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Chair

Mr. Gary Goodyear

Standing Committee on Procedure and House Affairs

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● (1105)

[*English*]

The Chair (Mr. Gary Goodyear (Cambridge, CPC)): Let's begin this morning's meeting.

I want to say a few things here first. Colleagues, we have two witnesses appearing by video conference for today's meeting from two different locations, as well as a witness with us this morning in the room. We are giving English feed through the video conference. Unfortunately, we cannot give French feed through the video conference. I understand that's okay with the witnesses.

For colleagues you will notice that when you're watching the monitors, there will appear a yellow frame around the speaking witness. There's no yellow frame now, but if you watch your monitors the witness who is speaking will be framed in yellow.

I would also like to remind members of some of the technical aspects of a video conference. It is more difficult for the interpreters and the witnesses to follow the discussions, so I ask members as well as witnesses to speak slightly more slowly and perhaps a bit more clearly, if that's at all possible. Thank you.

We will need time at the end of the meeting, of course, to discuss upcoming meetings. I remind members that this meeting is being held in public to consider Bill C-16, An Act to amend the Canada Elections Act, fixed elections dates.

I would like to introduce our witnesses first. We have Professor Henry Milner, appearing via video conference from Sweden, where it's 5 p.m.

Good morning, Professor Milner.

Prof. Henry Milner (Visiting Professor, Department of Political Science, Umea University, As an Individual): From here it's good afternoon. Good morning to you.

The Chair: Thank you.

Professor Andrew Heard from Simon Fraser University, appearing from Victoria, British Columbia, where it is eight o'clock in the morning, give or take.

Good morning.

Prof. Andrew Heard (Associate Professor, Political Sicence Department, Simon Fraser University, As an Individual): Good morning.

The Chair: Thank you.

Of course, with us in the room we have Professor Massicotte from the University of Montreal.

Good morning, Professor, and thank you.

[*Translation*]

Prof. Louis Massicotte (Associate Professor, Department of Political Science, University of Montreal, Visiting professor in Democracy and Elections, American University, As an Individual): Here, it is 11:05.

[*English*]

The Chair: As is usual with the other meetings, this is a standard witness appearance meeting. We will begin with a brief statement from Mrs. Redman.

Hon. Karen Redman (Kitchener Centre, Lib.): Thank you, Mr. Chair.

I would like to table a motion. We have no notices of motion in this committee, as we all know. I'd like to table it now. In deference to the teleconference I would be willing to hold the discussion to the end of the meeting, but I would like it dealt with today.

The Chair: Is that acceptable with everybody?

The chair accepts the motion, and we will deal with it after the witnesses and before the end of the meeting. Is that what you're suggesting?

Hon. Karen Redman: I'll read it now, if that's acceptable, and we can deal with it before the end of the meeting.

The Chair: That's acceptable.

Hon. Karen Redman: I move that this committee recommend that the Standing Orders in effect on October 5, 2006, including the provisional standing orders, be made permanent, and that the adoption of this motion be reported to the House forthwith.

The Chair: Thank you. We'll open that for discussion after the witnesses.

Proceeding with the nature of today's meeting, let's start with opening statements from our witnesses.

There's no particular order, but since you appear ready to go, let's open with you, Professor Milner. Please, your opening statements, sir.

● (1110)

[*Translation*]

Prof. Henry Milner: Thank you, Mr. Chairman. Thanks everyone.

I will be making my presentation in English, but I am certainly prepared to answer any questions in French.

[*English*]

I'd like to thank you all for inviting me. I'm very pleased to have the opportunity to address this committee, and I'm very pleased that the government has decided to move forward in this area.

I think some of you are familiar with the paper I did. It has been referred to. I've looked at the transcripts of some of your previous discussions, so to the extent that I have influenced progress in this area, I'm very pleased.

Obviously I can't deal with the entire issue in five minutes. I hope we have enough time during the give-and-take for other more specific aspects to be raised.

From what I've seen of the discussion and from what I've read of the background papers, my feeling is that some aspect, perhaps the wider aspect, hasn't been given the attention it deserves. Too much attention has been given to the technical constitutional aspect. The real reason why fixed elections are a good idea has disappeared in this discussion, and I'm going to try to emphasize that.

I'm not a constitutionalist. My specialty is comparative politics, looking at institutions and how they work in various countries, including this country, where I teach every year. I come at this from that perspective.

My general feeling is that the Constitution has been used to unnecessarily narrow the proposal both in its content and also in the way it has been presented and discussed. To some extent, at least, the real reason behind moving toward fixed election dates hasn't been given the attention it's due.

I realize there is a constitutional aspect. Some people argue that in order to do anything more than what's in the current bill could require a constitutional amendment. My suspicion is that that's not the case. We've seen movements in Westminster systems—in Canadian provinces, in four Australian states, and in the assemblies of Scotland and Wales.

Frankly, I don't see the need for the escape clause that has been put right at the beginning of this bill, namely that nothing shall affect the powers of the Governor General, which has been interpreted as allowing the Prime Minister, even in a majority situation, to call an election if he or she so chooses. The only constraints, therefore, are not written constraints. But the fact is that since there is an official normal election date in the law, this would place a greater constraint on the ability of a majority Prime Minister to act.

My feeling is that the law should be very explicit about these constraints so that the Prime Minister in question will be more bound by them, and also because it sends out a very important message to the people. Obviously a minority government normally presents unusual circumstances. In a majority government, the normal case is that the election will take place as set by law, and only in unusual or exceptional circumstances could it be otherwise. The law has to be extremely clear on this.

The point I want to make—and this is a very general one—is that the discussion has so much focused on, in Parliament, the concerns of parliamentarians. Elections should not be focused on the concerns of parliamentarians. They should be focused on the concerns of voters.

The basic idea of fixed election dates—and that's why we have them in most countries like Canada—is that the normal voter or anybody involved with the election—journalists, potential candidates, civic education teachers, anybody interested in getting people interested and involved in the electoral process—is able to do so under very simple and clear conditions that cannot be manipulated by politicians. That's the whole principle. The election belongs to the people. One, it should be clear that way, and two, people shouldn't think otherwise. We know how powerful cynicism is about politics, about partisanship getting in the way of what politics should be about, and we shouldn't invite that unnecessarily.

I would argue that the government is taking a step in the right direction. It's moving by certainly announcing that there will be a fixed election on a given date. But the law should be much more explicit in terms of sending out a message to Canadians that this is the normal way we will proceed: under normal circumstances, you can count on elections taking place on this date, and no one is going to change that.

Thank you very much, Mr. Chairman.

● (1115)

The Chair: Thank you very much, Professor. We appreciate your comments and your time this morning.

We will now move to Professor Heard for your opening statement. Thank you, Professor.

Prof. Andrew Heard: Thank you very much.

I'm going to read my initial comments to facilitate the translation process at this point. I will try to keep my comments brief, to the point, and touch on the three areas I was told the committee wished especially to hear about. I look forward to more detailed discussions with your questions.

In my view, the bill largely preserves the status quo ante, with the major exception of shortening the maximum life of a parliament to four years. As with the three provincial measures dealing with the same subject, Bill C-16 sets a maximum life of four years for the legislature, while explicitly preserving the Governor General's power of dissolution.

Legally the Governor General's power of dissolution must be exercised in tandem with the Prime Minister. Both the proclamation issued under the royal prerogative to dissolve Parliament and the actual election writs issued under the Canada Elections Act must be done by and with the advice of the Prime Minister. As I can explain in detail later, the law gives the Governor General the upper hand in this process, while convention ensures that the Prime Minister usually, but not always, is the actual decision-maker.

The decision to dissolve Parliament is normally made by the Prime Minister, and the Governor General must act on his or her advice to sign the proclamations and writs. However, constitutional conventions also provide the Governor General with the power, in certain circumstances, to refuse the Prime Minister's dissolution advice. This refusal is most widely supported for a minority situation where an alternative government could be formed by another Prime Minister.

In theory too, the Governor General may personally decide that Parliament should be dissolved and demand that the Prime Minister comply. However, this would be very controversial, indeed, and it could only be considered in the most drastic of circumstances, such as when Parliament is paralyzed and apparently beyond the control of a cabinet determined to cling to power.

In its current form, Bill C-16 neither alters nor is directly affected by the confidence convention. I can briefly summarize a difficult topic by noting that modern constitutional authorities generally agree on three types of votes involving a test of confidence. These various confidence votes can be grouped into three broad categories. The first two are relatively unambiguous.

The first is any otherwise ordinary motion that the government has designated in advance to be a matter of confidence.

The second group of confidence votes relates to motions to approve broad government policy, and defeats on these motions clearly demonstrate lost confidence. These votes include the Address in Reply to the Speech from the Throne and the main budget motions. Most commentators also include the main budget implementation and supply bills in this category, which involve confidence, but we should note that other money bills do not.

The third set of confidence votes are the problematic group, occurring on motions worded to convey a lack of confidence in, or the serious censure of, the government or members of cabinet. The key for categorizing either stand-alone motions or amendments as confidence votes must inherently hinge on their wording. The problem is just what wording makes a motion a test of confidence.

Some examples are unmistakably clear, such as the one that precipitated the last election: "That this House has lost confidence in the government." But a review of motions over the past century reveals that motions with much more varied and convoluted wording have been considered tests of confidence. As a result, motions become tests of confidence because their wording conveys a loss of confidence, a condemnation of the government, a call for resignations, or a declaration that the government is not fit, or has no right, to hold office.

Constitutional conventions have a limited legal status, but the courts have made use of them in various contexts. There are a few possible ways in which conventions might arise in judicial consideration of Bill C-16's current provisions, and I do not believe judicial consideration of conventions will significantly alter the bill's current provisions.

However, the courts would be called upon to adjudicate the confidence convention if the bill were amended or a constitutional amendment proposed to prevent premature dissolutions, except when a government has lost confidence. In my view, this is highly undesirable for two reasons: one, the confidence convention currently has vital flexibility and room for evolution; and two, a confidence vote is a supremely political act that should not be subject to either judicial interpretation or enforcement.

● (1120)

Currently, the Governor General is the ultimate enforcer of the confidence convention. Although she is an appointed official, convention requires that either the current Prime Minister accepts political responsibility for her actions, or a new Prime Minister is appointed who will.

On the constitutional issue, it's not a question of if it is possible in our parliamentary system but it's a question of which process should be used. And in my view, the current provisions of Bill C-16 are achievable through ordinary legislation, but constitutional amendment may be needed to achieve its supposed objective of precluding early election calls not resulting from a loss of confidence. Amendment may well be required in the latter case, because changes substantially affecting the Office of the Governor General require a unanimous amending formula.

