist the nominee.

[English]

The Chair: Thank you.

Mr. Preston.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): Good afternoon. It's good to have you here.

You mentioned in your presentation that in some cases, when a consultation is being held in conjunction with a province, there would be some negotiation needed with the election department of each of the provinces. You already do that in a lot of cases. You have cooperation now with the provincial election branches in each of the provinces.

Mr. Marc Mayrand: We do, and we're always looking for further collaboration.

Mr. Joe Preston: I understand you're already sharing information with them, on voters' lists and other things. Granted, there are some legislative differences between how elections may be held, but you're already negotiating with them.

In your speech to us today, you implied that there may be some difficulties in those negotiations. Since you're already working with them on a number of other areas, what are you anticipating?

Mr. Marc Mayrand: I spoke briefly with some of my colleagues. Generally, their sense is that they would need legislative authority from the province.

The second thing that would be challenging is that we have different rules for voting at the federal and provincial levels. Residential rules vary. Inmates can vote in certain provincial elections but cannot vote in federal ones. These rules would need to be harmonized. On election day you can't apply two sets of rules to the same electorate depending on what they wish to cast a ballot for. That would require us to agree.

Again, based on early discussions, I suspect that some of the adaptation required would be very substantive. It's not about sharing personnel and locales or things like that. It's rules about voting; it's rules about residency; it's rules about polling-day registration, which do not exist in at least one province.

How do you operate in that environment, sharing the same personnel who are administering very different rules in some cases? Some of those rules are substantive. Again, STV does not exist in the provinces right now.

•(1630)

Mr. Joe Preston: Then I commend you for already, at least as a preliminary, looking at what the differences may be. Let's try to make sure we move ahead. That's certainly going to save you a lot of time after the fact.

You do recommend that the consultation be held during a federal election. It would certainly be a lot easier, because it's a broad-based situation that you already control, and voting stations and that type of thing certainly could be shared for all of the above.

Mr. Marc Mayrand: Yes.

Mr. Joe Preston: In answer to questions from Mr. Reid, you mentioned some of the opportunities to start looking around the world. You would look at this method of voting that's already in place in a lot of places, whether it's how to count ballots or what size ballots may be. Have you started your preliminary research on countries already using some similar system of voting, at least?

Mr. Marc Mayrand: Yes. We sent observers to Australia, which had an election last fall and is using that system for their Senate. We also had two observation missions to Scotland, which was just introducing the system. We're definitely looking at how other electoral bodies around the world are administering this regime.

Mr. Joe Preston: In either of those, did you find any insurmountable issues?

Mr. Marc Mayrand: No, it's doable. My only concern is that I don't think it's doable in two years. But it's doable. It exists, and apparently it works satisfactorily for many countries.

Mr. Joe Preston: Let's use the outlook of the possible rather than the impossible, of course. If someone else is already doing it, that may save us a great deal of time in finding the method and the how-tos, if you will.

That's all I have.

[*Translation*]

The Chair: Ms. Picard, you have the floor.

Ms. Pauline Picard (Drummond, BQ): Good afternoon, Mr. Mayrand.

If I understand correctly, some Senate seats could remain vacant for almost four years, unless the government establishes a bank of nominees in order to fill those positions. Would that be possible, in your opinion?

Mr. Marc Mayrand: Yes, and that period could be longer under other pieces of legislation. Another bill could set a term of eight years. As I understand it, Senate appointment consultations could only occur during a general, provincial or federal election. As I already stated, there could be certain issues there at the provincial level.

Ms. Pauline Picard: For example, there could not be by-elections.

Mr. Marc Mayrand: Exactly, it could not occur during by-elections.

Ms. Pauline Picard: According to the bill, a party would have to register as a third party if it wants to promote a nominee by means of advertising, and its expenses would be subject to the same limits as those that apply to third parties in elections for the House of

Commons. A little earlier, you talked about expenses, but you did not mention that particular aspect.

Mr. Marc Mayrand: It would be possible for a party to register as a third party, within the meaning of the Canada Elections Act and the Senate appointments legislation, for the purposes of funding or carrying out advertising related to a consultation campaign.

