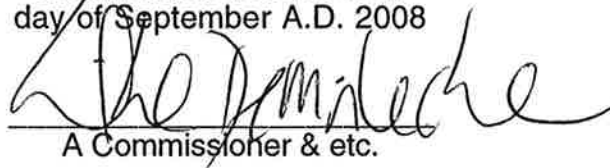


This is Exhibit "G" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008



A Commissioner & etc.



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39th PARLIAMENT, 1st SESSION

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CANADA

House of Commons Debates

VOLUME 141

| NUMBER 047

| 1st SESSION

| 39th PARLIAMENT

OFFICIAL REPORT (HANSARD)

Monday, September 18, 2006

Speaker: The Honourable Peter Milliken

Government Orders

[Government Orders]

* * *

(1205)

[English]

Canada Elections Act

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Hon. Rob Nicholson (Leader of the Government in the House of Commons and Minister for Democratic Reform, CPC)

moved that Bill C-16, An Act to amend the Canada Elections Act, be read the second time and referred to a committee.

He said: Mr. Speaker, I am pleased to have the opportunity to speak to Bill C-16, fixed date elections. I am also pleased to be standing here in my capacity as Minister for Democratic Reform. It is something that very much interests me and I am delighted to hold this particular portfolio.

I am absolutely convinced, since going back to my days at Queen's University where I studied the parliamentary system and the different legislatures around the world, that the British parliamentary system as adapted by Canada is the best system in the world. It has a tradition that goes back centuries. Some legislatures can point to a history of years and in some cases even decades. We can go back centuries of the British parliamentary system having provided effective, secure and stable government for people around the world. I believe we are very lucky to have it. However we have adapted it to ourselves and that is what is important. It is important to realize that no system, not even the best system in the world, is static; it must change.

In Britain alone, from the times of the Magna Carta, there were huge changes over the years to the system, all adapting and making the system a better one. The Constitution of 1688 is a good example of a break from the past but nonetheless an important change.

We too in Canada have made huge improvements to the parliamentary system in our short history. I think back to the 1800s when various Canadian provinces developed the concept of responsible government. Responsible government meant that the governor was taking his direction from the legislature. This was a huge step forward. Everyone recognizes that made government fairer, more democratic and improved the system that we had. Some of the changes are large and some are incremental but they are all moving in the right direction. We only have to look back to the last century to some of the changes that were made in Canada, such as the extension of the voting franchise.

If we were to go back a little over 100 years ago we would see that voting in our system of government was confined. It used to be confined just to property owners. It was extended to adult males and into the 20th century that changed. I remember this point being brought home to me during the election of 1984. I visited a senior citizens home operated by the region of Niagara where I met an elderly woman. I, like all new candidates, shook hands and said hello to everyone. This woman stopped me and said that she wanted me to know that she had voted Conservative in every single election since the Conservatives gave her the right to vote. It took me aback. I said to her that it must give her a good feeling to know that she has always been right, as indeed she has been.

Another Conservative prime minister, John George Diefenbaker, continued to extend that franchise to Canadians when he extended the voting rights to aboriginal Canadians. I think everyone at that time and since has realized that these are the steps we must take to make our system more democratic and more fair.

I am pleased to have the opportunity to talk about another change in our electoral system, one that I think will improve it, Bill C-16, An Act to amend the Canada Elections Act, which would provide fixed date elections.

I will begin with a description of the current process for calling elections and discuss some of the difficulties associated with it. This will be followed by a discussion of the many advantages that we will have when we adopt this legislation, as I hope this House does.

(1210)

Currently it is the prerogative of the prime minister, whose government has not lost the confidence of the House of Commons, to determine what he or she regards as a propitious time for an election to renew the government's mandate. It could be three years into a majority government, which is what we saw in the year 2000 when the government felt it was to its advantage to call a snap election to get another mandate. I also could go back to the early nineties when another government, with which I am very familiar, decided not to go in 1992 but waited until 1993. That particular Parliament lasted almost five years. There is quite a bit of leeway.

When the prime minister, under the current system, requests the dissolution of the House, the governor general, unless there are unusual circumstances, agrees and the country finds itself in an election. What we have is a situation where the prime minister is able to choose the date of the election, not based necessarily on the best interests of the country but on the best interests of his or her political party. I believe Bill C-16 would address those concerns.

Before going into the details of the bill I would like to discuss the key advantages of a fixed date election. Fixed date elections would provide for greater fairness in election campaigns, greater transparency and predictability.

An hon. member: Greater fairness, yes.

Hon. Rob Nicholson: Transparency and accountability. The President of the Treasury Board knows all about that and how important that is. This is what we want.

There would be improved governance, I believe higher voter turnout rates and it would assist in attracting qualified candidates to public life.

Let me discuss the issue of fairness. Fixed date elections would help to level the playing field for general elections. The timing of the general election would be known to everyone. Since the date of the next election would be known to all political parties, they would have equal opportunities to make preparations for the upcoming election campaign. 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 would be on an equal footing.

That has to be of particular interest to opposition parties that have not had the opportunity to call an election. Every party would know when the election will take place and would be able to make the appropriate plans.

Another key advantage of fixed date elections is that this measure would provide transparency as to when general elections would be held. Rather than decisions about general elections being made behind closed doors, general elections would be public knowledge. Instead of the prime minister and a small group of advisers being the only ones who know when the country will move into the next general election, once this bill is passed, all Canadians will have that knowledge, which makes it fair.

I said that it would improve governance and I think it would. For example, fixed date elections would provide for improved administration of the electoral machinery by Elections Canada. The Chief Electoral Officer, in a majority situation, would know with certainty when the next election would occur and would be able to plan accordingly. This would certainly give greater efficiency to the work of Elections Canada and, quite frankly, would save money. All of us know the situation where Elections Canada is trying to make a reasonable guess as to when the election will be called, scrambling to rent space and come up with locations for voting. All these things cost money. It seems to me that this would save money if we knew with certainty when the election would be called.

Another good reason for this bill is that I believe we would have higher voter turnouts. We are suggesting that the elections be held on the third Monday in October, except when the government loses the confidence of the House. That is a time when the weather in most parts of the country is generally the most favourable. Indeed, in my riding of Niagara Falls it is pretty well still summer. I appreciate that it is at the southern end of the country and it is not quite the same for others, but nonetheless the weather is still pretty reasonable in October.

Canadians would be able to plan in advance. Those who are thinking of taking a vacation or who might be outside of their constituencies can make plans to get their votes in when they know with some certainty. That is not the case if they are out of the country or visiting somewhere and the election gets called. Those things pose some difficulty. For those individuals who know well in advance when the election is coming, this is a step in the right direction.

  (1215)

This is not just important to the people who are voting. How about candidates? All of us know people who want to or are prepared to get into public life but who want to know when the election is. Right now we do not have a particularly good idea. It could be three years, as it was in the year 2000, or it could be five years, as it was in 1993. This can be very difficult for candidates. People have other lives and they want to know with some certainty when they will be called upon to put their name forward. It would help to attract candidates to the next election.

Let me give some of the details of the bill. Legislation providing for fixed date elections has to be structured to meet certain constitutional realities of responsible government. They include the requirement that the government have the confidence of the House of Commons and we respect the Queen and the Governor General's constitutional power to dissolve Parliament. The bill before us was drafted carefully to ensure that these constitutional requirements continue to be respected. The bill does not in any way change the requirement that the government must maintain the confidence of the House of Commons. Moreover, all the conventions regarding the loss of confidence remain intact.

In particular, the prime minister's prerogative to advise the Governor General on the dissolution of Parliament is retained to allow him or her to advise dissolution in the event of a loss of confidence. Moreover, the bill states explicitly that the powers of the Governor General remain unchanged, including the power to dissolve Parliament at the Governor General's discretion.

We looked at other legislation across Canada when we were putting this together and the bill is very similar to legislation that is in British Columbia, Ontario and Newfoundland and Labrador. It should be noted that the legislation in those provinces is working.

Hon. John Baird: Passed very quickly too.

Hon. Rob Nicholson: That's right. The President of the Treasury Board knows all about this having served, with distinction I might add, in the Ontario legislature. It works.

For those who think this is too much or have some problems with this, all they have to do is look at the experience. For instance, British Columbia had its first fixed day election on May 17, 2005, and it went well. The election in Ontario will be on October 4, 2007 and in Newfoundland and Labrador it will be on October 9, 2007. In British Columbia there was no suggestion that it had a lame duck government, as that expression is sometimes used. It worked well and people were able to plan with certainty.

I will now talk about the mechanics of the bill. The bill provides that the date for the next general election would be on Monday, October 19, 2009. Of course this would be the date only if the government is able to retain the confidence of the House of Commons until that time. For example, if on tomorrow's ways and means motion on softwood lumber the government were to be defeated, a general election would be held according to normal practice. However a subsequent election would be scheduled for the third Monday in October in the fourth calendar year after the next election. It moves depending on when the election takes place and that is the normal model that would be established by the bill.

General elections would occur on the third Monday in October in the fourth calendar year following the previous general election. However, in brief, we chose that date because it was the date that was most likely to maximize voter turnout and to be the least likely to conflict with cultural or religious holidays or with elections in other jurisdictions. We looked at it very carefully to ensure this was a date that could work.

This raises an additional feature of the bill that I want to bring to the House's 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 comes into conflict with either a cultural or religious holiday.

  (1220)

However, with the introduction of this, there is some possibility in the future that the stipulated election date will occasionally be the same day as a day of cultural or religious significance or of an election in another jurisdiction. The Ontario act, that we had a look at along with the others, allows some variation and some slight movement to accommodate that.

We are proposing the same thing. The bill would empower the Chief Electoral Officer to recommend an alternate polling day to the governor in council should he or she find that a polling day is not suitable for that purpose. The alternate day would be either the Tuesday or the Monday following the Monday that would otherwise be the polling day. Allowing alternate polling days to be held on the following Tuesday or Monday is consistent with the current practice of course of holding elections on a Monday or a Tuesday.

Some opposition members have indicated that this bill is illusory in that the Prime Minister can call an election at any point up until the fixed date for the election, but that is not how our system of responsible government actually works. The Prime Minister has to retain his prerogative to advise dissolution to allow for situations when the government loses the confidence of the House. That has to be there. This is a fundamental principle of our system of responsible government.

Moreover, if the bill were to indicate that the Prime Minister could only advise dissolution in the event of a loss of confidence, it would have to then define confidence and the dissolution of the House of Commons would then be justiciable in the courts, something that we do not want. We do not want the courts to decide what is a confidence measure and what is not.

In conclusion, this bill providing for fixed election dates is an idea whose time has come. I remember recently, I believe in June, there was a poll taken and 78% of Canadians supported this particular idea. It is good to note that the third week in October is already citizenship week in Canada. It is a time when we celebrate what it means to be a Canadian. That is another reason for putting it at that particular time. Of course, fundamental to being a Canadian citizen is our civic responsibility and duty to vote.

This legislation provides greater fairness, increased transparency and predictability, improved policy planning, increased voter turnout, and will help to attract the best qualified Canadians to public life. I hope that my colleagues will join with us in the House to pass this important piece of legislation.



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Mr. Paul Szabo (Mississauga South, Lib.):

Mr. Speaker, I listened intently to the government House leader in regard to this bill. I was a little disappointed that he did not address some of the arguments that would tend to indicate that this is not all win-win. There are some risk elements. For instance, there is simply the aspect that, as is the case in the United States with its fixed election dates, the year before the election is spent electioneering and in fact governance does not occur during that last year. It is very likely that the Government of Canada would not be productive and, therefore, responsible government would not be present during a very long period of time. I am not sure that Canadians are ready for this.

The member indicated that a poll had been taken of Canadians. I am not sure that Canadians were given all the information they needed to make an informed decision and I think that is also important.

My question to the government House leader really has to do with the fundamentals. He referred to the Prime Minister being able to go to the Governor General and recommend an election. He gave some examples from the 1990s. The government House leader should, and I hope he will, confirm to the House and to Canadians that in fact that royal prerogative for the Prime Minister to recommend to the Governor General to dissolve Parliament without the condition of having lost confidence of the House will still exist under this legislation.

Therefore, a fixed election date is only providing a recommended date in the absence of a loss of confidence in the House or at the discretion of the Prime Minister to go to the Governor General, as has been the tradition in the past, to recommend the dissolution of Parliament. I think that has occurred in all of history except in one case where someone else was asked to form a government and an election in fact was called.

To be open and transparent with Canadians, will the government House leader clearly state that the royal prerogative, which entails the Prime Minister going to the Governor General to call an election even if a confidence vote is not lost, will stay in place and there will still be an election when the Prime Minister chooses it?



(1225)



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Hon. Rob Nicholson:

Mr. Speaker, the hon. member covered a number of different areas and one of them I believe was disadvantages. I hope this means he is not going to oppose this bill. It is fair enough to have some questions, but I really hope this bill will receive his support.

He said there would be electioneering in the last year before the election and nothing would get done. It seems to me it would be the contrary. If a committee were trying to make a report and plan its time, those members would know exactly when that report would need to be done. It is very challenging with our present system because an election could be held after three years, four years or five years. A committee could be doing good work, but its members do not know whether to undertake a new study or whether they should make plans for the fall because they are in the dark. They do not know when an election will be called. It seems to me this would be a huge improvement in terms of organizing time.

I looked at what happened in British Columbia. My colleague the chief government whip is nodding his head. Things unfolded as they should have. There was a normal campaign as we might expect. We are in public life. We are always ready for elections. We are always keeping an eye on that sort of thing. It seems to me that knowing an election will be held in four years would allow more things to get done.

My colleague asked about the polling. The poll was taken in June. The hon. member could probably take this up with Ipsos-Reid because this was their poll. This is a well-known national polling organization, and I have every reason to believe this was a fair poll. I have no evidence to the contrary. The hon. member might want to take this up with them. They found over three-quarters of Canadians liked the idea of taking some discretion away.

The hon. member mentioned the Prime Minister. I do not know who he is talking about. I can tell him about this Prime Minister. This

Prime Minister will live by the law and spirit of this particular piece of legislation. He and this government are driving this democratic reform.

This legislation does not involve just fixed dates for elections. The Senate tenure bill is an important piece of legislation. These are all steps in the right direction, but again, they do not remove the royal prerogative. I was asked this question by one of the members of the opposition quite some time ago. I assured him that the royal prerogative with respect to dissolution remains. This bill is an expression of how the House intends to conduct itself.

I hope the hon. member will do the right thing and give his support, and help move this legislation to committee.



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Mr. Joe Comartin (Windsor—Tecumseh, NDP):

Mr. Speaker, I have always wanted to acknowledge the fact that my friend is a graduate of the law school that I went to. However, I am not sure it really helped him a lot in his political career in terms of where he has ended up.

The NDP are in support of this bill and I think he is aware of that. We do have reservations around the minority government situation and the ongoing reservation of the royal prerogative in those circumstances. In particular, our concern is that a prime minister or a cabinet of the day could manipulate, if I can put it that way, the political agenda by way of designating any number of votes as being confidence votes, knowing that at some point they will provoke the combined opposition to vote against a bill.

I wonder if my colleague's government has given any thought to limiting that government power to specified areas, that is, only certain types of bills. I would suggest, because of historical precedence, that these should be money bills and that only money bills should be designated as confidence motions. All others would simply be regular votes and therefore would not provoke or justify the calling of an election if the vote failed against the government.



(1230)



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Hon. Rob Nicholson:

Mr. Speaker, it seems to me that I pointed out the problem. If we started defining what constitutes confidence in our parliamentary system, we would be open to this then being challenged in the courts. I presume that all hon. members do not want to have the courts determining something like the confidence measure that is a part of our parliamentary system. It has been around for hundreds of years. It has changed slightly over the years, but everyone understands it to be one of those things that are important for a government to do its job.

The hon. member says it might be just limited to money bills. I could not disagree with him more. If this country put before Parliament measures to confirm that Canada will be at war, would that not be an awful lot more important than some spending in a particular government department? To my mind it would be, and of course that would be a confidence measure.

We should look at the softwood lumber agreement. It is an agreement between two countries involving the three largest provinces in Canada. It is vital to the lumber industry. When it first came to a vote in Parliament, I said that it was not an agreement; it was a miracle what the minister was able to put together. Nonetheless, it is extremely important and yes, that is a confidence measure.

The member should not always think that what is important is in terms of dollars and cents. It goes far beyond that. That is why we worded the bill the way we have.



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Hon. Stephen Owen (Vancouver Quadra, Lib.):

Mr. Speaker, it is a delight to be back in the House of Commons after the summer recess and to see you, Sir, looking so well.

I am pleased to rise to speak to the bill today. As the official opposition House leader mentioned when the bill was first tabled in the House, the official opposition supports the bill in general but we do have some concerns in regard to ensuring that the objectives of the bill are properly met within the proper constitutional framework of the House of Commons and our relationship with the Crown, and also in regard to taking full advantage of some of the opportunities that the government House leader has mentioned to ensure that the efficiency, the cost containment, the decline in cynicism, and the representativeness of candidates and such, which are potentially the promise of this bill, are actually fulfilled.

Let us start with the first section of the bill, which would amend section 56.1 of the Canada Elections Act. It states, as has been noted:

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

We have had a question from a colleague of mine and an answer from the government House leader with respect to what defines a vote of confidence and therefore a lack of confidence, a vote of non-confidence, and he has responded very broadly that it is not just money, that it might be war or some other thing that the government thinks is very important. That is the very type of looseness that can create uncertainty and can, I think, create instability in the House, uncertainty in the public mind and a frustration of the objective of the legislation, which is otherwise quite appropriate. We are not voting against the bill, but we will be looking in committee to get some constitutional definition around what we are talking about.

People looked at the election in Germany in 2005. Many people reported at the time that it was their opinion that then Chancellor Schroeder manipulated the defeat of his own government to cause an election at a time that he thought was advantageous, so I think we are going to want to look at what role the courts may well have on this, what role the Governor General has, how much discretion is actually there, and what has happened to that royal prerogative over time, through disuse or whatever. It is an important thing for our constitutional democracy. In committee we will have to get a firm grip on it and in a way which I think does the basic work that has not yet been done to interpret the impact of the bill.

Looking more generally at the bill, I think the government House leader is correct in saying that we have a building practice in this country, an experience, of fixed election dates. Not only has my province of British Columbia had fixed date legislation, but it has had an election with a fixed date. I must agree that this has worked out as well or better than anyone who had some misgivings about it could have thought. It did bring predictability.

It has actually demonstrated to many other provincial jurisdictions in the country that this is something that should be part of their democratic reform package. We have heard that Newfoundland and Labrador, Prince Edward Island, New Brunswick and Quebec are looking at this as a way to go. It may well be that this is just a trend, that as with medicare in Saskatchewan, it has been tested in the provinces and its time has come federally, but of course we must always look to those examples for their experience and what we might do better with this legislation as it goes forward.

In December 2005, the Institute for Research on Public Policy did an exhaustive study of parliamentary democracies and democracies similar to Canada's and what sort of election timing legislation and rules they followed. It found that only 11 out of the 40 democracies similar to Canada's have unfixed dates such as Canada does.



Globally, the trend is certainly toward that. I think we should be taking it very seriously. Certainly, therefore, we should not put up any blinders to suggest that we have always done it a certain way and therefore we simply cannot change it. Others have changed it and it is working well. There are lessons we can learn from that. That will be very much a part of this debate and the committee work.

