***Progressive Canadian party opening remarks concerning Bill C-76, The Election Modernization Act, An Act to amend the Canada Elections Act and other Acts and to make certain consequential amendments.***

Remarks Delivered to the Standing Committee on Procedure and House Affairs, June 6, 2018, by Brian Marlatt, Communications and Policy Director, Progressive Canadian Party.

Thank you to the chair and to the committee for inviting the Progressive Canadian party, who I represent here today, to present important evidence in our view concerning Bill C-76, the Election Modernization Act, An Act to amend the Canada Elections Act and certain other Acts effected by the bill, for study within the committee's mandate. The Progressive Canadian party is a continuation of the tradition in Canadian politics of a Tory party willing "to embrace every person desirous of being counted as a 'progressive Conservative' " (Macdonald to Strachan, Correspondence, February 9, 1854: National Archives). The PC Party was led, until his recent passing, by the Hon. Sinclair Stevens who was a minister in the Clark and Mulroney Progressive Conservative governments, and is now led by former PC MP Joe Hueglin.

I am speaking today as Communications and Policy Director on PC Party National Council but I have also contributed to the Elections Canada Advisory Committee of Political Parties in 2015 and again in meetings in 2018, yesterday in fact, and previously have also served, before political involvement, as an Elections Canada DRO and Elections BC Voting Officer and Clerk. I hope this experience adds value to our witness testimony.

Evidence and comments today will be limited largely to implications of Bill C-76 in the context of today's fixed date election law introduced in 2006, the Fair Elections Act, sometimes described as

the Voter Suppression Act by Progressive Canadians, introduced as Bill C-23 in the 41st Parliament, and other proposed electoral reforms which have been part of public discussion of this bill. I welcome questions from committee in its larger context or detail insofar as I may be able to contribute positively to your study of the bill.

As an aside, I will note that because Bill C-76 is important in the evolution of our democracy, vigorous debate in the Senate is likely to follow given the new partisan spirit introduced by appointments in the previous government which have been moderated but not checked by the new Independent Advisory Committee recommending persons for senate nomination by the prime minister to the Governor General. Appointment to the Advisory Committee, however, may reflect the policy direction of the prime minister and government of the day regardless of personal merit of Advisory Committee members and Senate nominees. The Progressive Canadian Party and the Hon. Sinclair Stevens have recommended my own belief that concerns about patronage, partisanship, and the risk to national unity of divisive accountability to the provinces if proposals for senate election are revisited may be mitigated within the constitution in future by allowing a quorum of the full Queen's Privy Council to advise the GG on the basis of excellence and knowledge of governance. By allowing the existing but underused advisory body to the GG, the Queen's Privy Council, to nominate senate candidates across party lines and levels of government instead of exclusively by the current prime minister or an Advisory Committee chosen to reflect the policy direction of the government of the day the appearance of partisanship may be avoided.

A PC Party 2015 media release discussing this recommendation is appended. *

Bill C-76 importantly proposes to limit the length of federal election campaigns, restrict spending allowed in a new "pre-writ period" subject to rules administered by Elections Canada immediately before a campaign, and introduces new rules to regulate third-party political activity. The bill also seeks to address some of the concerns raised by Canadians about the outcomes of Bill C-23 in the 41st Parliament, the Fair Elections Act, including restoration of the education role of Elections Canada during elections and reversing measures which some have described as voter suppression, for example by restoring use of the voter identification card as valid voter id at the polls, and other important electoral reforms.

Change in Westminster parliamentary democracy may be characterized as a balance of continuity and change, of evolutionary trial and error, and it is best when it proceeds by what the Renaissance scholar Desiderius Erasmus described as "by little and little." Unexpected consequences can be moderated, ill-advised choices mitigated or remedied. Bill C-76 is about evolutionary change. The need for progressive evolutionary parliamentary change is suggested by the 42nd General Election.