On a more optimistic note, the proliferation of similar legislative measures at the provincial level may raise citizen expectations for majority governments to last the full years. In B.C., for example, common discussions of elections are already premised on the belief that four-year cycles are required. Ironically, this proposed legislation may best achieve the government's stated objective by generating a new constitutional convention to limit a Prime Minister's election options.

Thank you.

The Chair: Thank you very much, Professor Heard. I appreciate your comments as well.

Now we'll move to Professor Massicotte, for your opening statement, sir.

[*Translation*]

Prof. Louis Massicotte: Thank you, Mr. Chairman.

Ladies and gentlemen, thank you for inviting me.

I am familiar with Bill C-16 and the debates that took place in the House of Commons at second reading on September 18 and 19.

I will be making my presentation in French.

[*English*]

I can make an audible noise in English, enough to teach in an American university, so I'm willing to answer your questions in either language.

[*Translation*]

In the debate of which I am aware, I believe I was able to discern a reasonable consensus among the participants with respect to the nature and scope of the legislation. It is commonly referred to as the fixed election date bill, but everyone seems to clearly understand that in reality, the election calendar will not be as definitive as it is for our neighbours to the South, for example.

To paraphrase Mackenzie King, what Bill C-16 offers us are elections at fixed dates, to the greatest extent possible, but probably at dates that are not fixed. The Prime Minister will still be able to ask the Governor General to hold an early election, and not only if the government loses the confidence of the House. This is an interesting compromise.

A totally rigid election calendar is extremely rare in parliamentary systems. In that regard, among sovereign countries, Norway is the exception that confirms the rule. However, it is common to restrict the right to dissolve Parliament. In practice, election dates are more predictable under other parliamentary systems than in Canada.

That being the case, the temptation is great to suggest that Bill C-16 will change nothing; however, giving into that temptation would be a mistake. With this bill, a prime minister will not be able to request and secure the dissolution of Parliament as easily as before. In that context, it will be much more difficult to call an election simply to make it easier for a government to be re-elected. But one should not underestimate the climate, and thus a potentially negative public reaction to that kind of decision. It would definitely be starting off on the wrong foot for a prime minister to have to spend the first week of an election campaign responding to accusations of political opportunism, or even of having broken the law.

So, I endorse this bill. I must say that some of the arguments made in support of this legislation are not as convincing as others, but in my view, the strongest argument relates to equity. Giving a party leader the privilege of choosing the date of the next election, without any guidelines, gives that party an exclusive advantage, which may be a less decisive factor that some may say or believe. In my opinion, the general thrust of the Elections Act is clearly to put all the players on the same footing. That is an argument we hear over and over again in the debate and there is a good reason for that: it's a valid argument.

Where I did get the sense that there is a difference of opinion among MPs was with respect to the desire of some to take advantage of this bill to explicitly set out in legislation, and perhaps even in the Constitution, the conventions governing responsible government. As far as that goes, I'd say that it's quite a nice idea, but I don't see it as being urgent.

There has been a tendency to do that in Continental Europe. In France, they call it “rationalized parliamentary government”. It's clear and has more of an educational thrust. You have a short paragraph laying out exactly when a government is defeated and when it is not. I'd say that our practice in this area, which for the last century and a half has been to rely on conventions that I personally am quite familiar with, having studied parliamentary tradition, has served us quite well. There have been some ambiguous cases. Mention has been made of the May 2005 vote, but as you know, the debate did not last long. Ultimately, the House of Commons clearly reaffirmed its position. The lesson I draw from the May 2005 episode is that technicalities do not allow a government to prolong its existence indefinitely.

The other idea that has come forward is that some would like to amend one of the existing conventions by abolishing the prime minister's power to make any issue a matter of confidence. Let's just clarify what we're talking about here. This refers to a situation where a prime minister says to members of Parliament: “You may not like every detail of the measure I am proposing but, in my subjective opinion, it is fundamental. So, I am going to put you in the position of having to either accept or refuse; I am putting my head on the block. If you reject this measure, I will consider that I have lost your confidence and will advise accordingly. ” That is what happens when a prime minister asks for a vote of confidence. Some would like to see that abolished.

● (1125)

I do not agree. This practice is a feature of pretty well every parliamentary system, and there is a very important reason for that, which has to do with the very nature of the parliamentary system. A parliamentary system is not just one based on a legislative assembly of parliamentarians where the government does nothing more than fulfill the will of the House of Commons. Under a parliamentary system, what is known as the Executive does not just carry out orders. The strength of the parliamentary system is tied to the government's ability to show leadership, subject to the House of Commons' power to defeat it and the ultimate power of the electorate to arbitrate a fundamental disagreement that may have arisen between the government and Parliament.

Basically, Mr. Chairman, I endorse this bill both because it reduces the possibility of a prime minister abusing his power to dissolve the House of Commons, and because it maintains that power while at the same time increasing the chances that it will be used more appropriately.

In closing, I would just say that it is quite rare for a government to propose an institutional measure that it does not benefit from in one way or another. Now that this opportunity has arisen, I believe you should take full advantage of it.

Thank you.

● (1130)

[*English*]

The Chair: Merci, Professor Massicotte.

What we're going to do now is go to our first round of questions. Unless the committee disagrees, then because we have a number of witnesses, we'll go with a seven-minute first round. Is that agreeable?

We will start in the usual order, with our Liberal members, and I have Mr. Owen up as the first questioner.

Hon. Stephen Owen (Vancouver Quadra, Lib.): Thank you, Chair.

Welcome, witnesses. Thank you very much for making yourselves available to us, one in person and two in different time zones.

Professor Milner, on behalf of all of us, I'd like to thank you for your very insightful paper for the Institute for Research on Public Policy. It has given us a great grounding and framework by which to discuss this important project. I think you're right in your reading of both our discussions in this committee and in the House, that there is general agreement that going to a more fixed system is a good thing.

I'd like to just raise a few issues for each of you, with reference to points that each of you have made.

I hope I haven't misunderstood you, Professor Milner, but you've suggested that we need to be explicit about the constraints on the right of the Prime Minister to request a dissolution, and only in exceptional circumstances—I think you used the word "exceptional"—should that be permitted in a majority government. If I could just leave those "exceptional circumstances" for a moment, I would look to Professor Heard's comment that this bill in front of us does really nothing in terms of convention other than to shorten the maximum length of a parliament.

Then I go to Professor Massicotte's reflection that in fact, as a matter of equity, this is a good thing—that's the key reason—but also, when there was a majority government, it would be seen as an act of electoral opportunism. Therefore, there would be a sufficient constraint against a Prime Minister seeking a dissolution in a majority situation.

My question is this generally. If it's only in "exceptional circumstances", how do we define them? If we define them or however we define them more explicitly in the bill, do we then keep the courts out in the situation of Professor Heard's third situation? And I agree with him that it's wise to try to keep the courts out of parliamentary issues of this sort.

The final question is on the equity position that has been mentioned by Professor Massicotte. There's equity between parties, yes, but there's also an issue of equity within a party, which I wouldn't mind your reaction to. The Prime Minister, as leader of that party, may actually threaten to dissolve Parliament and call an election, threaten his own caucus with such an action, in order to block any attempt to overthrow his leadership. I wouldn't mind the experience of any of you with that sort of situation.

The Chair: Excuse me, witnesses. I probably should have explained that a seven-minute round means seven minutes for questions and answers. Mr. Owen has used up three minutes on the question, so I would like you to please do your best to answer.

We'll start with Professor Milner. If you could possibly keep your answer to one minute, we'll end up getting all these questions answered. I know that's difficult, but please do your best. Thank you.

Prof. Henry Milner: The definition of exceptional circumstances is not a simple one, and I would have liked to see some attempt in the drafting of the law. My ideal would be something like the German system, where in a majority system you'd still need a vote of non-confidence. This would mean the government would have to engineer a vote of non-confidence from its own members, which would take really extraordinary circumstances for it to act. In other words, the idea would be that when the government loses the confidence of the House, only then can we have a premature election, whether in a majority or a minority situation.

The second point I want to make is particularly in relation to Mr. Massicotte's interpretation. This is all a matter of interpretation. You can interpret the law as an incentive that will make it harder for the Prime Minister in a majority situation to call a premature election, but we don't really know. Nothing in this law is going to tell us whether this will happen. I'd like to believe this will happen. Minimally, I would like to see a very clear statement accompanying the law that would say that give Canadians a message saying this is what we expect. It seems to me that's the very least we could expect, and it would be publicized in a very clear way. Perhaps it could still happen; I'm not ruling it out.

I would go further, possibly, if the consensus is that all this does is reduce the five-year term, make it a bit shorter, and that ultimately the room to manoeuvre of a majority Prime Minister really hasn't changed very much. I suggest—and if we want to avoid a constitutional issue—we could go further and do what they do here in this country, in Sweden, and in Finland, and that is that we would change the incentives. It's a very simple process. The next election would simply take place on the third Monday in October after the last regular election, so a premature election would not change that. That would have a very strong disincentive to anybody bringing down a government prematurely. That's an extreme measure, and I'd hope we could avoid that, but I wouldn't want to end up with the status quo, except a slightly shorter length of Parliament.

● (1135)

The Chair: Thank you, Professor.

Professor Heard, have you any comments?

Prof. Andrew Heard: No, I think I'll pass on this one. Thank you.

The Chair: Professor Massicotte.

Prof. Louis Massicotte: There are two points I'd like to address on the issue of exceptional circumstances.

Should you try to specify in a constitutional provision or in legislation when exactly and in what kinds of circumstances an early election could be called? Henry has mentioned the experience of Germany. I'm glad he did, because I happen to know that experience very well .

The Germans in 1949 had a negative prejudice against dissolution—the constitution signers. The constitution makers in 1949 had a negative view of dissolution because of the way it had been used during the previous republic and so on. They created not only federally, but in the various *Länder*, a setting where elections would occur at very predictable dates unless it were very necessary to call an early election. And they made that very difficult .

Three early elections have been held since 1949. The three circumstances were utterly different. In 1972 it was because the majority of Chancellor Brandt was slipping away and he decided to clear the skies and to call the election early by engineering his own defeat, which was not a very elegant way of getting what he wanted.

The second case occurred 11 years later after a motion had toppled Chancellor Schmidt and put Mr. Kohl in place. Mr. Kohl, having acceded to power without a vote of the population, thought it fit that the people have an opportunity to pronounce on the issue, so again, he engineered his own defeat, which, incidentally, caused a constitutional challenge through the German Constitutional Court.

The third case occurred very recently. I'm sure it's fresh in your minds if you have an interest in German news. The chancellor again engineered his own defeat, and the circumstances are very interesting. He was only one year and three months before the end of his term, yet he had come to the conclusion, which was warranted, I think, that he had totally lost the confidence of the country. Provincial elections, which in Germany are a test for federal governments, had been extremely negative, and so he decided to, again, engineer his own defeat and an early election was called. What struck me, incidentally, is that everybody agreed with it. There was wide consensus within the Bundestag about the elections.