Certainly the efficiency argument has some real merit if this is really used responsibly. In the planning of committee work, public policy development, legislative approval and bureaucratic implementation, if we take advantage of this certainty, not to simply become lame ducks during the last year but to in fact plan efficiently right up to the date the election campaign starts, then there is real potential for efficiency to be achieved from that predictability.

We know that certainly in law and legal principles, and in criminal law in particular, certainty is absolutely critical as a basic tenet of the criminal law of Canada. We know that in business certainty and predictability are often even more important than the particular taxation rule or regulatory rule. Business has to know what is coming to properly prepare. I think the work of the House of Commons and the Government of Canada can benefit from that as well if it is properly planned.

The fairness issue is a good one. The government House leader raised it. In our discussions of how we develop public policy, we must always, in the House and, frankly, in government, look to the fairness, not just from our own subjective point of view but also from the view of the public. I think we have had experiences in Canadian parliamentary democracy, if not federally then provincially, in which the public has decided that the early calling of an election is unfair and inappropriate. We saw that in Ontario some 15 years ago, when the government that called for an early race paid for it through the public's feeling that it was unfair.

That transparency, that level playing field, that coming to a place like Ottawa to the House of Commons with a firm mandate and a majority government to work to a certain schedule and to fulfill that obligation to the public, all of that, I think, is something that should be emphasized.

That fairness will help erode cynicism. I think we in this House are all too painfully aware that the public is cynical. We are constantly under pressure, and an appropriate pressure, from the public, our constituents, to deal with the cynicism that perhaps the best interests of individual Canadians are not always looked after in the House. We have to do everything we can to break down that cynicism. If this is properly implemented, I think this can help do that.

Of course, if we increase fairness, transparency and planning and if we reduce cynicism, that should lead to greater voter turnout. That is one of the most important indicia of the health of our democracy, which slipped a bit in 2004. It went up again in 2006, but we are still far below what I would see as a healthy voter participation in our democratic process. I think that is important.

Of course the date that has been suggested, that of the third Monday in October, helps with voter turnout with respect to the seasons. At that time we do not have a lot of perhaps retired and senior citizens holidaying in the southern United States to avoid the cold weather, and we do not have students out of university or people who are away during the summer and are not available to vote or take part in the whole civic engagement. That could all be very positive.

I understand and appreciate that voting in February or January in Vancouver is no problem at all. In fact, we had a very great time with the weather in the lower mainland during the last election, but I do appreciate that other parts of the country, including Niagara, that wonderful temperate area during certain months of the year, could benefit in voter turnout from not having to face harsh winter weather conditions.



The early fall date I think is an interesting one. Ontario has picked something similar. B.C. went for a late spring date and there is some consideration in British Columbia of moving it to the fall. I think there is some real purpose behind that. For one thing, the lead-up, the period of the campaign, would be at the end of the summer. Rather than suspending the parliamentary session in mid-session, that is helpful. It is also helpful with the predictability of planning courses in high schools and universities around civics for seniors, community groups and new immigrants, courses around electoral responsibility and the democratic process. The predictability in putting those types of civic exercises into a predictable annual rotation is probably helpful with turnout as well.

The question of representativeness of candidates is an important one. We know that we struggle in this country, and certainly in the House, to have the appropriate representation of women, for instance, which is of course far below the pro rata size of the population. I believe it is 21% in the House and I know that all of our parties struggle with it. I think we have to struggle together as a House of Commons and look to the legislation to ensure that as it is finalized and implemented--and it may be amended--it takes advantage of whatever opportunity a fixed date can provide for forward planning, for organizing someone's professional or family life, for fundraising, and for the whole nomination process of candidates to ensure that this increases the representativeness of the House by gender and as well as to properly reflect the indigenous, the multicultural and the linguistic duality and the multiplicity of this country. That could be an important thing.

One of the problems that we all must be aware of and has been spoken of often is the further Americanization of the Canadian political situation. I think what we have to do is look to this legislation to ensure that this does not happen--the fixed date may actually help if we do it properly--and that there is a shorter campaign period.

The government House leader mentioned, and I think correctly, that electoral officials can plan better with a fixed date. A lot of the work they might have to do during an election could actually be done before the campaign starts, so the campaign could be shorter. With appropriate campaign and political financing laws, I think that could be very helpful. It is something we want to pay very careful attention to: ensuring that the campaign period is limited and that the political financing laws are aligned with that to stop the great expense and lame duck or never-ending practice of the American political process.

There is another issue that I think we should look at just briefly and then perhaps in more detail in debate in committee. We should look at how federal election fixed dates, if we are indeed going ahead in that direction, fit in with other levels of government and their electoral dates. There is a possibility there, if we can align through intergovernmental discussion. For instance, Ontario will have municipal elections this fall and then provincial elections in 2007. As well, Lord knows, we are going to have the American presidential election in the fall of 2008, and then, as set out in this legislation, a federal election in the fall of 2009.

Is there some way we can annualize our civics courses, our public education, so that we are both avoiding overlapping elections, which frankly can exhaust the public, and also taking advantage of every year having a swing through, a reminder, a refresher or mock elections and such in our schools, universities, colleges and communities to really heighten people's awareness of the issues and of the importance of their democratic participation?



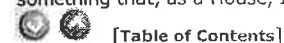
(1245)

Finally, I would put the aspect of democratic reform in a broader context. We have political financing reform that was brought in by the former Liberal government. The accountability act takes further steps in political finance legislation. It has not been completed yet but it is certainly in play, and political financing is a big part of the electoral framework.

Another aspect is election timing, and we are addressing that today. Another aspect is the voting procedure and looking at different systems, or combined systems, than simply the first past the post system. We know that many democratic parliaments in the world operate on different voter systems. We know the Law Commission of Canada has come out with a very detailed report recommending a mixed proportional system.

British Columbia had a very engaged citizens' assembly process to look at a potential change. It got almost 68% of the vote on a plebiscite issue, but not the 60% needed. There are numerous jurisdictions across the country, I believe six in all, looking at different voter processes. That is another piece of it.

Finally is the public engagement part of representative democracy, and that is absolutely critical. Democracy is always on a spectrum between participation and direct representativeness. We have to get that balance right, but it is only healthy if our representative democracy is responsive to the participatory engagement of our population. As a fourth level of electoral reform, this is something that, as a House, I hope we will consider very carefully.



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Hon. Jay Hill (Prince George—Peace River, CPC):

Mr. Speaker, I appreciated the comments made by my colleague for Vancouver Quadra on this important legislation.

Already in the debate this morning, there has been some discussion and questions from opposition in regard to the legislation. I thought the government House leader did an excellent job of explaining the rationale for the legislation and why we believe, in the Conservative Party of Canada, that all members of Parliament would want to support it as our Parliament and parliamentary institutions continue to evolve. It is an important step forward.

My question deals with the prime minister's prerogative to note that he and his government perhaps have lost confidence of the House, therefore precipitating an election. There were some questions about why we would still need that and what would constitute loss of confidence in this place. I believe the government House leader did a pretty good job of explaining why that is necessary.

We certainly do not want the courts to muck about and define what is or is not a confidence motion for our Parliament. However, I would suggest to my hon. colleague for Vancouver Quadra that if we get this legislation in place, there will be public pressure, both on the opposition in a minority situation and on the prime minister and the government, to very clearly explain to Canadians why an election would be necessary.

Once there is a fixed election date in front of Canadians and they are anticipating and planning for an election, in this particular case on Monday, October 19, 2009, if confidence is lost in this chamber and the Prime Minister is required, under our system of government, to go to the Governor General and have her call an election, I think there will be increased pressure to explain to Canadians why we could not wait until that fixed election date. That is a good thing, because it would provide, at least I hope, for much greater stability in Parliament and in the nation.



(1250)



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Hon. Stephen Owen:

Mr. Speaker, there are a number of ways of looking at this question. I quite agree that during a minority parliament if a vote were lost by the government in the House, there would be a very rigorous public and political debate over whether that constituted confidence or not. This would happen probably before the vote as well as after the vote, if the government lost.

It will be a political context. The Governor General will of course be thinking very carefully about this legislation, what the spirit of it is, what her constitutional responsibilities are, what historical practice has been and what the public debate and political debate has been. I do not have any doubt about that.

We have another situation and there is an uncertainty there. I think one of the useful things that the committee can do is to look at whether there are some defining points. Are there some, not rigid formula that the courts will interpret and must be followed, objective criteria that can give some direction to the political and public debate and the Governor General's consideration?

An additional problem is not where there is a minority government, but where there is a majority government, as was the case in

Germany last year. Despite there being no issue of confidence and the government having a majority, the prime minister still has the prerogative. The Governor General, under this legislation, would still have the prerogative to dissolve parliament and call an election. That is another challenge for members to think through to ensure we get it right so we do not hobble or cement an advantage now, which many people see as being an unfairness.

Let us make sure that the objective that is before us is properly met in the most effective way.



(1255)



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Hon. Jay Hill:



Mr. Speaker, my colleague from Vancouver Quadra raised the issue in his answer about the prime minister still having the prerogative under a majority situation to call an election before the fixed election date, if the bill becomes law and were to be in place.

Yes, under the legislation the prime minister of the day would still have that freedom to go to the Governor General and ask her to dissolve parliament and call an election. I suggest it would be very difficult for any prime minister to sell that to Canadians if they were expecting, especially under a majority situation, that parliament was going to last for a period of time. I cannot imagine why a particular prime minister would feel that he or she could not continue to govern, despite the fact of having a majority and having an election date some time into the future. I believe it would have to be an extraordinary situation for a prime minister to do that. If a prime minister went against the spirit of this legislation and purely called an election because he or she felt the opportunity was ripe, that the situation for his or her particular political party was very advantageous to go to the polls, I suspect that person would quite likely be punished by the Canadian people in the subsequent election campaign.



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Hon. Stephen Owen:



Mr. Speaker, the chief government whip is probably right that there would be tremendous political pressure against a crass move that was not in emergency circumstances or in some very important circumstance. However, we have an obligation in the House, to the fullest extent that we can, to simply not rely on political dynamics to ensure that something untoward does not happen. I invite government members on the committee and all members in further debate to think very carefully about this prerogative because it leaves an uncertainty.

Let me mention a type of situation which could occur. There could be a change in leadership of the government party by reason of death or incapacity, or whatever, shortly after an election. There has been a practice in our parliamentary democracy, it is not inviolate but it is quite frequent, that a new leader seeks to get his or her own mandate at a fairly early date. Maybe we can look at this opportunity to break that expectation or trend. To me it has always seemed a bit like putting a presidential aura around a prime minister who is not directly elected, but is only the leader of a party with the most elected members. If a new prime minister used that reason for asking for a dissolution, I would like to see that rejected. Maybe the legislation could make that clear in some way.

All I am suggesting is that we tighten this up to the full extent possible to ensure the certainty that we are seeking.

[Translation]



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Mr. Michel Gauthier (Roberval—Lac-Saint-Jean, BQ):



Mr. Speaker, the legislation before us is certainly worthwhile. Everyone will benefit a great deal from having elections held on a fixed date in the Canadian parliamentary system.

I would like to tell the government that the Bloc Québécois members will definitely support this legislation because, in our view, it represents a step forward. People need to understand that we again have a minority government. In recent years, we have had several elections in a short space of time. Canadians need to know that since I became a member of Parliament in 1993, no majority government has completed its full mandate, which should run between four and five years. Choosing an election date has become a political plaything for a prime minister, who tries not to find the best way of accommodating voters, but to find a time when public opinion may give him popular support. It has become a guessing game, with absolutely disastrous consequences.

First, people get fed up with having hundreds of millions of dollars of their tax money spent to hold an election four, six or eight months before it is required. Holding elections on a fixed date is sound fiscal policy. It is wonderful. A normal mandate runs for four years. This gives the government time to do things, and no one has to deal with the stress of an unexpected election campaign.

There is a serious shortage of women in politics. But let us look at what is required of candidates who want to join us here in the House of Commons or serve in the provincial legislatures. We are talking about professionals, business people, people who have some responsibility in society. They are expected to announce six, seven or eight months in advance that they intend to run for office. Imagine a wife and mother or a career woman who also has family obligations. She has to tell her husband and children that she plans to run as a political candidate in the next election, with all that involves.

This is fine if the election is called a month later: people announce their intention to run, then they start campaigning. We know how it works on the ground: we campaign daily, selling memberships leading up to a convention and convincing the organizers. That is how we work. However, the election might not happen until seven months later because the Prime Minister decided to put it off since the polls were not looking very good. Then people find themselves in a pseudo-campaign situation for six or seven months while they prepare and wait for the big day. Obviously, they have to keep working at it because everyone knows they intend to run.

This kind of cat-and-mouse game is detrimental to recruiting candidates. If we know that the election is to take place on such and such a Monday in October of such and such a year, people can plan for it, at a time that suits them, and then announce their candidacy.



(1300)

I sincerely believe that one of the major advantages of this bill is that it would simplify life for people who want to enter public

service, but who are not prepared to play around with their careers for five, six, seven months, or maybe even a year while they wait for a general election to be called. This is an extremely important part of planning the transition from private life to political life for people who decide to take the leap. This is an important element.

The second very important element is that democracy works best when everyone, even the men and women in politics, knows that there are fixed elections. Fixed elections enable us to take more coherent, organized action rather than playing the will-he-or-won't-he game with the Prime Minister.

I believe that there is nothing worse for democracy than letting the Prime Minister decide when to hold an election based on when public opinion tells him he is at his best, and then surprising everyone with the election announcement.

In my opinion, an election is not a game. An election must be taken seriously, approached honestly and not be a surprise. It must take place in its own time in order to allow citizens to express their opinions. This is another extremely important consideration.

Past prime ministers toyed a great deal with election dates. Oddly enough, this card has almost always been played in the month following the arrival of a new leader of the opposition. That indicates that the prime minister would take stock of the situation. If the Bloc Québécois was holding a leadership convention, the time was right to call an election two months later. How considerate. There is no time to organize as everyone is caught off guard.

A leadership race is currently underway in the Liberal party. It would be tempting for a prime minister, in these circumstances, to call an election perhaps two, three or four months after the new leader is chosen so as to not give this individual the time to organize.

I must say that the Prime Minister is being reasonable and sensible when he tells citizens that he is setting aside this prerogative, which is his to exercise, and doing so deliberately. He says that he will not play games with the opposition parties or public opinion. He will simply respect the mandate given. Obviously this bill does not and cannot change the constitutional powers of the Prime Minister and the Governor General, particularly those of the Governor General.

A responsible government assumes that the Prime Minister could, at any time, if defeated in the House, go to the Governor General and advise him or her that he no longer has the confidence of the House. That goes without saying.

The Constitution has not been amended. However, the Prime Minister, by putting forward this legislative measure, and even if he does retain the authority to act otherwise, places considerable political pressure on himself and on those who will follow.

People would not understand, for example, if the Prime Minister, after tabling this Bill providing for elections in October of 2009, should decide to call an election in 2008, with three months notice—because the polls were favourable or because of some other circumstances—perhaps because he was hoping to achieve a majority government. That would not be well received. The voters would say he was two-faced, saying one thing when talking about principles but acting in an entirely different way when it is time for action.

It is no secret that in tabling this bill, the Prime Minister is creating a framework that he will have to respect in all situations and that he must accept. In addition, what he is doing will have consequences for others. He is agreeing, for himself, to give up that prerogative of playing with election dates. As a result, it won't be done any more.

Once he has taken this step, the path will be marked out for subsequent prime ministers, who will have to respect this legislation which is a very clear expression of the will of the House of Commons.



(1305)

Moreover, the Office of the Chief Electoral Officer has very complex work to do to prepare for an election. At present, the possibility that there might be an election at any time during the government's mandate requires Elections Canada officials to be in a state of constant readiness. Some rather large expenditures are linked to that state of affairs. I am not just talking about the mandate of a minority government. It is true even in the context of a very strong majority government, as we have seen in the past.

It seems to me that with a fixed election date, in the context of a majority government, Elections Canada could better plan its work and its schedules and be better prepared, more adequately prepared, when the situation required it. That is also an absolutely remarkable benefit.

In addition, elected members have many other matters to be concerned with than the need to be re-elected, perhaps in a year-and-a-half, two years, or three-and-a-half years. They have a great deal of parliamentary work to do and lots of work in their ridings. Having a certain, predetermined room for manoeuvre will allow members, through agreement with all parties, to plan the work of parliamentary committees and the legislative agenda to be accomplished. The government and the opposition will be able to plan better and work more effectively. It avoids unpleasant surprises and enables parliamentary committees to schedule their work so that within one mandate a number of problems could be dealt with. Parliamentary committees will be able to plan their work and establish a schedule that respects dates known to everyone.

A clear democratic advantage ensues, for this leads to improved democracy. As for the practical organization of elections, this will also allow for a better electoral process. It also has the advantage of making it possible to better organize the work of Parliament. It also allows very worthy candidates to better plan the announcement of their candidacy, which is not currently the case. This could draw more women to political office, and certainly more senior level professionals who cannot risk putting their careers on hold for months at a time.

Furthermore, researchers looked at approximately 40 parliamentary democracies from around the world and found that only 12, including Canada, do not have fixed election dates, or at least an electoral period established within a couple of months. In short, only 12 out of 40 do not have elections on a certain day or during a certain period. This means that accepting fixed election dates would be a step towards progress. It would mean joining the 28 other parliamentary democracies that have established this rule. This also prevents overlapping with unsuitable periods for an election, such as during holidays or during periods that could interfere with elections being held in other areas of our public life. This allows us to simply declare late September and October, every four years, as the election period for the House of Commons, as we would all know that the election is held the third Monday in October. Everyone could then plan their schedules based on this information.

We therefore support this bill. It does not change our democratic habits in any drastic way; it merely specifies the importance of fulfilling four-year mandates.

  (1310)

I have served several terms in this House since 1993, and I have never seen a government complete its mandate. When a minority government was elected, reporters asked me whether I was disappointed that we had another minority government, because that could mean an election in the relatively near future. I told them that whether we have a minority or a majority government, it never completes its mandate. The legislation before us will allow governments to complete their mandates. That is what we hope and want. For a minority government to complete its mandate, it needs to do one very simple thing: respect the members of this House.

Any government that decides to respect the will of the House of Commons will easily be able to complete its four-year mandate. From now on, the Prime Minister and the cabinet—the executive—will have to agree to govern by consensus. The opposition has the power to allow the minority government to continue or to defeat it. Of course, our goal is to allow the government to govern. But the government has the responsibility to develop the tools it needs in order to govern. With a minority government, an election might be held in October 2009. This government would have to try to govern more openly to rally the forces of the NDP, the Bloc Québécois, the opposition as a whole or the Liberal opposition. This is possible. It has happened in the past, and it generally means more responsible governance.

Fixed election dates can benefit both majority and minority governments. We all try to the best of our ability to ensure that the government governs properly, over the course of a full mandate. Canadians do not like having too many elections and want us to act responsibly. The bill will make that possible.

Again, without eliminating the Governor General's prerogative to dissolve Parliament, the Prime Minister has set an extremely rigid set of parameters for himself, and he will have to abide by those parameters or else lose all credibility. When he has followed those parameters once, his successors will be morally obliged to do the same. This is a step forward. I salute this initiative. The Bloc will support it on its merits, as it approaches every piece of legislation tabled in this House.