The 42nd General Election of Parliament October 19, 2015 well-illustrates the need for many of the measures recommended in Bill C-76. 2015 was the first election honouring the Fixed Date Election law. The 41st Parliament had seen the parliamentary Opposition in effect neutered by the unavailability of parliamentary responsible government by excesses of party discipline in a majority government and the fixed date election law. Omnibus bills and limited debate on controversial legislation including the Fair Elections Act became the norm rather than the exception. The last year of the 41st Parliament was reduced arguably to a campaign to elect the next parliament. By the end of session in June 2015 campaigns and campaign spending by parties and third parties was ramped

up before rules applying to writ period spending came into effect. An almost unprecedented 78 day writ period followed in which party spending limits allowed nationally and in all 338 riding elections per candidate doubled. Money became key, the distance between public interest and party interest widened. Concern about C-23 voter suppression grew.

(See: *Memo on the Fixed Date Election Law, Money and the Corporate Political Party in 2015, and the implications for Smaller Political Parties, and Independents.* Appended. **)

Many of these concerns were anticipated. The Progressive Canadian Party addressed several of these concerns and proposed remedies which were discussed in a submission solicited by this committee, PROC, in September 2006 when the Fixed Date Law, was presented as Bill C-16 and in a submission to the Elections Canada Advisory Committee of Political Parties (ACPP) on Election Advertising in which the implications of Fixed Date Elections was discussed. Both documents are available also on the EC website or by request from EC.

Bill C-76 proposes a new pre-writ period in a fixed date environment, beginning June 30, at the end of session in the year a fixed date election is to be honoured and a maximum limit of a 50-day campaign writ period. We cite the following remarks from the PC Party 2015 submission to Elections Canada, by way of guidance in ways Bill C76 may be improved:

"It is widely reported that political parties or candidates are conducting political campaigns well in advance of the writ being dropped to begin the formal election period. At present, there is no limitation on the spending of political parties or candidates outside of the writ period. In other Commonwealth countries, notably the United Kingdom, political advertising outside of the writ period is subject to legislated "long campaign" and "short campaign" limits administered by the

Elections Commission....EC advice and interpretative instruction for the 2015 election is strongly recommended.....

Advertising activities by the Government of Canada and government departments have included public service announcements of programmes "subject to parliamentary approval". Such announcements may be deemed partisan advertisements funded by public monies and taxpayer dollars by the agencies contracting to issue such public service announcements because they concern proposals, generally by the governing party of the day, which have not received parliamentary approval."

While this practice is not strictly election advertising in advance of the writ period, the effect is the same. It is recommended that these practices be qualified and that a pre-writ period in Fixed Date Election years be extended to mirror "long campaign" practices administered by the UK Elections Commission – if the fixed date election law is not repealed in the interest of protecting the principle of responsible government at the heart of Canadian Westminster parliamentary democracy.

The Progressive Canadian party strongly agrees with intention and certain of provisions in Bill C-76 which are intended to reverse the outcomes of Bill C-23, the Fair Elections Act passed in the 41st Parliament, and see these corrections as part of continuity and change, evolution in parliamentary practice, by which the unintended consequences or error in previous legislation may be mitigated or remedied. In particular, we commend the restored role of Elections Canada and the Chief Electoral Officer (CEO) in providing public information during elections and measures to ensure that every qualified Canadian may take part in riding elections of a parliament in all of Canada. Restoring the Voter Identification Card issued by EC as acceptable identification of voters at the polls. We note

that in other places and countries, requirements for photo id and other limitations have had the effect of limiting voter participation and have been described as voter suppression in some sources.

The Hon. Sinclair Stevens, speaking for PC Party National Council in 2014, underscored the seriousness of these concerns, stating that **"**It is the view of the Progressive Canadian Party that Bill C-23, entitled the Fair Elections Act [would] betray basic principles of democracy in Canada even if substantially amended. Bill C-23 will deny the right to vote to large numbers of Canadians and as such must be challenged in the courts as unconstitutional....in ways indicated by scholars of Canadian constitutional law and political science published in the national media, Progressive Canadians believe the Fair Elections Act must be rejected as unfair, undemocratic, and deserving of constitutional challenge even in light of amendments which are being recommended by members of the House of Commons and in Senate committee. Bill C-23, the Fair Elections Act, is deeply flawed in fundamental ways and for its apparent intent." (PC Party Media Release, April 17, 2014, appended.)

Bill C-76 is a welcome remedy for some of the flaws of the Fair Election Act and we welcome this remedy.