So my point would be, when it comes to exceptional circumstances, try to define this. Try, if you wish, but I don't think it would be very easy to do so and I don't think it would be wise either to do so.

● (1140)

The Chair: Thank you, Professor.

Now to Mr. Reid, please, seven minutes.

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

My question was actually going to inquire in greater detail about the German example, but that's just been done for us.

One of the things that occur to me here is this. If a government loses a vote of confidence and the four-year cycle is not up, especially if we're quite early on in the four-year cycle, it strikes me that it's not constitutionally impermissible that the opposition parties—if it's a minority parliament—could attempt to demonstrate that they have the confidence of a majority of members. In the current situation we could imagine it's perhaps improbable, but not constitutionally impossible, that the current Conservative government could be defeated on a confidence matter, and rather than going to an election, the three opposition parties could demonstrate that they have a workable coalition and go to the Governor General.

Am I right in assuming that this would be the case and that under the new law the Governor General would at least have the option of accepting their offer to demonstrate that they could put forward, say, a confidence motion in a new government in the House of Commons?

I'm asking you, Professor Massicotte.

Prof. Louis Massicotte: I'll try to answer this as best I can. This is one of the areas of the conventions surrounding the possibility of refusal of dissolution by the Governor General that is a grey zone, a grey area.

I would say that if a new minority government is defeated, let's say, three days after the opening of Parliament, after the throne speech, and the Prime Minister wishes to call an early election, there is every possibility that the Governor General will refuse. I think many people would accept that view, that you can't have elections so close.

The issue was widely discussed in 1972 when Mr. Trudeau hung to power, as you know, and the informal rule was that if you could survive the six months, that's fine. If you're defeated within the first six months, there is a strong possibility that the request for dissolution would be refused by the Crown. If you are defeated later than that, it would be much more difficult to imagine that the request for dissolution would be refused unless there are clear reviews. And as you know, it's a very difficult power to exercise, to refuse dissolution. The only Governor General who did had the kind of experience.... I'm referring to Lord Byng.

I'm not a lawyer. I don't see these conventions being in any way clarified or modified by the piece of legislation that you are dealing with.

Mr. Scott Reid: Let me ask you a supplementary question then. A lot of the discussion seems to have been based on the assumption that the opposition parties would be fairly passive. It would be the government putting forward motions in the House of Commons, engineering its own defeat. But again, I'm using the minority government model here. I can see how this would be more problematic in a majority, but imagine a situation in which it seems likely there will be a vote of non-confidence in the government over some matter of confidence, whether it's a money bill or a budget. One can even imagine it's a motion that says “no confidence in this government”, but perhaps there could be an accompanying motion as well or an indication that one would be put forward saying that we would have confidence in some new ministry.

What would happen in such a circumstance?

Prof. Louis Massicotte: That would be interesting. I personally thought of that possibility. Look, I'm obliged to refer to Germany again because this is exactly what they have, the so-called famous vote of constructive no confidence. In order to avoid an election being held, they do two things at the same time. They topple the chancellor, but they elect a new chancellor on the same stroke, so that if the opposition parties cannot agree among themselves on the new Prime Minister, the government will continue to stay on.

We do not have this. But nothing would prevent, I think, the House of Commons from adopting a motion to that effect. As we are dealing with conventions and as we are in grey areas, I see nothing in the law of Parliament—and I probably stand to be contradicted by people more familiar with the rules than I am—but I'm pretty much under the impression that such a scenario would be admissible. It would certainly create a very interesting pressure on Her Excellency not to accept a possible request of dissolution from a defeated Prime Minister and to instead appoint as Prime Minister, without an election to be called, the new Prime Minister designated in the motion.

Am I clear?

● (1145)

The Chair: Mr. Reid, you have two minutes left.

Mr. Scott Reid: Maybe rather than asking any further questions, I could just ask the other witnesses if they have any comments on what has been said.

The Chair: Professor Milner.

Prof. Henry Milner: I'll defer to Professor Heard.

The Chair: Professor Heard, do you have any comments?

Prof. Andrew Heard: Yes. I agree with everything Professor Massicotte has said, and I would just add as well that a Governor General can only refuse dissolution if she is prepared to appoint another Prime Minister in place of the one who's offered the advice of dissolution, because it's a standing convention that if your advice is refused by the Governor General, then the Prime Minister should offer their resignation.

In the circumstance of a minority government where there's an alternative possible government, then quite clearly the Governor General would be able to find an alternative. This should be worked out through informal discussions prior to any formal meeting between the Governor General and the Prime Minister.

The Chair: You actually have one minute left, Mr. Reid, if you would like.

Mr. Scott Reid: I'll just thank the witnesses and wait for the next round. Thank you.

The Chair: Thank you very much.

We will now go to Madame Picard, *s'il vous plaît.*

[*Translation*]

Ms. Pauline Picard (Drummond, BQ): Thank you, Mr. Chairman.

Someone said earlier, in his summary, that the legislation must be clear and that Bill C-16 simply maintains the status quo.

If I understand correctly, that means that Bill C-16 does not amend current conventions with respect to matters of confidence and if, in a situation where the government has a minority, the prime minister calls a vote of confidence on a matter involving values, and loses the vote, that means that at any time, an election could be called. Is that what you said?

Prof. Louis Massicotte: What I meant was that a prime minister does not call a vote of confidence whenever he feels like it. It is a formal procedure.

One of the rare examples that I cite to students — I don't know whether you were in the House of Commons then — is the time in 1988 when Mr. Chrétien called a vote of confidence on the issue of Hepatitis C. The government had a majority, but the Opposition had tabled a motion asking that victims of Hepatitis C receive full compensation. Some Liberal MPs were tempted to support the motion. So, Mr. Chrétien put his head on the block, saying: "That's too bad. Either you like this motion or you don't and, as we say in English, it's: Love me, love my dog, if we end up in an election and I'm defeated."

For the prime minister, it's a means of applying pressure, but you should never forget one thing, and that is, that it's a dangerous game to play. Parliament may well take you at your word and say no, even on a very minor issue. And having said before the vote that he was putting his head on the block, if Parliament turns around and says no, then he ends up having his head cut off. You have no choice but to follow through on your threat.

So, it's a risky business, but I do think we need to preserve that option, because it's a way for the government to move things forward. The great thing about the parliamentary system, compared to the one our neighbours to the South have — of which I am quite familiar, even though I don't particularly admire it — is that our system assumes that the government can do good things for us. It can also do bad things, as I am fully aware, but it is better to have an activist government than one that fails to act. I believe it's one of the advantages that our system offers.

● (1150)

Ms. Pauline Picard: Would the other witnesses care to comment?

[*English*]

The Chair: Yes, they can.

If you want to ask any of the witnesses, they can answer for you. Thank you.

[*Translation*]

Ms. Pauline Picard: On the same question.

[*English*]

Prof. Andrew Heard: Yes, I'd like to address an issue that was raised in second reading and comes up here as well, the desirability of the Prime Minister being able to draw a line and say that this is a matter of confidence. I think it's as important for the government to be able to set a matter as being a test of confidence as it is for the opposition to declare that something is a matter of confidence. Essentially, both sides are saying that the issue is so important that if it is voted down, they are prepared to go to the people over it.

I think that is a very important principle that should be protected in our parliamentary system.

Thank you.

Prof. Henry Milner: I don't agree, because an election is not simply a way in which political leaders can use Parliament to impose their will. An election belongs to the people.

An understanding should be built into the law to say that as long as the government maintains the confidence of the majority of the members of Parliament, it cannot bring about a premature election. It's not very complicated. We've seen in Canada that if a government is defeated on a bill, doesn't want to treat it as a matter of confidence, and there isn't clarity on it, it then goes to the House and says, "I want to reaffirm that the majority of the members of the House still have confidence in the government." In fact that's what happens.

So ultimately, if you're really talking about being prepared to undermine the government because the majority in Parliament is no longer satisfied with that government, it should take the form of an express vote of non-confidence. It should not be seen as a means by which a particular leader places pressure on other leaders because of his or her priorities.

The Chair: You have three minutes left, Madame Picard.

[*Translation*]

Ms. Pauline Picard: Professor Massicotte, what would you like to see added to the bill to tighten it up or ease the constraints?

Prof. Louis Massicotte: Well, as I said in my presentation, I can live with this bill as it is presently worded. I suppose minor changes could always be made. Personally, if there is one thing, it would be that this be enshrined in our Constitution. I think it's a little strange, from a pedagogical standpoint, for Section 50 of the Constitution Act, 1867 to state that no Parliament shall continue for longer than five years, when the Elections Act says that it's going to be a maximum of four years. I find that rather strange from a pedagogical standpoint.

By the way, the situation is the same for the National Assembly. In the Constitution, it talks about four years but in the Act of the Legislature, it's five years, and it's the most recent legislation that takes precedence. From an educational standpoint, I would have preferred and expected something else. When I saw this bill, I thought to myself that it must be legislation amending the Constitution Act, 1867. And yet this legislation actually amends the Canada Elections Act.

I realize that, legally speaking, it makes no difference. Parliament clearly has the right to amend Section 50 of the Constitution Act, 1867 and reduce its own term. That, at least, is my reading of the federal Parliament's amending powers as regards the Constitution, but in my opinion, it should have exercised that power at the drafting stage. Pardon the expression, but as a country, I think we have become rather constipated, constitutionally speaking, because we don't dare touch the wording. We find all kinds of reasons to avoid it because those who dared to do it, as you well know, had plenty of opportunity to regret it.

I'll be perfectly frank with you about this legislation. What I see is that it introduces new constraints for prime ministers, and I see that as an interesting feature. I would have liked those constraints to be confirmed in the Constitution, not because it formally has more authority, but simply because the new rules would perhaps be clearer for the public.

● (1155)

[*English*]

The Chair: Thank you, Professor, and thank you, Madame Picard.

Mr. Dewar, please.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair, and thank you to our guests in B.C., Sweden, and right here in Ottawa.

Most of you agree that this is a good bill and that it is the right direction in which to go.

Mr. Milner, your writings and the presentations you made to the Law Commission of Canada—which we all value and sadly see the demise of, but that's another story—were on the issue of democratic reform, and flexible fixed election dates are a piece of the puzzle. As I've said in committee before, from my perspective and that of my party, this is not the panacea for democratic reform; it's a piece of the puzzle.

Now to the point and questions around your presentations, I'd like to start with you, Mr. Milner, because I share your concerns about clarity in the bill. I am not a constitutional lawyer; I'm a humble servant of the people, and I'm glad you're emphasizing that this is something for the people. It is not for us; it's not the inside baseball that usually occurs. It is to make it explicit to the people of Canada that this is when an election will take place, and if it is not to be on this date there should be some darn good reasons why.