  (1315)

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Ms. Diane Bourgeois (Terrebonne—Blainville, BQ):

Mr. Speaker, we just heard a very fine speech. It is always a pleasure to listen to the hon. member for Roberval—Lac-Saint-Jean who is very eloquent and has a quiet, subtle way of advancing ideas that are real food for thought.

He mentioned one point that I would like him to explore further. That is the need of ordinary citizens for fixed election dates. Why? As he explained, they are a great help to the hon. members and the parties. However, for a community that is waiting for a bill, for example, what is the effect of fixed election dates?

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Mr. Michel Gauthier:  

Mr. Speaker, I mentioned this briefly, but for the benefit of my hon. colleague and everyone else, I will add the following. The parliamentarians in this House and the government could do a better job of preparing; they could draw up their schedule better and would have a better idea of how much parliamentary time they have to critique a bill and consult Canadians. If necessary, they could consult a little longer and do further research.

When we know the election date and how long we have for our work, the quality improves. We know where we are at.

I am the House leader. I have been in the House of Commons for 13 years and have been House leader for 12.

For all 12 years, at the end of every session ministers in the various governments come to see me, because I am the House leader, and beg me to allow their bill or legislation to pass. They tell me that a certain bill is absolutely essential and ask if I would be willing to consent to this legislation being speeded up so that it can pass.

I am saying this for the people listening to us and for the hon. members who have not yet had a chance to experience a few ends of session. I find this game at the end of parliamentary sessions unseemly and unfortunate. However, I can understand it.


A minister who has an important piece of legislation—on the environment or industry or in any given area—is very eager to see it pass. He has worked on it for seven, eight or ten months and sometimes more than a whole year, and there have been consultations and much effort. When the minister sees the end of the session looming, he definitely does not want to all this work to go down the drain. He does not want to have to start all over again a few months later, or even after an election, because there is nothing left that matters any more.

Fixed election dates would eliminate surprises. How many prime ministers have thrown their own ministers for a loop by calling early elections? It is amazing. I think that Canadians—whom we are supposed to be serving here by introducing and passing legislation—would be happy to know that the hon. members work in a planned, orderly fashion and that the results will arrive as expected.

This would therefore be a great improvement for everyone: for both the people and ministers. They voted for legislation and did well. It will be easier for them and easier as well for opposition members to work on legislation that they want to help along. That is another good reason to support this bill.

  (1320)

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Hon. John Baird (President of the Treasury Board, CPC): 

Mr. Speaker, I wish to thank my colleague from Quebec for giving a good speech.

Obviously it is always the third party's fault when a government that had a majority for close to 10 years did not have an opportunity

to put its own bill to the vote. That is what happened with the previous government. I find these stories really funny.

I agree completely with the member from Roberval: this new bill would let us know ahead of time when the next election would take place. The ministers would have lots of possibilities and would know how many years, months and days they had left to work on their bills.

Something else that is very important is the way things operate, particularly a minority government. But it is exactly the same way of operating in a majority government: the ministers work with the opposition critics.

I had a very enjoyable experience working with the former Bloc Québécois critic, Benoît Sauvageau, who passed away. He was an extraordinary man, a very honest man, with great abilities and a lot of experience. It was a great pleasure for me to work with him. All our thoughts go out to his family and his colleagues on both sides of the House.



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Mr. Michel Gauthier (Roberval—Lac-Saint-Jean, BQ):

Mr. Speaker, I am very pleased that the President of the Treasury Board liked what I had to say about the ministers. I can tell you that this is so for all ministers of all governments. It is natural and it is also to their credit.

I have always had respect for a minister who goes to the trouble of crossing the House, of coming to see me, going to see the leader of the official opposition or the leader of the NDP to try and get a bill passed. I have always found that it was a mark of trust and commitment on the part of such people.

So I sincerely feel that holding elections on set dates will get rid of this element of surprise. It will give rise to fewer surprises for these people, and more work will get done with better planning.

It has happened that, in wishing to support bills, we have agreed to go a little faster, and sometimes we have made mistakes from going too fast, because the legislative process requires us to act seriously. This is another reason in support of holding elections at set times. We will have more time to do our job properly, we will not need to fast-track, there will be less need for us to rush and there will be less risk of typos slipping into bills. So it is a good measure.



(1325)



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The Acting Speaker (Mr. Royal Galipeau):

Questions and comments. Two minutes remain for the question and answer.

Resuming debate, the hon. member for Windsor—Tecumseh has the floor

[English]



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Mr. Joe Comartin (Windsor—Tecumseh, NDP):

Mr. Speaker, I rise to speak to Bill C-16 and to signal, as I did earlier this afternoon, that the NDP would be supporting this legislation. We are looking forward to getting it into committee for further discussion and perhaps amendments. In essence, the proposition being put before this House right now is one that we have supported for a good number of years. In the 2004-06 Parliament our former member, Ed Broadbent, was a strong proponent of this and encouraged the government of the day to press forward with it, to no avail. We are pleased to see that the government has in fact moved on the issue.

To a great extent this bill is about combating the cynicism that is in the electorate. We can say it makes sense for our electorate to know that there would be a fixed date for an election every four years and prepare for it knowing in advance when voting would take place. However, what is more important, and I do not want to downplay the significance of that certainty of a fixed date, is that if this bill passes it would be an opportunity for this House, for Parliament, to say to the citizens of Canada right across the country that we are no longer going to have their decision making process manipulated by the government in power. That has been very much the history of parliaments of all stripes in this House.

A parliament, a government of the day, will say this is to its advantage to go now even though it is nowhere near the generally accepted four, four and a half year mandate that we should stay and work and do what is our responsibility to the country. The government says, no, this is to our advantage right now, because of this issue, it is popular in the country, it is our issue and so we are going to go to the electorate.

We saw that, as we heard from some of the other speakers today, in the last number of years happening repeatedly, where we had elections at three and three and a half year intervals, and that suffers. If nothing else, if we want to look at it from a non-democratic standpoint and simply from a financial standpoint, it means we have more elections, and those cost money, in the range of \$200 million, each time we go to the electorate. More importantly, the essential issue is that we say to the people of Canada that we are no longer going to manipulate the electoral date in order for it to be of advantage to the government in power of the day.

One of the side effects of that, because of the certainty of the date which would allow people to know in advance when the vote would be and to prepare for it, is that it would increase, I believe, the number of people who would vote because they would not feel this negative cynicism toward all parties and all politicians from this perspective. They would say that they knew this election was coming at this point, it is part of our law, they are ready for it, they are going to participate in it, they are prepared for it, and they have not been forced to go to the polls only because of an opportune time for the government in power. For that reason the bill is important. It is one that we should all be supporting. I think we have heard today from the various parties that they all intend to in fact support this approach.

I suppose the comment one has to make is that it is too late. We should have done this a long time ago, but in fact we are now finally now getting to it.

One of the concerns that we do have of this legislation is with regard to the situation in a minority government because of course this law would have no effect if the past practice continues. The past practice is, as often as not in a minority government situation, that the government comes down not so much because of a lack of confidence generally in the government but on a specific issue.

  (1330)

We are proposing for consideration in this minority government situation, and we will be raising it at committee when it gets there, to constrain the ability of the government to intentionally bring itself down by creating a false issue, by setting up an issue that all three of the opposition parties with the majority of seats in the House would vote against. That has happened and there certainly has been speculation that the government may be planning on doing that some time in the spring of this session.

In order to avoid that kind of cynicism, there are alternatives. I put this to the government House leader today. He, of course, was dismissive of it in the sense that it would usurp the power of Parliament and cross over into conflict with our courts. What I suggested to him was that we limit the number of issues that can be confidence motions, so that a government cannot unilaterally, as it can now, say an item is a confidence motion and if we do not vote with it the government, it goes down and we have an election.

That again is a manipulative tool that governments in the past have used. From a democracy standpoint there is no reason to have that in our system. We could, I believe, with some discussions, debate and negotiations come to a conclusion and incorporate that into legislation as to what is a permissible motion of confidence and exclude all others.

One of the answers I received from the government House leader was that we cannot do it because we would end up being challenged in the courts. That is not necessarily the consequence. The decision as to whether a motion is one of confidence or not, once we have set the criteria, could be determined, first by your Chair, Mr. Speaker. That is one alternative, or it could be by a vote in the House. There are other alternatives.

Albeit, and I am not going to advocate it, another alternative is to allow the Governor General to make that decision. Being an unelected position and being a strong democrat, I am not prepared to turn the power over to that office, but I do believe it would fall within the perspective, control and authority, and jurisdiction of either the House or of the Speaker of the House at the time, and so there are alternatives.

Going back again to why we are supporting the bill, both from a democratic standpoint but more to deal with cynicism within the electorate, it would be another way of saying to the electorate, even in the minority government situation, that they would not be forced to go to the polls, that we would be able to continue the government and continue on the issues that are confronting the country without going to the electorate. We would not allow the government of the day to simply say something is a confidence motion, that if we do not vote with it we would have an election.

There are alternatives. It is an alternative that I believe would deal very much with the other part of the cynicism when elections are called in this country.

I want to say that there are clear reasons why this will be effective and I want to address one of the negatives at the same time as seeing it as a positive. I believe that by allowing for fixed election dates we actually would reduce the amount of partisan electioneering that goes on between elections. We would reduce it to that latter period of time, to the last six months.



What happens now, and I think we are being less than honest with the electorate when we stand in the House and say that we are going to be in a constant election mode with the implication being that we are not right now and we are not even in a majority government situation. I have been in both. Anybody who has been here knows whether one is in a majority government situation or a minority government situation, as it stands right now, electioneering goes on because we do not know, and I was very glad to hear my colleague from the Bloc making this point, when the plug will be pulled. Right now we are into that situation and in fact we do partisan electioneering on a constant basis.

  (1335)

Having fixed dates, I believe and would argue strongly, would reduce the amount of partisanship that goes on between elections and restrict it to the latter period of time of, as I say, six months to a year before the campaign starts. The argument is that it is somehow going to increase the amount of politicking that goes on, being meant in a negative tone, the result of which will in fact be just the opposite.

With regard to the other positives here, again it is a situation where because one knows what one is confronted with in terms of a date, the recruitment of candidates by all parties and the recruitment of volunteers by all parties will be enhanced when we know the dates that we are working toward as far as the election date itself.



The bottom line is, and I will conclude with this, if we proceed with the legislation as proposed, it is definitely a step forward but it is not enough. I believe we should strongly look extensively at the issue of how we trigger elections in a minority government situation around confidence votes and amend this legislation to include criteria as to how the situation would be dealt with then. That would go to finalizing that cynicism that the electorate feels toward all politicians about the way we manipulate election dates in this country.

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Mr. Dean Del Mastro (Peterborough, CPC):

Mr. Speaker, I listened with great interest to what the hon. member had to say. I am encouraged to hear that it sounds as though he is supporting election reform in this manner. I was, however, disturbed by some of the amendments that the member was proposing with respect to confidence motions in the House.

It seems to me that governments are elected on a mandate and are expected to deliver on the promises they have made. Certainly, this government is making a case for the fact that it will deliver on what it has promised. If bills are going to be constantly debated, and no one has to express confidence in a government, I do not think any government could really go to the people and express that it would deliver on its promises. I would like to hear what the member has to say about that.

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Mr. Joe Comartin:

Mr. Speaker, perhaps the member should study some of the other governments. I am going to use England as the example.

England's legislature has been going through an extensive reduction in the votes that are considered to be confidence motions. It does not in any way demean the democracy in that country. I believe it is just the opposite.

Governments there, both conservative and labour, have suffered defeats on issues they ran on and saw as part of their mandates in their elections. Their governments did not collapse. Democracy continued in that country. It can in fact work.

The other point that one would have to make, if one goes back and studies the history of successive governments in this country, is that all too often matters that were not part of the mandate are brought forward as confidence motions. They tend not to be the major issues of the day on which the political parties ran for government or ran for office, but more mundane ones that are oftentimes manufactured as causes for confidence motions knowing that the opposition parties collectively will vote against it and bring the government down.

  (1340)

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Mr. Paul Szabo (Mississauga South, Lib.):  

Mr. Speaker, I thought the member raised a couple of interesting points. I think there is general support in the House for the legislation but subject to some discussion and maybe some witnesses at committee on a couple of points, many of them are around the issue of the concept of the royal prerogative.

As the member will know, Eugene Forsey has opined that to set fixed terms for government or fixed election dates would in fact require a constitutional amendment. He also indicated that a constitutional amendment would eliminate the royal prerogative because then the Governor General would not be in a position to go against the laws of the land. In fact, even if a prime minister were to go to the Governor General because he or she would like to refresh the mandate, the Governor General would probably have to say no simply because of the issue that the royal prerogative in fact would have been muted by the override of Parliament.



I am wondering if the member has done any reading in this area and whether there is any concern with regard to the need for a constitutional amendment in this regard.

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Mr. Joe Comartin:  

Mr. Speaker, I have looked at it to some degree. I certainly do not claim to be a constitutional law expert, which is what we are into here. I would not challenge Mr. Forsey's opinion but it is only one opinion. There are strong opinions on the other side within the constitutional law, both academics and practitioners, that this proposed amendment by the government to the elections act would withstand a constitutional challenge.

I would make one additional point and that is that our Constitution is not just a written one. The Supreme Court has made it clear that we can create constitutional conventions and that may very well occur here. It is certainly what I believe would occur if we moved along the lines I am arguing for which is a restriction on what a vote of confidence is. If over a period of years the Governor General were advised by the government of the day to have an election on a certain date and abided by that, over a period of several elections that would then become a convention within this country. The same would be true in a minority government situation along the lines that I previously mentioned.

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Ms. Libby Davies (Vancouver East, NDP):

Mr. Speaker, being a former municipal councillor I have always supported fixed election dates. It has never been an issue. People know when an election will be held. It is no big deal. B.C. has fixed election dates. I think it is about the only thing Gordon Campbell has done in B.C. that I agree with.

One group of voters that are ready and waiting for the next set election date are the voters of Vancouver Kingsway. They were denied the opportunity to send a message to their member of Parliament who betrayed them in the last election by switching parties. While I support set election dates, it is very unfortunate that the Conservative government has chosen to sweep under the carpet and ignore one of the most basic forms of voter accountability and democracy in our country and that is to ban floor crossing.

I would like to ask the member for Windsor—Tecumseh if he could comment on that. It seems to me that we cannot cherry-pick these issues. This is about democracy, accountability to voters and making our system work. The fact that the floor crossing bill never happened under the government is a crying shame and really betrays the voters of Vancouver Kingsway who have a right to say something about what took place there.

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Mr. Joe Comartin:  

Mr. Speaker, I could not have said that better myself.

What we are doing here with regard to fixed election dates is a very small part of the electoral reform this country needs. Floor crossing is one of the issues that badly needs to be addressed given how the electorate has been so abused by both the Liberals and the Conservatives in the last two Parliaments.

A number of other amendments and changes to our laws are needed. Some are extensive while others are fundamental. In the last Parliament, Mr. Broadbent led the way at committee by proposing a number of necessary amendments to our laws and to our system. I was just reading one of the reports from the committee before I came over here today. The Conservative government supported a number of those amendments and yet we have seen no sign of them. We see things like the push for an elected Senate being sidetracked to a significant degree by the appointment of unelected senators by the government and by simply moving to change the time they will be in office.

A number of things rapidly need to be done and the government is just sitting on its hands with regard to them. We really have to question its intent and its sincerity in this regard.

(1345)

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Mr. Pat Martin (Winnipeg Centre, NDP):

Mr. Speaker, I will just take this opportunity to briefly ask my colleague about the need to reform the elections act. In terms of election financing, one of the most glaring things facing us today that we believe could have been addressed by the government is the fact that the current Liberal leadership race is relying on massive election loans that are more like donations which would clearly be in violation of the election financing act were they viewed in their real context.

Perhaps my colleague from Windsor could comment on the lack of real election reform and the need for raising these other important issues in the same--

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Mr. Paul Szabo:

Mr. Speaker, I rise on a point of order. I know it is in the rules of this place that no one is to be accused of breaking any laws. Indeed, the laws are being followed in accordance totally with electoral laws. I think the premise of the member's question and the insinuation is an embarrassment to Parliament.

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Mr. Joe Comartin:

Mr. Speaker, I did not get any implication from the member that he was accusing the Liberals of illegalities but more of moral bankruptcy, and he is right. The issue of those types of loans was raised in 2003 at committee by one of our members who is no longer in the House that this was a glaring loophole. We are seeing that loophole being exploited at this point.

What are they thinking Canadians will think about that? It clearly is a loophole and it is a wonder that the government did not plug it. Some more work for its members to do.

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Mr. Tom Lukiwski (Parliamentary Secretary to the Leader of the Government in the House of Commons and Minister for Democratic Reform, CPC):

Mr. Speaker, in case there is any confusion among those people who are viewing this debate, I want to say that we are not talking about fixing elections because that would be a bad thing. Bill C-16 is a very good thing. This is part of our overall democratic reform package. I think it will be well received within this place because it is one of the more positive steps in democratic reform that any government can bring forward.

We currently have a system where at the will of the government it can call an election. That obviously leads to many things along the lines of manipulating voters and manipulating dates to get the most beneficial time to the governing party to call an election. Obviously, as many speakers before me have indicated, this would bring an element of fairness to the whole equation.

I should also say at the outset that I am very pleased to hear the majority of my colleagues in this place stating unequivocally that they plan to support this important legislation. I say the majority but I cannot say all because as usual my colleagues on the official opposition side of the House, the Liberal Party of Canada, seems to be all over the map in terms of whether they want to support this or not. I heard today my hon. colleague from Vancouver Quadra state that he wishes to support this legislation, although he offered a few pieces of advice that we perhaps could tweak the legislation and make it stronger.

I have also heard in previous interviews the member for York South—Weston state without reservation that he will support the legislation but I also hear my colleague from Wascana say without reservation that he will oppose the legislation. I suppose it is not unusual to hear my colleagues on the Liberal side of the House once again failing to come to any unanimity on a very important issue. In fact, I find it distressing and troubling that members of the Liberal Party of Canada would oppose, in any way, shape or form, a sense of accountability that would bring transparency and fairness to this place.

Let me once again try to point out some of the elements of this legislation and why it makes sense to me and to most Canadians. In fact, I should say that a recent polling has observed that over 77% of Canadians polled think that fixed election dates would be a good thing and a necessary change. I agree with that for all of the right reasons.

First, of course, it would ensure fairness. It would ensure that no party, regardless of political affiliation, while in power would be able to manipulate a date for a federal election to its particular advantage. I must say that this has happened time and time again over the last 100 years and not only by Liberal governments. It has happened with Progressive Conservative governments in the past. In fact, my research indicates that since 1867 with majority governments, the vast majority of governments ignored the four year traditional and conventional timeframe for federal elections.

Not once over the course of 12 years did the previous Liberal government adhere to the four year convention. Former Prime Minister Chrétien was in the habit of calling elections every three to three and a half years. That allows the governing party to have a political advantage over its opponents. Only the governing party knows the dates of the next election. If the polls happen to be favourable and it looks like the governing party might be returned in either a majority government or at least a strong minority, the governing party can call an election at its whim.

Conversely, if it appears that the polls indicate that the governing party may not win an election at that four year cycle, it can delay that election up to five years and beyond. Quite frankly, that should not be allowed to happen.

This legislation would take care of that. It would make it incumbent upon the present government and governments in the future to adhere to a fixed date for federal elections. The manipulations of governments trying to buy voters with their own money would come to an end. This is a very important step in our package of democratic reform.

