

**BILL C-16: AN ACT TO AMEND  
THE CANADA ELECTIONS ACT**

**James R. Robertson, Principal  
Law and Government Division**

**29 June 2006**  
*Revised 3 May 2007*



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## LEGISLATIVE HISTORY OF BILL C-16

### HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	30 May 2006
Second Reading:	19 September 2006
Committee Report:	25 October 2006
Report Stage:	6 November 2006
Third Reading:	6 November 2006

### SENATE

Bill Stage	Date
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First Reading:	6 November 2006
Second Reading:	23 November 2006
Committee Report:	15 February 2007
Report Stage:	15 February 2007
Third Reading:	28 March 2007

Message sent to the House of Commons: 28 March 2007  
Message returned from the Senate: 27 April 2007

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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THE CANADA ELECTIONS ACT\*

BACKGROUND

Bill C-16, An Act to amend the Canada Elections Act, was introduced in the House of Commons and received first reading on 30 May 2006. The bill amends the *Canada Elections Act* to bring in fixed election dates at the federal level in Canada. It provides that, subject to an earlier dissolution of Parliament, a general election must be held on the third Monday in October in the fourth calendar year following polling day for the last general election, with the first general election after the bill comes into force to be held on Monday, 19 October 2009.

After a brief debate in the House of Commons, the bill received second reading and was referred to the Standing Committee on Procedure and House Affairs. The Committee reported the bill back to the House without amendments after hearing from several witnesses. Bill C-16 received third reading in the House on 6 November 2006, and was introduced in the Senate later the same day. **The Senate amended the legislation and sent a Message to the House of Commons with the amendment on 28 March 2007. The House of Commons did not agree with the Senate amendment, and, after further debate, the Senate did not insist on its amendment.**

The issue of fixed election dates – or elections at fixed intervals – has been discussed at some length, and acquired a certain popularity in recent years. Fixed election dates are part of a general package of measures designed, it is argued, to make Parliament more accountable and democratic. Part of the reason that this issue has been embraced by many people is that it is seen as a way of counteracting the pervasive cynicism that exists towards

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\* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

politics and politicians. It is also perhaps – like many proposals that involve direct democracy, with which it is often linked – reflective of the American influence on Canadian political institutions and practices.

The argument is that fixed election dates would remove an unfair advantage that the government possesses in being able to decide on the date for an election. It would create a level playing field for all participants in the electoral process, by removing the uncertainty and perceived bias in favour of the governing party. This would facilitate planning for election officials, as well as political parties and candidates. It is also argued that, indirectly, fixed election dates would help relax party discipline and allow freer votes, as the Prime Minister and cabinet would no longer be able to use the threat of an election to keep their caucus in line. At the same time, by ensuring that an election could be held earlier in the event that the government clearly did not have the support of the majority of the House of Commons, the concept of confidence that underlies the parliamentary system of government would be preserved.

Opponents of fixed election dates argue that they are inconsistent with parliamentary traditions and interfere with the effective functioning of Parliament. It is argued that the Prime Minister must have the flexibility and freedom to seek the dissolution of Parliament at any time – whether because of a loss of confidence or because of a need or desire for a renewed mandate from the electorate. Major policy initiatives, on which the government believes an election should be held, can arise outside of an election period. Fixed election dates could lead to paralysis if the House is unable to function, and if the situation cannot be resolved in the usual way by calling an election. Fixed election dates also raise the prospect of an American-style campaign that stretches over months or years, rather than a short period. It would also be possible for a government to forestall a fixed election date by engineering its own defeat on a motion of confidence. In addition, it is not correct to say that the existing system, where the Prime Minister determines the date of the election, always works to the advantage of the governing party, as many governments have been defeated at the polls. It is also debatable whether a fixed election date would in fact loosen party discipline.

The Canadian Constitution does not contain many provisions regarding elections. Section 50 of the *Constitution Act, 1867* states:

Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer.

Section 4 of the *Canadian Charter of Rights and Freedoms* provides as follows:

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs of a general election of its members.