•(1635)

Ms. Pauline Picard: And they would be subject to the same limits as someone running for office in the House of Commons.

Mr. Marc Mayrand: They would be subject to the same limits as a third party wishing to do advertising during an election campaign. It's based on the province, and the limit is adjusted for the province as a whole. It's based on the voters, the area and the number of places involved. There is only one area, and therefore, there is only one nominee. The limit is set using the formula laid out in the Canada Elections Act.

Ms. Pauline Picard: You mentioned a little earlier that implementing a system such as this could take from two to three years.

Mr. Marc Mayrand: At least three years.

Ms. Pauline Picard: At least three years; I see. When your system is in place and is running smoothly, a federal or provincial election will have to be called in order to activate it, is that correct?

Mr. Marc Mayrand: Yes, no pilot project is possible in this case. So, there is no risk of error; that risk must be kept to a minimum.

Ms. Pauline Picard: Certainly, with new technologies, harmonization may be possible. In the coming years, do you foresee any potential complications or errors, given that it is a new system? Do you have a reference with other countries who use exactly the same process?

Mr. Marc Mayrand: There are always differences, and the Canadian system will have to reflect that. That is why a timeline is important and the testing of these new systems is critical to ensure the success of a consultation.

Ms. Pauline Picard: Can you tell me which countries have a similar system?

Mr. Marc Mayrand: Scotland uses the single transferable vote system. Australia, which probably has the best known system, and one that applies nationally, to the Senate, as well as at the State level, has had quite a lot of experience with it. There may also be Belgium, but I don't want to mislead you. The two main systems are Australia and the Australian States, and Scotland, which only implemented it in the last election.

Ms. Pauline Picard: Have you had any discussions with the people responsible for running it?

Mr. Marc Mayrand: Yes, we sent IT experts over there to have a look at their system. Also, I hosted my counterpart from Australia last fall. We try to find opportunities such as that in order to learn from each other with respect to the kinds of challenges we're facing.

Ms. Pauline Picard: Thank you.

Mr. Marc Mayrand: Madam Chair, with your permission, I would just like to clarify an answer I gave Mr. Paquette earlier. I most certainly misled him when I stated earlier that the broadcast rules would apply. I am told that they do not apply. So, in terms of debates or air time, the rules set out in the Elections Act do not cover Senate appointment consultations. As a result, nominees do not free or paid air time. I just wanted to be sure I had not given you incorrect information.

The Chair: Thank you.

Mr. Gourde.

Mr. Jacques Gourde (Lotbinière—Chutes-de-la-Chaudière, CPC): Thank you very much, Madam Chair.

I would like to be clear that senators represent a certain Senate district. In future consultations, will those districts be considered when a senator is re-elected, or will they become completely obsolete?

Mr. Marc Mayrand: Only in Quebec do there seem to be Senate districts. In all the other provinces, they do not exist. Candidates run for the province as a whole. And, from what I understood of the bill, even in Quebec, the election or consultation to appoint senators will be province-wide. Under the Constitution, senators are appointed to represent districts but, for the purposes of the consultation, it would be a province-wide vote.

Mr. Jacques Gourde: I see.

Reference has been made to electronic vote counting. Have there already been attempts to do that in Quebec? At the municipal level, it turned out to be a complete fiasco. Are there any provisions in the bill that would help us to avoid a similar nightmare in future?

• (1640)

Mr. Marc Mayrand: You can rest assured that we will do whatever is necessary to prevent things from going off the rails. That is precisely the reason why I am insisting on more time to implement these systems. The technologies obviously exist; we don't have to re-invent the wheel. But these technologies are not currently being used in Canada for election purposes. One of the problems we have to resolve relates to the fact that there are few Canadian suppliers, given that no one is using that system in Canada. We will have to call for proposals from foreign firms in order to develop this system.

Mr. Jacques Gourde: I believe that Canadian companies did attempt to do this in the past, but found there was no market for it. However, if there is a call for tenders, you may well be able to find Canadian firms.

The electronic aspect of this is one of the factors you referred to. What are the other factors that could delay implementation of a consultation process?