Finally, on the margins of debate concerning Bill C-76 can be heard voices calling to revisit the question of electoral reform which for them means replacing riding elected MP s in each of Canada's 338 electoral districts according to Single Member Pluralities or Majorities with party proportional representation according to the national or regional party popular vote.

We elect Members of Parliament to the Parliament of Canada in riding elections held in each riding separately in a General Election of a parliament when Parliament is dissolved or in by-elections between General Elections. We elect Members of Parliament, not parties, movements, or prime ministers. Party vote, or distributing seats in the House of Commons according to the proportion of votes received by party members nationally is not relevant.

These facts about Canadian electoral practices are consistent with the constitutional architecture of Canada and with Canadian realities of space and population. Diversity of interest and of opinion even within party groups often varies widely in distant parts of Canada: the view in the North, the coasts, prairies and industrial heartland can vary considerably in ways party discipline, whether formal or as a part of movement politics yet is not reflected in party proportional representational systems.

We strongly advise that debate on Bill C-76 not be distracted by those who purpose to achieve partisan advantage by advocating for systems of party proportionality regardless of the merit of movement or party view they may represent.

Democratic rights and objectives are not achieved, sustained or protected by changing the system to achieve partisan advantage, they are achieved by the power of persuasion and the willingness to do the hard work of achieving democratic societal consensus.

I would like to thank the committee for taking the time to consider our representation and my remarks and I hope they will help to guide you in meaningful debate and conclusions toward

modernization of Canadian elections.

---

*

Progressive Canadian Party takes up Harper challenge for better Senate Reform

For Immediate Release July 30, 2015:

Newmarket, Ontario - The Hon. Sinclair Stevens, Leader of the Progressive Canadian (PC) party, took up Prime Minister Stephen Harper's challenge to provinces and others to come up with better, constitutionally acceptable Senate reform proposals.

Prime Minister Stephen Harper has declared a moratorium on prime ministers' nominations for Senate appointments by the Governor General of Canada until it is reformed. Prime ministers have been nominating candidates to the GG representing the Queen for some time. The practice has become a convention within the constitution, some believing mistakenly that the PM actually makes Senate appointments because they are assumed to be qualified; recent appointments appear to be made for party interest and sectarian provincial interest through provincial election of senators.

"Progressive Conservatives understood that the Senate is a check on the prime minister and cabinet government and on excesses of electoral partisanship and provincial sectarianism, as intended at Confederation. We enshrined this understanding as Guiding Principles for Senate Reform at our National Policy Convention in 2000 and reaffirmed them at the PC Democratic Reform Convention in 2002. Today's PCs take this a step further," Stevens said.

The Progressive Canadian party proposal for non-partisan nominations to the Governor General for appointment fulfils the need for change able to meet the constitutional requirements for regional representation in an Upper Chamber selected for knowledge and ability to serve as a revising chamber of government legislation and regulation, or "sober second thought," without opening the constitution for amendment under the general formula or unanimous approval to change Parliament

entirely into a unicameral legislature.

"Progressive Canadians propose that future nomination of senate candidates to the GG come from the non-partisan Queen's Privy Council, instead of from the Prime Minister alone," Stevens stated. "As a member to the Queen's Privy Council I am aware of the privilege and duty we have historically to advise the monarch through Her representative, the Governor General of Canada. These are powers rarely used by the Queen's Privy Council meeting in full assembly but exist within the constitution. The convention of allowing the prime minister to nominate senate candidates may be said to derive from the prime minister's standing as a Queen's Privy Council member."

Mr. Stevens noted that our problems today seem to centre on the partisanship of a prime minister who for the first time in Canadian history makes nominations only of people who "pledge" to pass his government's legislation, including proposed senate elections held by the provinces and limited Senate terms. Many recent appointments are clear patronage. This abandons the Senate's duty to review and revise government legislation within the constitution. Mr. Harper has appointed 59 senators and has said he will only make future appointments if the Senate is reformed to elect senators accountable to individual provinces. That would build firewalls around each province and against Canada and the House of Commons instead of representing all Canadians equally by protecting minority interests whether defined by geography or population in regions or some other basis.