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the legislative assembly, as the case may be.

Section 5 of the Charter also provides:

There shall be a sitting of Parliament and of each legislature at least once every twelve months.

The combination of these provisions is that, in theory, there could be almost six years between two federal general elections. The convention is, however, that elections are called about every four years. The five-year constitutional limit on the life of a Parliament has been exceeded only once since Confederation (in 1916), and has been approached on only seven other occasions.

While the Constitution provides a *maximum* time for the House of Commons to continue, no *minimum* is set out. Elections are called by the Governor General, usually on the advice of the Prime Minister, and can be called at any time, up until the end of the five-year mandate.

It is also relevant to note that the preamble to the *Constitution Act, 1867* provides that “the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom.” This latter phrase has been interpreted as importing into Canada the “confidence convention.”

As the Special Committee on Reform of the House of Commons (the McGrath Committee) said in its 1985 Third Report: “The confidence of the House of Commons in the governing party lies at the heart of what we have come to know as responsible government.”

Unlike a presidential system of government, with its distinction between the legislative and executive branches, and its checks and balances, in a parliamentary system, the executive and legislative are fused. This form of government requires that the cabinet be responsible for its actions to an elected legislature; the ministers are members of and answerable to the legislature. Responsible government requires that ministers of the Crown acting collectively as the cabinet or individually are responsible for their actions to the elected legislature.

Under the confidence convention, the executive, or ministry, must have the confidence of the majority in the legislature. A government that is defeated on a vote of confidence is expected to resign or seek a dissolution. A new government must meet the House, and demonstrate that it has the confidence, or support, of the majority. What is involved is a *convention*, one that does not appear in the text of the Constitution (though, arguably, it forms part of the Constitution), in a statute, or the Standing Orders of the House, but which goes to the very root of parliamentary democracy.

There has been much discussion in recent years about issues such as party discipline and free votes, both of which are related to the question of confidence. Regardless of whether the confidence convention is misconstrued, or too strictly applied, in Canada – as many observers argue – the basic tenet that the government must possess the confidence of the legislature remains.

The Reform Party of Canada included the concept of fixed election dates as part of its platform from its inception. Politicians from other parties have also expressed support for the idea of fixed election dates, and polls have indicated that there is some public support for the proposal. Several provinces have considered fixed election dates, and, to date, two have adopted legislation to this effect. Other groups have studied or commented on the issue of fixed election dates.

#### A. Special Joint Committee on the Constitution of Canada (1970-1972)

The Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada was established in October 1970, and tabled its final report in February 1972. It travelled across the country to hear evidence from individuals and groups, and the transcripts of its meetings fill eight large volumes. According to the index to its proceedings,

the issue of “specific dates” for elections was raised on nine occasions and by seven separate witnesses. In its Final Report in 1972, the Special Joint Committee made the following recommendation:

43. Every House of Commons should continue for four years, from the day of the return of the writs for choosing the House and no longer, provided that, and notwithstanding any Royal Prerogative, the Governor General should have the power to dissolve Parliament during that period:

- (1) when the Government is defeated
  - (a) on a motion expressing no confidence in the Government;  
or
  - (b) on a vote on a specific bill or portion of a bill which the Government has previously declared should be construed as a motion of want of confidence; or
- (2) when the House of Commons passes a resolution requesting dissolution of Parliament.

The Special Joint Committee noted that all institutions were being subjected to close re-consideration, and the House of Commons, as the principal institution of Canadian democratic government, was no exception. Many changes in the rules and practices of the House had been made in an attempt to address the day-to-day shortcomings in its functioning, and further changes were being considered. Criticisms of Parliament had also been voiced by people outside, including the suggestion that elections should be held at fixed intervals. It was argued that this would lessen the control of the executive over the legislative branch of government. The Special Joint Committee, while sympathetic to the demands for parliamentary and electoral reform, affirmed its support for the preservation of representative institutions, although this was not intended to be an acceptance of the *status quo*. One of the two constitutional changes that it supported was fixed-term parliaments.