Mr. Marc Mayrand: Are you referring to the STV system? Other than the technology, there will be a need to train staff, develop information programs, deliver information programs to staff, and develop public awareness programs that will be required to inform the voters. All of that represents a considerable effort. Once again, that is in addition to all of the other efforts that are normally required for by-elections or general elections, and possibly for the transitional selection method provided for in the bill.

Mr. Jacques Gourde: When you talk about informing the voters, do you believe it could take more than a year to explain to voters that, as part of the process...

Mr. Marc Mayrand: I do not think, either that it will take a year, or that we could retain the attention of the voters for such a long period of time, but I do think there has to be a solid public information and awareness campaign aimed at the voters, because there is likely to be some confusion at the beginning. This is completely new: in Canada, people have never before exercised their right to vote in this way. All of a sudden, there are two ballots. One is filled in differently from the other, and the result is calculated differently as well. All of that has to be explained to the voters, and it has to be clear so that there is no confusion when the votes are counted.

Mr. Jacques Gourde: Earlier, you were saying that there could be some problems in the provinces in terms of organizing these consultations.

Because the voting process is organized with Elections Canada alone, normally every four years, if there were vacant Senate positions to be filled in one province and a provincial election were to be called, would it be possible to work with Elections Quebec, for example...

Mr. Marc Mayrand: Throughout my presentation, I tried to suggest possible solutions. One of the solutions I suggested in my presentation involved the possibility of delegating the selection process or appointment consultations process to the provinces. Indeed, Alberta already has experience with it. Alberta has its own system for selecting senators. The names are passed on to the Prime Minister. That might be a better model, rather than having a mixed system—in other words, holding both federal and provincial elections on the same day. That raises all kind of issues, some of which are yet to be resolved.

[English]

The Chair: Mr. Angus.

Mr. Charlie Angus: Thank you.

I think many Canadians have wondered how to fix the Senate. If we go back to John A. MacDonald, when the Senate was first founded on patronage and cronyism, he explained that it was there to protect the rights of minorities. Of course, his definition of minority is somewhat different from that of the poor tourist pages who stand outside the Senate explaining the protection of minorities today. John A. MacDonald said we need to protect the rights of minorities because there will always be more poor people than rich people. So the Senate was there to protect the interests of rich people.

That attitude was perhaps typical 141 years ago. Now, 141 years later, we're being asked to fix it with a "dealer's choice", whereby we're going to trust that the Prime Minister will pick from the list and will pick the electoral choice, but he's not bound by it.

We're trusting that we'll spend \$100 million to \$150 million on a process to be ready, if he decides to call. He might decide not to call any, or he might decide prior to the election to fill a whole bunch of vacancies with political friends and then hold a few safe ridings or regions where he thinks he can win. And yet, as Elections Canada, you have to be prepared for this.

You're dealing with very loosey-goosey financing rules. In your experience, do you think it would have been simpler just to say that this will be for the election of senators, period, and that it will be based on a system of voting such as we have for members of Parliament? Would that not be a lot simpler for your work and maybe cost a little less money?

• (1645)

Mr. Marc Mayrand: In a sense, it's a policy choice, and there has to be consideration of the limitations that are set out by the Constitution. I'm not sure I can comment further on this aspect; I think it's a matter for discussion among parliamentarians. We will simply undertake the task of administering the regime that Parliament wishes to adopt for appointment of senators.

Mr. Charlie Angus: I was also quite surprised, and you mentioned them, by the political financing rules—you referred to the gaps. It seems to me that in 2008, the one thing anybody in any political party would know is that if you play fast and loose with political financing rules and don't have really clear, laid-out rules, someone's going to break those rules. Allowing that is the fast track to political hell, and yet we have a situation where there are no limits on spending and parties can supply goods and services—perhaps phone banks. Would that be something they could help...?

Mr. Marc Mayrand: They can certainly share information.

Mr. Charlie Angus: Yes, and they can sign up as a third-party activist.

