

Fixing What Ain't Broke

The New Norm of Fixed-Date Elections in Canada

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Abstract. Since 2001, legislation implementing fixed dates for general elections has been passed by the federal government, and most provincial and territorial governments. The notion that general election dates are now fixed, however, is flawed. In my submission to *Changing Political Landscapes*, I will explore the fledgling norm of fixed date elections in Canada and examine the aspects of the legislation which call into doubt the fixedness of these elections. With a review of the literature on the subject, I begin by inquiring into the emergence of this foreign phenomenon into Canadian electoral politics and the justification for its extensive adoption. Comparing the legislation across jurisdictions, I analyze the basic construct of fixed date election legislation in Canada, survey similarities and differences, and discover how fixed dates for elections are ultimately avoidable. As a result, I find that election dates are not truly fixed in Canadian jurisdictions where fixed date election legislation has been enacted.

Introduction

Since the dawn of the 21st century, fixed dates for general elections in Canada have become a widely adopted norm. Bernard Lord, the former New Brunswick premier, once opined that folks “like to know when the elections are going to be” (as cited in Desserud, 2007: 204). This is a familiar concept to Canadian voters because we are inundated with information about what goes on with our southern neighbours. It is rather comforting, as Premier Lord knows, knowing when an election will be, and that there is nothing those rascally politicians can do about it. One wonders, however, what benefit this American import provides for Canadian electoral and political systems that operate in different ways than those stateside, and why the sudden uptake on a mechanism that the Americans had implemented for their elections during the mid-19th century.

It is the purpose of this essay to examine the affirmative and negative arguments on the matter of fixed election dates. Yes, it is true that fixed-date elections (herein referred to as FDEs) are popular with the general public and politicians from all parties. Nevertheless, upon review of the literature on this topic, one is struck by tepid reception offered to the proponents of FDEs and their favoured arguments. Why the discrepancy? In an effort to make sense of FDEs and their place in the Canadian context, we will explore this topic with one question in mind: are fixed-date elections a meaningful measure of democratic reform, or are they a benign populist appendage to our parliamentary system?

The essay shall proceed immediately into a review of some background information relating to FDEs, in particular, a definition of relevant terms and an examination of the context which led to their implementation. Second, we will examine and analyze the legislation that led to the implementation of FDEs. In the third and fourth sections, we will review and discuss the arguments presented in the literature that favour and oppose, respectively, the adoption of FDEs

in Canada. This essay draws to a close with a discussion of claims presented within, and a conclusion that FDEs are ineffective and superfluous to the Canadian parliamentary system.

Background on Fixed Date Elections

We begin with a definition of the concept of fixed-date elections. They are, essentially, general elections which are held at regular and defined intervals. Put another way, FDEs are defined as “those in which the election date for government and representatives is established by law, usually through a constitutional provision” (Desserud, 2007: 206). In practice, the scheduling of elections is laid out in the respective federal, provincial and territorial electoral legislation. Uniformly, the norm across Canada is for a general election to be held at a certain point during the fourth calendar year following the previous general election, though there is no consensus on particular dates or times of year. In sum, FDEs provide a modicum of certainty to Canadian political actors by signaling narrow yet approximate time frames for future general elections.

FDEs are one normative change to the Canadian electoral process that are part of a broader “package of measures designed [...] to make Parliament more accountable and democratic” (Robertson, 2007: 1). Indeed, FDEs were seen as “one of the first visible reforms successfully passed [...] to address the so-called 'democratic deficit'” (Alcantara and Roy, 2014: 257; see also Milner, 2005). The concept of democratic deficit has been a persistent irritant for lawmakers, perhaps as it was a particularly salient issue with the public through the 1990s and 2000s. The perception is one of aloof politicians and unresponsive institutions fomenting corruption and dysfunction. Scholars like Donald Savoie have examined the shifting of the locus of power in Canada “from citizens towards elites” (as cited in Alcantara and Roy, 2014: 261; see also Desserud, 2007: 207). This is a trend ordinary citizens have been effectively powerless in countering. Reining in the power of the executive, therefore, is an attractive strategy, and FDEs offer one avenue that appears fairly straightforward in its execution.