(1350)

It is more than simply fairness. It is the transparency that I think most Canadians are looking for in their elected officials. Canadians do not want to think that the timing of a federal election will be held behind closed doors where a bunch of party hacks and pollsters get together and say that this would be their best chance to win the next election and that they should call the next election on a particular date. That should have no bearing on the timing of a federal election.

The bill, if adopted by this place and the upper chamber, will prevent that type of action from happening again. All Canadians will have the luxury of knowing that their governments, now and in the future, will have to adhere to a certain timeframe, the third Monday in October every four years. If that is not enough, it will also improve the ability of each successive government to provide the type of legislation and governance that Canadians expect and, frankly, deserve.

Too often we find a sense of gridlock within the public service because public servants are unaware of when the next election might be called. They are somewhat fearful of bringing forward initiatives or improvements within their particular government department or agency for fear that legislation or that initiative will be quashed by the government with the call of a federal election. Without question, if all parliamentarians and public servants knew that there were specific and fixed dates for elections, governance would vastly improve.

One of the more important elements of the legislation, of which very few people have spoken today, is that with fixed election dates I believe voter turnout would probably increase. Right now we all know and I think admit that there is a high level of voter cynicism for a number of reasons. One of them is that elections can be called at the whim of the government in a majority situation. I believe if the general public knew when the election would be held, they would have more confidence in coming forward to vote on election day, notwithstanding that if we had fixed elections dates, over time there would come a sense of knowledge and reality within the electorate that every four years, the third Monday in October, there would be a federal election. It would become almost routine and more and more voters would come out to the polls because they would know and expect an election on that appointed date.

One of the real tragedies we have is the fact that over the last 10 years or so we have seen a steady decline in voter turnout to the point now where slightly over 60% of Canadians exercise their franchise on election day. That is a tragedy. Decades ago we had 75% and in some provinces at least 80% voter turnout. People took pride in the fact that their vote counted. They had an opportunity to change the course of the country or at least elect a government that seemed to agree with their particular point of view.

Now, particularly among young people, we find a situation where people just do not feel they have an opportunity to truly influence democratic institutions. This is one small step in rectifying that.

Finally, I encourage all members in the House, particularly my friends opposite, to vote in favour of the legislation. Without their support, without the support of all opposition parties, the legislation will fail. That would be to the detriment of all Canadian people.

The government is convinced and committed to ongoing democratic reform. This is the first step and we will take other initiatives as we come through this fall session. With the support and help of all my hon. colleagues, we can all engage in true democratic reform for the benefit of all Canadians.

  (1355)

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Mr. Paul Szabo (Mississauga South, Lib.):  

Mr. Speaker, during his speech, the member referred to party hacks and other backroom people setting election dates.

Would he care to comment on the story in today's press from the Conservative Party hacks and backroom boys that the next election is next spring, right after the budget comes down?


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Mr. Tom Lukiwski:  

Mr. Speaker, my hon. colleague has again got it completely wrong. It is idle media speculation.

Let me just assure my colleague that the longer we have a chance to stay in power, with the legislation that is being so overwhelmingly approved and appreciated by Canadians, the better we will be. We do not want an election after the next budget. We want an election after four successive budgets. That would ensure that we stay in power for an awfully long time.

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The Acting Speaker (Mr. Royal Galipeau): 

When we resume discussion on the legislation, there will be four minutes left for questions and comments.

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[Statements by Members]

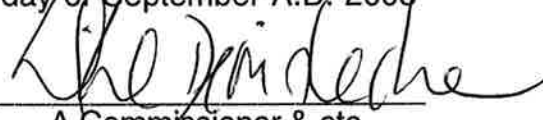
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  (1400)

[English]

Fort McMurray  

This is Exhibit "H" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008


A Commissioner & etc.



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CANADA

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1st SESSION

39th PARLIAMENT

OFFICIAL REPORT (HANSARD)

Tuesday, September 19, 2006

Speaker: The Honourable Peter Milliken

The House met at 10 a.m.



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Hon. Carol Skelton (Minister of National Revenue and Minister of Western Economic Diversification, CPC):

Mr. Speaker, I wish to split my time with my hon. colleague from South Surrey—White Rock—Cloverdale.

It gives me great pleasure to rise to speak on Bill C-16, which would establish fixed election dates for the third Monday of October every fourth year. The bill continues the Conservative government's commitment to provide accountability and transparency in our Canadian democracy.

There is no perfect day for an election. There are, however, better days than others, as everyone in the House knows. I commend all the volunteers in the last election who had the unfortunate job of trying to hammer—or should I say jackhammer?—signs into the ground and who door-knocked with chilling winds and snowy days.

Of special importance to my riding of Saskatoon—Rosetown—Biggar is that October 19, in good years, allows farmers to finish their harvests. Agribusinesses and the people employed in those businesses could become involved in the election process. During the harvest, the agricultural sector barely has time to sleep, let alone participate in or even think about politics. Bill C-16 would ensure that they are able to fully participate in elections.

Senior citizens would also not have to brave the cold weather to exercise their democratic rights. I have heard from many of my senior constituents about the difficulty of making the trek to the polls in freezing temperatures that can reach -30°C. The ice is another danger best avoided when possible, as it seriously hampers their ability to participate in Canada's democracy.

The third Monday of October allows our youth to get settled in the school year. Students could hold candidate debates so they could actively participate and become aware of the issues. As we all know, youth voter participation is at an all time low, with only an estimated 35% of 21 year olds to 24 year olds voting. The most cited reason for this lack of participation is cynicism of the political process. This cynicism extends further than youth, with manipulation of election dates increasing voter apathy.

A poll in 2004 by the Environics Research Group found that 81% of people supported having elections at fixed times. The government listened and now we are acting. By removing the politics from calling elections we are restoring trust in Canadian democracy. No longer will election dates be manipulated by politicians behind closed doors. Combined with the federal accountability act, we are responding to the concerns of our youth and all Canadians by doing politics differently.

The bill makes elections predictable but also makes room for flexibility. In the case of the election falling on a religious holiday or near an important provincial or municipal election, the date can be moved up to seven days following the set polling date.

With the passage of Bill C-16, elections will become predictable and stable while still keeping governments accountable. B.C. and Ontario, under Liberal governments, have both adopted fixed dates for elections, with other provinces considering doing the same. These governments remain accountable because they still allow for votes of non-confidence.

Bill C-16 would allow the government to be voted out in a vote of non-confidence. In this way, the Governor General retains her powers to dissolve Parliament. The bill explicitly states:

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

There have been no constitutional or legal problems for either B.C. or Ontario with their election dates and there will not be for the federal government.

We are providing predictability while still working with the traditions of parliamentary democracy. This bill is truly the best of both worlds. It would also allow for provincial governments to plan their elections around federal elections. They could plan to hold them closer or further away from federal elections based on their preferences. One thing is clear, though, and that is that it would make election planning a more rational and easy to follow process. People could plan in advance to get involved in the political process knowing exactly when the next election would be called.



(1030)

This bill will increase voter turnout by giving more access to our electoral system. Predictable elections will also reduce waste in government machinery and give Canadians value for their money. Elections Canada has to be in a constant state of readiness, which forces it to keep a high level of staffing. This is very costly. In the case of a majority, Elections Canada knows when to expect an election and can plan accordingly. This bill will substantially reduce the cost of holding elections in the future.

Political parties, individual candidates and staff will also be able to plan better. Staff members may be able to join a hockey league knowing that they will not have to leave it midway through to participate in an election. Candidates can plan their election strategies knowing precisely when they will start campaigning. Government departments can plan their agendas more effectively. Instability and uncertainty means that departments have to hold off on projects because they are unsure who will be in power. Committees will be able to plan policy in advance, making it a more focused and efficient system.

Predictability has many political rewards for government and allows us to do our jobs better. In the current system, the governing party has an unfair advantage over opposition parties with the ability to call elections when that suits its purpose. We have seen this done in the past by federal and provincial governments and parties of all stripes. Governments can call elections to coincide with upturns in the economy after large capital projects have been completed or if they are doing well in the polls. This is clearly an unfair advantage for the governing party. Levelling the playing field is an important aspect of democratic government.

People in my riding often come up to me and say that they do not feel the democratic process is working for them any more. Instead, they say, it is working in the interests of those in power and their friends. With this bill, election dates will no longer be set to benefit the ruling party but set to benefit the people.

We must continue the process of restoring trust in our democratic institutions by making them independent of internal party politics. Parliament has been developing a non-partisan electoral system for the past 100 years. Electoral boundaries are drawn by independent commissions and elections are administered by Elections Canada. The date of elections, though, continues to be in the hands of politicians.

In conclusion, let us finish the process by taking politics out of electoral date setting. Let us restore trust in Canadian democracy.



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Mr. Anthony Rota (Nipissing—Timiskaming, Lib.):



Mr. Speaker, I was listening closely. I like what I hear and it makes a lot of sense, but I have a real concern about fixed dates. I think back to 1988, when municipal and federal elections took place at the same time. At that time, the government fell and elections went on. My concern is that I do not see anything in the bill, and I hope there will be an amendment, so that this would not happen.

My big fear is that at some point the federal government will fall due to non-confidence during a time when there is a municipal election. Municipal elections now are scheduled every four years in Ontario. What would happen then is that in perpetuity, until the next non-confidence vote takes place, we would have elections happening at the same time at the municipal level and the federal level. The same thing can happen at the provincial level, because Ontario now has a fixed date. It all depends on when that non-confidence vote happens. My big concern is that we would have two levels of government having elections at the same time and it would cause a lot of confusion.

What we are trying to do is mix a congressional system, like those in the United States and other countries, with a parliamentary system. I have a concern when we start blending those two things and do not look at the consequences, because we solve one problem but we may cause 500 more. That is my concern. Other than that, I really do not have a problem with fixed date elections. Maybe the member can comment on what we can do to prevent that from happening.



(1035)



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Hon. Carol Skelton:



Mr. Speaker, I appreciate the question from my colleague, which is very interesting. My hon. colleague has spoken about how this works very well in the province of British Columbia. We in Saskatchewan do not have fixed election dates. I think it would be a great benefit for our province. We know when the municipal elections are and we know when they are going to be held. Non-confidence is always something that we cannot work around, but I think this whole bill would start to make a very positive change at the federal level in this country.



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Hon. Bryon Wilfert (Richmond Hill, Lib.):



Mr. Speaker, the hon. member talks about the election dates being fixed and how governments have at the moment discretionary power in order to call an election at their whim for political purposes. I certainly agree with that, except that in the beginning of the bill it states that the Governor General still has discretionary power to dissolve Parliament.

The government of course can go to the Governor General and say that this was a vote of confidence. The bill does not define what is a vote of confidence. Is it only going to be, as I suggest it should be, on the Speech from the Throne and on the budget?

Governments still have the power to dissolve Parliament based on what they perceive to be a vote of confidence. If the government is really serious about fixed election dates it will define that. Otherwise, by saying that in fact we are going to have a fixed election date four years from now does not prohibit in the interim this government or any government in the future from calling an election based on a perceived vote of confidence.

That is the weakness I see in the bill. Neither the government House leader nor members of the government have been able to address that, which to me is window dressing and not dealing with the real issue. The real issue is how to prevent an election from happening either by accident or still by design by a government, which the member claims she does not support.



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Hon. Carol Skelton:



Mr. Speaker, as someone who was first elected to this place in 2000 and has undergone three election campaigns I think the bill is a huge step toward making a rational decision to help Canadians, to save money, and to put some common sense back into the whole issue of election dates. I think that common sense is having an election every four years and not on the whim and call of the Prime Minister. Non-confidence votes are always based on money bills and I think that is something opposition parties will have to look at.



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Mr. Russ Hiebert (Parliamentary Secretary to the Minister of National Defence, CPC):



Mr. Speaker, I take great pleasure in rising to speak to Bill C-16, An Act to amend the Canada Elections Act. The bill would fix federal elections for the same day every four years.

The bill is the fulfillment of yet another election promise on the part of this Conservative government. In our election platform we stated we would:

--Introduce legislation modelled on the BC and Ontario laws requiring fixed election dates every four years, except when a government loses the confidence of the House (in which case an election would be held immediately, and the subsequent election would follow four years later).

That is exactly what the bill does. By now, the opposition, the media and the voting public are starting to understand that the promises we made during the last election are promises we intend to keep. They watched us fulfill our campaign promises to cut the GST, deliver truly universal child care benefits, present criminal justice reform and pass the accountability act. They will see many more commitments from our platform fulfilled this fall.

This particular bill, though relatively modest in scope, is significant for what it represents. It signifies this government's strong

commitment to an ordered and measured reform of our democratic system of governance. The 19th century model of government our fathers of Confederation founded our nation upon has served us for nearly 140 years. Yet, in recent decades, we have seen a tendency of our current system for power to become consolidated at the centre. Provincial powers have become subsumed into the federal power and the power of Parliament has become subsumed into the Prime Minister's Office.

This concentration of power at the centre has had serious consequences in many areas of Canadian life. For instance, we have seen the rise of regional alienation and even the formation of various separatist movements. A chief complaint they level is that Canada is not working. I disagree with those separatist sentiments, but it is a fair criticism to make that Canadian democracy does not work as well as it could.

That is what we will begin to correct with basic democratic reforms such as fixed election dates. With these reforms we will begin to move from a 19th century toward a 21st century system of democracy that better serves the needs and aspirations of our many provinces, our much larger population and our modern society.

After nearly 140 years of Confederation we have seen little democratic reform up until now. We have long heard promises of democratic reforms from other parties including the previous Liberal government. We saw reports commissioned. We saw ministers of democratic reform appointed under the Liberals. The previous Liberal minister of democratic reform said just last year:

Our political structures and institutions need renewal. Canadians are crying for political stability. Only in this way can we direct the focus of government once again to growing a competitive economy that safeguards our quality of life.

We agree with that statement, but we will take action and not just talk about it. Yet, it is this new Conservative government that has delivered during the first months of office.

As a member of Parliament from British Columbia, I am particularly proud to be speaking in support of fixed election dates. My province has long been the leader in the area of democratic reform and was the first province to implement fixed election dates in 2001.

British Columbia made history when we had our first provincial election with a fixed election date of May 17, 2005. I believe it is no mistake that B.C. in particular has become a driving force behind our democratic reform in Canada. Indeed, B.C. is literally the furthest from the centre of political power in Canada; three time zones away, with high mountains and vast prairies between us and Ottawa.

Yet, despite the distance and the political alienation that many sometimes feel, British Columbians have always taken the constructive approach. Rather than throwing out the baby with the bathwater by choosing separatism, we have asked ourselves what needs to be done to fix these problems.

British Columbians strongly believe that our system of government can be renewed and reformed. We have worked hard in recent years to make that a reality. We have legislation to allow for the election of senators to represent B.C.



We have recently undertaken a process called a citizen's assembly to examine the question of proportional representation and we held a province-wide referendum on that proposal. We have passed recall legislation. We have successfully implemented fixed election dates.

Fixing the election date levelled the playing field for everyone in B.C. Voters knew when the election was coming and had plenty of time to gather information, discuss the issues and formulate their decisions. Every party was able to plan accordingly. Parties could find candidates and those candidates could plan their lives around the known dates of the campaign. Candidates and parties could plan their fundraising. The governing party lost a real advantage, but this reform worked and democracy in B.C. has ultimately strengthened.

As with the reforms in B.C., we now see Ontario and Newfoundland and Labrador adopting similar methods that are proposed here in Bill C-16. Federal election dates would no longer be chosen with the advantage they may provide to the governing party. Every party would have the same opportunities.

The reverse is also true. Not only are snap elections out, no longer will governments that have passed their "best before" date and face certain defeat at the polls be able to drag out their terms simply for the purpose of remaining in power as long as possible.

The disastrous Ontario administration of would-be Liberal leader Bob Rae comes to mind as a prime example. His unpopular government clung to power for 57 months out of the 60 possible maximum.

Setting the dates of future elections in law would also have a noticeable benefit for the Canadian economy. As a trading nation with borders that are open to the flow of goods and capital, Canada's economy prospers when investors enjoy stability. Knowing the date of an election enhances the ability of businesses to engage in longer term planning. We also avoid the potential for large fluctuations in our currency due to speculation, which can harm our export based economy.

Returning to the example of a government that has overstayed its welcome and is intent on grasping power for a full five years, the four year election cycle would give voters the opportunity to judge a government on its economic performance sooner.

The disastrous Bob Rae government in Ontario, which ground the economy to a literal standstill on its infamous "Rae days" could have been tossed out nearly a year earlier. Ontario might have avoided that final year of high taxes, huge deficits, high unemployment and record welfare rolls.

A date fixed in October would also steer clear of many of the shortcomings of the recent federal election that straddled Christmas and New Year's. The October date would avoid interfering with most of the religious holidays and observances of Canadians. It would also avoid the summer and winter seasons, when many Canadian may be away from their homes and communities for extended periods.

My riding of South Surrey—White Rock—Cloverdale has one of the highest populations of seniors in the nation. A large number of these seniors head to warmer climes in the winter months, for reasons of health and recreation. An October vote would allow my constituents to discharge their civic responsibilities without interference to their vacation plans. As such, making it easier to participate in an election with a fixed date in October should encourage a higher voter turnout; and the higher the participation rate, the healthier our democracy.

Our democratic reforms do not end with fixed election dates. These are only the first steps. We promised a series of substantive reforms during the recent election.

Among these, we promised to begin reform of the Upper House by creating a national process for choosing elected members for that House from each province and territory. We proposed further reforms to make the Upper House an effective, independent and democratically elected body that would equitably represent all regions.

We committed to restore representation by population for Ontario, British Columbia and Alberta in the House of Commons while protecting the seat counts of smaller provinces.

We committed to making all votes in Parliament, except the budget and main estimates, free votes for ordinary members of Parliament and to increasing the power of Parliament and parliamentary committees to review the spending estimates of departments and to hold ministers to account.

Members will know that a modest step toward reform of the other place has begun with a bill to limit the terms of new members of the other place to eight years. Members will also know that we have opened up the process by which our Supreme Court justices are chosen so that Parliament would be allowed to question and consider potential appointees.

In conclusion, I encourage all members to support this modest yet important reform proposed in Bill C-16.



(1045)



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Ms. Chris Charlton (Hamilton Mountain, NDP):

Mr. Speaker, I am old enough to remember wearing a button that said "Canada's NDP: The only party with policies worth stealing". Therefore, I am delighted to see that the Conservatives have finally seen the wisdom of that saying and have adopted at least one of the pieces that was part of Ed Broadbent's package for true democratic reform.

The member concluded by saying that theirs was a modest step forward. Could he explain to the voters, who are concerned about things such as the musical chairs by the member for Vancouver Kingsway or the member for Newmarket—Aurora, why that reform stops short of actually dealing with other democratic reforms such as banning floor-crossing, bringing in proportional representation and adding new transparency to leadership races in our country?



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Mr. Russ Hiebert:

Mr. Speaker, I can understand the urgency and the desire for the member opposite to increase the amount of democratic reform that this place needs. I suggest that one step at a time is the way to go. To put all these things into one omnibus bill would surely result in greater opposition than what we experience when we bring in legislation one at a time. I encourage her and her party to stand behind this initiative and help it pass.