#### B. McGrath Committee (1984-1985)

In 1984 a study was prepared by Eugene Forsey and Graham Eglington for the Special Committee on Reform of the House of Commons, entitled *The Question of Confidence in Responsible Government*. A section of this study was entitled “A Fixed Term for the House of Commons? No!” and discussed some of the issues involved in the proposal. As the title



indicates, the authors were adamantly against the idea of fixed election dates, arguing that it would necessitate a constitutional amendment to abolish the power of the Crown to dissolve Parliament either in all circumstances or in stated circumstances. Moreover, they objected to the proposal on its own merits: while acknowledging that the advantages said to flow from a fixed-term House of Commons appear attractive, they argued that stability and accountability may well be inherently in conflict and could further enhance executive domination of the House.

### C. Lortie Commission (1989-1992)

The Royal Commission on Electoral Reform and Party Financing (often referred to as the Lortie Commission after its chair, Pierre Lortie) was appointed in 1989 to undertake a comprehensive study of Canada's electoral laws. In a summary of the issues raised during the Commission's hearings, it was noted that elections in the United States are held on a fixed date every two or four years, whereas in Canada elections occur at the call of the government or if Parliament is dissolved because the government has lost a vote of confidence in the House of Commons. According to the Summary, a dozen intervenors called for a fixed date for federal elections, usually on the basis that an election be held once every four years. The Summary continued:

The argument for holding federal elections on a fixed date was mainly that it would make it easier to administer and organize elections, as well as provide for better enumeration. One or two intervenors suggested that the fixed date was also more democratic because it removed the ability of the party in power to call an election at the most favourable time.

In its 1992 Report, the Commission addressed the issue of fixed election dates very briefly. It noted that fixed terms are more common in non-parliamentary systems, where there is usually a separation of powers between the executive and the legislature. While it noted that a fixed term for the House of Commons would diminish the potential advantage to the governing party of choosing the most opportune moment to call an election, and therefore would be fairer to all political parties, the Commission felt that the proposal for fixed terms presented several major problems. The Commission canvassed the various issues, but did not specifically accept or reject the concept of fixed election dates or fixed terms. At the same time, it did not make any recommendations regarding this proposal.

#### D. Standing Committee on Procedure and House Affairs (1994)

In 1994, the Standing Committee on Procedure and House Affairs received an order of reference from the House of Commons to study various matters, including “fixed election dates.” In its report, which was tabled in the House on 9 December 1994, the Committee noted that none of the witnesses raised the issue of fixed election dates, but that members considered the issue and reviewed the arguments for and against such a proposal. It concluded, however: “The Committee is not prepared to make any recommendation regarding fixed election dates or terms at this time.”

#### E. Private Members’ Bills

Over the years, there have been several private Members’ bills tabled in the House of Commons proposing that elections be held at regular intervals. These date back at least to 1970, when Bill C-206 was introduced by Doug Rowland, MP, whose bill was worded very similarly to the recommendation of the Special Joint Committee, of which he was a member. Ron Stewart, MP, tabled Bill C-483 in 1980. Elwin Hermanson, MP, introduced Bill C-250 in 1996; unlike the others, it was debated and voted on at second reading, but was defeated. Jim Pankiw, MP, introduced various bills between 1998 and 2004. Stephen Harper, MP, the then Leader of the Opposition, introduced Bill C-512 on 1 April 2004.

#### F. Provincial Initiatives

The legislatures of British Columbia, Ontario, and Newfoundland and Labrador have all enacted legislation that fixes general elections at four-year intervals.

British Columbia was the first province in Canada to introduce such legislation. The *Constitution (Fixed Election Dates) Amendment Act, 2001* fixed the date of what was then to be the next election on 17 May 2005. It further set every subsequent election on the second Tuesday in May of every fourth year. The confidence convention was not affected by the Act.