You've had some time to reflect on what possible changes could be made. I'm not a constitutional lawyer, but I like the idea that we have some criteria in the bill that are overt and clear about the intent of this bill.

Do you have any thoughts around that?

Prof. Henry Milner: Well, as I said—and I won't try to repeat myself—I assumed that this would be in the bill, and when it wasn't there, I found myself in a quandary, because it's not the sort of thing.... I'm not experienced at drawing up laws. Something that would say that elections in Canada take place under the following conditions unless a government loses the confidence of the House, at which time the Governor General, on advice, will call an election at another date struck me as a natural way to set up the law.

If there were major constitutional concerns, I would have liked them to be addressed in a different way than they were addressed here. I find that given the way the law is worded, with the first item being a negative one, certainly anyone reading this law would say that it doesn't really change anything. Before you actually announce in the law the new situation about election dates, the first item literally, physically, says that nothing will change the ability of the Governor General, on advice, to call an election at any time.

So pedagogically, at the very least, if it really is a major obstacle—and frankly, I haven't been convinced of it, and I'd like to be convinced of it—to doing what I've proposed, surely the law should be written in a way that makes it very clear that the intent is that this power of the Governor General be used as little as possible. If you can't specify the specific circumstances, at least specify the intention.

So that's where my real disappointment is.

Ultimately, if it is true that you cannot do this under our interpretation of the Constitution—which I don't see being the case—and it turns out that the constraints we are capable of imposing prove to be ineffective or are expected to be ineffective, then we can actually change the incentives, as I said, by moving the date, by not allowing the date of normal elections to be fixed. That would be perfectly constitutionally viable, and it would certainly change the incentive situation, even under minority governments, to make premature elections less likely.

I think that's what Canadians would want, but it is an extreme measure, and I'm not necessarily advocating it at this point. I think it's incumbent upon the politicians, the people behind this bill, to persuade me, if I'm representing Canadians in this case, that this bill will change normal ways of holding elections and calling elections. That's what I want to be persuaded of. That's what I think the people of Canada have the right to be persuaded of. The way it's drafted, and the discussion that I've seen, and the reasons that I've seen, frankly, have not done the job.

● (1200)

Mr. Paul Dewar: I just wanted to know if the other witnesses wanted to comment on that, if they had any insight on it. I'm with the professor. What we want to get away from are parlour tricks. We've seen too many of those, so I'm just wondering if you have any ideas on how to achieve those goals.

Prof. Louis Massicotte: You know, parliamentary institutions are complex things, and when you are talking about the parliamentary system, what I would say is that dissolution is pretty much, as they say in English, in the nature of the beast.

Now, some people have tried to create the impression that early elections were a monstrosity or something unheard of, that we were real troglodytes, clinging to our own practices on this. Wait a minute. Let me quote you one of the best contributions on this topic, an article that appeared in the *American Political Science Review* in 2002. It agrees, by the way, that the use of dissolution is often opportunistic, but what does it have to say about fixed date elections? It says: Contemporary parliamentary constitutions vary widely in their dissolution powers. There are some systems in which discretionary dissolution is constitutionally proscribed

— through fixed date elections—

> in Switzerland, which we admittedly would not classify as a parliamentary democracy, Parliament can be dissolved only upon constitutional amendment. And while the Norwegian constitution in practice is clearly parliamentary, it permits no early dissolution of...(the Norwegian Parliament) for any reason. Yet such cases are rare. Most constitutions permit parliamentary dissolution and place the ultimate decision in the hands of the head of state...

The point to be understood here is that dissolution is part and parcel of the parliamentary system. I won't venture to explain to you the historical circumstances that led the Norwegians not to have dissolution, but I can tell you they are clearly peculiar and it had to do with their status as an associate of Sweden earlier.

The Chair: I'm sorry, the time is up for that round. Perhaps, Mr. Dewar, you might want to finish that question in the next round.

We're going to move to the second round now, with five-minute rounds—that is, five minutes for questions and answers. We will start with Ms. Jennings, please.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you very much for your presentation.

First, I just wish to make the point, and I assume the witnesses agree, that to label Bill C-16 as establishing fixed election dates is not accurate. A more accurate description would be that they are flexible fixed election dates. That's my first point.

Second, we've had a number of witnesses come before us and attempt to make the argument that moving to either fixed election dates or flexible fixed election dates would actually improve voter participation. I have asked these witnesses to bring forth studies they have that would demonstrate a clear causal link or correlation between higher voter participation and either fixed election dates, when the voter is completely free to vote or not, or flexible fixed dates. I've yet to see them, so I'm wondering if any of you witnesses would have that information.

[*Translation*]

Finally, I would like to address the point that you raised, Professor Massicotte, when you said that you expected, from a pedagogical standpoint, that the Constitution Act, 1867, rather than the Canada Elections Act, would be amended.

● (1205)

[*English*]

The Chair: There is a technical problem.

[*Translation*]

Hon. Marlene Jennings: I am also wondering why it was done this way. I know one could argue that to amend the Constitution Act, 1867, the approval of seven provinces is required, and so on. But there is another argument that says the Parliament of Canada can unilaterally amend the section stating that an election must be held every five years, or at the very latest in the fifth year.

I would like you to comment on that, because I'm rather confused about the reason why the Canada Elections Act is being amended, rather than the appropriate section of the Constitution Act, 1867.

[*English*]

The Chair: Madam Jennings, are you referring specifically to Professor Massicotte or to everybody?

Hon. Marlene Jennings: I am referring to Professor Massicotte on the issue of modifying the act of 1867 and the other witnesses on the first two points I raised. If Professor Massicotte also wishes to comment on the first two points, he may.

The Chair: Professor Massicotte is first.

[*Translation*]

Prof. Louis Massicotte: Thank you, Ms. Jennings.

I am a political scientist, but I am neither a constitutional expert nor a lawyer. However, I myself have studied this carefully. I worked on Parliament Hill for seven years. I was there when the Constitution Act, 1982 was passed. As regards the formula for amending the Constitution, I have in fact studied it quite a lot, and this is what I have concluded.

When you ask what the federal Parliament can amend in the Constitution through a simple Act of Parliament, I believe you are referring to Section 44, which stipulates that the Parliament of Canada may amend any and all provisions of the Constitution of Canada related to the executive and the legislative branch. It is a very broad power.

Section 42, which stipulates that the approval of seven provinces is required to do certain things, is a provision that limits a general power. That limitation should itself be interpreted in restrictive terms.

In the specific list of subjects listed under Section 42, which requires the consent of seven provinces representing 50 per cent of the total population of the provinces, I see no mention of the term of Parliament's mandate. I'm sorry, but that simply is not there. Consequently, I believe the term of the House of Commons mandate very clearly falls under the federal Parliament's legislative authority.

Some will say this interferes with the powers of the Governor General, but I think we have to be careful here; what requires the unanimous consent of the provinces has nothing whatsoever to do with Her Excellency because, as you know, the entire Government of Canada is lead on behalf of Her Excellency. It is the function *per se* that is at issue, and not each of the royal powers. Indeed, if you wanted to change that function, you would need everyone, even though in my humble opinion, that could have been included in the Constitution Act, 1867.

[*English*]

The Chair: Thank you.

Thank you, Madam Jennings. I'm sorry, your five minutes are up. Perhaps on the next round you can get one question in.

Hon. Marlene Jennings: May I simply ask that if the witnesses have any evidence or studies, could they submit them in writing?

The Chair: Are the witnesses clear on that? If you have any studies that have any correlation or suggest that the voter turnout is better with this type of format suggested by—

Prof. Henry Milner: Can I answer that?

The Chair:

Actually we don't have time for an answer, but maybe Madam Jennings might be able to get the answer in the next round.

We do have to move on, because there are other questions.

Mr. Reid, please.

Mr. Scott Reid: I propose the way we get the answer to Ms. Jennings' question is for me to ask Professor Milner to comment on this. If I'm not mistaken, in the paper Professor Milner wrote, which I think was submitted to all of us, he did a fairly exhaustive study. I'm assuming that the way to answer this question would be to look at jurisdictions that have gone from non-fixed to more fixed elections and then to examine them.

I don't know if that's the case, but Professor Milner, I'd be interested in knowing if you have anything to say on that.

● (1210)

Prof. Henry Milner: There is no evidence of the kind you ask, mainly because we have very few examples of recent changes of the kind you describe. Since most countries use fixed elections, to isolate fixed versus unfixed and look at the different voting turnouts would not work statistically.

There are two points I'd like to make on this. I have argued that with fixed election dates—and Mr. Dewar mentioned this—as part of a series of changes to address the democratic deficit, then I think it would be very clear because we would end up being similar to countries with higher turnouts, like the country I'm in right now. But that would not just be fixed election dates; it would include, for example, more proportional elections. If you combine those and a number of other specific matters, it's pretty clear that you would more likely improve turnout.

The second point—and this is the point I make in the article that you cite—is that what having fixed election dates does is make it easier to address particular groups that we have found are likely to be absent from voting. It makes it easier to address them and say, look, let's develop a strategy so that in the next election we can mobilize resources towards those people. If these are young people, for example, the resources to be mobilized would largely be through the schools, through planning civic education courses. If it's immigrant-based populations, it might be other means. If it's attracting women candidates, for example, I think fixed election dates would help in that regard, for the reasons I've explained and that have been mentioned in this committee.

In the very specific measures to improve participation, having fixed election dates is a good tool to facilitate that, but those are very specific, in that it's in the context of those kinds of very specific measures that fixed election dates would affect turnout. I'm not prepared to simply say that if this law is passed more Canadians will vote. There's no data to allow us to predict that.

Thank you.

Mr. Scott Reid: At one point in a previous meeting—and Madam Jennings can correct me if I'm wrong—I believe I overheard her expressing a concern that the number of voters might actually go down in the event of fixed election dates.

Hon. Marlene Jennings: No, I never said that.

Mr. Scott Reid: I believe I overheard you say it to the chair at one point, or to the clerk.

Hon. Marlene Jennings: No.

Mr. Scott Reid: I'll ask Professor Milner. There is no evidence to suggest that there could be a reduction in participation, is there?

Prof. Henry Milner: No, I can't imagine. For example, the United States has fixed election dates and their voting turnout records are fairly low, but there are a whole bunch of reasons for that. Frankly, I think if they didn't have fixed election dates in the U.S., they'd have at least as low, if not lower, turnout. Note that American turnout rates are now the same as Canadian, at least in the last presidential and federal election. Even there, the American case doesn't work. And you can never generalized from single cases.

So no, there is no data to prove that.

Mr. Scott Reid: Thank you.

The Chair: Thank you.

For the record, our colleagues from the Bloc, do you have any questions? No.

I will then turn the microphone to Mr. Dewar, please, for five minutes.