The adoption of FDEs into the Canadian parliamentary system has been a relatively recent phenomenon. It is interesting and somewhat surprising to note that, prior to May 17, 2005, Canada essentially “ha[d] no experience in fixed-term elections above the municipal level” (Milner, 2005: 11). This is because the first fixed-date election law was passed in 2001 for general elections in British Columbia (Dodek, 2010: 215; Tremblay and Cauchon, 2010: 427). Prior to this, there were no fixed terms for federal, provincial or territorial lawmakers aside from the maximum term limit of five years for legislatures as stipulated in Section 4 of the Charter of Rights and Freedoms. In the years following the British Columbian initiative, all but one province and two territories have adopted FDEs for general elections in their respective jurisdictions.

FDEs are a foreign import into our parliamentary system, something with which we have become familiar due to our proximity to the United States (Tremblay and Cauchon, 2010: 426). In the American congressional system, their 'fixed' system means that effectively “nothing can be done to alter the date of the next legislative election” (Milner, 2005: 14). By now, it is widely understood that Americans vote in presidential elections every four years on the first Tuesday after the first Monday in November. Although the American model serves as the ideal case, it is important to note that such rigidity would not be compatible with the Canadian parliamentary system. There are important differences between FDEs in both countries; however, their purpose remains the same, and that is to remove from the executive branch the ability to call elections, and to have elections occur on a predetermined schedule

Jurisdiction	Year adopted	Elections post-adoption	Elections on fixed date
Canada	2007	3	1
Alberta	2011	2	1
British Columbia	2001	4	4
Manitoba	2008	2	2
New Brunswick	2007	2	2
Newfoundland and Labrador	2004	3	2
Northwest Territories	2007	3	3
Nova Scotia	Election dates are not fixed		
Nunavut	2012	2	2
Ontario	2005	3	2
Prince Edward Island	2008	2	1
Quebec	2013	1	0
Saskatchewan	2009	2	2
Yukon	Election dates are not fixed		

As FDEs became the norm across Canada in the years after 2001, it is interesting to note the actors who sought to implement such legislation. Based on an examination of the timing of FDE implementation across the country, it appears that such legislation has been proposed by relatively new ministries that succeeded governments of two terms or more, except for FDE legislation introduced by the three-term New Democratic government in Manitoba and the former Progressive Conservative regime in Alberta, which adopted FDEs in their fortieth year in power (Alcantara and Roy, 2014: 260). In the other provinces, FDEs were introduced within two years of a change in government. Table 1 shows the year in which FDE legislation was adopted in each jurisdiction, as well as the number of general elections held after the adoption of FDE legislation, and the number of elections that actually occurred on their fixed dates.

Canadians' first experience with FDEs, in British Columbia, was initiated by a new government that had been particularly sensitive to matters tied to the democratic deficit. The British Columbia Liberal party formed government after winning the 2001 general election with 57.6 per cent of the popular vote, which landed them a whopping and extremely disproportionate 97.5 per cent of the seats in the legislature (British Columbia, 2002: 37). That same party lost the 1996 general election to the BC New Democratic party, which formed a majority government despite losing the popular vote by nearly 3 per cent (*Ibid.*: 21). In response to what had been a highly unpopular New Democratic administration, the newly elected BC Liberal ministry put forth legislation to have election dates be set according to a schedule, in an effort to eliminate the manipulation of election timing by the executive branch. This would also dissuade any future government from exhausting the constitutional term limit of five years to avoid calling an election, as the defeated New Democratic regime had done ostensibly to salvage popular support.

To summarize, FDEs are thought to be an effective policy option in response to a perceived democratic deficit in our political institutions. Put another way, the democratic deficit is a set of problems that the public wants addressed, and FDEs are proposed as a simple solution for one systemic ailment. By curtailing the option of variable election dates, it is argued, we remove the

ability for governments to act in their “electoral self-interest” (Dickson, et al., 2013: 102). As well, FDEs could eliminate advantages that incumbents can exploit by calling elections at times of their own choosing, which include taking credit for positive economic news and trends—or, conversely, avoiding blame for negative economic news—as well as exercising discipline over caucus and cabinet, and taking advantage of political situations like high approval ratings or opposition disarray (Roy and Alcantara, 2012: 775-76). Furthermore, FDEs may act as a counterweight to the increasing concentration of power in the hands of political executives (Desserud, 2007: 207; Alcantara and Roy, 2014: 261). When confronted by a problem as opaque and shapeless as the democratic deficit, FDEs thus appear to legislators as a tangible and simple policy action that will indicate to voters that progress is being made in addressing a systemic weakness in our democratic institutions.