So we would have a situation where one party might have a war chest ready to go. I know they're not supposed to spend money directly, but we have fairly loose rules here. We might have three regions where they might not stand a chance of winning any of the seats, so just before the election they would appoint a whole bunch of candidates, and then in an area where they think they could win, they would announce one of these consultations, dealer's choice processes. The election financing rules could really skew the local elections, because we'd have the possible use of phone banks; we'd have the party acting as a third party...all the money that they wouldn't be allowed to spend in local elections.... We just have to look at how much they got themselves into with the in-and-out scandal. This would certainly be a huge way for a party to potentially influence regional elections.

What kinds of rules would we need in place to ensure that this kind of attitude and that kind of behaviour wouldn't cut it? The argument I hear from the government is, "Trust us; the Prime Minister wouldn't do that". That's a joke. This is 2008; we didn't just come off the turnip truck. We need clear rules here.

So what rules would you suggest to ensure that this kind of behaviour wouldn't be gotten away with?

Mr. Marc Mayrand: I mentioned a few in my earlier presentation. I think the first thing would be to prohibit someone

from being a candidate both as a Senate nominee and as a House of Commons member.

Also, maybe there should be consideration given to prohibiting a candidate for the House from registering as a third party; that is, I think there should be a further discussion as to why this is needed. There are anti-collusion provisions in the electoral law. There are some in the proposed legislation. They could be strengthened a bit.

And the other question—and this is why I think it merits a fair bit of discussion and debate—the last one, would be consideration of prohibiting not only transfer of funds but also transfer of goods and services.

On the other side of the equation, you have candidates having to run provincial campaigns, and there is a need to provide some sustainability to their campaign. I think that's the challenge here.

One of my concerns, and this is why I bring these issues forward today, is that I'm not sure we have achieved the right balance. The rules as they are set up may undermine some of the rules governing candidates to the House. That's why I raised those concerns today.

• (1650)

The Chair: Thanks, Mr. Mayrand.

We'll proceed to Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, and thank you, sir, for being here today.

It's been interesting to hear some of the questions, I would suggest bordering on hysterical, as to the approach. When we look at the situation we have now, there is no consultation whatsoever. There's an unfettered ability for the Prime Minister to make partisan appointments without any limit. In this bill we have an opportunity for Canadians to consult and for Canadians to have input.

As you have rightly pointed out, although in my time sitting here the issue keeps coming forward, and I think it was even raised in the last round, why don't we just elect senators; why don't we just elect them directly? Well, the problem with that, as is the problem with the preferred course of the NDP, which would be the abolition of the Senate, is that there would have to be a constitutional amendment. You've rightly pointed out that this is a way of consulting with Canadians, but as the constitutional experts we had here before pointed out, to go far beyond that would involve a conflict with our Constitution.

I have a couple of questions.

Roughly, what is the cost now of a general election?

Mr. Marc Mayrand: It will be roughly \$280 million for the next one.

Mr. Rob Moore: So I guess my point is—to address another concern I've heard raised around the table—democracy does cost money. There is a cost to having a democracy. There are probably a lot of cheaper systems, but there are none that I would rather have than a democratic system.

So democracy costs, and this system will cost money to implement. However, I would argue that to put a democratic stamp and to have that consultation with Canadians that so many of them want, it would be worth the money that we're going to spend to get Canadians' input and add that democratic stamp to the Senate.

One other issue I just have to mention, which has been raised, is what about the cost? It's going to be expensive. Elections are expensive. All of us have had to raise money, but if there's one thing the current appointees to the Senate have proven particularly adept at, it's raising money. There are many of them who have shown themselves to be quite capable fundraisers, and I would suggest that if the future nominees are half as capable fundraisers as the current senators we have, they'll do just fine.

On the issue of the timeline, I note that you did consult with an IT firm, I believe it was, on the implementation. I'm a bit taken aback at the two-year to three-year figure. I know in business oftentimes something can come and go in two years. So I'm wondering about the notion that we couldn't speed this up. I would be quite surprised if any challenge, from a timeline perspective, would come on the IT side. Do you have any comments on that?

Mr. Marc Mayrand: If it were not for technology, probably two years would be fine. But with technology, which would be new, again, in the electoral process in this county, it needs to be fully tested to ensure full trust in those results. We think we'll need those three years.

I would be happy to share more information on how we arrive at that.