Mr. Paul Dewar: Thank you.

I want to return to the question that we were examining before, starting maybe with a statement and then a question.

If we're looking at the democratic deficit, one of the concerns people have had over the last number of years has been the concentration of power within the executive branch. As I said before, it's not a panacea, but my hope is to at least spread that power a bit more. One way you can do that is to not give all the cards, if you will, to one person's hand, but to share them.

One of the aspects of this is the issue of confidence. I don't want to beat this to death, which means I'm going to subtly beat it to death, but when we're talking about issues of confidence—and I was interested in the comments that were made—we're under the understanding that, yes, it's up to Parliament to decide. But I was referencing something in committee before, when the Prime Minister said the vote on Afghanistan was going to be a vote in Parliament and then it turned it into a confidence vote. The notice for that was problematic, and I'm simply suggesting that ultimately we should have some boundaries around what is confidence, understanding that we're in an organic system, if you will, and if I can use that term, that is based on convention.

I would agree with the idea that it is a complex system, but in the nature of something that's organic and flows, you can influence it and have confluence. I was simply suggesting that. Are there not some criteria that could be set, if not in this bill then in some other manner, to talk about issues of confidence? Quite frankly, as Mr. Milner has said, this is about the participation of citizens, not for Parliament to play parlour tricks. If we're talking about the executive branch having that ability, in and of itself, and not about Parliament having the same ability, then we don't have an even keel.

I was just curious. Is it not important to at least acknowledge the issue of confidence when you're talking about a law like this, whereby you're hopefully setting the parameters around saying that if Parliament is to fall and there's lack of confidence, then it had better be for a darned good reason, and not just when you're trying to whip your own backbench? Quite frankly, that is what happened with other prime ministers, right? It was a threat to keep your folks in line. Clearly, that's not to the benefit of Canadians, it's to the benefit of the ruling party.

● (1215)

The Chair: Mr. Dewar, are you directing that question to any specific listener?

Mr. Paul Dewar: I'll start here and then—

The Chair: We have two minutes left.

Professor Massicotte, please.

Prof. Louis Massicotte: The point is whether we can come up with a list of items that would be matters of confidence. We have such a list at present, informally. It's pretty clear that we are not in complete ambiguity. A government is defeated if a motion of no confidence is passed. The motion must say that the government is blamed or that the government does not enjoy the confidence. This is clear. If the House wants to get rid of the government, it can do so.

Secondly, it can do so by rejecting supply—not by voting against any financial measure, as some people say, because this is not correct. You can reject the whole taxation bill and the country can work nevertheless, because there is already a taxation bill in force. The state can work. If you reject supply, this is another issue, because you deprive the government of the money it needs to pay its civil servants.

And there is a third area. If a Prime Minister has said that something is a matter of confidence, that he leaves if he loses, then if he loses he will have to leave.

So these are clear, but if you try to specify which ones are matters of confidence, I'm struck by one thing. Is it the wisdom of nations? I don't know, but I know pretty much the practice in other parliamentary systems, and I still have yet to see the country where everything has been specified, that this is a vote of confidence and this is not. They all say that if the house passes a motion of censure against the government, then they are out, but they don't go further.

Try to imagine all the kinds of circumstances that can arise. In some contexts one issue is absolutely basic in the minds of some people, and in other circumstances it is not. For some members of this House, I suppose the definition of marriage is something that absolutely strikes at the heart of the human condition. Other people say that's an issue on which we may disagree, that it's not as basic as you say.

I would come back to that theme. Plenty of constitutional lawyers have tried before us to regulate the political dynamics in detail, as much as possible. The outcome has not been very satisfying. It's probably better to keep the flexibility.

The Chair: Thank you. I appreciate the comment.

I don't want to forget our guests who are in Sweden and Vancouver, so I'm going to allow a little bit more time for final comments on this question, if that's okay with colleagues around the table.

Professor Heard, how about going first? Very briefly, please.

● (1220)

Prof. Andrew Heard: I think it's really important to maintain the flexibility, and it is extremely difficult to be precise about what constitutes confidence. As an example, a motion was proposed in 2002, I believe, by Elsie Wayne that this House condemn the government for continuing to overstretch military personnel and so on. Right immediately after her, Joe Clark said that this was not a motion of confidence. But the government had to stand up and treat it as a motion of confidence, because the motion contained the words “that this House condemn the government”.

There was a misunderstanding on the part of the opposition members proposing this motion. They believed it wasn't a confidence motion, but by all other accounts, it was, and I think they were quite right to do that.

This underlines the problem of trying to be precise.

The Chair: Thank you.

Professor Milner.

Prof. Henry Milner: I think that to some extent this is an unreal question. I don't see why we have to be so precise that every possible situation is somehow made explicit. If we say that no election will be called unless the government loses the confidence of the House, if we find the appropriate parliamentary language for saying that, then I think that would be sufficient. Where there might be doubt, you'd simply call for a vote of the House and ask it to express either its confidence or its non-confidence. In other words, if a particular bill is defeated, and it's uncertain and there's nothing explicit in the law that says, "Is this confidence or not confidence?", then it's very easy to ask the House if this was something it meant to be an act of confidence or non-confidence. That is a normal way to act, and I don't think other parliaments have a problem with this.

It's understood, say, in Sweden or Germany that a government remains in power.... It's only if it's unable to maintain the confidence of the House, in the case of Germany—or no other government either—that there has to be a premature election. This is understood. I doubt if in these countries they specify every possible way in which lack of confidence could be expressed. But the meaning of the existing law is absolutely clear in all of those countries, and I don't see why we shouldn't make an effort to do the same.

The Chair: Thank you very much, Professor.

We are well over time on that answer, but I think we've gotten great responses from our witnesses.

I no longer have names on my list here for colleagues to ask questions, except for Mr. Reid. We do have time for one more round, but I would like to remind colleagues that we have a motion on the table that we have to deal with, plus we have future business to deal with. I'm not restricting the questions by any means, especially since we've gone to such trouble to have communications from around the world.

Are there questions?

We'll go to Ms. Jennings first, and then Mr. Reid.

Hon. Marlene Jennings: I have a very short question. It's primarily for you, Professor Milner, regarding voter turnout. If you do have any studies—I'm assuming that any study of the issue would have looked at fixed election dates in municipalities—I would simply ask that you forward that information to the committee through our chair.

Thank you, all witnesses, for your presentations.

The Chair: Thank you, Madam Jennings.

Are the witnesses clear on that request? I'll bet you didn't think you were going to get homework today, did you?

Mr. Reid, please.

Mr. Scott Reid: Thank you.

We've talked about something on the theoretical level that those of us who were elected in the 38th Parliament got to experience in reality, which is the question of what constitutes a confidence vote and what happens when there is a difference of opinion as to what constitutes a confidence vote.

I recall quite distinctly that in the spring of 2005 the government was defeated on something that we in opposition regarded as a confidence matter. They chose to regard it not as a confidence matter, and ultimately, after much delay on the part of the then government House leader, there was a confidence vote on a very clear question, which the government won. Subsequently, about 11 months ago, there was a further confidence vote, and a very clear confidence vote, which they lost. And that was the end of that.

To me, these things are not necessarily all that difficult to resolve, given that we've all lived through something within the past 18 months—and have gotten to live through it, actually, over and over again over a period of some time.

I want to come back to a question. This relates to Professor Heard's presentation at the very beginning of his testimony.

It struck me, Professor Heard, as you were talking—and you can correct me if I've misunderstood this—that what you were saying in so many words was that while this is a law, what it's doing in practice is moving toward the establishment of a new convention, and that as with all conventions, this will be regulated ultimately by public opinion. If the public is prepared to accept that an action has been taken by a government that causes an election to occur prior to the expiration of four years, and public opinion judges it to be legitimate, then effectively the convention is established that this is within the bounds of a reasonable early election call. If the public rejects that essentially, by punishing the government and replacing it with a new government, effectively that is a demonstration that a new line in the sand has been established by convention.

I'm not sure I've captured what you said correctly, but I am interested to know if you agree with the way I've just characterized it.

● (1225)

Prof. Andrew Heard: Yes, I do. I believe that bringing forward the bill and having public discussion of it does highlight for the public the desire to keep majority governments to a normal four-year span. That is certainly what we've seen out here in B.C.

I think it is also important to maintain some degree of flexibility to meet unforeseen circumstances that could come up. The generation of a public expectation is very strong in the current political culture.

It's also important to underline that a government going early to the polls doesn't necessarily have the advantage. It does in one sense, but we have a number of provincial governments that were defeated after calling a three-year election. The New Brunswick government is the most recent example; the Parti Québécois came to power in 1976 because the Liberal government went to the polls after three years; Ontario's NDP government was defeated in 1990—and so on.

So the people are willing to make a judgment. I don't see a great harm in relying on the people to pass judgment on whether an early election was or was not needed.

Mr. Scott Reid: Thank you very much.

I don't know whether any of the other witnesses want to comment on that.

The Chair: There is one minute left for comments.

Professor Milner, have you any comment?

Prof. Henry Milner: No, not on that particular matter.

The Chair: Thank you.

Professor Massicotte, have you any comment?

Prof. Louis Massicotte: I have not on that issue.

Maybe I would like to answer later the point raised twice by Ms. Jennings, but that's all I have.

The Chair: I think we should allow that.

Professor Massicotte, you have one minute, please.

[*Translation*]

Prof. Louis Massicotte: Ms. Jennings, you asked whether there is any evidence showing that if elections were held at fixed dates, the voter turnout rate would increase. There is no evidence of that.

Yesterday, I called a colleague and good friend — they are not mutually exclusive — who shall remain nameless, since I don't want to bring him into this publicly. He is someone who has thoroughly studied voter turnout rates across the globe, and he has also taken part in comparative studies. When I told him some people thought that holding elections at fixed dates would improve the voter turnout rate, he burst out laughing.

If I had told my American colleagues at the American University that Canadians had found a way to deal with the drop in voter turnout that involved holding elections on fixed dates, imagine what their reaction would have been! They would have said: “We tried that 200 years ago!”

[*English*]

The Chair: Thank you very much, Professor Massicotte.

Mr. Dewar, a last question for the witnesses.

Mr. Paul Dewar: Thank you.

I have put the convention issue to rest and it shall rest in peace.

I want to turn to Mr. Milner. I think it's important to note that when we're talking about democratic deficit and reform, I'm sure they didn't study the extension of the franchise to women when they did that. It's simply sometimes the right thing to do and I say that as a passing observation. In this case it's the right thing to do, I believe, along with many other things.

One of the things that impressed me about your work for the Law Commission and some of the other papers you've done is the idea of civic participation. I'd love to talk to you about the idea of proportional representation, but on this particular bill how can we use this bill, not only to pass it in Parliament, but what can we do to really get out there and have more people participate in the democratic system? How do you envision fixed election dates improving that state? And how do we get more people active and involved—young people, people who normally don't participate—with this bill, in and of itself?