(1050)



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Ms. Denise Savoie (Victoria, NDP):

Mr. Speaker, I am very pleased to see the government talking about making our democratic process work better to serve the interests of all Canadians. However, there are many commonsense practices that exist now, outside of these legislative changes, that would also further that goal. One of them is to hold true consultation processes.

Recently the government supposedly held a consultation process on post-secondary education. The closing date happened to be the date when students returned to university. It was held during the summer and it failed to advise many of the stakeholders of this consultation process.

Would the government commit to a real consultation process rather than the kind of sham that was held this summer on post-secondary education?



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Mr. Russ Hiebert:

Mr. Speaker, I cannot help but note that the member has no real questions with respect to the legislation. She has moved on to other topics of reform that perhaps the House should consider, but I would like to address Bill C-16, the one focused on fixed election dates, and simply highlight some of the other benefits that I did not get a chance to address in my speech.

In summary, there are four clear benefits from the legislation.

It provides fairness. No longer will the governing party be allowed to manipulate the process.

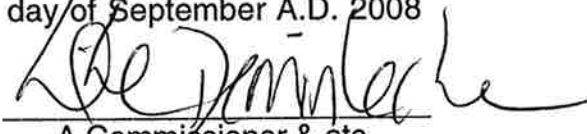
It provides transparency and predictability. Canadians will benefit from knowing exactly when these fixed elections will occur so they can plan their lives and the businesses around it.

It improves governance by removing power from the prime minister's office and devolving it to the people, as it should be.

Hopefully, it will result in a higher voter turnout. The date in October was chosen particularly to avoid conflicts with municipal elections and religious holidays, such that the voter turnout should be higher if we adopt this legislation.

I encourage all members in this chamber to support Bill C-16.

This is Exhibit "I" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008


A Commissioner & etc.



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39th PARLIAMENT, 1st SESSION
Standing Committee on Procedure and House Affairs

EVIDENCE

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Tuesday, September 26, 2006

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Hon. Rob Nicholson



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Mr. Warren Newman (General Counsel, Constitutional and Administrative Law, Department of Justice)



Hon. Stephen Owen



The Chair



Hon. Stephen Owen



The Chair

EVIDENCE

Tuesday, September 26, 2006

[Recorded by Electronic Apparatus]

* * *

(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:

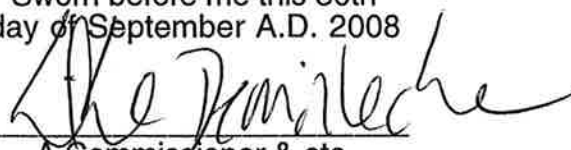
I assumed that was the intention. I'm concerned not with the intention, which seems sound to me, but only with the actual legal effect of the proposed section worded as it is, which appears to be internally contradictory. I wonder if there's a--

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

This is Exhibit "J" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008


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Debates of the Senate (Hansard)

**1st Session, 39th Parliament,
Volume 143, Issue 51**

**Tuesday, November 21, 2006
The Honourable Noël A. Kinsella, Speaker**

- SENATORS' STATEMENTS
 - United Nations Report on Violence Against Children
 - National Child Day
 - Cardiovascular Risk Assessment
 - Congratulations to Steven Fletcher on Induction into Terry Fox Hall of Fame
 - National Child Day
- ROUTINE PROCEEDINGS
 - Study on National Security Policy
 - Amended Report of National Security and Defence Committee Tabled
 - Proceeds of Crime (Money Laundering) and Terrorist Financing Act
 - Bill to Amend—First Reading
 - Assemblée parlementaire de la Francophonie
 - Bureau Meeting, June 29-July 3, 2006—Report Tabled
 - Foreign Affairs and International Trade
 - Committee Authorized to Meet During Sitting of the Senate
- QUESTION PERIOD
 - Finance
 - Income Trusts—Change in Tax Treatment
 - Health
 - Program Cuts to Secretariat on Palliative and End-of-Life Care
 - Foreign Affairs
 - Prime Minister's Visit to China—Case of Mr. Huseyin Celil
 - Delayed Answer to Oral Question
 - The Cabinet
 - Representation of Prince Edward Island
 - Answer to Order Paper Question Tabled
 - Public Works and Government Services—Jean Canfield Building
 - The Senate
 - Introduction of New Pages
 - Pages Exchange Program with House of Commons
- ORDERS OF THE DAY
 - Constitution Act, 1867
 - Bill to Amend—Second Reading—Debate Continued
 - Canada Elections Act
 - Bill to Amend—Second Reading—Debate Adjourned
 - Criminal Code
 - Bill to Amend—Second Reading
 - Referred to Committee
 - Constitution Act, 1867
 - Bill to Amend—Report of Special Committee on Subject Matter—Debate Continued
 - National Philanthropy Day Bill
 - Second Reading—Debate Continued

Second, we should not proceed until Nunavik is legally represented in the Senate.

Finally, until the maintenance of the democratic characteristic of the Senate, through transitional accommodations, is assured, we should not proceed with the bill.

Honourable senators, for those reasons I propose that the bill itself be suspended until we see the next bill concerning the process to select senators.

Clearly, we cannot speak about democracy and vote on laws to promote our democracy while knowing that a large region of our country and its inhabitants are still forgotten. Therefore, the bill should not be read the second time and the subject matter and the report of the special committee should be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

The Hon. the Speaker: Honourable senators, a motion in amendment has been moved.

Hon. Anne C. Cools: Honourable senators, was it a motion or a suggestion?

The Hon. the Speaker: Senator Watt, did the chair understand correctly that the honourable senator has moved a motion in amendment?

Senator Watt: I moved a motion that the bill not be read the second time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

(1520)

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Watt, seconded by the Honourable Senator Adams, that the bill —

Senator Cools: Point of order. Honourable senators, at first I thought Senator Watt was making a proposal or a suggestion. I did not realize he was moving a formal motion. His Honour is treating it as a formal motion. Is that what Senator Watt had intended? My understanding of the motion is that he is asking that the bill and the subject matter be sent to the Standing Committee on Legal and Constitutional Affairs?

Senator Watt: Yes, in the proper time.

Senator Cools: You cannot make a motion now about events in the future. The bill has not yet had second reading.

The Hon. the Speaker: Honourable senators, the question before the house at this moment is the motion of the Honourable Senator LeBreton, seconded by the Honourable Senator Comeau, for the second reading of Bill S-4. Therefore, we are at second reading, which is usually on the principle of the bill. Since we are debating only the principle of the bill, we do not amend a bill at second reading. As I have not put the question, there has been a suggestion made, and perhaps Senator Watt would be satisfied that the record shows that he has made this suggestion and, when we reach a different stage, wishes to move that amendment. It would be in order then.

Senator Watt: That is correct.

On motion of Senator Milne, debate adjourned.

Canada Elections Act

Bill to Amend—Second Reading—Debate Adjourned

Hon. Consiglio Di Nino moved second reading of Bill C-16, to amend the Canada Elections Act.

He said: Honourable senators, I am pleased to begin debate on second reading on Bill C-16, to amend the Canada Elections Act to provide fixed dates for general elections. This bill honours a Conservative Party commitment made during the election campaign.

First, I note that Bill C-16 has been passed in the other place without amendment with all-party support. A range of expert witnesses appeared before the Standing Committee on Procedure and House Affairs in the other place. The committee heard from the Chief Electoral Officer, representatives of political parties, academic experts, the Leader of the Government in the other place and the Minister for Democratic Reform.

While there were minor differences on some details of the bill, I was struck by the fact that all parties supported the fundamental rationale of the bill. I believe they all shared a view that elections belong first and foremost to the people of Canada, the electorate, and that no party should be permitted to exploit the timing of an election to benefit the party's electoral fortunes. All parties also agreed with the principle that the timing of elections should not be left to the Prime Minister but should be set in advance so that all Canadians will know when the next election will occur. This knowledge will help erode the scepticism and cynicism Canadians have shown in recent years towards politics and politicians.

[Translation]

Honourable senators, I will start by describing the current procedure for calling a general election and examine some of the difficulties involved. Then, I will address the many benefits associated with fixed date elections. Finally, I will outline the provisions contained in Bill C-16.

[English]

Today, it is the prerogative of a Prime Minister whose government has not lost the confidence of the house to determine what he or she regards as a propitious time for an election to renew the government's mandate. The Prime Minister then requests dissolution from the Governor General and, if the Governor General agrees, the Governor General proclaims the date of an election. We have a situation where, behind closed doors, the Prime Minister can choose the date of the general election not necessarily based on the best interests of the country but the best interests of the governing party. Bill C-16 will address this problem and will produce many other benefits.

Honourable senators, before going into the details of the bill, allow me to discuss the key advantages of fixed-date elections. Fixed-date elections will provide for greater fairness in election campaigns, greater transparency and predictability, improved governance and higher voter turnout. Fixed-date elections also will help to attract the best qualified candidates to public life.

First, I will discuss the issue of fairness. Fixed-date elections will help level the playing field for those seeking election. With fixed date elections, the timing of general elections will be known to all and not just the Prime Minister and a few confidants. Since the date of the next election will be known to all political parties, each party will have an equal opportunity to prepare for upcoming election campaigns. Instead of the governing party having the advantage, an advantage the party may have over other parties for several months, the passage of this bill will put all parties on an equal footing. It is not only fair but also right that each party have equal time to prepare for elections.

Another key advantage of fixed-date elections is transparency. Rather than making decisions about election dates secretly behind closed doors, general elections will be set in advance as prescribed by this bill. Once the bill is passed, the date of each election will be known by all Canadians.

Predictability is also a key advantage of fixed-date elections. Canadians and political parties alike can rely on our democratic election system working in an open and predictable fashion. Appropriate plans can be made on a reliable basis to prepare for and respond to fixed-date elections.

[Translation]

Honourable senators, fixed date elections will improve governance. For example, fixed date elections would provide for improved administration of the electoral machinery by Elections Canada. In majority government situations, the Chief Electoral Officer would know with certainty when the next election would occur and would be able to plan accordingly. This would almost certainly promote greater efficiency at Elections Canada and, therefore, would very likely save money.

[English]

Political parties will also likely save money, as they will not need to remain on an election footing for extended periods of time.

Moreover, fixed-date elections will allow for better parliamentary planning. For example, parliamentary committees can set out their agendas well in advance, which will make their work, and Parliament as a whole, more efficient.

Yet another reason for adopting fixed-date elections is that this measure likely will improve voter turnout. Because elections will be held in October, except when a government loses the confidence of the house, fewer people will be transient. Again an example, most students will not be in transition between home and school and will be able to vote. I predict many more will. Moreover, seniors will not be deterred from voting as they might be in colder months. Of course, citizens will be able to plan in advance to participate in the electoral process, arranging for advance voting if they plan to

be away, and indeed many will plan their absences in order to vote.

(1530)

An additional benefit is that pre-election campaigns to "get out the vote" will be better prepared, as the organizers will know exactly when the next general election will take place and plan accordingly.

Finally, I want to mention a most important additional advantage. Fixed-date elections will help to attract more of the best-qualified Canadians into public life. Those who are considering public service as parliamentarians will be better able to plan and arrange their lives and schedules, resulting in many more talented Canadians entering public life. I believe that fixed-date elections can only help in attracting the most qualified individuals to public service.

[Translation]

Honourable senators, I would now like to talk about the provisions of the bill.

A bill that provides for fixed-date elections must be structured so as to comply with the constitutional realities of a responsible government. It should include a provision stating that the government must have the confidence of the House of Commons and a provision to ensure that the bill will not affect the Governor General's power to dissolve Parliament. The bill that is before us was carefully drafted to meet these constitutional requirements.

Consequently, the bill in no way changes the requirement that the government must maintain the confidence of the House of Commons. In addition, the practices regarding the loss of the confidence of the House are maintained. In particular, the Prime Minister's prerogative to recommend that the Governor General dissolve Parliament is maintained, in order to allow the Prime Minister to recommend dissolution if the government loses the confidence of the House.

The bill also expressly states that the Governor General's powers remain unchanged, including the power to dissolve Parliament at the Governor General's discretion.

[English]

As set out in the government's platform, this bill is modelled after existing provincial fixed-date elections legislation. This legislation is very similar to the approach used by British Columbia, Ontario, and Newfoundland and Labrador.

Honourable senators, it should be noted that the legislation in all of these provinces is working well. British Columbia recently had its first fixed-date election, on May 17, 2005, and Ontario and Newfoundland and Labrador will soon have theirs on 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.

[Translation]

The bill sets Monday, October 19, 2009 as the date of the next general election. Needless to say, this will be polling day only if the government maintains the confidence of the House until then.

[English]

For example, if the government were to be defeated tomorrow, a general election would be held according to normal practice.

Senator Mercer: Good idea.

Senator Di Nino: You might have a chance. Just keep it up.

However, the subsequent election would be scheduled for the third Monday in October in the fourth calendar year after the election, and that is the model that would be established by this bill. General elections will occur on the third Monday of October and the fourth calendar year following the previous general election. The third Monday of October was carefully chosen because it was a date that was likely to maximize voter turnout and be least likely to conflict with cultural or religious holidays or with elections in other jurisdictions.

[Translation]

That brings me to another aspect of the bill that I want to bring to your attention: the possibility of setting a different day for polling in the event of a conflict with a major religious or cultural holiday or with an election in another jurisdiction.

This is Exhibit "K" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008



A Commissioner & etc.



Proceedings of the Standing Senate Committee on Legal and Constitutional Affairs

Issue 18 - Evidence, December 6, 2006 (Afternoon meeting)

OTTAWA, Wednesday, December 6, 2006

The Standing Senate Committee on Legal and Constitutional Affairs, to which was referred Bill C-16, to amend the Canada Elections Act, met this day at 5 p.m. to give consideration to the bill.

Senator Donald H. Oliver (*Chairman*) in the chair.

[English]

The Chairman: Honourable senators, I call to order this meeting of the Standing Senate Committee on Legal and Constitutional Affairs. This is our first meeting in relation to Bill C-16, an act to amend the Canada Elections Act. The purpose of this bill is quite straightforward. It amends the Canada Elections Act to bring in fixed election dates at the federal level in Canada. It provides that, subject to an earlier dissolution of Parliament, a general election must be held on the third Monday in October in the fourth calendar year following polling day for the last general election, with the first general election after the bill comes into force to be held on Monday, October 19, 2009.

To begin our consideration of this bill, we are pleased to have before us this evening the Honourable Robert Douglas Nicholson, the Leader of the Government in the House of Commons and the Minister for Democratic Reform. Mr. Nicholson is from the province of Ontario and represents the riding of Niagara Falls. He is joined today by Mr. Dan McDougall, Director of Operations, Legislation and House Planning, and Mr. Douglas Wolfe, Senior Policy Adviser, Legislation and House Planning, both from the Privy Council office, and by Mr. Warren J. Newman, General Counsel, Constitutional and Administrative Law Section, Department of Justice.

Minister, we thank you very much for your cooperation in agreeing to appear before us today with such short notice.

Please proceed with your presentation.

Hon. Robert Nicholson, P.C., M.P., Leader of the Government in the House of Commons and Minister for Democratic Reform: I am pleased to be here as you begin your discussions on Bill C-16, which provides for fixed dates for general elections.

Fixed dates for general elections was an electoral commitment of the government. Moreover, I am pleased to note that after being thoroughly debated in the House of Commons and thoroughly scrutinized by the Standing Committee on Procedure and House Affairs, Bill C-16 was passed without amendment and with all-party support.

I will begin with a description of the current process for calling general elections and discuss some of the difficulties that we see associated with it. I will then present some specifics of the bill and some of the reasons I believe it will be beneficial. I will also talk about why the government chose to draft the bill in the way it did, and why the route we took was both necessary and effective. Finally, I will be glad to answer any questions.

As you know, today it is the prerogative of a prime minister whose government has not lost the confidence of 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 requests the dissolution of the House of Commons from the Governor General. If the Governor General agrees, he or she proclaims the date of the election. This is a situation in which the Prime Minister is able to choose the date of the general election, not necessarily based on what is in the best interests of the country, but based on what is in the best interests of his or her party. Bill C-16 will address this problem and will, I think, produce a number of other benefits.

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

During House committee hearings, the Deputy Chief Electoral Office for British Columbia indicated how well the B.C. legislation is working and that it actually saved the B.C. taxpayers a significant amount of money in the last election.

The government's bill provides that the date for the next general election will be Monday, October 19, 2009. Of course, that will be the date only if the government is able to retain the confidence of the House until then. The 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 the 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 will occur on the third Monday of October in the fourth calendar year following the previous general election.

We chose the third Monday of October because it is a date that is likely to maximize voter turnout and will be least likely to conflict with cultural or religious holidays or elections in other jurisdictions. That raises an additional feature of the bill to which I want to draw your attention: it 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.

However, with the introduction of legislation providing for fixed dates, there is some possibility that in the future the stipulated dates will occasionally be the same day as a cultural or religious day of significance.

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

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

As to the benefits of this bill, 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.

Another key advantage of fixed dates for general elections is that this measure will provide transparency as to when the general elections will be held, rather than decisions about election dates being made behind closed doors. General election dates will be public knowledge.

Fixed dates for elections will also allow for improved governance. For example, fixed dates for general elections will allow for better parliamentary planning. Members of parliamentary committees will be able to set out their agendas well in advance, which will make the work of committees and Parliament as a whole more efficient.

Yet another reason for adopting fixed-date elections is that the measure will likely improve voter turnout because the elections will be held in October, except when a government loses the confidence of the House. The weather then is generally favourable in most parts of the country, and fewer people are transient. For example, most students will not be in transition from home to school in October and will therefore be able to vote. Moreover, seniors will not be deterred from voting in October, whereas they might possibly be deterred in the winter months.

Honourable senators, I should like to speak on an issue raised during Senator Joyal's debate on Bill C-16 on Tuesday, November 21. Senator Joyal argued that, should Bill C-16 be enacted, we would be changing section 50 of the Constitution and section 4 of the Canadian Charter of Rights and Freedoms. He indicated that this is so because "... we would reduce the maximum life of Parliament to four years while both in section 50 of the Constitution and in section 4 of the Canadian Charter of Rights and Freedoms, the maximum life of the House of Commons is five years."

I want to assure honourable senators that Bill C-16 in no way contravenes section 50 of the Constitution Act or section 4 of the Canadian Charter of Rights and freedoms. Section 50 and section 4 contain provisions that are similar in scope, purpose and effect in relation to the House of Commons. Section 50 provides that the life of a House of Commons is five years and no longer, but expressly preserves the Governor General's power to dissolve the house sooner than that. Section 4 creates a maximum term of five years for the House of Commons and provincial legislative assemblies. These provisions ensure that, barring an emergency, no House of Commons will continue for longer than five years. Their evident purpose is to guarantee that there will be elections of the House at least every five years.

That intent and the constitutional maximum provided by these sections are respected by Bill C-16. Nothing proposed in the bill in any way impairs or contravenes the five-year limit. Quite the opposite: The bill works within the constitutional limit, contemplating that elections be held every four years.

The Constitution does not require that the House continue for as long as five years. As constitutional scholar Peter Hogg notes in his treatise, *Constitutional Law of Canada*, the five-year period "is a maximum term, not a fixed term."

Indeed, section 50 makes it clear that the Governor General retains the ability to dissolve the House at any time sooner than its five-year maximum life. The Constitution does not require, or even create the expectation, that the House of Commons will actually continue for a full five years.