In Ontario, the *Election Statute Law Amendment Act, 2005* states that a general election shall be held on 4 October 2007 and subsequent elections on the first Thursday in October every four years. As in British Columbia, the Ontario rules allow for the dissolution of the legislature following a vote of no confidence in the government. Both provinces included a clause indicating that the Royal Prerogative was not to be affected by the new legislation.

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

## DESCRIPTION AND ANALYSIS

Clause 1 of Bill C-16 inserts a new section in the *Canada Elections Act* just before the heading “Writs of Election” before section 57. The proposed section 56.1 – headed “Date of General Election” – starts with a subsection that asserts that nothing in the section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General’s discretion.

The proposed section 56.1(2) then sets out the main provision of the bill. It states that, subject to subsection (1), each general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, with the first general election after this section comes into force being held on Monday, 19 October 2009. (The last federal general election was held on 23 January 2006)

The proposed section 56.2 provides that the Chief Electoral Officer may recommend an alternate day if the day set for polling is not suitable. Reasons for choosing an alternate date include the prescribed date being in conflict with a day of cultural or religious significance or a provincial or municipal election.

**At third reading in the Senate, this section was amended to include “a federal, provincial or municipal referendum” as one of the reasons that the Chief Electoral Officer could recommend an alternate polling date. The House of Commons did not agree with this amendment and sent the bill back to the Senate. The Senate did not insist on the change, and, after a brief debate, dropped the amendment.**

The Chief Electoral Officer may choose another day, provided that the alternate day is either the Tuesday immediately following the Monday that would otherwise be polling day, or the Monday of the following week. He or she makes a recommendation to the Governor

in Council, and “without delay” publishes a notice of this recommendation in the *Canada Gazette*. If the Governor in Council accepts the recommendation, an order to that effect is made and is also published without delay in the *Canada Gazette*. No order regarding an alternate election date is to be made after 1 August in the year in which the general election is to be held.

Clauses 2 and 3 of Bill C-16 make certain consequential amendments to the *Canada Elections Act*.

## COMMENTARY

At present, federal general elections in Canada can be held at any time. In the case of a minority government, this can mean a new election after only a few months in office, as happened in 1979 with the Progressive Conservative government of Joe Clark, or in 2005 with the Liberal government of Paul Martin. In the case of majority governments, it means that elections can be held after only three years, or delayed until the end of the fifth year. As experience has shown, there are problems associated with holding elections too frequently, as well as too infrequently. Governments that are perceived to have clung to power, or waited too long for a propitious time for an election, have been defeated; but so have governments that were seen to have been too opportunistic by calling an early election.

Many people feel that fixed election dates – or fixed terms – would be an improvement, in that they would remove the power to call elections from the governing party. The trend over the past 100 years has been to develop a non-partisan electoral system, taking the process out of the control of politicians and of Parliament. Electoral boundaries are drawn by arm’s-length commissions, and elections are administered by an independent agency, Elections Canada. The calling of elections is an anomaly, in that it remains a political decision, made by the government of the day.

As noted above, the issue of fixed election dates, or fixed terms for the House of Commons, has been discussed at various times in recent years. The following are some of the arguments that have been made in favour of, and against, the idea.

### A. Arguments in Favour of Fixed Election Dates

Reasons put forward in favour of setting fixed election dates include the following:

- It would remove an element of unpredictability from Canada’s political system, and provide a degree of security of tenure for the House of Commons and the government.

- It would allow election officials, as well as political parties and individual candidates, to plan better for elections: if the dates of elections were known well in advance, procedures could be streamlined and expenses reduced (at present, Elections Canada is required to be ready for an election at any time).
- It would remove the advantage from governments, which have the power to set election dates under the present system, and would thereby create a more level playing field.
- It would give governments reasonable and sufficient time to develop and implement their legislative agenda or program, without the risk of having to fight an election, and it would allow some of the more difficult and unpopular decisions to be taken.
- It would remove the threat of dissolution, which is a major factor used by governing parties to keep their members and supporters in line; it could, therefore, lead to more independence for ordinary Members of Parliament, and more relaxed party discipline.
- It would acknowledge the fact that, because of party discipline, it is virtually impossible to remove a majority government under Canada's present system.
- Opposition parties, knowing that the government has a fixed term of office, might be more constructive in their criticism, and develop different approaches.
- In Canada, municipalities are elected for fixed terms, and this has not resulted in the end of accountability or democracy.