Mr. Rob Moore: I'm wondering, too, if there was broader consultation, perhaps, with other groups. There may be some IT firms that would say, "No, as a matter of fact, two years is doable." That's a thought that I would put out there.

We've talked about when there's a federal event or when there's a provincial event. I recognize and I think my colleague, Mr. Gourde, mentioned that a vacancy could open up just after a federal general election and we would want to fill that before another four years or so. You mentioned that while it may be a bit cumbersome and it may require some work, having this consultation in sync with a provincial event is doable.

•(1655)

Mr. Marc Mayrand: Administratively and operationally, yes. The issue is over the rules you would apply on that day. How many rules for voter identification would you apply during that day? That's an issue that needs to be reconciled, and unless there's more clarity in the act....

Let's say there's a general election in any province next year and this bill is in place and there's an order. Will STV apply for that consultation? No province has STV.

There are some issues that I don't think are the responsibility of the administrators of the process, either provincial or federal, to resolve. We need to have a set of rules on that day, and that's why I was suggesting that maybe a solution to address the problem of the time lag in consultation would be to rely more on provincial legislation. Alberta has had that experience, certainly.

The Chair: Thank you, Mr. Mayrand.

Mr. Maloney, you have the floor.

Mr. John Maloney (Welland, Lib.): Mr. Mayrand, I thank you for your recommendations on pages 9 and 10 of your speech. I think they make eminent good sense, and I hope the committee will consider them in our deliberations.

On the issue of the single transferable vote, if a consultation panel became necessary during the transition period—the two years or three years that you suggest—we would have to use a system other than the single transferable vote. If we hold an election in conjunction with the provinces, you've indicated that no provinces utilize the single transferable vote at this time, so conceivably we could, at any given time in the future, be using the federal election rules or we could be using the provincial election rules at the same time—say, five years from now. Would that not constitute a lot of confusion? That's my first question.

Second, would there be any potential significant differences if we used a system other than the single transferable vote, such as the first-past-the-post system? If you needed a panel of three Senate appointments and there were four candidates, then the top three would get the nod. Is there any magic in utilizing the single transferable vote? What are its advantages?

Mr. Marc Mayrand: That's a broad question.

First, with respect to carrying out those selection processes in parallel with provincial legislation, again it's the Prime Minister at the time of the issuing of the order who would determine whether, given the legal regime in place, it would be appropriate to hold the consultation in parallel with provincial legislation.

With respect to STV and its benefits, the main benefit of STV assumes there's more than one candidate to be elected for the same district; otherwise, I'm not sure there is more real value for this. However, the minute you want to appoint three or four candidates for the same territory, the STV allows giving the most value to the electors' choices. If an elector comes in and votes for Candidate A and finds at the end of the day that Candidate A has been elected by a majority of 10,000, he may feel that had he known that, he would have voted for Candidate B, because Candidate B was his second-best candidate. STV allows the elector to do just that: number one is this candidate; number two is this one. If my vote is not needed to elect candidate number one, I would like it to be transferred to candidate number two.

It's a better reflection of the choice of the electors when you have to fill more than one seat.

• (1700)

Mr. John Maloney: I think you've got a monumental education task in getting your electors to understand the process. This committee, at our last meeting, had some difficulties wrapping their heads around how it would work. We had the example in Ontario of the recent referendum in our last provincial election, and people just didn't understand the whole system. It wasn't the fault of the provincial elections officers; they did, I'd say, a good job in trying to educate the people.

Mr. Marc Mayrand: No, there's quite a challenge there, and I guess there have to be participants who advocate for the system also.

Again, it's been well used in other countries and generally well received by electors of those countries.

The Chair: Thank you.

Do you have a short question?

Mr. John Maloney: Yes.

For the gazetting of notices for a provincial election, you need a six-month lead time. Again, we've got the practical situation that nobody has a fixed election date provincially. Often an election can happen within a short period of time.

Utilization of the provinces—is that really a practical, realistic choice?

Mr. Marc Mayrand: We have across the country currently four or five provinces that have fixed dates, so for those provinces I guess that would facilitate the planning for the Prime Minister.