Fixed-Date Election Legislation: What Does the Law Say?

In a matter of twelve years, the federal government and the vast majority of provincial and territorial governments had adopted legislation prescribing FDEs (Alcantara and Roy, 2014: 256). We explore in this section the development of Canadian FDE laws and the important implications for FDEs in the Canadian context, which owe to their nature and relation to constitutional conventions and prerogatives. There are significant similarities among the various jurisdictions' FDE legislation, although there are some remarkable differences as well. As we conclude our analysis of the legislation, we discuss briefly the trends and possibilities for FDE legislation in Canada.

To begin, it must be noted that Canadian FDEs are not entrenched; that is, election dates are subject to change for a number of reasons. Without exception, all FDE legislation incorporates a section preceding the fixed election schedule which stipulates that governors general, lieutenant governors, and territorial commissioners are not prevented from dissolving the legislature by following through on the Royal Prerogative. In effect, this leaves intact the previous convention of prime ministers, and likewise the provincial premiers, advising the governor general from time to time to dissolve Parliament and to call an election (Hawkins, 2010: 130). FDE legislation expressly states that the viceroy is not bound to follow it nor, as per convention, are they bound to follow the advice of prime ministers on parliamentary dissolution, meaning viceregal representatives retain “a certain discretion” on constitutional matters which includes the timing of elections (McWhinney, 2008: 16). Indeed, the FDE legislation has been “carefully crafted to explicitly preserve the discretion” of the viceroy to dissolve the legislature (Dodek, 2010: 232). As we see, due to the construction of the associated legislation, FDEs are a misnomer, acting effectively as a suggested schedule for the timing of general elections without impeding on the prerogatives of the Crown.

Jurisdiction	Scheduling (Relative to Previous General Election)
Canada	3 rd Monday in October in 4 th calendar year after last general election
Alberta	Between March 1 and May 31 in 4 th calendar year
British Columbia	3 rd Saturday in October in 4 th calendar year
Manitoba	1 st Tuesday in October in 4 th calendar year
New Brunswick	3 rd Monday in October in 4 th calendar year
Newfoundland and Labrador	2 nd Tuesday in October in 4 th calendar year
Northwest Territories	1 st Monday in October in 4 th calendar year
Nova Scotia	Writ issued pursuant to an order of the Governor-in-Council
Nunavut	Last Monday in October in 4 th calendar year
Ontario	1 st Thursday in June in 4 th calendar year
Prince Edward Island	1 st Monday in October in 4 th calendar year
Quebec	Last Monday in September in 4 th calendar year
Saskatchewan	1 st Monday in November in 4 th calendar year
Yukon	Writ issued pursuant to an order of the territorial commissioner

Unlike the familiar regularity of fixed election dates in the United States, there is no uniformity in the scheduling of elections in Canada. The tendency has been for election dates to fall some time during the spring or fall seasons, but even then, there is no consensus as to the best time of the year during which to hold an election. In the earliest instances, the British Columbia and Newfoundland and Labrador governments offered a date that was four years following the previous general election in their proposed FDE legislation, which is why we had May general elections on the west coast and elections in October down east. Most jurisdictions have selected a date in October for their FDEs, whereas Alberta (between March 1 and May 31), Saskatchewan (November), and Ontario (June) have opted for different times. Table 2 provides the schedule for federal, provincial, and territorial elections, and it should be noted that the timing as published here is subject to change pursuant to new legislation.

Moreover, there is no discernible pattern for the year of a general election. Again, we look to the familiar American system and the major presidential election contest which occurs in years, like 2016, which are divisible by four, although some state and congressional elections do occur outside presidential election years. As such, it is no surprise that there are provincial elections scheduled to occur in each year between now and 2021, and that none of these electoral events have been intentionally scheduled to coincide with one another. In sum, the various pieces of FDE legislation, while responding to similar issues and popular demands, have neither been constructed to synchronize the Canadian electoral calendar nor to make the electoral process more efficient by conducting simultaneous elections across multiple jurisdictions.

