

What Happened to Fixed-Date Elections?

As I record this a controversy involving the rules of Canadian parliamentary government and our electoral system has managed the near unthinkable. It replaced the Covid pandemic at the top of the headlines in Canada's media for a couple of weeks.

The circumstances were as follows. The opposition Conservative Party proposed the creation of a parliamentary committee to examine the government's spending during the Covid pandemic and other matters that the Conservatives believed involve unethical actions by the Liberal government. Prime Minister Trudeau responded by threatening to make the vote in the House of Commons on whether to create this committee a vote of confidence in the government, meaning that if his government were to lose this vote it would be required to resign and the Prime Minister would request that the Governor-General call a new election.

But wait a minute. Isn't the next federal election supposed to take place on October 16, 2023? This appears to be what is required by s.56 of the Canada Elections Act. (<https://laws.justice.gc.ca/eng/acts/E-2.01/page-9.html#h-204214>) And indeed at the website of Elections Canada, October 16, 2023 is indicated as the date for the next federal election.

The fixed election date provision specified in Canadian law since 2007 may cause Canadians to imagine that as in such countries with electoral systems as diverse as those of France, Norway and the United States, our country's constitution requires that national elections be held on a specific date, after a term of a specific number of years. This is a true fixed-date electoral system. It is not what exists in Canada. The four-year term of office and the

election dates required pursuant to s.56 of the Canada Elections Act do not change the rules of the Canadian constitution. These rules state that no government may last longer than five years before a new election must take place, s.4 of the Constitution Act, 1982, and that the Governor-General may dissolve Parliament and require that a new election be held at any time during the five-year maximum term of a government, s.50, Constitution Act, 1867. This constitutional provision allowing for the holding of an election before the date specified in the Canada Elections Act is, in fact, acknowledged in s.56 of that law. It states that, " Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion." And in reality, according to the unwritten rules of the constitution, it is the prime minister and not the governor-general who determines whether and when a new election will be held.

The idea that Canada has fixed dates for federal elections was shown to be incorrect just a year after the fixed date provision became part of the Canada Elections Act. The Conservative minority government that had been elected in 2006 resigned and a new election was held in 2008. Then, only three years later, the Conservative minority government elected in 2008 resigned and a new election was held in 2011. The fixed election date timetable was respected for the next two elections held in 2015 and 2019, both of which were preceded by majority governments. And so it appears that Canada may have fixed-date elections when one party controls a majority in the House of Commons, but four-year terms are unlikely during periods of minority government. In fact this has long been the case.

So why was the Canada Elections Act changed to include the "fixed-date" provision when, in fact, almost nothing has changed? Well, not quite nothing. A majority government that decides to ignore the four-year cycle envisaged by the law and either send Canadians to the polls earlier or continue longer than four years would have some explaining to do. It may be, however, that no more than a rather small fraction of the population would be particularly exercised by such a decision.

Fixed-date provisions have been adopted by parliamentary democracies across the world in response to various complaints about governments being able to call elections at a time of their choosing. Foremost among these complaints is the charge of electoral opportunism, that is, the belief that being able to choose the timing of an election gives the governing party an advantage over its rivals. It is also argued that fixed dates for elections permit better planning by parties when it comes to the activities necessary in preparing for an election, including raising money and selecting candidates, and would also facilitate planning by election officials. Fixed date elections are expected to loosen party discipline because members of the government caucus would no longer be kept in line by the threat that an election might suddenly be called. Some advocates of a rigid fixed-date election requirement argue that it would eliminate what they see as the anachronistic discretion that, at least according to the letter of Canada's constitution, belongs to the Governor-General when it comes to the timing of elections.

At the same time, however, there are criticisms of fixed date elections. Perhaps the one most frequently heard is that they are inconsistent with parliamentary government and the

notion of responsible government. If the government loses the confidence of the House of Commons it ought to be able to resign and trigger a new election. It would not always be the case that some other party or parties would be able to form a government capable of winning votes in the House, and if a new election could not be held for a set number of years this could result in legislative stalemate. Moreover, some argue that exceptional circumstances can arise which justify the calling of an early election.

With the exception of Norway, virtually all parliamentary democracies that have adopted fixed-date elections have maintained the ability for an election to be called earlier than the term specified in the law. But have such electoral system reforms made a difference? In a recent study by Canadian political scientists Stephen White and Christopher Alcantara, the authors conclude that the literature does not point in a single direction. Regarding the important electoral opportunism argument, they write, "There seems to be no firm consensus in the literature as to whether the election timing power provides an electoral advantage to First Ministers and their incumbent parties. Some studies suggest that the election timing power is highly advantageous, providing incumbents with a powerful tool for increasing their re-election chances and circumventing the ability of voters to properly hold governments and leaders accountable for their actions." (Stephen White and Christopher Alcantara, " Do Constraints Limit Opportunism? Incumbent Electoral Performance Before and After (Partially) Fixed-Term Laws," *Political Behavior* (2019), p.660) Based on their examination of federal and provincial elections in Canada since fixed-date reforms were passed, they conclude that, "Our evidence indicates that the introduction of partially fixed election dates in Canadian provinces has constrained the behavior of incumbent governments and eliminated a distinctive

incumbent advantage."(672) White and Alcantara also point to earlier work by André Blais and his colleagues suggesting that parties in power may be punished by the electorate when they deviate from the election dates fixed by law.(Blais, A., Gidengil, E., Nevitte, N., & Nadeau, R. (2004). "Do (some) Canadian voters punish a prime minister for calling a snap election?" *Political Studies*, 52(2), 307–323.)

As to whether fixed-date elections hold the promise of reducing party discipline in the legislature, not everyone believes that this would be a good thing. Nor is it clear from the experience so far in Canada or in other jurisdictions where fixed election dates have been adopted that party discipline has become weaker. The factors that cause members of a party caucus to vote in a uniform manner and to take direction from their leaders are multiple. In Norway party discipline is high, notwithstanding that the constitution does not allow for early elections.

So what are we to make of the adoption of fixed-date elections in Canada? And should anyone be indignant if a prime minister threatens to call a snap election?