For other provinces, yes, if there's no fixed date, I don't think we would be able, or the Prime Minister would be able, to order the selection process to be held in conjunction with the provincial election, because that would assume he knows the date of the provincial election.

The Chair: Thank you very much.

I'm going to shorten the next rounds to give everybody the opportunity to ask a question.

Mr. Reid.

Mr. Scott Reid: Thank you, Madam Chair.

I'm really more engaging in a discussion with Mr. Maloney than I am asking Mr. Mayrand a question, because I don't think it's fair to ask policy questions of someone whose role is to interpret rather than to offer policy opinions.

Just with regard to the single transferrable vote system and its relative merits or demerits vis-à-vis the first-past-the-post system that we use for members of the House of Commons, the obvious advantage of it is in proportionality. There's some level of proportionality when you've got more than one candidate running and, to some degree, the preferential vote allows you to avoid strategic voting.

If one imagines, as your first choice, you are a supporter of, let's say, the New Democratic candidate and you vote for the Liberal because you think he's got a better chance of defeating the Conservative, who you don't want, that's the kind of thing that occurs in a first-past-the-post election. There's no danger of that under a preferential system, where you can indicate your preference for your first choice. If that person dropped off the list, your second choice then comes into effect. That's a significant advantage.

The other thing I wanted to point to is multi-member elections in the closest parallel that exists, which is the Australian Senate. They use an STV system. They used to use a kind of first-past-the-post system, with multiple members elected at the same time. What happened was you'd get a situation where perhaps in an Australian state, 55% of the vote would be cast for Party A, 45% for Party B, but Party A would win 100% of the slate from that state. They had to actually alter that system. So I think that's the kind of problem that can exist with a first-past-the-post system for a chamber like the Canadian Senate.

Thank you.

[*Translation*]

The Chair: Mr. Paquette.

Mr. Pierre Paquette: In terms of what you were discussing earlier with Ms. Picard, with respect to advertising conducted by a party presenting itself as a third party, you have suggested, with respect to services, that shared premises not be included. So, in terms of advertising, I understand you to be saying that it is the same thing.

Mr. Marc Mayrand: All goods and services, yes.

Mr. Pierre Paquette: Including advertising.

In any case, we are only beginning our study. It could take quite a long time.

When Mr. Van Loan appeared before the Committee, he said that the bill currently under consideration would give the government complete flexibility in terms of deciding to hold a consultation, when to hold it, in how many provinces to hold it at the same time—it obviously would have to occur at the same time as a federal or provincial election—and how many seats would be involved, vacant or otherwise.

That is a lot of flexibility. You mentioned that you would prefer that it be done at the same time as a federal election. Given that there can only be elections in five of the ten provinces and that elections could be held even if there are no vacant seats in the Senate, might that affect the voter turnout rate and the seriousness with which people treat this type of consultation? For example, there would not be consultation underway in Quebec, but in Ontario, there would, and we know that media coverage is often from coast to coast—you note I didn't say “national”, because several nations are part of the Canadian political landscape. If a consultation can be held even when there are no vacant seats, why would people want to go and vote, since the candidates they select might not get appointed for four or even eight years.

Do you not think the flexibility the government has given itself in Bill C-20 is problematic?

•(1705)

Mr. Marc Mayrand: I suppose those are factors that would have to be considered by the Prime Minister at the time he made the order.

However, there is a risk that voters would be much less interested in voting if the choice they make is unlikely to serve any purpose in the near future.

Finally, I think we have to consider the impact this could have on the nominees. What is the point of taking part in a race or a campaign if there is no certainty of being appointed, even if you are chosen by the voters? I think that has to be considered, at least as far as the nominees are concerned, in this case.

Mr. Pierre Paquette: I have one final request to make. I will be brief, because we were asked to be.

You regularly conduct studies on various topics. In relation to Bill C-16, for example, you provided us with some relating to voter turnout among youth. They were extremely interesting. I don't know whether you have any research reports on the experience in Australia, Scotland or other countries. However, if you do have any information that could help us in our own study, I invite you to pass it along to us through the clerk.