There are some key differences among the various pieces of FDE legislation, though most are not particularly substantial. In Alberta, the term fixed-date election is a bit off the mark; instead, there is a period of time stipulated in the Alberta's *Election Act* during which a vote may be called, which is the three month period from March through May in the fourth calendar year following the previous general election. The specific sections of legislation that deal with setting the date of general elections are noted in Table 3. Legislation in Manitoba, New Brunswick, and the

Northwest Territories all have allowances for adjusting the date of their general elections to avoid conflicting with a federal election, which permit altering the provincial fixed election date by one to six months from its original date. As well, Quebec's law on FDEs permits the Chief Electoral Officer to alter the date of the election by a week if the fixed date is unsuitable, without providing any guidance as to what that may mean.

TABLE 3	
SCHEDULE OF ELECTIONS IN LEGISLATION ACROSS CANADA	
Jurisdiction	Legislation
Canada	<i>Canada Elections Act</i> , SC 2000, c 9, s 56.1(2)
Alberta	<i>Election Act</i> , RSA 2000, c E-1, s 38.1(2)
British Columbia	<i>Constitution Act</i> , RSBC 1996, c 66, s 23(2)
Manitoba	<i>The Elections Act</i> , CCSM, c E30, s 49.1(2)(b)
New Brunswick	<i>Legislative Assembly Act</i> , SNB 2014, c 116, s 3(4)(b)
Newfoundland and Labrador	<i>House of Assembly Act</i> , RSNL 1990, c H-10, s 3(2)
Northwest Territories	<i>Elections and Plebiscites Act</i> , SNWT 2006, c 15, s 39(5)
Nova Scotia	<i>Elections Act</i> , SNS 2011, c 5, s 29
Nunavut	<i>Nunavut Elections Act</i> , SNU 2002, c 17, s 36(3.1)
Ontario	<i>Election Act</i> , RSO 1990, c E.6, s 9(2)
Prince Edward Island	<i>Election Act</i> , RSPEI 1988, c E-1.1, s 4.1(2)(b)
Quebec	<i>Election Act</i> , CQLR, c E-3.3, s 129
Saskatchewan	<i>The Legislative Assembly Act</i> , SS 2007, c L-11.3, s 8.1(2)
Yukon	<i>Elections Act</i> , RSY 2002, c 63, s 50

In Ontario, the FDE legislation allows for some fluctuation in the date of the election in the event of a conflict with religious or cultural observances. As per Section 9.1(6) of the Ontario *Election Act*, the Chief Electoral Officer (CEO) has the ability to choose an alternate polling day if they are of the opinion that the fixed date is unsuitable due to an overlap with a significant religious or cultural holiday (Hollins, 2007: 14). A similar clause exists in New Brunswick, although the ability to act in that jurisdiction rests with the premier. Prior to the 2007 Ontario provincial election, the CEO conducted an outreach initiative, contacting 278 organizations in 56 cultural communities from ten major religions, a third of whom responded (Hollins, 2007: 15). These community organizations were asked questions in an effort to determine if there were “dates of cultural or religious significance” on and around the fixed election date and if such observances would obstruct their members' ability to vote (*Ibid.*). Though such an outreach program was not required of the CEO, it gave assurances to religious communities that their practices were being respected. Additionally, it provided an alternative perspective to election officials on the conduct and timing of FDEs, and it established a proactive template on how to proceed with an electoral event with respect to the religious and cultural observances clause of the *Election Act*.

A unique and puzzling section in Newfoundland and Labrador's FDE legislation concerns the calling of elections upon a change of executive leadership. In essence, the 2004 FDE legislation introduced by the Progressive Conservative government of the day had amended Section 3.1 of the *House of Assembly Act* to say that upon the resignation of a premier as leader of the governing political party, their successor, once sworn into office, shall within twelve months request a

dissolution of the legislature so that a general election may be held. One reason for the addition of this section to Newfoundland and Labrador's FDE legislation was to address another problem linked to the democratic deficit. Danny Williams, whose government introduced FDE legislation, sought to address the problem of "calling elections just three years into a majority government mandate" (Marland, 2007: 78), a tactic exploited and an irritant exacerbated by his predecessors.