Bill C-16, which contemplates that elections be held every four years, contravenes no constitutional requirement or expectation of a longer term. It expressly preserves the Governor General's powers. The bill makes it clear that nothing in it affects those powers, including the power to dissolve Parliament at the Governor General's discretion.

The Governor General's powers remain those that are held under the Constitution: to dissolve Parliament at any time within the five-year constitutional limit. However, by providing that elections are to be held every four years in October, the bill establishes a statutory expectation that the relevant political and administrative officers will govern themselves accordingly to accomplish this end — working within the rules and conventions of parliamentary and responsible government.

The aim of the bill is to ensure, to the extent possible within the framework of our constitutional system, that the date on which an election will be held may be known in advance, thereby increasing fairness, transparency, predictability, efficiency and forward planning.

In summary, Bill C-16 respects both the purpose and the provisions of section 50 of the Constitution Act, 1867 and section 4 of the Charter. It does not affect the maximum term or life of a Parliament. It does not contravene that maximum.

By providing that, subject to the discretion of the Governor General, elections will be held at four-year intervals within that maximum period, the bill will give rise to a reasonable expectation of regular and certain election dates. That will not only respect the Constitution, but will enhance the quality of our parliamentary democracy. We are committed to making this modest but important change to improve Canadian democratic institutions and practices.

In conclusion, I would point out that the third week in October is citizenship week in this country, a time when we celebrate what it means to be a Canadian citizen. It is fitting, therefore, that the general elections will be set for the third Monday in October, a most fitting and fundamental expression of our citizenship.

Fixed-date elections will provide for greater fairness, increased transparency, improved policy planning and increased voter turnout. In June of this year Ipsos-Reid released the results of a poll which showed that 78 per cent of Canadians support the government's plan to provide for fixed-date elections.

Moreover, I would stress again that the House of Commons passed this bill, an electoral commitment, with all-party support without a single amendment. I hope that senators will also look favourably upon this important piece of legislation, and I truly hope it receives your support.

The Chairman: Thank you for that overview.

I have a very simple question. In Canada we celebrate Thanksgiving in the month of October; can you tell us what the fixed date is for the Thanksgiving Day break and holiday and whether this bill will conflict with the celebration?

Mr. Nicholson: I do not think so. One of the advantages of the date that we have chosen is that Thanksgiving, as you know, is the second Monday in October, whereas our election date is the third Monday. Inasmuch as there will be advance polls available in the previous week, it seems to me that, for those individuals who for any reason could not be there on the third Monday of October, the opportunity would be there for them to vote at the advance polls. Also, because Thanksgiving

is a time when people generally get together, that again will enhance voter turnout. For those reasons I think the third Monday is a good date.

Senator Milne: Minister, welcome to the committee. I apologize for holding you up a little bit at the beginning by being late.

You said that when there is a conflict with a day of religious or cultural significance the "Chief Elections Officer may recommend an alternate polling day . . . up to seven days following the day . . . ". I am concerned that seven days may not be enough, because we do have religious festivals and celebrations in this country that are constantly changing every year. I am thinking particularly of Ramadan, the dates of which change every year. I am concerned about that limit of seven days.

Mr. Nicholson: It is a reasonable balance that we try to strike. There is an acknowledgement that, whatever date you pick, you cannot completely exclude the possibility that you will conflict with some group, some religion or some cultural festival. We cannot guarantee that we will always be able to avoid that.

That being said, when I discussed this with our departmental officials one of the first items of business was to ask them to please scour the calendar to pick a date that would least likely conflict with any other cultural or religious festival, at the same time being consistent with our goal to provide a date that works well in a secular society in terms of students coming and going, and keeping an eye on things like the weather and some of the established holidays. We did provide the flexibility that, if there is a problem with the Monday, the Chief Electoral Officer can recommend it go over to the Tuesday. If there is something wrong with the whole week for some reason, the recommendation should come that it would be a week later. We could have given discretion for a month or two months, or something like that, but in terms of planning for the nation and knowing that Thanksgiving is the previous week, we believe the third Monday will work, with a bit of room. This is consistent with provincial legislation as well.

Senator Milne: Minister, there has been some comment that this bill is in violation of the preamble to the Constitution Act, 1867, where the provinces of Canada were three colonies at the time, including Nova Scotia and New Brunswick, united " . . . with a Constitution similar in principle to that of the United Kingdom." Since the United Kingdom has the confidence convention, it is a fundamental part of our Constitution. I am a little concerned about that.

Mr. Nicholson: There is quite a bit in the preamble. I notice that the union would be conducive to the welfare of the provinces that promote the interests of the British Empire. I am aware of that, and I do not think that what we are doing departs from the tenets of British parliamentary democracy or in any way violates the spirit of the Constitution. I cannot see, senator, where it would be that much of a departure. It is perfectly consistent that we can set dates for elections. Perhaps Mr. Newman could comment.

Warren J. Newman, General Counsel, Constitutional and Administrative Law Section, Department of Justice Canada: The preamble, in speaking of a Constitution similar in principle to the United Kingdom, reflects the principles of parliamentary and responsible government. Although the preamble has no enacting force, it can be used to interpret the provisions of the Constitution. I think the minister is correct in saying that there is nothing in the bill that in principle violates parliamentary government. On your specific point about whether the confidence rule remains, it does in fact; it remains entirely intact because it is preserved expressly, insofar as legislation can preserve a constitutional convention, which is an unwritten rule. It is preserved in the opening provision, section 56.1(1), which states that: "Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion." If confidence is lacking in the government, it is always open to the opposition parties to move a vote of non-confidence, and the legislation takes that into account.

Senator Milne: Why, then, when the Lortie commission in 1992 was looking at all this, did they comment that this type of system in Bill C-16 would not work because the government could always orchestrate its own defeat under such a system. They felt that the proposal for fixed terms presented several major problems. How does this bill address that concern?

Mr. Nicholson: I am not quite sure. Ultimately, if a government were orchestrating its own defeat it would have to be a decision of the House. Again, it would be a situation in which the government, for whatever reason, had lost the confidence of the House. There would have to be non-confidence votes taken by the opposition parties. I cannot see that.

Senator Milne: Yes, but you and I know it can be orchestrated.

Mr. Nicholson: I would expect that any government, in presenting legislation that it hoped would be passed by the House of Commons, would do so believing it to be in the best interests of the country; and that should certainly be its guiding principle. If it was the decision of the opposition parties to defeat the government, the confidence convention as

preserved by this bill would apply and, again, it would be within the discretion of the Governor General.

Senator Milne: I will subside.

Senator Cowan: Welcome, Mr. Minister. I spoke in support of this bill when it was introduced in the Senate, but I did express some concerns, a couple of which I would bring to your attention and invite your comment on, if I may.

First, perhaps I could follow up on the point that my colleague Senator Milne introduced, namely, this business of a government orchestrating its own defeat in order to call an election. As I understand it, the special joint committee that studied this issue in 1972 suggested that any legislation that would bring into being a fixed-date election would try to define in some way the concept of "lack of confidence." Did you look at trying to do that in this legislation? If not, why not? Could you just expand on that? Perhaps I could give you the three quick points.

I can easily see how this would work and would add predictability, transparency and openness in a majority government situation, but at least for the moment we seem to be in an age of minority governments.

Mr. Nicholson: I hope that does not last very long, senator.

Senator Cowan: I hope it does not last very long either, but perhaps for different reasons. It is easier for me to see how it could operate within this predictability and promote predictability in a majority situation than in a minority; I think you probably agree with that.

Mr. Nicholson: Yes.

Senator Cowan: The second point is this: when we get fixed-date elections, are we not condemning ourselves to a constant state of election readiness. I think our friends in the U.S. see that, at least in the House of Representatives, where it seems to me that they are constantly campaigning for re-election or raising money for re-election.

Third, is there anything that indicates that a beneficial side effect of bringing in this scheme is an increase in voter turnout and an increase in candidates for minorities in our situation? As I understand it, in British Columbia there was no indication that there were more women candidates who presented themselves for office in a fixed-date election. That is something that all of our parties are committed to doing, but thus far they have not found a way to do it. It may well be that this helps, but I have not found anything that would support that that would happen. I invite your comments on those three points.

Mr. Nicholson: If you do not mind, senator, I will take them in the reverse order. You asked about what are the chances of an increased voter turnout and what this would mean, and you specifically mentioned minorities.

The present system, in which Parliament could last any time up to five years, acts as a discouragement to some people. There are many people who have other considerations in their lives or employment considerations. Not being able to have a fixed date as to when they will be called upon to present themselves to the public is problematic. Many years ago, in the riding of St. Catharines, one individual put his name forward, received the nomination, and the election of 1974 took five years. That was a five-year term. He gave up around 1978. He said, "I must get on with my life. I cannot put my life on hold." He actually declined to be the candidate for my then political party.

In terms of people who want to enter public life, it adds a little more predictability, and it seems to me that over the long run that would be an advantage.

With respect to the increase in voter turnout, interestingly enough, despite predictions to the contrary, one of the highest turnouts we have had in recent times was the election at the end of January of this year. That was for reasons of its own, but overall, for people who are planning trips or for students, having people know will work out.

On your second question, you said we will be in a state of constant election readiness. I do not believe that is what happened in British Columbia. You mentioned the American system. The system of primaries that the Americans have somewhat extends the electioneering period. I would say that there are some advantages to it. You would know that for the Chief Electoral Officer, in trying to come up with polling stations and booths, it is very difficult when you are constantly trying to guess exactly when the election is.

It puts everyone on notice. We have had a couple of elections in the last two decades that were at around the three-and-a-half-year mark. I was part of a government that went within a few weeks of the whole five years back in 1993. That in and of itself put people on increased election footing for a period of time of almost two years, so I am not overly concerned about that.

Your first question was whether we had considered defining the confidence convention. It seems to me that if we tried to define what the confidence convention is and put it on paper, we would then be subject to having that interpreted by the courts. I have no problem with the courts interpreting the legislation of the Parliament of Canada, but it seems to me the confidence convention by its very nature is something that is difficult to define precisely. We would not want to get into an argument that could be tested in court as to whether the confidence convention is in effect or not. We did consider it, but we feel leaving the confidence convention as it is now is a better way to go.

Senator Cowan: I understand why you did not move to put a definition in, and those are all very valid and good arguments about predictability, arguments I agree with in respect to a majority government situation. Like you, I have talked to people, and I know of examples in my own province where candidates have stepped aside because they cannot wait any longer and have to get on with their lives. However, I do not know how, in our current political environment, this will give them any more comfort.

Mr. Nicholson: You are right. In a minority situation, in a sense, all political parties and individuals are in a constant state of election readiness. As I indicated in my opening remarks, if we are defeated on our budget implementation bill next week, everyone recognizes that that is a confidence measure and we could therefore be into an election again, similar to last year, over the Christmas holidays. There is nothing we can do, or should be able to do, about it. As the senator indicated earlier, we have a Constitution similar in principle to that of the United Kingdom, and this is one of the principles of it. Governments must maintain the confidence of the House.

Senator Zimmer: Welcome, Mr. Minister, to you and your colleagues. My questions are in the area of the vote of confidence or the interpretation of a loss of confidence. It is my understanding that the bill ensures that an election could be held before the end of a four-year period in the event that the government clearly does not have the support of the majority of the House of Commons. Would this be determined only through a vote of confidence, or does this bill provide for other means of interpreting a loss of confidence?

Mr. Nicholson: It could be done in several ways, senator. You are quite correct that on what we call opposition days, there could be a motion specifically that the government has lost the confidence of the House. On the other hand, in the example I gave to you of the budget implementation bill that we intend to call on Friday of this week, if at some point that bill is rejected by the House of Commons, that will be a clear indication that the government has lost the confidence of the house and an election will ensue.

Senator Zimmer: Turning to another area of interpretation or definition, it is argued by some opponents of fixed election dates that stability and accountability are inherently in conflict. Give me your thoughts on this notion.

Mr. Nicholson: Fixed election dates provide a certain stability and predictability within a majority government. Senator Cowan pointed out that that does not exist within a minority situation. In terms of accountability, it is an improvement in that it opens up to Canadians the predictability and the certainty of when that election is. The huge amount of power that is in the Prime Minister's prerogative to recommend to the Governor General basically at any time to pull the plug is a power that I believe should be curtailed. This restriction makes it more democratic in the sense that other people are able to plan and to participate in public life. I think it is an improvement over what we have, and I am certain that is why British Columbia, Ontario and Newfoundland have moved in that direction.

Senator Zimmer: On the confidence vote, given that this bill would not affect the powers of the Governor General, including the power to dissolve Parliament at his or her discretion, is there any possibility that under this bill an election could be called before the four years were up in a situation where the government had not been defeated in a confidence vote?

Mr. Nicholson: Any prime minister who attempted that would do so at his or her peril. Once having told Canadians, and put it into writing, that that date will be, in this case, the third Monday, a prime minister who called an election for no reason, after not having lost the confidence, would be into a very difficult constitutional situation that would require perusal by the Governor General. Even if that difficulty was overcome, I am sure the Canadian public would have something to say about it. It is a true restriction of the powers of the Prime Minister, and a good one.

Senator Joyal: Mr. Minister, I have two points to raise with you. The first is on the interpretation of section 50 of the Constitution. You referred to that in your opening remarks. I understand that Bill C-16 changes section 50 by putting in a statutory limit of four years instead of five years for the life of a Parliament. Am I right or wrong on this?

Mr. Nicholson: Senator, you asked if it puts the limit on the length of a Parliament at four years? Yes.

Senator Joyal: Section 50 reads:

Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for

choosing the House . . .

Mr. Nicholson: We know that that has not been the case, except in rare circumstances, since 1867. That is the maximum, and most elections have been called prior to the five-year period.

Senator Joyal: I understand that. The practice in the use of section 50 is essentially that it is within five years. As you stated, Parliaments have lasted two years, others three years, others four and a half years, others three and a half and so forth. However, the essential effect of Bill C-16 would be, in practice, to state that from then on, after Royal Assent, no House of Commons would continue for more than four years.

Mr. Nicholson: That is the essential effect of it.

Senator Joyal: Yes. In other words, it would change the substance of section 50.

Mr. Nicholson: I am not sure about that, senator. It seems to me that the admonishment or the directive of section 50 of the Constitution is that no Parliament can be longer than five years. It seems to me that some future Parliament could amend the legislation and could make it three years or four and a half years, or indeed remove it and make a fixed term of five years. The interpretation of section 50 has been that it provides a maximum number of what Parliament can be, unless there were other circumstances you would be aware of under the apprehension of a war or that sort of thing. That is an exception to this. I think this provides a maximum, but it would be open to some future Parliament to decide to make it four and a half or three years, as is sometimes the case in municipal government, but again we are setting it at four years and that is within the five year maximum set out in section 50.

Senator Joyal: I understand.

Dan McDougall, Director of Operations, Legislation and House Planning, Privy Council Office: In a certain sense, it relates to the previous question as well, relating to accountability and what happens. As the minister indicated in his opening remarks, it creates a reasonable expectation that the Prime Minister will act in a certain way. As has been said, the Prime Minister would then be held accountable to the public if he were to, as has been suggested, engineer his own defeat or do something to contravene the express wishes of Parliament to have the fixed election date. It goes back to the basic question of accountability rather than to a constitutional issue related to the exercise of section 50.

Senator Joyal: That is the prerogative of the Prime Minister. That is the other issue I want to tackle, but the first one is with regard to section 50. The net effect of Bill C-16 is to limit the life of Parliament to four years while in the Constitution it provides that it could go as long as five years. That is essentially the limit. It curtails the 12 more months that we can have over and above four years. That is the net effect of Bill C-16 in relation to section 50; so you change the impact of section 50.

Mr. Newman: I would respectfully disagree, senator. I clearly see your point of view in terms of the opening wording of section 50, which says that every House of Commons shall continue for five years; however, had the government wished to change section 50, it would have been open to the government to do so under section 44 of the Constitution Act, 1982. The Parliament of Canada may amend the Constitution of Canada in relation to the Senate and the House of Commons in areas such as this, so long as it is not an amendment going to six years, if we remain within the constitutional maximum.

However, the intention was not to do that. There is no provision in Bill C-16 that says every House of Commons shall continue for four years. In other words, there was no attempt to amend section 50 because it was not thought necessary to open the text of the Constitution Act, 1867 to achieve the ends of Bill C-16. This bill does not address itself to the life of the House of Commons. All it does is simply create, as the minister said, an expectation that political actors and administrative officials will govern themselves in accordance with a rule, which has been stated as emphatically as any constitutional convention, that there will be elections every four years.

That is about as far as one can go within section 50 without changing it, but there is no change to section 50. I would argue that the meaning of section 50, if it is taken in terms of its full context, is very similar to section 4 of the Constitution Act, 1982, which you invoked as well; that is, that the purpose of section 50 and section 4 is to ensure that as a rule the House of Commons will not continue beyond five years. That is the purpose. It is to protect against long Parliaments. That purpose is respected by an act that says we will have elections every four years. If one reads section 50 all the way through — “Every House of Commons shall continue for five years, subject to being sooner dissolved by the Governor General and no longer” — that is the full import of section 50. I would argue that that is also the way section 50 was interpreted in the old section 91(1), which you will recall very well. That was the earlier power to amend the Constitution that the United Kingdom Parliament gave to the Parliament of Canada in 1949, and it said that Parliament had the power to amend the Constitution from time to time except as regards the rule that no House of Commons shall continue for more than five

years. That is the way section 50 was being interpreted.

I do believe that that is the way to read this legislation, and one has to take into account the presumption of constitutionality. The government did not intend to amend section 50. The provisions do not purport to amend section 50, and there is certainly a plausible way to read Bill C-16 as coming within the terms of section 50. That is the approach that the government is putting forward.

Senator Joyal: I am glad you are quoting the interpretation given by the court in the Senate reference on the interpretation of section 91(1), because that is essentially one of the key arguments that we have to study in relation to Bill S-4, with respect to the interpretation of the scope of section 44 of the Constitution, as you know.

Mr. Newman: Yes.

Senator Joyal: We might have the opportunity to debate that in another meeting in the future.

The net effect of Bill C-16 is essentially to limit by statute the maximum life of a Parliament to four years, while in the Constitution it could go up to five. There is no question about that. We cannot negate the evidence of the effect of this bill. It is to limit from then on the capacity for a Parliament to survive for more than four years. Now it can survive up to four years and two months, four years and three months, or four years and nine or even 11 months. The net effect of the bill is essentially to prevent the fifth year of the existence of Parliament.

The Chairman: Senator Joyal, you have put that question to the minister and you have put it to the lawyer. They have both responded to it. I gather that you are not satisfied with the responses that either of them have given you to the suggestion that this bill, in putting in a limit of four years, is not allowing the full five years now permitted in the Constitution. You are not accepting that.

Senator Joyal: No, I am not accepting that. I think that the very existence of the wording of section 50 provides for an additional possible 12 months that will not be possible with the amendments contained in Bill C-16. That is my point. It limits the possible life of a Parliament of an additional possible 12 months. That is essentially the impact of this bill.

We can agree to disagree on your interpretation of section 50, and I submit to you that, if the government wants to change that, it could go through section 44 of the Constitution in relation to this very section of the Constitution, because it pertains to the House of Commons only and does not affect the institutions of Parliament per se, or the essential characteristics of Parliament.