"Progressive Canadians propose to reform Senate nominations within the constitution by allowing a quorum of the full Queen's Privy Council to advise the GG on the basis of excellence and knowledge of governance. Partisanship, patronage, and election accountable to provinces instead of to all Canadians or unicameralism will become problems of the past; the role of the Senate as the institutional memory of Parliament will be preserved by sustaining tenure appropriately," Mr.

Stevens said, explaining the PC Party proposal for Senate Reform more fully.

"Constitutional amendment or replacing Canada's parliament with a unicameral legislature will be made unnecessary by a change of practice allowing the existing but underused advisory body to the GG, the Queen's Privy Council, to nominate senate candidates across party lines and levels of government instead of exclusively by the current prime minister."

The Queen's Privy Council consists of current and living former prime ministers, cabinet ministers, Supreme Court Chief Justices, former speakers of the House of Commons and Senate, former governors general, invited current and former premiers and distinguished individuals, and members of the royal family.

Mr. Harper has been cited in a federal court case filed by Vancouver lawyer Aniz Alani for failing to fulfil his duty in Senate appointment. Twenty-two Senate seats are empty in July 2015, some since 2012. Mr. Alani has expressed willingness to defer to a Supreme Court reference if called on the issue. In a previous 2013 Supreme Court reference the Harper government proposals for Senate reform were found to be unconstitutional.

-30-

For more information contact:

The Hon. Sinclair Stevens,

Leader, PC Party

smstevens@epla.net

1-888-666-3821

Last Updated on Friday, 31 July 2015 06:56

---

**

*Memo on the Fixed Date Election Law, Money and the Corporate Political Party in 2015, and the implications for Smaller Political Parties, and Independents.*

The fixed date election law defined a Canadian General Election for the first time in 2015. As the law intended according to arguments offered at the time Bill C-16 amending the Canada Elections Act was introduced, it meant that the election date was predictable, that parties could plan election campaigns around a fixed election date, it meant that the perceived advantage of the government to call an election when it wished was ended, some will claim.

Political parties looked to their own interest in writing the fixed date election law, the interest of democracy and the people of Canada was largely ignored. The growing cynicism of Canadians about the virtues of democracy in Canada was given reason to increase and may be argued to have been a major contributor to falling voter turnout in the following two elections, 2008 and 2011.

The writ was dropped early in 2015, with the result that the writ period lasted 78 days (August 2-October 19) instead of the usual 36-37 day campaign. Even under the fixed election law as first written, the writ was expected to be dropped September 13 instead of August 2nd.

The 78 day campaign increased the cost of the election by an estimated $125,000,000. The maximum allowable campaign expenditure by each candidate in each of Canada's 338 ridings increased from about 100k to $200,000. That is just during the writ period. Pre-writ expenditures are unlimited.

Money became decisive in an unprecedented way because of the length of the campaign and the amounts of money spent. Money rivalled political organization, and more importantly caused the issues of concern to Canadians nationally and within their ridings where all voting and all elections take place in Canada to be ignored when it served the interest of the corporate political party. Evidence of this is provided in the large advertising expenditures of some political parties, but more particularly by the choice of some political party candidates not to take part in debates in their ridings when the subject was not within the party's platform talking points. This some believe occurred to an unprecedented degree in 2015. The fixed date election law arguably contributed in a significant way to an increasing erosion of democracy's relevance and accountability, in particular in the perio since 2006.

Money decided that only two or three political parties mattered, that candidates in each riding became as meaningless as the MP s we elect where party discipline is excessive, and that candidates of smaller parties and independents were irrelevant. This is shown in public perception, and arguably in election results.

As predicted by the Progressive Canadian party in its submission in 2006 to the Standing Committee on Procedure and House Affairs, the fixed date election campaign began for practical purposes in June, at the end of the spring sitting of the House of Commons, and continued until the October fixed date. Also as the PC Party predicted, for political parties in the House of Commons the unofficial election campaign began even earlier, effectively in October 2014, a full year before election day, and the people's business in parliament was neglected.

Money replaced democracy as the key to the 2015 General Election. For smaller parties, for independents, and for the choice of the best candidate in each of the 338 ridings this was devastating. Already at a disadvantage because national campaigns by parties and national media coverage of leaders debates, all candidates in the 338 ridings where elections in fact take place in Canada were replaced by the corporate political party. Democracy was not served by this outcome.