Mr. Marc Mayrand: I am thinking of one study that was conducted that we did not commission, and which is now public. It's the study conducted by Mr. Ron Gould on the problems they experienced in Scotland when they implemented this new system. I could send it along to you. It focuses more on the administrative and operational side of things, and the challenges in that area. I will also see whether we have anything else we could provide to you.

Mr. Pierre Paquette: That would be great.

The Chair: Thank you.

Mr. Bélanger, you have the floor.

Hon. Mauril Bélanger (Ottawa—Vanier, Lib.): Thank you, Madam Chair.

Mr. Mayrand, Ms. Davidson and Mr. Perrault, I want to thank you for being with us to day. I also want to thank you for the work you have done at Elections Canada with respect to the issue we are considering today, as well as in all the other cases.

I have to admit that, hearing the many suggestions you are making, I am tempted to think that Elections Canada was not consulted when the bill was being developed. If you were consulted, you were clearly ignored. However, I am not asking you to comment on that.

I want to come back to the comments made by Mr. Reid. I am delighted to know that representatives of the Fédération des communautés francophones et acadienne du Canada will be appearing before the Committee, because they do not agree with either the comments made by Mr. Reid, or his attitude. In fact, in the brief they sent to the Committee, they refer to a study carried out on behalf of the Commissioner of Official Languages. A professor from the University of Montreal concluded that, if the two reform bills currently before Parliament were to pass, the Francophone and Anglophone minorities in that institution—the Senate, in other words—would completely disappear. I think the minority communities in Canada, be they Anglophone or Francophone, have every reason to be concerned.

Mr. Mayrand, as part of your duties, do you conduct any legal analysis with respect to the constitutionality of the measures that are proposed?

Mr. Marc Mayrand: No.

Hon. Mauril Bélanger: I think the Committee should consider doing so. In fact, I want to suggest that the Commissioner of Official Languages be invited to appear before the Committee, Madam Chair.

In the Constitution, we are dealing not only with what is written in black and white, but also all the written and unwritten principles associated with it. One of the principles outlined in the secession reference relates to the protection of minorities. If Bill C-20 ignores minorities, in my opinion, an official constitutional challenge should be launched against the bill on that basis. I'm not talking about the constitutional challenges that New Brunswick, Quebec and Ontario are preparing. I think it's important to clarify that for the benefit of those closely following this issue.

Mr. Mayrand, I have two questions. First of all, would it be possible for provincial governments, based on the wording of the bill currently before us, to call by-elections in an attempt to influence the result in one region or another? Would it be possible for provincial governments to call a provincial election or by-election when a consultation is underway?

•(1710)

Mr. Marc Mayrand: It is the prerogative of provincial premiers to decide when an election is to be called, except in those provinces with fixed election dates. To my knowledge, there is no rule. It is the prerogative of the province.

Hon. Mauril Bélanger: We are talking about elections on the same day. If elections overlap, there would not necessarily be any cooperation.

Mr. Marc Mayrand: No, it's for holding joint events.

Hon. Mauril Bélanger: I was told that the single transferable vote system is widely accepted. I don't know whether that's true, but I would like you to tell me whether there are any studies on this. The STV system tends to disadvantage those perceived as being the frontrunners in an election race.

Could you check to see whether that is the case? Are there any studies on this?

Mr. Marc Mayrand: I am not aware of any such study. I could certainly ask that some research be done and then share that information with the Committee.

Hon. Mauril Bélanger: It's a phenomenon that...

Mr. Marc Mayrand: It is not something that I have heard before.

Hon. Mauril Bélanger: I have heard it because certain political parties apply it, including my own. Indeed, the phenomenon whereby people perceived as being in the lead are at a disadvantage does enter into it and can influence the results. I simply want to be certain, if we were to pass this, that the system will be neutral and not give any one candidate in the race an advantage over the other.

Thank you.

The Chair: Do you have a comment? No? Thank you.

[*English*]

I believe the bells are about to start ringing, so that will be the last question.

I'd like to thank the Chief Electoral Officer and his team for tallying up the facts for us. I have a feeling we're going to have you back for a recount. The bill is very complex, as you can see by the questions.

Thank you very much.

I'd like to thank all our members for their cooperation today. We'll see you at the next meeting.

The meeting is adjourned.

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