That being said, I would like to continue on the other issue, the prerogative of the executive. As the minister said properly, the net effect of this bill is to remove the prerogative of the Prime Minister to go and seek dissolution of Parliament at any time before four years, and not after four years because now he will be prevented from doing this with Bill C-16. It is essentially to fetter the prerogative of the Prime Minister, after three and a half years or three years and nine months, to go to the Governor General and seek dissolution. The Governor General would be put in a very difficult position if the Governor General received a visit from the Prime Minister with a request to dissolve Parliament after three years and nine months, according to this bill.

In other words, for the Prime Minister to be able to go to the Governor General and request dissolution, the Prime Minister would have to have a vote of non-confidence formally registered in Parliament, if I understand the way the prerogative will be acted upon. Am I right or wrong?

Mr. Nicholson: I did not want to leave the impression that only a four-year period of time could take place. If, in fact, Parliament is dissolved by reason of a minority government, that will leave four years and six or eight months, but less than five years. You say the only way would be by a motion of non-confidence. I think I indicated that, for instance, if the government lost the confidence of the House of Commons by reason of the defeat of the budget implementation bill, that is not a resolution of the House of Commons. Nonetheless, it affects the confidence convention, and the Prime Minister would be within his or her right of attending upon the Governor General and asking for dissolution of Parliament on that basis.

Senator Joyal: With respect to any other issue, if the government —

Mr. Nicholson: If there was no reason, you are right. I indicated that if for no reason the Prime Minister went after three years and nine months and asked the Governor General to dissolve in the face of legislation, that would be a very difficult constitutional question facing the Governor General. Depending on how the Prime Minister survived that hurdle, it would seem to be an issue for the public of Canada, because it would fly in the face of the legislation before you today.

Senator Joyal: In other words, if you claim that the prerogative of the Governor General would not be impaired by this

bill, in that context, the Governor General could send back the Prime Minister asking him to return with a clear vote of non-confidence from the House of Commons?

Mr. Nicholson: Again, I will not presuppose the Governor General's actions, but I imagine that the Governor General, any Governor General, would want to be satisfied that the Prime Minister had lost the confidence of the House. Whether that was by means of a resolution or by the defeat of an important piece of legislation, as in the example I provided, the Governor General would be within his or her right to ask those questions.

Senator Joyal: I am not talking about a money bill. The convention in that is essential to the principle of responsible government.

As Senator Milne suggested in her question, it is rooted in the preamble of the Constitution. That is the fundamental principle of responsible government and the fundamental character of a Westminster-style Parliament versus a presidential system. We are all aware of that.

The very point I want to understand is this: The Prime Minister who calls an election, not on a money bill in which they would be defeated, but on another issue, would have to request from the House a vote of confidence, which the Prime Minister or the government party would lose in order to allow the Prime Minister to seek dissolution of Parliament from the Governor General.

Mr. Nicholson: We would have to see the set of facts that came together. Again, we are not trying to affect the confidence convention. We made that very clear.

The confidence convention itself has evolved somewhat over the last couple of hundred years. If you are asking me under what circumstances the government has lost confidence in the House, again, it is not precisely defined anywhere in our Constitution as to what the confidence convention is. It is one of those things you know when you see them; you understand it when it is before you. That will continue.

Senator Di Nino: I think this is an opportune time for those in opposition to ask questions on this issue.

Three other provinces have enacted legislation that this legislation is modeled after. They all did it for the same reason, to curtail the power of the First Minister to his or her own will and for their party's benefit. They have gone through this process and, to my knowledge, no challenges have been raised by anyone, constitutional or otherwise. I do not believe there have been.

Do you know whether any challenges have been raised, and if so, what have the results been?

Mr. Nicholson: I know of no challenge to any of the three provincial legislatures, on constitutional or other grounds, with respect to the legislation they have passed. My understanding is that their legislation is as carefully drafted as ours is and would withstand any constitutional challenge.

The Chairman: I would ask Mr. Newman to respond to the same question.

Mr. Newman: I am not aware of any challenges, and I verily believe there have not been any raised to the constitutionality, legality or propriety of the other provincial legislative initiatives in this area.

Senator Bryden: Thank you for being present, Mr. Minister.

Our Parliament is different from those of the provinces. The provinces have one legislative body. We have two. It is easier for me to understand why, when the parliaments in the provinces have non-confidence in their government, their government must resign. However, in the Parliament of Canada the Senate, although it is not a confidence chamber, can have an effect on what the government does. If, for instance, in the Parliament of Canada a government has been elected and after two years it sees an opportunity, for example, for free trade — going back to the free trade debate — but runs into a recalcitrant Senate — which in fact is what happened on that occasion, the Senate, although it is not a confidence chamber, holds all of the powers that the House of Commons holds, including the powers to amend and delay and indeed to veto. In the actual instance of the free trade debate, the solution of the government of that day was to call an election and go to the people to resolve the issue. They did that and won. With that mandate, they were able to proceed with the free trade situation.

My question is this: Presented with the same situation, how would the government under this bill dissolve Parliament and go to the people?

Mr. Nicholson: That is a very interesting question. I was there during the free trade debate. Without having been privy to the discussions between the Prime Minister and the Governor General, the Prime Minister may have made the case that it was necessary to go to the people to obtain a mandate, because he believed that he was unable to maintain the confidence of Parliament. My guess is that he perhaps extended that to the upper chamber. I am not sure.

Senator Bryden: However, powerful as prime ministers are, they are not able to extend beyond the constitutional position. A similar situation happened in the GST debate. A different solution was ultimately reached.

Mr. Nicholson: I remember that. I think we created another eight senators at that time.

Senator Bryden: Yes. It was rather an extraordinary measure. Really, the point is that situations develop in which opportunities present themselves and the government feels that it really does need the mandate of the people in order to carry out what may be a very controversial and difficult thing, but one which the government of the day knows is the right thing to do.

That is not a confidence matter, because the government probably has the support of the majority. Let us say it is a majority government of the House of Commons. It is not an answer to say, "We have lost the confidence of Parliament," because we are not a confidence chamber; but we can get in the way sometimes. I do not see, really, any way that there is discretion, or an opportunity for the government of the day or the Prime Minister of the day, to be able to do that, to deal with that.

The other side of that coin is that a government may be in office for two years, say, and because it is really inept there are outcries across the nation that nothing is being done, or there may be suspicions of all kinds of things, but the government is able to last because it has a majority. As we all know, and we have been in this game a long time, there are ways in which you can keep people in line in the House of Commons, particularly in your own party. If there is really a demand, then, short of a revolution and of people going and hitting the streets, how do the people, in fact, get an opportunity to get rid of this government? There is no constitutional basis. So long as he can handle the confidence in his own House, the Prime Minister can stay there.

If we look south of the border, at the moment there are some folks who would be very happy to get rid of the Chief Executive Officer in the U.S. Our system, up until now, has been able to accommodate those types of situations. In the U.S. they can accommodate it too, but it is a very difficult procedure to go through impeachment and so on.

I am concerned that this bill, because of the bicameral system that we have. Of course, I realize that some of your colleagues might suggest that the easy answer would be to get rid of the Senate. That might not be as easy as you would think. Nevertheless, what I have described is what we have now, and it may tie the hands of a good government one way or the other, or tie the hands of the people in order to force a government to come back for another mandate before doing whatever controversial thing it wants to do — let us say joining the star wars situation.

The Chairman: Those are two excellent questions and we will have the answers, but first could you just answer this one question? You said the other side of the coin is what if there were a government that was totally inept and things were not happening and nothing was being done and they were there for two years, and you suggested that under our present system something could be done. If it were a majority government, what could be done for an inept government that had been there for two years, with nothing happening? What could we do under our present system?

Senator Bryden: You are right.

The Chairman: I would like the minister to answer that. I would also like to hear from the Privy Council Office.

Mr. Nicholson: Senator, you raise a very interesting constitutional point. I think what you are asking me is what would happen if there was a majority government that had the confidence of the House of Commons but there was a recalcitrant Senate. It seems to me the better question would be why would the Senate, against all constitutional principles, then stand in the way of the will of the people and the majority of the House of Commons? That would be an interesting constitutional question in and of itself. The reverse of that is what would happen if you had a party that, as in your example, had a majority government and was two years into its mandate; it would be less likely that something would happen to displace that government. I would suggest to you that the people's ability to displace that government would actually come sooner as opposed to later. A government that was hugely unpopular or incompetent would probably wait the whole five years, and usually we have found that when governments have gone the whole five years the people have had a very strong opinion about that.

Again, with respect to our system of government, as Senator Milne was pointing out, it is in part unwritten and these are the things we deal with. You are right: a Senate that refused to pass legislation from a majority of the will of the House of Commons would present its own constitutional challenges. On the other hand, if a government, in the opinion of some or

perhaps most people, is incompetent after two years into its majority, it could very well continue unless there was some cause, of a nature that would be very difficult for me to describe, for which the Governor General intervened; but those latent powers are always there with the Crown. I do not see how this bill would alter that, but in your specific example people would be able to get at that government about 12 months earlier than they might otherwise.

Senator Bryden: I have one comment, which is on the free trade debate. As I understand it, the government that was elected basically campaigned, not pushing free trade, indeed against the point of free trade. However, once it was in for two years, there was a change of opportunity and a change of mind, and it decided that it would go after a free trade agreement with the U.S. The Senate did what it was supposed to do and basically said, "That is not the will of the people. You just tested the will of the people two years ago and they said no. They voted you in but not with that mandate."

Mr. Nicholson: It seems to me that on the free trade debate the government, and I was a member of the government, had actually been in office for four years; so there are those who could make the argument that it was reasonable, and it was actually suggested to us that there was a constitutional convention, quite apart from the five-year maximum, that suggested we actually should go after four years. It seems to me that the election of 1988 was called at or about two weeks, or within several days or a couple of weeks, shy of a four-year term, and the government did receive another mandate.

Senator Bryden: Yes, they did and that was the famous free trade election.

Mr. Nicholson: I appreciate that.

The Chairman: Senator Bryden, your question was so good I really would like to hear a response from the Privy Council Office on the fascinating point that you raised.

Mr. McDougall: What we have tried to do in crafting this bill is to stay within the conventions of responsible government and within the parameters of the Constitution as they exist now. As has been indicated, there will always be these "difficult" areas that come up when one is trying to interpret the conventions and how they have been applied over the years — and indeed what constitutes the convention as of this very day. Those problems will not disappear because of the passage of this bill. Issues will undoubtedly arise that will require interpretation and some discernment as to what is the correct application of the convention.

The Chairman: His question was more than that though. With this bill are we cutting off and removing something that was essential to the way our democracy works? That was the way I understood his question, and it was a good one.

Mr. Nicholson: Indeed, it is a very good question and we do not think that that is what is happening with this bill. What this bill is trying to do is address the opposite situation. It is not the situation where the government is going on a clear question with a clear mandate seeking a new mandate from the people, as is the example on your free trade. What this bill is intended to do is to address the situation where, for political expediency and because of public opinion polls or another issue that may be driving the public and the expectation is that a new mandate can be had, the government will pull the plug at a whim to try to deal with public opinion polls, when there is not a real issue, which is what arguably should be the focus of a campaign. It is trying to address that situation more than outlying issues that we are dealing with in trying to orchestrate a defeat.

Senator Bryden: Sometimes when you cast a net to catch certain fish, you get some that you really do not want. I believe that there is a possibility of that here.

The Chairman: That is the bycatch.

Douglas Wolfe, Senior Policy Advisor, Legislation and House Planning, Privy Council Office: The situation in which an election is called to decide what will happen on a question such as the free trade agreement is very rare. That situation has only arisen on that occasion, at least in recent memory.

Generally, as my colleague indicated, elections are called on the basis of the interests of the political party in power. Of course we do not know exactly what is in the mind of a Prime Minister when he or she requests dissolution, but the situation that the honourable senator has outlined is fairly rare, at least in recent history.

Senator Stratton: If a government was two years into its mandate and something like the GST issue or the free trade agreement came up, where there was an impasse, would the Prime Minister not go to the Governor General and say that due to the perceived problem the House should be dissolved and an election called? Would that not be the appropriate route to take?

Mr. Nicholson: That is a possibility, of course. If the Senate were refusing to abide by the will of the elected House, that

would be a constitutional crisis and perhaps cause for a meeting between the Governor General and the Prime Minister.

Senator Ringuette: Mr. Minister, you said that this bill should curtail the power of the Prime Minister. When you were saying that, I was recalling the last 10 months of federal politics. You indicated that a defeat on a motion or resolution could also trigger an early election.

I thought back to motions before the House. There was the motion on Afghanistan and the motion on the softwood agreement, as well as a motion dealing with Kyoto. I recall that the Prime Minister said publicly that on at least two of the three motions he was ready to call an election. He was not speaking of money bills; he was speaking of motions.

Therefore, I conclude, although I hope you can prove to me that I am wrong, that this bill is window-dressing, because it does not curtail the power of the Prime Minister to decide, from his perspective, what is a confidence or a non-confidence issue. The matter is left to his power of persuasion on the Governor General. Therefore, this bill is nothing but window-dressing.

In addition, it gives the impression to the Canadian population and the opposition parties that the Prime Minister has no intention of calling an early election. However, that is not the reality.

If you amended this bill so that it would curtail the power of the Prime Minister to persuade the Governor General that a vote against sending troops to Afghanistan for an additional nine years or a vote in favour of Kyoto is a vote of lack of confidence in the government, that would be reasonable. However, looking back at the last 10 months of this government, I see this bill as window-dressing.

Mr. Nicholson: Senator, a bill like this is another matter on which the government or the prime minister of the day can be judged. In your hypothetical example, a prime minister commits Canadian troops for nine years. A prime minister committing this country to a theatre of war would raise an interesting discussion. I believe that a prime minister has lost the confidence of the House of Commons if there is a fundamental disagreement in the House on whether this country is going to war or is committing troops to a theatre of war.

You may argue that that is not a confidence matter, but again the confidence convention is preserved vis-à-vis the Governor General. It is not intended to do that. It is intended to provide more predictability. In the example Senator Joyal gave, a prime minister who is three years and nine months into his mandate decides to ask the Governor General for a dissolution. Such a prime minister would have some difficulty persuading the Governor General that he or she had lost the confidence of the House or that the public should go to the polls three or six months hence. I believe it is a step in the right direction, senator.

Senator Ringuette: You have reinforced your earlier comment that an election can be called at any time so long as the Prime Minister can make the case to the Governor General. These are your words. I stand by what I am saying. Unless this bill is amended to provide measures to curtail the power of the Prime Minister, it is window dressing.

Mr. Nicholson: If it was the will of Parliament, the House of Commons and the Senate, to leave the prerogative of the Prime Minister completely intact, that would have been a decision for this Parliament to make. I have made the point to you that the House of Commons has unanimously accepted this as a step forward, as a good and important piece of legislation, and I am urging you to study it and to ask questions, but to enact it in the form in which the House of Commons passed it.

In your example, if a prime minister, after three and a half years, for no reason understandable to the public, demanded a dissolution of Parliament by the Governor General, I believe that under this legislation the Governor General would be within his or her rights to deny that. At this time, there is nothing stopping any prime minister who sees an electoral advantage from asking the Governor General to dissolve Parliament and call an election, even though there is no issue that could in any way be described as a confidence matter. However, under this bill a prime minister would be restricted in that situation.

In your example, if a prime minister was committing troops for nine years to a theatre of war, I believe that a pretty good case could be made by that prime minister, if he or she did not get the approval of Parliament, that he or she had lost the confidence of the House. I do not believe it is confined only to money bills.

Senator Ringuette: In my political experience, both provincially and federally, knowing many of the players on all sides of the political spectrum, I believe that any political issue can become a confidence issue if declared so by the Prime Minister.

You have not convinced me.

Mr. Nicholson: I cannot answer for the people that you know or for your experience, but in my experience and from my belief I think that this will work. It is a step forward.

Mr. Wolfe: If I might add something to that, the legislation before us was drafted really with a view to the provincial legislation in British Columbia, Ontario and Newfoundland and Labrador. If we look at the British Columbia legislation, it created a firm expectation that the election would take place on May 17, 2005. The expectation was created very firmly in the minds of the population of British Columbia that the election would take place at that time. It would have been very difficult for the then Premier of British Columbia to depart from that expectation. Certainly, a political price would have to have been paid had there been a departure from that date.

Mr. McDougall: If I could add a further point, this is also a trend within parliamentary democracy, which is going this way as well. It is not just Canada that is looking at this within our system. There is a general movement towards this around the world. More and more states are looking towards establishing fixed dates for elections. For example, even within the United Kingdom, the devolved Parliaments in Scotland and Wales also have fixed dates established for those situations as well.

A number of academic studies have looked at this situation around the world. Canada and the Westminster Parliament itself are more the outliers now than the norm in terms of this trend. It is a step that governments are generally looking towards to try to improve the functioning of the system. I suspect you often get into the types of debate we see here, where one side advocates more of a presidential aspect in which there are absolutely fixed terms, and it is clear that you cannot change the immutable type of system that they have in the United States.

The expression that has been coined for this is "fixed flexible term." In effect this is more of a fixed flexible term, and it has to be in order to operate within the constitutional parameters we have and with the system of responsible government we have here, which also tends to be the norm in other parliamentary democracies that are looking towards this type of system.

Senator Ringueffe: Exactly that. With regard to parliamentary democracy, I am a believer in the representative responsibility of the member of the House of Commons. On a policy issue, if the members of the House of Commons vote against a motion, that is the desire of the people. It does not necessarily call for the defeat of a government. That is where democracy is moving.

My concern here is that this bill is not responding to the real, new trend of democracy and the powers of the members of the House of Commons to represent the people in the House of Commons and to be able to say to a government that the majority of the Canadian population do not agree with a particular policy. That is very different from a non-confidence vote on a money bill.

You can have a prime minister who says, okay, you do not agree with my policy, so I will call an election and justify that to the Governor General. I have stated my case.

The Chairman: Minister, I know that you have come here tonight as House leader and you are in the midst of a major debate in your House. We have finished the first round; I have a number of senators down for the second round. We have been an hour and a half and I should like to know, before I go further, how much more time you have with us here before you have to go back to your debate; do we have time to do a second round?

Mr. Nicholson: By all means, senator. Let us do the second round.

Senator Milne: I am still very concerned about this inflexible seven days: clause 1 of the bill, proposed section 56.2(4) of the Canada Elections Act. From a pragmatic point of view, I was born during one of my father's election campaigns. I have been involved in elections all my life. Since Mr. Wolfe and Mr. McDougall have segued into talking about fixed terms in other provinces, what is going to happen as more and more provinces go to fixed terms and inevitably election dates begin to coincide? In British Columbia they have set May 17; no problem there. However, in Ontario it is October 4. In Newfoundland it is the second Tuesday in October. Now for Canada it is the third Monday in October. I know this causes confusion in people's minds; it causes difficulty for Elections Canada to find people to man the polls and control advertising and all the rest of it; and it also causes difficulty for candidates just to find volunteers to get out there and knock on doors for them.

I am very concerned about the inflexibility of that seven-day envelope that you have given in this bill. How do you propose to deal with the pragmatic problems on the ground?

Mr. Nicholson: Senator, I agree with you that there is always a potential for a conflict somewhere. I suppose one of the advantages in having the federal Parliament take out the third Monday in October every fourth year following a general

election — and I believe others will be moving to fixed dates for elections as well — is that it will be less likely that others will choose the same date.

Senator Milne: It depends on the vote of confidence.