One may also see obvious inspiration for this section in Williams' own experience as opposition leader to a premier, Roger Grimes, who had served two-and-a-half years of a mandate to which he himself had not been elected. Ultimately, it is debatable whether or not this section of the Newfoundland and Labrador FDE legislation is truly effective. Williams' successor, Kathy Dunderdale, took office about ten months before a fixed election date. Dunderdale's eventual successor, Paul Davis, deferred a provincial general election by nearly two months, a move which avoided a conflict with a scheduled federal election but which also pushed the election date well past the twelfth month of Davis' premiership. What we do know is that, up until now, no other jurisdiction has sought to adopt a similar amendment pertaining to unelected first ministers in their electoral legislation.

A final word on the state of FDE legislation in Canada, and here we are looking at the few jurisdictions that have not adopted FDEs. In 2014, Nunavut became the most recent jurisdiction to adopt FDEs, with their elections being scheduled for the third Monday in October in the fourth calendar year following the previous general election (Nunatsiaq Online, 2014). There are signs that the newly elected government in Yukon may move to adopt FDE legislation in the near future (Forrest, 2016). Nova Scotians, however, have not joined their counterparts in switching from flexible to fixed dates, and there is scant evidence to explain the reasoning behind this. In Nova Scotia, the discussion around FDEs is more of a murmur, having never really caught the wider public's attention. There were suggestions upon Stephen McNeil's ascension to the premiership that legislation would be introduced to fix the date of the next provincial general election (CBC News, 2013). At the time, Nova Scotia's CEO, Richard Temporale, suggested FDEs would make the conduct of elections more cost effective and efficient, and would allow for more preparation as candidates would likely be nominated well in advance of the campaign period (Lightstone, 2014). However, McNeil ultimately balked at instituting FDEs, claiming that evidence from other provinces on their utility is disconcerting and that such initiatives are a waste of valuable time, adding that his government is "not in the business of creating legislation that people don't adhere to or wouldn't be adhered to in this province" (CBC News, 2015). One study explains that the impetus to adopt FDE legislation in Nova Scotia is not as strong as elsewhere because the current and recent governments did not succeed multi-term governments (Alcantara and Roy, 2014: 269). Indeed, the three major political parties have each won a recent general election. Regardless, even as the trend nationally is firmly in favour of FDEs, they are likely to remain a foreign concept in Nova Scotia politics for the foreseeable future.

Why Fixed Date Elections are a Positive Development for Canadian Democracy

Considering the pace at which FDEs were adopted and became the norm across the country, one assumes that the pro-FDE arguments must be incredibly convincing. FDEs are one item among a suite of reforms aimed at improving the state of democracy and lessening public cynicism with regard to political institutions. There are plenty of advocates among academics and politicians, each with their own reason to support the adoption of FDEs. In this section, we will explore the

arguments of the affirmative in an effort to determine the essential justification for this 'new normal' in Canadian politics.

The initial and obvious argument in favour of FDEs is that it takes away the privilege of the first minister to request a legislative dissolution in order to call an election at a time of their choosing. Prior to the adoption of FDE legislation, a government may have “time[d] their election calls to coincide with improvements in economic performance, favourable opinion polls, the completion of capital projects, the disarray of opposition parties,” or one of innumerable other reasons (Desserud, 2007: 204). Governments are especially keen to call elections “when unemployment rates are low and [...] to avoid impending downturns” in order to maximize their chances at re-election (Dickson, et al., 2013: 114). In short, governments who have the flexibility to call an election at any time may do so in order to realize short term electoral gains, but this also has the effect of fomenting cynicism among the electorate. FDEs, therefore, are seen as one means of “reducing [...] cynicism towards elections and election campaigns” (Milner, 2005: 22).

Election timing is an important aspect of all democratic systems, but this is an especially strong consideration for legislators in systems where election dates remain unfixed. Calling an election at the right moment could portend gains at the ballot box. For a majority government, the decision to launch an election campaign depends on the size of the present majority and on the likelihood that said majority could be increased (Balke, 1990: 214). This is especially true for governments formed by ideological parties who require large majorities in order to successfully proceed with the adoption of their legislative agenda (*Ibid.*: 213). Launching into an election at a government's preferred time is considered an opportunity for the party in office to consolidate their support and maintain their grip on power. With the introduction of FDEs, the advantages and privilege of election scheduling are effectively squelched.