---

***

## "Fair Elections Act to be challenged in Courts"

**For Immediate Release April 17, 2014**

**Newmarket, Ontario –** The Honourable Sinclair M. Stevens, Leader of the Progressive Canadian Party, said today, **"**It is the view of the Progressive Canadian Party that Bill C-23, entitled the Fair Elections Act by the Harper government, will betray basic principles of democracy in Canada even if substantially amended. Bill C-23 will deny the right to vote to large numbers of Canadians and as such must be challenged in the courts as unconstitutional."

Further, Bill C-23 undermines the role of Elections Canada as guardian of the integrity of the electoral system and would deny the responsibility of Elections Canada to promote democratic participation by Canadians.

"For these reasons and in ways indicated by scholars of Canadian constitutional law and political science published in the national media, Progressive Canadians believe the Fair Elections Act must

be rejected as unfair, undemocratic, and deserving of constitutional challenge even in light of amendments which are being recommended by members of the House of Commons and in Senate committee. Bill C-23, the Fair Elections Act, is deeply flawed in fundamental ways and for its apparent intent."

Mr. Stevens continued, "The Elections Act ranks in importance with the Constitution, which cannot be altered by the Government-of-the-Day at its sole discretion."

"It is the intention of the Progressive Canadian Party to begin a constitutional challenge of Bill C-23, the Fair Elections Act, in federal court and in the Supreme Court of Canada should the act become law."

Bill C-23 was the creation of the Harper Government without consultation with Elections Canada officials, other political parties or Canadian citizens through public hearings. These facts were given further significance when it was learned that the author of a study cited by the Minister of Democratic Reform as supporting the Bill stated that in his view the government should either substantially amend or withdraw the act, in his view.

It is the position of the Progressive Canadian Party that whatever is passed into law the "Fair Elections Act" will be the work of the Government of Canada in inception and in passage alone and, in present or amended form, would undermine democracy in Canada. As such it is unacceptable and must be challenged in the Courts.

**For more information contact:**

The Hon. Sinclair Stevens, Leader

The Progressive Canadian Party

Newmarket, Ontario

1-888-666-3821

smstevens@epla.net

---

****

**Election Advertising by Registered Parties and Candidates.**

- 2015-08 Election Advertising by Candidates (file name: 2015-08_Election Advertising by Candidates_Draft for consultation_June 2015)

- 2015-09 Election Advertising by Registered Parties (file name: 2015-09_Election Advertising by Registered Parties_Draft for consultation_June 2015)

**The Progressive Canadian Party.**

The following comments are offered regarding the Interpretation and Approach of Elections Canada (EC) to election advertising by Registered Parties and Candidates.

This is the first Canadian federal election in which the fixed date election law has been in effect to the end of the full four year fixed term for elections introduced by legislation receiving royal assent in 2007, Bill C-16. The Chief Electoral Officer (CEO) will be reporting to Parliament on findings concerning the October 19, 2015 election after the election is held.

The fixed date election law raises important questions for the 2015 election. Registered parties and candidates and the promise of a fair election undistorted by monied interest will greatly benefit by Elections Canada advice, interpretation guidelines and understanding of the anticipated EC approach to the new fixed date election advertising environment within the existing limited legislation.

Traditional election advertising by registered parties and candidates has historically been governed by regulation, interpretation and approaches administered by Election Canada defined by election campaigns conducted after the dropping of the writ at any point during the life of a Parliament even in the case of a majority government.

The implications of the fixed date election law for political parties, candidates, funding of advertising by registered parties and candidates during the election period and prior to dropping of the writ, and broadly for democracy in Canada, were subjects of discussion during the ACPP June 8-9, 2015 AGM, however, and will be important to CEO instruction to registered parties and candidates concerning their rights and obligations under the Canada Elections Act for the October 19, 2015 election.

This is because of the several ways in which the fixed date election law changes the practice and

meaning of elections in Canada in ways which may impact election outcomes. Such changes include redefinition in practice of the length of election campaigns beyond the traditional legislated writ period and repurposing of pre-writ political advertising in consequence.