● (1230)

Prof. Henry Milner: Let me try to answer with a very concrete example about which we now have more information. This begins with something that began in the United States, was taken up in Canada, and I've now heard they do this in Sweden as well. That is, they run mock elections in the schools at the time of the regular elections and they use it to inform young people about the elections. They report the actual votes in the media and they use it as a form of political education, civic education.

We now have some pretty good data on the Americans, who have been doing it for a long time, that it actually does have an effect in terms of greater political knowledge and a greater likelihood to vote in the first real election that these young people confront.

In Canada we did this—something called student vote—in the 2004 federal election. I think it was also done in 2006, but I haven't had a chance to look into that. It was also done in several provincial elections.

What happened in 2004? For the 2004 election it worked badly. It worked badly compared to when it was done in British Columbia at the time of the last provincial election. Why did it work badly when it was done in Canada in 2004 and work so well in British Columbia when it was done in the last British Columbia election?

It's very simple. You will remember—you were all part of this—that in the 2004 election in Canada, the government waited until June 28. We were expecting an election and we waited and waited. Finally on June 28, it came. The student vote people had been preparing and by the time of June 28, many of the schools were already either completely out of session or students were on their way out and so on. So in many schools, nothing happened. And even in the schools where it did happen, in many cases the results were not very useful.

That means that the learning experience...and there is an important learning experience, because you have to prepare, you bring politicians in, the civics education and the history teachers get involved—it's a big process. And yet the process was aborted because Mr. Martin had decided it would be a good idea to wait until June 28 to have the election.

In British Columbia, on the other hand, everybody knew it was going to be on May 17. All the planning worked very well. There were no problems.

If we know that the next Canadian election—at least when there is a majority government—will take place on the third Monday in October of the appropriate year, the next time there is a student vote it will certainly be much more effective. That's a very specific example of what we can do to mobilize a particular group that needs mobilization. There is a great deal of data about young people not voting and so on, so here's a very concrete example of where a fixed election date would make a difference. We've experienced that in Canada, and at the very least, it seems to me that if we're not going to do something like that and do it in a very clear way, one has to explain to the people who've worked hard to organize these student votes why not.

I must say that in everything I've heard and everything I've read in relation to people who are skeptical about moving in this direction, I've never seen a good answer to that.

Thank you.

The Chair: I think we'll end it there because there are only 10 seconds left.

Colleagues, thank you for your rounds of questions.

Most importantly, I'd like to thank our witnesses. Thank you in Sweden for getting up so early—or I should say staying past your suppertime—and thank you in Vancouver, British Columbia, for getting in probably before breakfast. Thank you very much for that.

Professor Massicotte, we extend our appreciation to you as well for coming in this morning.

Gentlemen, your answers were very detailed, and you are clearly experts in your areas. We appreciate the thorough responses to the number of questions this morning.

Colleagues, we will shut off the video conferencing and say goodbye to our friends. The witnesses are excused, but we will continue with business, if we can.

I remind colleagues that we have a motion before us. We will have the motion reread by Ms. Redman in a moment, but I would also like to remind colleagues that debate for motions in this manner have no time limit on them. Although we have 25 minutes left in the meeting, I do have other business to deal with. That's simply a friendly reminder. We will proceed.

Ms. Redman, you have the floor.

● (1235)

Hon. Karen Redman: Thank you, Mr. Chair.

I appreciate the fact that colleagues have had a chance to read this. I didn't want to delay the teleconferencing. I think people went to a lot of trouble to get the witnesses here, so I'm glad we were able to act with dispatch.

The motion reads:

> That this Committee recommends that the Standing Orders in effect on October 5, 2006, including the provisional Standing Orders, be made permanent, and,
>
> That the adoption of this motion be reported to the House forthwith.

By way of brief explanation, Mr. Chairman, this topic has been discussed at other meetings and in other venues. These provisional orders will expire if they're not dealt with by November 21. We did agree collectively on that extension, and they were dealt with as a package. They were actually brought in when the government as in opposition, and they were proposed then. We, the government at the time, accepted them, and because they were dealt with as a package, we feel it's appropriate that they be dealt with again as a package.

The Chair: I caught Mr. Hill's eye first. If anybody else would like to speak to the motion, please put your hand up.

Mr. Hill is next, please.

Hon. Jay Hill (Prince George—Peace River, CPC): Thank you very much, Chairman.

This is one of those moments in my parliamentary career that I find the most disturbing. For anybody who happens to be listening to the proceedings of this committee and for all my colleagues, I'll explain this in some detail, Mr. Chairman.

I have had the distinct honour and pleasure to serve in a variety of roles, as have most members of Parliament, during the 13 years I've been an MP. Many of those roles were in a caucus officer position. I think I speak with some knowledge of how this place, this Parliament of Canada, this people's House, operates.

It's been my understanding, whether it's a majority government or the minority government we're presently faced with that Canadians have elected to represent them in the House, this place can only work through mutual respect, trust, and honour. While only members of Parliament who have been admitted to the Privy Council have the term “honourable” in front of their names—and I'm very privileged to have had that bestowed upon me in February—I've always believed that every member of every party, and even independents, operate honourably.

I believe that while this motion in and of itself would be viewed by members of the general public and probably by members of all political parties as somewhat innocuous, on the changes to the Standing Orders that were negotiated during the last Parliament, all four parties were involved in the negotiations and discussions. They came into effect on February 18, 2005, in the last minority Parliament. They had an expiry date at the time they were put into place.

I'll read the section: “That these Standing Orders come into effect at 11:00 o’clock a.m. Monday, March 7, 2005 and remain in effect for the duration of the current parliament and during the first sixty sitting days of the succeeding parliament.” That was the 38th Parliament, which was the current Parliament.

As I've said, during my tenure in the House I've had the pleasure, and some might say the advantage, of being in various caucus officer positions. I was the opposition House leader at the time these came into place. I'm well aware of and was privy to the discussions that took place at that time. There would normally be six people sitting on this committee who were privy to the discussions and conversation that took place at the House leader and whips meeting, the regular weekly House leader and whips meeting that took place on Tuesday, September 19, when this was discussed.

Mr. Chairman, getting somewhat advanced in years, my memory isn't always perfect, but I think I have a pretty good understanding of what was agreed to at that meeting of House leaders.

As I said, and I'll relate back to my first comments during this intervention, I strongly believe this House has to operate on honour, trust, and respect.

As I recall, the conversation surrounding an extension of these standing orders went something like this. The government House leader, Mr. Nicholson, raised the issue. It had been raised previously, I think by the Bloc Québécois, if I'm not mistaken, at a previous meeting. They had indicated that they were concerned, as I think all parties were, that given what I'd read earlier, there was an expiry date built into the House order or the motion when the standing orders originally came into existence. There was this expiry date looming, and we had discussions at a couple of meetings.

● (1240)

On Tuesday, September 19, the House leader raised the issue, and we had a pretty good discussion about it, and we came to an agreement. That agreement was that we would temporarily extend the standing orders so they wouldn't come up against the 60-day expiry date and just kind of fall by the wayside somewhat inadvertently, one might say. So we agreed to extend it.

Furthermore, we had some concerns about some of these standing orders. We felt that most of them could be agreed to, probably unanimously agreed to. But what was eventually agreed to by all parties at that meeting was that we would ask our senior parliamentary assistants to meet, obviously sooner rather than later, to see if there was agreement on those standing orders and on which ones we suspected we could have unanimity relatively quickly.

The House leader, Minister Nicholson, was prepared, subsequent to that, to move the necessary motion in the House and get it adopted quickly. Once the staff had met, if there were some who felt it required further discussion, each of the parties could formulate an opinion and do some research on it and on any possible ramifications, either intentional or inadvertent, that would come about because of the permanent adoption of those standing order changes. And we would proceed with further discussion on it.

I well remember that some of my first discussions, Mr. Chairman, at the House leader level or the whip level, were under the chairmanship of Don Boudria, who no longer is a member of Parliament here but who served the Liberal government—in fact, I think successive Liberal governments—as their House leader. I do not recall one single instance, in all those years, despite having a majority, when Mr. Boudria broke an agreement that was made at a House leaders' meeting. He believed so strongly in the fact that the management of the House, and the discussions and negotiations that take place every day in this place to try to further the interests of Canadians at large, is so reliant on the trust and respect and honour of members, that he would never break his word. And I never saw him break his word.

I have tried to uphold myself in these various roles I've had over the last number of years in the same manner, despite the fact that Mr. Boudria is a Liberal and I am a Conservative, Mr. Chairman. Set that aside. This place can only operate if we trust and respect each other and if our word is our bond. We can't have everything in writing. When we agree to something, it has to be an agreement, or the place will cease to operate and it will become completely dysfunctional.

Many Canadians, I'm sure, when they watch proceedings here some days—maybe many days, unfortunately—would probably argue that it is dysfunctional. But it would be a lot more dysfunctional if there weren't this trust and respect between members of Parliament. Despite our partisan political differences and our different viewpoints, when we come to an agreement, especially at the level of the House leader or the whips or the deputy House leaders or the deputy whips.... All these positions are key to the ongoing management of the House itself and its committees and the very parliamentary precinct that we inhabit when we're at work here.

● (1245)

I must say, Mr. Chairman, that to me this is a shameful day. As I said, people might look at this and might say, well, what's the big deal? There probably will be general agreement on these changes to the Standing Orders. So if Madam Redman's motion were to be put to a vote at this committee and passed and adopted by the House “forthwith”, as it reads, what's the big deal?

The big deal isn't with the motion, Mr. Chairman. In fact, we don't know at this point in time whether all the parties, including our party, will agree to all the changes. We don't know, because the staff hasn't met yet. Our senior parliamentary assistant fully intended to honour the spirit of what we'd agreed to at the House leaders meeting.

I would challenge anyone to think that the logical time, the best time, for staff to meet to discuss something like this—which isn't pressing, because the deadline has been put off until November 21—wouldn't be next week when the House is in recess for a week, when they have additional time so they can get together and discuss this, as directed unanimously by the House leaders and the whips at the weekly House leaders meeting.

This motion really calls into question the very fact of whether we should continue to have House leaders meetings if an agreement we make there means nothing, and any one of us or any party can just therefore bring forward a motion that what we agreed to isn't satisfactory or decide that we're in a bit more of a hurry. I challenge why, all of a sudden, this is pressing—why we need to have these changes to the Standings Orders adopted forthwith, which runs contrary to the discussion we had and the agreement we had between all four parties.

That's why I submit that this is shameful, and in the 13 years I have been here, and I mean this with all sincerity—this isn't a political statement, Madam Redman, through you, Mr. Chairman because I want to try to keep this respectful—this is absolutely shameful.