Another objective of FDE legislation is that it creates fixed terms in power. Typically, Canadian elections occur on a quadrennial basis. In New Brunswick, for instance, general elections have occurred on average once every 48.3 months since 1785, and governments rarely go far beyond a four-year term in office (New Brunswick, 2004: 56; see also Dodek, 2010: 225). The New Brunswick example is indicative of the generally accepted Canadian norm of four-year terms for majority governments (see Ferris and Voia, 2009: 881), a trend similar to our American neighbours but one that is not necessarily the norm in other Westminster-style democracies. In Australia and New Zealand, for example, governments are elected for terms of three years (Milner, 2005: 29, 37), whereas in the United Kingdom, the recent trend has been towards longer terms of five years' duration (Levy, 2010). Why the pattern in Canada tends toward quadrennial elections is not clear in the literature, but what we can determine is that FDEs have effectively ensured the length of Canadian officeholders' terms at four years.

Fixing the date of elections could empower backbenchers relative to the first minister and cabinet. With flexible election dates, first ministers can threaten their caucus with an election call in an attempt to quell rebelliousness and insubordination (Desserud, 2007: 208). This erodes the ability of ordinary members to voice concerns and criticisms about the government's agenda without the fear of disciplinary consequences, which could range from a reduction in certain privileges up to expulsion from caucus. FDEs may subject a first minister to a “death by a thousand cuts” if flexibility on the timing of the election call is eliminated (McWhinney, 2008: 16); ideally, however, the adoption of fixed dates would compel the first minister to be more attentive to their backbenchers' “opinions and views, and [to] be more cognizant of their own need for the support of the legislative assembly” (Desserud, 2007: 208). FDEs, therefore, are seen as a means of making the executive branch of government more responsive and responsible to legislators writ large.

Alternatively, supporters of FDEs will point out that the certainty of an election date will lead to increases in voter participation. Milner suggests that having a fixed election date will allow for better “planning and staging of public events, seminars, adult education activities, and public information campaigns” which will lead to increased interest and engagement in the electoral process (2005: 23). It is also suggested that knowing when an election will occur will aid in countering the significant declines in turnout among younger voters and will provide a boost to the teaching of civics (*Ibid.*: 24). Another argument that suggests a rise in turnout rates resulting from the implementation of FDEs is that which concerns the legislator's responsiveness and engagement with constituents. Knowing when an election will be held, the argument goes, would make legislators less beholden to party leaders and more responsible to constituents, leading to an increase in “citizen confidence and participation in the political process” as fewer voters will fall under the cynical impression that their representatives “will have little or no voice once elected” (as cited in Desserud, 2007: 208). Although claims have been made suggesting rising turnout resulting from FDEs, a good number of them have come across as “Pollyanna-ish” (Dodek, 2010: 229) as turnout increases in fixed-date elections have largely failed to materialize.

A more convincing argument is the claim that FDEs lead to better planning and increased efficiency. Civil servants would benefit from the certainty and stability of knowing with whom they will be working, and would have a clear idea as to the length of a government's term in office, which would allow bureaucrats “to better plan for the implementation of government policy” (Dodek, 2010: 228). Legislators would be able to plan their agendas and to schedule the “use of limited resources,” such as time, money, and space, to more efficiently conduct their work (Milner, 2005: 21). Additionally, the planning and administration of elections would be made easier due to the forewarning of a fixed election date. The preparation required to put on a general election is immense. Acquiring staff, enumerating voters, and producing ballots, documents, and supplies are some of the laborious, time-consuming tasks that election officials face when readying for an election, and a fixed date would allow for more effective and efficient planning on the part of election agencies (Desserud, 2007: 209).

One final argument favouring the adoption of FDEs—and likely the most powerful contention—is that they are widely popular. As far back as the year 2000, polling indicated that more than half of Canadians were in favour of fixing the date of general elections (as cited in Desserud, 2007: 203). More to the point, it has been demonstrably shown that partisans from across the political spectrum are supporters of FDEs, as evidenced by the governments of various ideological backgrounds who have adopted FDE legislation (Alcantara and Roy, 2014: 259-60). Furthermore, initial evidence emanating from an empirical study on the timing of elections and voter sentiment suggests that there is no advantage realized by governing parties in jurisdictions with FDEs, which adds credence to the claim that FDEs are popular because they limit the electoral advantages of those in power (Roy and Alcantara, 2012: 779). In sum, FDEs are a popular, easy-to-grasp reform of our electoral system that is perceived to limit the power of the executive branch in determining the timing of electoral events for partisan advantage, while at the same time permitting ordinary legislators and voters a greater say in democratic and legislative processes.