Election outcomes in Canada must remain expressions of the political choices or decisions of Canadians rather than outcomes of the intrusion of money into democracy. Election advertising is a principle way in which money can affect election outcomes. Experience in the US and in Canadian provinces where fixed date elections are in place indicate that impacts of money on elections and democracy increase with fixed date elections. Discussion of the benefit to democracy of limiting the impact of money by limiting political advertising generally may be a useful future discussion, informed by practices in the UK and other Commonwealth nations.

The 2015 election will be conducted within the existing legislative framework concerning election spending limits and fixed date elections. Interpretative guidelines and the Approach to election advertising by Registered parties and Candidates specifically under the new fixed date election law is therefore of great importance to ensuring fair elections.

One example of where Elections Canada has anticipated this need is the requirement to remove pre-writ paid online advertising in all forms when the writ is dropped unless the content and production is to be treated as an election expense. This does not, however, diminish the distorting effect on elections of a pre-writ advertising campaign extended through the election itself when tested and found effective before the writ is dropped.

It is widely reported that political parties or candidates are conducting political campaigns well in advance of the writ being dropped to begin the formal election period. At present, there is no limitation on the spending of political parties or candidates outside of the writ period. In other Commonwealth countries, notably the United Kingdom, political advertising outside of the writ period is subject to legislated "long campaign" and "short campaign" limits administered by the Elections Commission. This has not been parallelled by similar legislated limitations in Canada however the fixed date election law provides new territory and an opportunity for the Chief Electoral Officer to provide interpretative guidance to political parties and candidates. EC advice and interpretative instruction for the 2015 election is strongly recommended.

Advertising activities by the Government of Canada and government departments have included public service announcements of programmes "subject to parliamentary approval". Such announcements may be deemed partisan advertisements funded by public monies and taxpayer dollars by the agencies contracting to issue such public service announcements because they concern proposals, generally by the governing party of the day, which have not received parliamentary approval. While comment on this practice is not strictly within the limits of guidelines and interpretations to be issued by Elections Canada and the Chief Electoral Officer to registered political parties and candidates at the time of the dropping of the writ in 2015, it would be negligent not to draw to the attention of EC and the CEO the concern these practices raise for participants in the ACPP AGM and members of the OGI Steering Committee. The Progressive Canadian party delegates did so during day one of the ACPP AGM, pointedly, and again through comment and advice as a member of the OGI Steering Committee.

The Progressive Canadian Party was very active at the ACPP AGM in discussion of the impacts on Canadian elections of money, advertising, and the *de facto* extended election period under the fixed date election law. In particular, PC delegates drew to the attention of the Chief Electoral Officer, and to others attending, the arguments presented by the Progressive Canadian Party to the Standing Committee on Procedure and House Affairs (PROC) in September 2006 in the formally solicited submission to the Standing Committee on Bill C-16 when the legislation was proposed.

A copy of the 2006 PC Party submission to PROC on Bill C-16 is attached for reference and future guidance.

Concerns raised by the PC Party to the Standing Committee on Procedure and House Affairs in 2006 pertaining to C-16 included the implications for Canadian elections of *de facto* creation of an election period extending from the end of the spring sitting of the House of Commons in June to the legislated October fixed date election in an election year.

Similarly, concern was raised by the PC Party at the ACPP AGM in June 2015 about the practical implications to Canadian elections and democracy in Canada of the greater costs and greater intrusion of money during the extended, unregulated prewrit campaigns of the redefined election period, and repurposed prewrit registered party and candidate advertising, under the fixed date election law.

At the time of this submission to the OGI Steering Committee, July 3, 2015, unregulated prewrit election advertising campaigns for the October 19, 2015 General Election by monied interest and

parties are underway at a cost to democracy which may be supplied by direction from EC under existing legislation.

It is felt this is particularly important to draw attention to these facts given the unprecedented nature of the 2015 election, which is the first Canadian federal election in which the fixed date election law has been in effect to the end of the full four year fixed term for elections introduced by legislation receiving royal assent in 2007, Bill C-16.

These opinions and advice are provided in conformity with the Mandate and Objectives provided in **Annex 1: Terms of Reference for the Steering Committee on Written Opinions, Guidelines and Interpretation Notes (OGIs) of the ACPP**.

Brian Marlatt, Progressive Canadian Party and OGI Steering Committee. July 2015.