And I would ask, through you, whether the official opposition House leader, Mr. Goodale, is aware of this motion. Does he condone that? It is the word of the official opposition House leader as well as that of the government House leader that are at stake here. If those two gentlemen are going to operate this House and try to manage the affairs of this House in concert with all members, all 308 members of Parliament, they have to operate on the basis of mutual trust and respect. So I'm led to believe that not only does Mr. Goodale, as the official opposition House leader, condone this, but he's behind it, since it's his name and his reputation that are at stake.

Now, if I wanted to try to run out the clock, I could filibuster this, because I'm so upset about it. I could filibuster this until the cows come home, as we like to say out west. But there are other members, as you pointed out at the start of this discussion. Everyone gets a chance to debate these types of things under the rules of our committee, and I'd be interested in hearing what others have to say about this.

As I said, it's not the substance of this. We had a clear agreement, and I stand to be corrected if that's not the case. If it's not the case, in fact, I would challenge, Mr. Chairman, that we had better start recording everything that is said and getting in writing everything that is said at the House leaders meetings.

That's all I have to say.

● (1250)

The Chair: Thank you, Mr. Hill.

Are there other comments to be made?

Ms. Jennings.

Hon. Marlene Jennings: Firstly, if my memory serves me correctly—and most members around this committee will say I have a pretty good memory—I was at that meeting and I do not recollect that there was the agreement Mr. Hill is talking about. Secondly, I'm insulted on behalf of the other members who were at that meeting for Mr. Hill to impugn the honour and integrity and honesty of everyone at that meeting.

However, I would point out to Mr. Hill that if he reads this correctly, if this motion is adopted, it is to be reported to the House forthwith. The House itself will make its determination as to whether or not it wishes the Standing Orders in effect on October 5, including the provisional standing orders, to be made permanent or not.

Hon. Jay Hill: It's unbelievable, Marlene. You were there.

The Chair: Order, please.

Members and Ms. Jennings, please speak through the chair.

Mr. Lukiwski is next.

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

Mr. Chair, I was also at that meeting. I also believe I have a reasonably good memory, and I recall that there was an agreement. It was agreed upon unanimously; there was no opposition.

There is an issue, again, just to underscore what Mr. Hill was saying. To be quite honest with you, I'm not the leading expert on standing orders. I wouldn't suggest that there is any particular standing order in here that I would be opposed to if it were deemed to be adopted permanently, but I do know one thing: I was brought up in an environment where my word was my bond. That's the bottom line. In this Parliament I have had the good fortune on many occasions to have conversations with, and come to agreement with, other parliamentarians on a variety of issues. Many of those occasions happened in committee, when an agreement would be struck with another committee member on whether you would support this particular initiative.

The Chair: Excuse me. I apologize, Mr. Lukiwski.

If members want to have conversations, there is one debate happening. The order is that Mr. Lukiwski has the floor; you are very welcome to have conversations, but please step away from the table.

Please accept my apologies, Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you again, Mr. Chair.

Again, if we start getting into an environment in which you can't trust or you can't believe someone.... Most of these agreements are not written down. We all know what we're talking about here; we're talking about approaching another member, saying you're looking for support on a particular issue in committee, and asking if the member will support this initiative—yes or no? If the parliamentarian or one of my colleagues says no, I cannot, for these reasons, that's fine. I don't take it personally, but I take the person at his word. Conversely, if someone says yes, I will support you, or I will support this when it comes to a vote, to me that's good enough; I don't need it in writing. To me, that's the fundamental premise on how we operate in this place.

Ms. Jennings, with all due respect, I was at that meeting, and I do absolutely recall that there was agreement. There was agreement. I don't think Mr. Hill's comments are untoward or out of order whatsoever. I just think that if this motion is adopted, it's the start of a very slippery slope in terms of relationships between parliamentarians and between parties. I know it certainly will be between me and Mr. Hill and other members from our side at the House leader and caucus officer level.

I'm willing to hear Ms. Redmond out on this. I see no reason that this issue has to be dealt with today. If in fact you wish to enact the permanency of these things, what would it matter if we waited at least another two weeks until our senior staff can get together and discuss these items in some detail? Then we can come back and say there is some disagreement about whether we had an agreement to delay this matter until November, but at least our staff has had a chance to get together and consult, and here's the report—here are the items of common agreement and here are the items of common disagreement. That would allow us to hash it out.

But to bring this on, frankly.... I vividly recall it because we had a debriefing. The reason I will place my memory on trial here, Ms. Jennings, is that we always have a debriefing after each House leaders meeting. Perhaps you do the same. This issue was discussed.

Again, to me, as Mr. Hill has said, it is not the issue of whether the motion should be adopted; it is the issue of breaking one's word, frankly, and that's where I have a big problem.

Thank you, Mr. Chairman.

● (1255)

The Chair: Are there other comments from members?

I saw Mr. Reid first.

Mr. Scott Reid: No, no, I'm okay.

Hon. Stephen Owen: Colleagues—and I say this in the spirit of colleagues, which all of us are—a lot of my career has been spent in dispute resolution, including in Parliament and professionally otherwise. It is immensely possible and happens frequently that when a group of people have conversations—particularly when there are busy agendas—they have a certain idea of what happened. There seems to be agreement in everyone's minds, but people go away with different understandings.

I take very seriously the statements of Mr. Hill, Mr. Lukiwski, and Madam Jennings about their recollections of this, but I think there might be real value in our stepping away from this until we can consider amongst ourselves exactly what happened and identify any particular misunderstanding that might have arisen.

I am not willing to jump to the conclusion that anybody on this committee, or any of our colleagues outside this committee, have acted dishonourably. I'm quite capable of understanding that misunderstandings arise. So I think we should all take a breath and a step back, and consider whether misunderstandings may have arisen and that this point of controversy arises out of those misunderstandings rather than out of any dishonourable behaviour.

The Chair: Thank you, Mr. Owen.

Mr. Reid, please.

Mr. Scott Reid: Thank you, Mr. Chair.

What is the intention regarding the length of time this committee's going to sit?

The Chair: We will sit until this debate is over and we decide on the motion.

Mr. Scott Reid: So that could go after our intended one o'clock—

The Chair: Absolutely. There is no time limit on the debate, according to the Standing Orders.

Mr. Scott Reid: Okay. I may take some time.

Let me begin, as I think is appropriate when one is dealing with acrimonious circumstances, by saying that when I look across the way at my Liberal colleagues, I have respect, actually, for all the colleagues I see over there, but I want to mention the respect I have for the individual Liberal members opposite.

I've always enjoyed Mr. Owen's intervention and particularly low-key manner, which he once again demonstrated today. I am of course aware that Mr. Owen wasn't actually in the room at the time and therefore is offering, I think, a very wise general observation.

Karen, I've dealt with you in the past and have always thought very highly of you. I remember, actually with particular fondness, one occasion when you came over to try to assist me in getting something that was out of order in order—the presentation of a petition. I'm sure you don't remember it, but I do, a petition that was not done in the proper manner but by people who had a heartfelt interest in the issue.

They'd submitted a white ribbon, with lots of signatures, on the issue of child pornography. The fact that they didn't know the formal rules did not diminish the fact that they felt strongly about child pornography. In recognizing the fact that they couldn't be allowed, you were very good at saying you were willing to find unanimous consent to allow something to be tabled that would not normally be allowed to be tabled. I appreciate that. I thought that was a very classy thing to do.

I would have gone to you next, Marlene, but since Marcel is seated, talking to Karen—I'm going in the seating order—I'll just mention that I've always thought highly of Marcel as well. I thought him a very intelligent, thoughtful, and gentlemanly person in his conduct, towards me at any rate, and conduct that I've been able to see.

Then, going back to the very beginning of my career as a parliamentarian in early 2001, I'm not sure if Marlene remembers this, but I remember that she approached me and asked if I would be willing to second a bill that was being introduced on an issue of non-partisan environmental concern—okay, Marlene, you do remember that—on non-economic measures of well-being, and particularly environmental well-being, alternative measures of well-being. So in the very first legislative action I was engaged in, in the House of Commons, I was actually working in cooperation with Marlene. I have fond memories of that, and consequentially of Marlene herself.

I say all of that because I'm trying to find ways of keeping the temperature down as we deal with this issue.

I do have an objection to the issue being brought forward in this manner—actually, two objections. I have the same objection as my honourable colleague, the government whip, has about the fact that it was brought forward contrary to, to my recollection, an agreement—and I want to return to that in a second. As a starting point, I have another concern, and I'll return to this in more detail a bit later.

My concern is simply this: the manner in which the motion is presented. It was of course presented without notice. Our rules permit that, so it's in order, of course. But notice could have been given nevertheless, and the failure to give notice suggests—I do stand to be corrected—that the intention is to have the motion adopted, not without debate, obviously, but without amendment. It's hard to see how one would amend this motion and therefore how one would amend any of the standing orders if such amendment were appropriate.

The way the motion is worded right now is:

> That this committee recommends that the Standing Orders in effect on October 5, 2006, including the provisional Standing Orders, be made permanent, and
>
> That the adoption of this motion be reported to the House forthwith.

So it's sort of hard to see how you would say, well, they'd be adopted with the following amendments to standing order this or that, particularly when that would presumably involve some degree of discussion and potentially the bringing of witnesses before the committee, that kind of thing. I just don't see how one could do that. This is really a motion designed in such a way as to make amendment practically impossible.

● (1300)

I could see that it's possible to defeat the motion, but it's not possible to amend it. Therefore, we're faced with, effectively, a choice between defeating the motion and saying that what we want is the Standing Orders to revert to what they were prior to February 18, 2005, when the provisional standing orders came into effect or, alternatively, taking them just as written without any alteration, where perhaps alteration is merited.

Truthfully, I don't know where alteration is merited. That was a question I had hoped to look at and consider, as one does with any technical matter of this nature, at a later point in time—during the break, essentially—but certainly as a part of the process that had been laid out in the House leaders meeting.

Having now turned to the House leaders meeting and in so doing I—

● (1305)

[*Translation*]

Mr. Marcel Proulx (Hull—Aylmer, Lib.): Mr. Chairman, it is now past 1 o'clock. If our colleague, Mr. Reid, intends to be obstructionist, he will have to wait until after the parliamentary recess to do so. We all have important work to get done today. We thought that the meeting was going to end at 1:00 p.m. Of course, that decision rests with Mr. Reid, but if he wants to be obstructionist, he'll have to wait until we get back, after the parliamentary recess.

[*English*]

The Chair: Unless a motion to adjourn is moved and adopted by the committee, the debate on the motion before the committee can continue, notwithstanding the scheduled time that the committee would end at one o'clock.

So unless I hear a motion from the members of the committee that is adopted, the debate will continue.

Is there a motion to adjourn?