The Case Against Fixed-Date Elections

By and large, the primary argument against FDEs is the promotion of the status quo: if the system isn't completely broken, why fix it? Other assertions, however, delve deeper into the matter and look at FDEs and how they interact with the fundamental foundations of our parliamentary

system. Here, we evaluate the claims of FDE opponents in an effort to understand what they find repulsive about FDEs and what aspects they seek to uphold of the former convention of flexible election dates.

An issue with FDEs is not so much that they attempt to set in advance the date for a future general election as much as it is the effect such legislation has in limiting lawmakers' terms in office. As it stands, there exists already a constitutional term limit of five years. Furthermore, FDE legislation is meant to prevent governments from going to the polls too early, but effectively, the legislation shortens the maximum length of time that elected officials may retain their office (Desserud, 2007: 209). FDE legislation, if we recall correctly, is meant to prevent snap election calls and abbreviated terms for majority governments; however, in practice, the legislation has had the unintended consequence of preventing governments from remaining in power for the full five years that are constitutionally permissible.

Another practical implication of FDEs is their effect on governance, in particular when governance is obstructed due to lack of legislative support. In the event that a government failed to secure a majority at an election, or in the event of a coalition government's collapse, or in the event that a government loses the support of some caucus members, a system of 'pure' fixed election dates would hinder the governing process and create institutional paralysis. In the rare event that an alternative majority could be cobbled together, the governance of the jurisdiction could continue unabated; on the contrary, the likelier scenario is one of dysfunction, where "[l]egislation would not be passed, and [those in power] would administer rather than govern" (Desserud, 2007: 210). Such a situation, though unlikely in the Canadian context, illustrates an important practical consideration on the effectiveness of governments lacking majority support who are also constrained by a fixed election date.

Along those same lines, the concept of confidence in Westminster-style parliamentary democracies is essential to one's understanding of the maintenance of authority and power. In short, commanding the confidence of the legislature is equated with majority support, even if said support comes from opposition legislators. The privilege of governing is acquired only if one commands the confidence of one's peers in the House. Consequently, ordinary members have a check on the power of the executive in their ability to offer or withdraw their confidence to those in the governing party. But what check do those in government have against ordinary members? The ability of the first minister to request a snap election serves as an executive check against the power of the legislature to withdraw its confidence in the government. In the event of a loss of support, the advent of parliamentary gridlock, or the exhaustion of a governing agenda, a new mandate may be sought from the electorate by requesting a dissolution from the viceroy (McWhinney, 2008: 16). This is the normal operating procedure in places where flexible election dates are instituted.

Problems arise when FDEs are added to the mix. Explicit votes of non-confidence aside, a government with a diminished ability to carry out the duties of office would effectively be hamstrung and unable to extricate itself from the legislative morass. Without an ability to request a dissolution, a government would be unable to quell caucus unrest or take advantage of opposition disarray with the threat of an election. Meanwhile, ordinary legislators retain their ability to keep the executive in check by offering or withholding confidence. In essence, if we look at the tension between the executive and legislative branches in terms of a duel, FDEs disarm the governing side while allowing ordinary legislators to retain theirs.

Notwithstanding the aforementioned opposing claims, there are two significant problems with FDE legislation. The first arises from the constitution. There is but one surefire way to ensure

that fixed election dates are respected and that legislative gridlock on one or several matters does not impede the governance of a jurisdiction, and this is done by amending the constitution. Of course, such a change would be akin to remodeling the Canadian parliamentary system into something resembling a watered-down version of the American congressional system (Desserud, 2005: 49; Desserud, 2007: 212). In effect, this would require disentangling the executive and legislative branches, a foreign concept in a Westminster-style parliamentary democracy. No longer would confidence be necessary to govern; by the same token, gone would be the ability to call elections at a time and for a reason of one's choosing. If not for the dark clouds of reality, such reforms might have seen the light of day. For that matter, the history of constitutional change in Canada is fraught with frustration and failure, ergo the institutional and systemic constitutional changes that would be required to entrench FDEs in our system are wildly implausible verging on wholly impossible.