#### B. Arguments Against Fixed Election Dates

Against these reasons, opponents cite various disadvantages associated with setting fixed election dates. These include the following:

- Fixed election dates and fixed terms are inconsistent with a parliamentary form of government, in which the executive must retain the confidence of the legislature.
- Governments would be able to do anything they wanted after an election, knowing that they would not have to face the next election for a specified period of time – there would be no requirement or incentive for governments to retain the confidence of a majority of the House of Commons, and they would be insulated from public opinion.
- It would make it harder than at present to remove an unpopular government between elections.
- It would not accommodate circumstances where governments may need, or want, to go to the people with an election; for instance, if a major issue or change of platform arose, or if the House of Commons was at an impasse.

- The calling of elections is an important and legitimate tool for a government: the threat of dissolution allows governments to keep their members in line, and the opposition off balance.
- Much of the impetus for fixed election dates comes from the mistaken notion that *governments* are elected; governments, in fact, are appointed, and are responsible to the House of Commons; an election is the election of *individuals* to serve in the House of Commons.
- With respect to the argument that fixed terms would lead to stability and to the opportunity for the government to carry through its policies and legislative program, it has been pointed out that stability and accountability are often inherently in conflict, and that security for governments should not take precedence over accountability.
- Fixed election dates or fixed terms would remove from individual Members the power – seldom exercised – to withdraw their support, and cause the downfall of the government. Thus, the status or independence of individual Members, whether government or opposition, would arguably be no better off under such a system.

It has been argued that any system establishing fixed terms of government or fixed dates of federal elections could be effected only by means of a constitutional amendment. It was the opinion of Eugene Forsey and Graham Eglinton that the election of the House of Commons for a fixed term would involve abolishing the power of the Crown to dissolve Parliament, whether in all circumstances or except in stated circumstances. In their view, this could be done only by a constitutional amendment, and would require the unanimous consent of the House of Commons and all provinces (although others have suggested that such an amendment could be achieved with the support of two-thirds of the provinces representing at least 50% of the population). Given that Canada's federal and provincial governments operate in a similar way, it is likely that any change at the federal level would have to be accompanied by changes at the provincial level.

Against this, it has been argued that a system of this kind could also be achieved by a federal statute, although such an Act could be amended or repealed by subsequent Parliaments. Generally, this approach, explicitly or implicitly, would not restrict the right of the Governor General to call an election, on the advice of the prime minister. In the various private Members' bills that have been tabled in the House of Commons, for instance, Members have generally incorporated a clause to avoid potential conflicts between the concept of fixed election dates and Royal Prerogative. One approach was to include a clause that, in one form or another, implicitly stated that the Royal Prerogative was not to be affected by the bill. For example,

Bill C-429, introduced by Jim Pankiw, MP, used this type of language: clause 2 stated that “the Prime Minister shall ... advise the Governor General to command that a general election be held ...,” thus implying that the Governor General would retain his or her traditional role. A second approach was used by Stephen Harper, MP, in Bill C-512: clause 2 of that bill stated that “Nothing in this Act affects the power of the Governor General to dissolve Parliament whenever the Governor General sees fit.” Both of these examples stand in stark contrast to the language used in Bill C-206, tabled by Doug Rowland, MP, in 1970. The bill would have amended the *British North America Acts, 1867 to 1965*. According to its explanatory note, its purpose was:

To abolish the Royal Power of Dissolution with a view to reducing the arbitrary power of the Prime Minister and enhancing the independence of the private Member of Parliament. To this end, a fixed term of four years is provided for each Parliament subject to the holding of an election at an earlier time if the government is defeated on a specific motion of want of confidence ... .