Mr. Marcel Proulx: Mr. Chair, I think the question should be, is Mr. Reid intending to filibuster?

The Chair: I think that question is out of order, in the sense that Mr. Reid has the floor. If Mr. Reid is willing to give us an indication, I'll allow the question.

I see no motion to adjourn the meeting at this point.

Mr. Reid, are you willing to answer that question?

Mr. Scott Reid: Let me answer the question, with your permission, Mr. Chair, by asking this question: am I allowed to speak to this on more than one occasion, or do I only get one shot at it?

The Chair: My understanding would be that if there is a motion to adjourn or suspend this meeting, we will reconvene. I was intending to ask for a motion to suspend for question period, to reconvene following question period. I suspect the same could hold true.

So the answer to your question, Mr. Reid, is that you would be given the opportunity to continue.

Mr. Scott Reid: That wasn't quite what I was asking.

What I was asking was, if I yield the floor at this point and get input from other people, am I able to return and continue to comment on this thing, or have I shot my bolt? That's the question.

The Chair: No, you will be allowed to continue.

Mr. Scott Reid: In that case, I can be somewhat more brief.

The Chair: For other members' knowledge, there is no time limit or numbers of times that members can speak in a debate of this kind.

The floor is yours, Mr. Reid, until I hear a motion to suspend or adjourn.

Mr. Scott Reid: I have one point to make very quickly.

I'm glad I put the part in about how much I respect the members opposite. I want to reiterate that I take that very seriously.

In terms of determining what was actually said at that meeting, I'm sure everybody recalls it accurately as far as their own memories go. I don't mean to suggest there was any dishonesty from anybody—believe me, I really don't.

However, we do have some evidence that sheds light on that meeting, although that meeting was unrecorded, in camera, no notes were made at the time, and no official transcript exists. That meeting in question took place between House leaders and whips on Tuesday, September 19. I was there. On Wednesday, September 20, the government House leader, the Honourable Rob Nicholson, moved a motion. His words are on the Hansard for that day. He moved a motion seeking unanimous consent and indicated that unanimous consent had already been achieved among House leaders. The motion was, "That the provisional Standing Orders, adopted by the House on February 18, 2005, remain in effect until Tuesday, November 21, 2006."

That was based on an agreement. We can argue whether that agreement occurred at that meeting or whether the consent was found later on; I'm not really interested in that. The point is that this was the expectation all of us had, until Mrs. Redman put forward her motion. For that reason—and I can't speak for anybody else—I certainly had not gone through and taken the proper look at the provisional standing orders that I anticipated doing between now and then.

I'll stop at that point, Mr. Chair.

The Chair: The speaker is Mr. Lukiwski, and then Monsieur Proulx.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you.

I want to support what my colleague Mr. Reid said. For those who were not at the meeting, I think that's proof positive that this motion would not have been brought forward with unanimous consent unless there had been a prior agreement at the House leaders meeting. It's patently obvious to me.

I want to applaud Mr. Owen for bringing what I thought under the circumstances was a pretty reasonable suggestion, that we take a deep breath and walk away from this for now. In light of what Mr. Reid has brought forward, I think that proves there was an agreement to extend until November 21. The reason we did that, as Mr. Hill has already stated, was so that staff could get together and discuss these standing orders, bring it back at some point after that discussion, allow us to agree, and move forward on which standing orders perhaps could be agreed upon and which needed further consultation. That meeting of the senior staff, or of the House leader staff at least, has not occurred. I can't understand it.

● (1310)

The Chair: A point of order, Mr. Proulx.

Mr. Marcel Proulx: On a point of order, Mr. Chair, I move a motion for us to adjourn until the return from the break week.

The Chair: I didn't make it very clear. You have to have the floor in order to move that. I'll put your name on the list, and when it comes to your turn, you can move that.

My apologies, Mr. Lukiwski.

Mr. Tom Lukiwski: I just suggest that if we're all trying to accomplish something we agreed upon in principle, and that is to look at the standing orders in some detail and determine which should be approved and which still need further discussion...you know, the analysis hasn't been done yet. I can't see what good it would do to approve this motion now. If we agree, then hopefully that consultation between staff will occur in the intervening days.

I'll stand down. There is a motion to suspend.

The Chair: Mr. Hill next, and then Monsieur Proulx.

Hon. Jay Hill: I'll be very brief.

For the benefit of the committee, because not all members of the committee were at this House leaders meeting—and I would pose this to Madam Redman, an individual who, as opposite numbers both when she was in government and I was in opposition and now when I'm in government and she' s in opposition, I have a lot of respect for—my recollection is that there was a discussion, as I alluded to earlier, at the House leaders and whips meeting wherein we discussed the possibility of referring this matter to the procedure and House affairs committee, or a subcommittee of that body, to be dealt with further, to be studied further, and to see if there was unanimity on some of the changes to the Standing Orders, all of them or whatever.

If my memory is correct—and that's why I'm asking through you, Mr. Chairman, to Madam Redman, so that she can consider this and think about it—I recall that she herself said that, because at times committees...how shall I put this? I don't remember her exact words, but it was an allusion to the fact that sometimes at committee meetings things can get contentious and partisan whereas, generally speaking, at the House leaders meeting and the whips meeting, when we discuss things amongst ourselves at that level, it's usually easier to arrive at consensus and agreement.

Through you, Mr. Chairman, to her and to the others present here, people like me, and as Tom said, people who have been raised in the belief that your word is your bond, it's very difficult for us not to take a move like this personally.

The Chair: Mr. Proulx.

Mr. Marcel Proulx: Still I'm not sick—

The Chair: And you're looking a lot better.

Mr. Marcel Proulx: I wanted to confirm that. Mr. Chair, I would —

The Chair: Before you do, Monsieur Proulx, it is the chair's desire to have a bit of time for business, so if you are making a motion, could you consider that I need some time? In other words, don't adjourn the meeting, suspend the debate.

Mr. Marcel Proulx: That's okay, Mr. Chair. I respect you—

The Chair: *Merci, merci beaucoup.*

Mr. Marcel Proulx: I respect you 100%, so let's suspend this discussion until the next meeting after the return from the break week. Presumably, you will take a few minutes for future business and we won't have to table another motion.

Thank you.

● (1315)

The Chair: Thank you.

(Motion agreed to)

The Chair: Colleagues, very quickly, I have written a letter and ask your permission to ask the Chief Electoral Officer to confirm for this committee that he has enough time to take care of the moving date issue in Quebec, since everybody moves July 1—does everybody recall that issue? So I have taken it upon myself to write to the Chief Electoral Officer and get some confirmation that in fact that is a non-issue, that there is sufficient time or there isn't.

Is the committee okay with my sending off a letter requesting clarification?

Madam Jennings.

Hon. Marlene Jennings: Chair, I appreciate your initiative. I would simply ask that in the letter, if the Chief Electoral Officer affirms that he would have time to deal with the 500,000-and-something Quebeckers who move on July 1, we ask that he provide us with very detailed information as to how he would deal with it. The resources, the amount of people, the whole procedure—how is he going to do that?

The Chair: Okay, that's easily done, and we will certainly do it. We will add that to the letter.

Members, if you wish to hear any other witnesses with respect to Bill C-16, we absolutely need to know that right now. I'm not trying to pinpoint anybody, but there were some concerns that more witnesses might be necessary. Is that still the feeling or can the chair conclude that we're done with our witnesses on this matter?

Mr. Owen.

Hon. Stephen Owen: Perhaps through you, Chair, I can ask all of us, are we satisfied that we have had enough advice on constitutional law issues and interpretation of statute issues in order to fully understand the meaning of those words? And I refer both to the impact of the first subsection dealing with the powers of the Governor General, as well as the second subsection, which appears to be contradictory. It would be my suggestion that we consider having somebody in on either statutory interpretation and/or someone on constitutional interpretation.

The Chair: A brief comment, Madam Jennings.

Hon. Marlene Jennings: I'd simply agree with Mr. Owen. Given the comments by Professor Massicotte, I'm particularly concerned. He doesn't claim to be a constitutional law expert, but he did give a fairly detailed biography of his knowledge and why he would have that knowledge. His concern on the fixing of election dates was that it should be taking place in our constitutional law, not in the Canada Elections Act.

The Chair: Okay. I'm hearing some significant concerns, clearly, from members that we may need to have further witnesses.

Are there any other comments on that? Mr. Reid.

Mr. Scott Reid: I thought we weren't through with our witnesses yet. Aren't there some more coming?

The Chair: No, we're done. We're asking now if you want more witnesses.

One witness who's been suggested for constitutional interpretations is Professor Peter Hogg, and for statutory interpretations, Professor Ruth Sullivan. Those are the names I have.

Mr. Scott Reid: I thought she was already on our witness list. Am I wrong?

The Chair: I don't think she could have appeared....

Mr. James Robertson (Committee Researcher): Both of these individuals had been on the list. Professor Hogg was unavailable for today's meeting, and Professor Sullivan is on sabbatical. She is out of town until October 14. We were unable to get that information until very recently.

The Chair: Shall we schedule a meeting at our earliest convenience, then, with these two witnesses?

Hon. Jay Hill: We can try.

The Chair: We can certainly try; that's the very least we can do. Is anybody opposed to that?

One more comment, Madam Jennings.

Hon. Marlene Jennings: Just to facilitate things, I would suggest that if Professor Hogg, for example, is not available for two or three months, we define specific questions in the invitation. We could ask him to respond to the committee through the chair.

The Chair: Good suggestion.

Hon. Marlene Jennings: We could do the same thing with the other witness.

The Chair: That's a very good suggestion. We can do that.

Mr. Reid.

● (1320)

Mr. Scott Reid: I have tremendous respect for Professor Hogg—I regularly consult his enormous compendium on the Canadian Constitution—but he is not the only constitutional expert available to us. Just recently a number of constitutional experts were brought forward on a very similar request relating to the upper house, for consideration, through a Senate committee, of Bill S-4.

As an example, Patrick Monahan from Osgoode Hall comes to mind. If Professor Hogg is unavailable, I suggest that rather than trying to send a series of written questions to him, we instead approach Professor Monahan, who is also a very distinguished scholar. I think that would be a reasonable approach.

The Chair: Seeing acceptance around the table, that's exactly what we will try to do.

Finally, I want to remind committee members that we will start clause-by-clause very soon. I want to remind members that there's a 24-hour notification for any amendment. If you have any of that coming up, please remember the 24-hour limit. I respect and care deeply for my clerk, so the sooner you can get that to her, the better.

It sounds as if we have one additional meeting to schedule, to mandate these witnesses in, and then we'll move to clause-by-clause, following which we will move on to new business. I just want to plant the seed that it might be the code of ethics for members.

And that's it. Is there any other business for today?

Seeing none, I declare this meeting adjourned.

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