Mr. Nicholson: I believe it was in the year 2000 that the federal election was called in the middle of the municipal election in Ontario. We had the Ontario election, we had the federal election going on, and there was a by-election in the riding of Welland next to me in the province. We had all three levels of government confronting the people in Welland. I can tell you that the people of Welland and my area survived it; they sorted it out and made it more of a challenge for those of us campaigning federally to see 30 or 40 candidates at the municipal level.

Again, our democracy is not always clean and perfect, and moving to a set date for election actually makes it a little easier to get volunteers and to plan around it, knowing when it is.

In my experience over the last few decades with respect to these elections, it became more challenging when nobody knew when the election was going to be called and it came unexpectedly. In the situation that I described to you in the year 2000 there were some challenges for the electorate.

Senator Milne: In some areas it will make it impossible to find polling places.

Mr. Nicholson: I think the Chief Electoral Officer will confirm, when he appears before you, that, in terms of locating space and actually setting up the apparatus for an election, this actually would make it easier for him, rather than having to be in constant readiness for two years, really on a moment's notice, to have to set up and get office space. I think that is a greater challenge, but I will let him speak for himself.

Senator Milne: The greater challenge is finding polling places for all of these different elections occurring in the same place at the same time.

I understand that when the Chief Electoral Officer appeared before the committee in the House of Commons on this bill he suggested expanding the time during which government advertising is restricted from the writ period alone to four weeks prior to the writ period. Has any consideration been given to that? I am thinking of all the different parties in different provinces at different levels of government all competing for advertising time.

Mr. Nicholson: This bill does not address that, and I will take that as a representation and a matter that perhaps we should look into.

Senator Milne: I know that in 2005 the chief electoral officers gathered in the Yukon and discussed the advantages and disadvantages of fixed date elections. Did you consult with any of them? I do not know what their conclusions were. Did you take those into consideration before drawing up this bill?

Mr. Nicholson: I, personally, did not, because I did not have that particular responsibility at the time. In my discussions with departmental officials, I have learned that they canvassed this every which way, and the recommendations were consistent with what we promised in the last election.

Senator Milne: In other words, the answer is, no, you did not give those consideration.

Mr. Nicholson: I was not a part of that discussion and I was not at that conference in the Yukon. It is my understanding that recommendations that came from there and elsewhere went into the mix in drafting this bill.

Senator Milne: I understand that the PCO drafted this bill. Did you take this into consideration?

Mr. McDougall: We have taken into consideration whatever studies and evidence we could find on this. In terms of specific consultations, we consulted with Elections Canada, not with the provincial electoral officials. However, I believe that some provincial officials testified when the bill was before the House Affairs Committee of the House of Commons. In pre-study and pre-drafting the bill, we did not consult with provincial officials; we consulted with the federal electoral officials.

Senator Cowan: Senator Bryden posed a very interesting question. The answer to the hypothetical situations that he expressed is the one that Senator Stratton answered with: The Prime Minister would simply say that he has a deadlock and needs it settled.

What would you do in a situation in which a party takes a campaign position on, for example, wage and price controls, gets

elected and then changes its mind after it takes office. It could be that the answer is the same.

It seems to me that it is further complicated if we reach the point where the Senate is elected in some way. That is why we wait with great interest. I do not know whether a Senate election bill falls within your mandate, but the Prime Minister has indicated he expects this fall —

Mr. Nicholson: Let me know how you feel about that before I answer.

Senator Cowan: When I see the bill, I will be delighted to give you the benefit of my views, but I do not answer hypothetical questions. We are the house of sober second thought; it is not our job to be first thought.

Obviously, it would be further complicated if there were an elected Senate and the House of Commons were not able to say that it alone represents the views of the people. If there were two chambers, both of which were elected in some manner, then that issue would be complicated. The other part is a small offshoot or variation on the theme that Senator Bryden alluded to: In our system, clearly the party leader is the central part of our system and, perhaps, the most significant determinant of voting choices. We have had situations whereby parties have been elected and prime ministers, for very good reason, have chosen to step aside and be succeeded by others, again for very good reason. The new prime minister might wish to seek a fresh mandate to take the party or the government in quite a different direction, given that circumstances have changed since the last election. There is no loss of confidence in this example. Would you see Senator Stratton's answer being the solution in such a situation? Would it be legitimate for the new prime minister in that circumstance to ask for another election in order to get a new mandate?

Mr. Nicholson: I do not think it would be legitimate, just in my opinion. Once the commitment has been made to have the election every fourth year in October, if the prime minister decides on his own that it would be an opportune time now to call an election, the Governor General would certainly be within his or her rights to decline that. As you were talking about the situation of Sir John A. Macdonald who passed away in the summer of 1891, I was thinking that he was succeeded by four Conservative prime ministers trying to make their mark. The mandate went the full extent before Sir Charles Tupper went down to defeat at the hands of Sir Wilfrid Laurier. I believe that I am correct when I say that this bill would make it difficult for a prime minister to make that case to a Governor General. I would have no doubt that a Governor General would probably refuse an individual in that case, on the face of legislation such as this proposes.

The Chairman: I would like to read into the record a quotation from the report of the Library of Parliament prepared for this bill that deals with the question just raised by Senator Cowan. At page 8 it states:

In December 2004, Newfoundland and Labrador adopted amendments to the *House of Assembly Act* to provide a fixed date for the holding of a general election in the province. The first date before a general election is the second Tuesday in October 2007, and thereafter elections will be held at four-year intervals. The bill also provides that by-elections are to be called within 60 days of seats becoming vacant, and held within 30 days of the issue of the writ. It also requires that in the event of a new leader being sworn in as Premier, an election is to be held within 12 months.

Senator Joyal: Mr. Minister, your comment is essentially in the context of the question I wish to ask. Bill C-16 conveys a great danger of putting the Governor General in an untenable position, because he or she will become the arbitrator of the implementation of the bill and will have to decide whether the vote of non-confidence or confidence is sufficient. Perhaps the situation in which the government operates in relation to Parliament might be similar to that described by Senator Bryden's example or Senator Stratton's example. We can imagine many situations in which the Governor General could become the arbitrator. This bill proposes to vest powers in the Governor General with no capacity to find the solace of the neutrality of his or her position in relation to the solution as we have seen it.

Did you measure up the context in which the Governor General would have to operate in terms of dissolution?

Mr. Nicholson: Likely, you agree with my earlier comment that it does curtail the powers of the prime minister, so you might have a discussion with Senator Ringuette as to whether it does. Again, if you are telling me there is more discretion or that the Governor General will have to make that decision, then those residual powers are with the Governor General now and the Governor General must always face that if a prime minister acts in an irresponsible manner or in the face of legislation. That would always be a decision that the Governor General would have to make.

Senator Joyal: The Governor General would become the object of an election. As my colleague Senator Milne said, we have experienced in Canadian political history times when the issue has become the decision of the Governor General, who is not elected but appointed, to refuse dissolution of Parliament when the leader of the majority party in the House of Commons is of the conviction that he or she has lost the confidence of the House or is not in a position to govern and,

therefore, wishes to seek a mandate from the electorate.

Mr. Nicholson: I am not so sure that that is any different than the position the Governor General is in today. In the case of a minority Parliament, Senator Milne mentioned the King-Byng affair; I believe the Prime Minister at that time lost the confidence of the House very quickly after a general election. It was the decision of Lord Byng, at that point, that Arthur Meighen should be chosen as Prime Minister. Ultimately, as was the case, the people of Canada did decide on that. Ultimately, they are the final arbiters of whether everyone has it right.

It is not too dissimilar to the situation that happened in Australia in the mid-1970s, when there was a conflict between the positions taken by the Prime Minister and the Governor General of Australia. Ultimately, the people of Australia sorted it out. Senator Joyal, if a prime minister who had a majority government was irresponsible and, on a pretext of trying to win another majority, asked for the dissolution of Parliament, I have no doubt, whether he or she got it or not, that ultimately the people of this country would make the decision whether the prime minister had acted in a responsible manner.

Mr. McDougall: I believe the previous Governor General addressed this very issue in her most recent memoirs, as well. She expressed that it was an issue she had to prepare herself for in the context of recent minority governments. Just to reinforce the point, it is an issue that can arise with the current situation as well; it is not an issue that is being created by this particular bill.

Senator Joyal: In the minority situation, anyone will understand that. The minority situation exists now and continues to exist; it is not that situation that is changed. The situation that is changed now is in a majority government context.

Unless I read the bill incorrectly, it applies in the context of a party that has a majority to govern. That is essentially the scenario in which we operate under this bill. That is why I feel that it puts the Governor General into a difficult position as being the arbiter of what is the political situation. Is it a loss of confidence or is it the fact that the Prime Minister does not have the proper motive, but only a pretext, to request dissolution?

Mr. Nicholson: In your situation, senator, if the Prime Minister has a majority government and then after two years, or four years, decides that he or she wants an election, it is not the Governor General who has the problem; I think it is the Prime Minister who has the problem.

Senator Joyal: We have seen in the history of Canada some governments that had difficulty in implementing their programs and decided to go back to the electorate to seek a mandate.

Mr. Nicholson: That becomes more difficult with this legislation.

Senator Joyal: I think so, because this legislation states that the life of Parliament is four years.

Mr. Nicholson: Exactly. In a majority context, that is what people can count on. If the Prime Minister, on whatever pretext, decided after two years to call an election, it would not be just the Governor General who would have something to say about this. If the Governor General, for whatever reason, was persuaded to call an election, the people of Canada would be the final arbiters and that is the way it should be.

Senator Joyal: I feel that you put the Governor General into an untenable position of being involved in making a judgment based essentially on a political situation.

Mr. Nicholson: In a minority situation in the province of Ontario, after the 1985 provincial election, the Progressive Conservative Party had the largest number of seats and decided to meet the Ontario legislature as the government under Frank Miller at the time. There were many who said that, if Mr. Miller had made that call on the Lieutenant Governor, the Lieutenant Governor would have been within his rights to call, as he subsequently did, upon Mr. Peterson and Mr. Rae to come to some sort of an accommodation to form the government. You are right; if Mr. Miller had acted irresponsibly — and there was no suggestion at the time that he would — the Lieutenant Governor, with his residual powers, would have been in that position. Ultimately, the people of Ontario in that case would get to decide.

You are quite correct. The Governor General, within our system in the 21st century, can be placed in a difficult position by the Prime Minister. That is the system we have inherited and we have adapted for this country, and that will not change. The Prime Minister could do that; but I have confidence that the people of this country will sort it out.

Senator Joyal: In the context of a crisis with the Governor General, that is the difference; that, in fact, this bill —

Mr. Nicholson: I think we would have a crisis; that is why I used the parallel. If a prime minister elected with a majority government, with legislation like this in place, decided after a certain point that he or she just wanted the election and had a

majority in the House of Commons, I think that would be putting the Governor General in one of those crisis situations that you mentioned.

Senator Joyal: I know, but what you are trying to describe is a situation that is totally unreal. A prime minister who wants to have an election will have one. The prime minister will certainly go to the people to get a mandate to implement a program or a platform, to try to solve an issue in which the government finds itself stuck in Parliament, such as the one that Senator Bryden mentioned — or because a government feels that it cannot move its agenda in the House for whatever reasons.

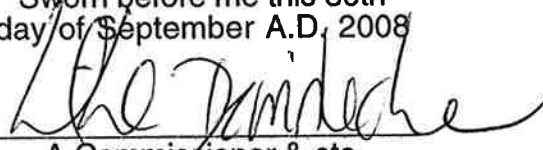
Mr. Nicholson: We will cross that bridge when we get to it.

The Chairman: You have just had the last word, Minister. On behalf of the committee, I want to thank you, along with Mr. McDougall, Mr. Wolfe and Mr. Newman, not just for making a regular appearance, but, in this case, for the benefit of your views on political science, Canadian history, constitutional law and finally common sense, to respond to many of the fascinating questions raised by honourable senators, particularly the Bryden question. Thank you also for coming on very short notice and leaving your work on the Hill.

The committee adjourned.



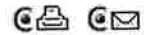
This is Exhibit "L" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008



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Canada's New Government Delivers on Fixed Date Elections

Ottawa, May 3rd, 2007 – Today, Canada's New Government took another step toward strengthening accountability and democracy in Canada with the granting of Royal Assent to Bill C-16. The Bill, which establishes fixed dates for general elections, will significantly alter the process for calling elections.

"This important piece of legislation will ensure fairness in the electoral process by eliminating the power of the governing party to call an election to capitalize on favourable political circumstances," said Peter Van Loan, Minister of Democratic Reform.

"The previous Liberal government repeatedly abused the power to call general elections and this legislation will strengthen accountability and provide certainty by setting October 19, 2009 as the date for the next general election."

After each general election, the legislation (which does not affect the constitutional powers of the Governor General) sets the date of the following election for the third Monday in October, four calendar years in the future.

The Prime Minister recently identified the strengthening of Canada's democratic institutions as a priority and Canada's New Government will continue to move forward with its agenda in this area.

"With the passing of C-16 in the Senate, Canada's New Government has fulfilled another commitment we made to Canadians in the last election campaign.

Next week we will continue to move forward on our agenda to strengthen accountability and democracy in Government, which includes legislation on limiting the terms of Senators to 8 years and legislation to give Canadians a say in who represents them in the Senate.

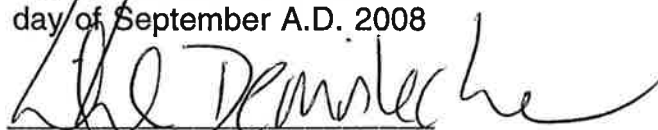
We call on all parties in the House of Commons and in the Senate to support the Government as it moves forward with its agenda," continued Van Loan.


For information, contact:

Michael White
Communications Assistant
Office of the Leader of the Government in the House of Commons and Minister for Democratic Reform
(613) 995-7226

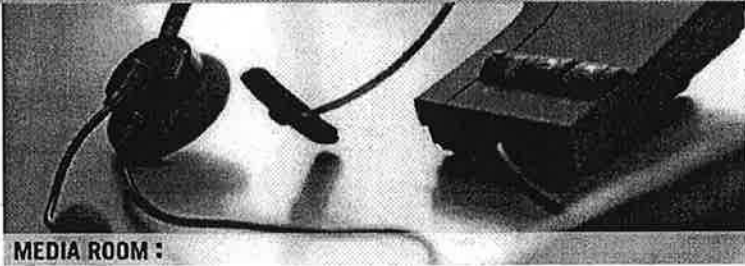
Date Modified: 2007-05-03

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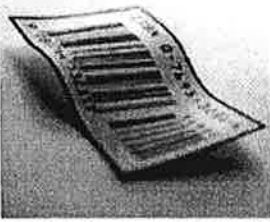

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NEWS



5/31/2005 5:02:28 PM

A Matter of Trust – Environics - CBC Poll

A new Environics survey conducted for the CBC shows that confidence in political leaders is at the lowest point in a decade. Of the 1500 eligible voters surveyed between May 12 and May 16, only 33 percent had either a great deal of confidence (2%) or some confidence (31%) in political leaders, down from 41 percent in 2004, and similar to the 31 percent found a decade earlier.

According to Donna Dasko, Senior Vice President of Environics "The sponsorship scandal and its aftermath has not only eroded the image of the Liberal Party, it has led to distrust of politicians and political parties in general. It has soured the mood of Canadians about the state of the country."

The survey shows that of only 39 percent of Canadians are satisfied with the way things are going in the country today; this is down 25 points in two years from the 64 percent who were satisfied in a 2003 Environics poll.

At the same time, no political party emerges as best able to run a government with honesty and integrity. Only 17 percent of those polled pick the Liberals – down five points from the CBC-Environics pre-election poll in May 2004. Almost equal numbers – 22 percent and 23 percent respectively, choose the Conservatives and New Democrats as best able to run an honest government, and six percent choose the Bloc Québécois. The number saying that no party can run an honest government has increased by five points, to 23 percent.

9/12/2008
CBC-Environics Pre-Election Poll

9/10/2008
Carbon Taxes – Panacea or Political Oblivion?

The survey was conducted between May 12 and 16 among a sample size of 1500 Canadians who were eligible to vote. The margin of error for a sample of this size is + 2.6 percentage points, 19 times in 20.

The top-line findings of the poll follows. For more discussion of the poll results see http://www.cbc.ca/news/background/poll_trust

For further information, please contact:
Donna Dasko, Ph.D.
Senior Vice President
Environics Research Group Ltd
donna.dasko@environics.ca

1. Now thinking about Canada, overall, are you satisfied or dissatisfied with the way things are going in this country today?

	Total
Satisfied	39
Dissatisfied	58
DK/NA	3

2. What do you think is the most important issue facing the country that the federal government should deal with?

	Total
Health care/health care system	29
Poor Government poor leadership (12)/ Sponsorship scandal, Gomery Commission (10)/honesty/corruption (1)	23
Education	6
Economy	4
Poverty/homelessness/hunger	4
Taxes	4
Social issues/social safety net/social programs	3
Environment/pollution	3
Unemployment	2
International issues/war/peace	2
Same sex marriage	2
Crime/law and order	2
Other (SPECIFY) _____	11
DK/NA	6

3. Do you have a great deal of confidence,

some confidence, little confidence, or no confidence at all in each of the following.....

a) Political leaders

	Total
Great deal of confidence	2
Some confidence	31
Little confidence	36
No confidence at all	29
DK/NA	2

b) Business Leaders

	Total
Great deal of confidence	9
Some confidence	53
Little confidence	23
No confidence at all	13
DK/NA	3

c) Religious leaders

	Total
Great deal of confidence	14
Some confidence	41
Little confidence	22
No confidence at all	18
DK/NA	5

d) Police

	Total
Great deal of confidence	40
Some confidence	49
Little confidence	8
No confidence at all	3
DK/NA	*

e) Judges

	Total
Great deal of confidence	26
Some confidence	49
Little confidence	15
No confidence at all	7
DK/NA	3

f) The media

	Total
Great deal of confidence	11
Some confidence	54
Little confidence	25
No confidence at all	8
DK/NA	1

4. Do you agree or disagree with each of the following statements.

a) You don't really expect that politicians will keep their election promises once they are in power.

	Total
Agree	72
Disagree	26
DK/NA	2

b) None of the federal political parties really addresses the problems of people like yourself.

	Total
Agree	59
Disagree	39
DK/NA	1

c) Ordinary members of parliament play an important role in determining government policy.

	Total
Agree	54
Disagree	43
DK/NA	3

d) It makes a big difference which political party is in power in Ottawa.

	Total
Agree	56
Disagree	40
DK/NA	3

e) Federal elections should be held on a

fixed date every four years instead of whenever the party in power wants to call it.

	Total
Agree	77
Disagree	21
DK/NA	2

5. Which of the following statements most closely reflects your opinion?

	Total
The Supreme Court of Canada has a duty to strike down any law of Parliament that it believes conflicts with the Charter of	77

Rights.	
The Supreme Court of Canada should never strike down any law that has been made by the elected Members of Parliament.	19

6. Thinking about the way radio, television, newspapers and magazines cover politics, politicians and political parties, would you say the media are or are not generally fair and objective?

	Total
Are fair and objective	54
Are not fair and objective	43
DK/NA	3

7. If you lost your wallet and it was found by one of the federal political party leaders, which one do you think would be the most likely to return it to you?

	Total
Jack Layton	27
Stephen Harper	19
Paul Martin	18
Gilles Duceppe	8
None	14
DK/NA	14