The other—and arguably the biggest—problem with FDEs is the nature of their construction. Earlier, we reviewed FDE legislation at the federal, provincial and territorial levels and, in every case, the legislation clearly maintains the prerogative of the Crown to dissolve the legislature (Tremblay and Cauchon, 2010: 428). Further, the legislation leaves unchanged a first minister's ability to request a dissolution at any time for whatever reason (Hawkins, 2010: 130). More to the point, the viceroy is not obligated to heed legislation for they are “governed by constitutional conventions,” and in the instance of legislative dissolution for an election, the “most relevant constitutional convention is that the [viceroy] only dissolves parliament at the [first] minister's request” (Tremblay, 2009: 25). The plain fact also remains that the viceroy need not heed a first minister's request and may, at their discretion, decline the request for dissolution and seek others to form a government (McWhinney, 2008: 15). In short, constitutional conventions trump ordinary legislation, and as a result, the utility and integrity of FDE legislation is seriously called into question.

The royal prerogative and the design of the legislation combine to create an existential crisis for FDEs. In a nutshell, the entrenchment of FDEs is overwhelmed by constitutional obstacles, and ordinary legislation to establish FDEs simply does not work in an effective manner (Desserud, 2007: 216). The law regarding FDEs lacks “an effective means of enforcing a dissolution and election at the end of four years,” and in any case, ignoring the legislation would lead only to political consequences, if any (Stoltz, 2010: 19). Already, there are numerous examples of fixed election dates being ignored, usually by means of hastening an election call. The most notorious of these was the federal election of 2008, wherein prime minister Stephen Harper requested a dissolution due to a lack of opposition support for his minority government (Tremblay and Cauchon, 2010: 439). Despite a legal challenge arguing an early election was in contravention of federal FDE legislation, the Federal Court of Canada rejected it on the basis that there were “no constitutional convention[s] constraining the prime minister from advising an election before the October 2009 date prescribed in the statute” (Heard, 2010: 129; see also Hawkins, 2010). Moreover, the claim that the viceroy would be compelled to dissolve the House to allow for an election in October 2009 because that date is written into federal FDE law proved to be an absurdity (Dodek, 2009: 20). If anything, as Dodek suggests, the provision of an explicit date has sown more confusion than confidence in the nature of Canadian FDE legislation.

As with governing, there are times when longer or shorter terms in office are justifiable. Not all elections are called to take advantage of a political situation. There are times when a government is simply avoiding conflict with another electoral event, or perhaps a new party leader is seeking an electoral mandate after ascending to the leadership of a governing party. While it

may seem that flexible election dates provide an advantage the governing party, in practical terms, such flexibility allows the executive to respond to political challenges and externalities that could only be mollified by calling an election.

Discussion and Conclusion

Apart from an innate aversion to superfluousness, there are serious doubts as to the utility and justiciability of FDEs and the legislation that enacts them. On the face of it, FDEs appear to be a solution in search of a problem. Don Desserud points out that some proponents of fixed election dates actually seem to favour limits on the time between elections (2005: 49). The movement towards FDEs did not explicitly come about as a means of implementing term limits. Even so, there is already a constitutional limit in place on the length of time that a legislature may sit, which acts in effect as a maximum limit on a legislator's term in office. Term limits are another American import that could partially address the democratic deficit by curtailing a politician's ability to serve innumerable consecutive terms. The Canadian prime minister is not encumbered by the same chronological restrictions that confront an American president. More to the point, even if both leaders face a fixed election date, only the American faces an entrenched date over which they exercise no control. Canadian election dates therefore are not fixed, and are merely suggestions to which the first minister may or may not pay heed.

In other areas, the benefits of FDEs may be more of a mirage. The former Chief Electoral Officer of Ontario, John Hollins, does not believe that FDEs are “cheaper,” “easier,” or lead to “a better turnout” (2007: 16). Planning may be aided with the luxury of time, but in order for plans to be successful, they require solid execution, and it is in these areas that election officials can do better. Furthermore, turnout does not necessarily rise due to the implementation of a fixed election date, and Hollins points to municipal elections and elections in the United States as examples of FDEs with habitually paltry turnout rates (2007: 16; see also Dodek, 2010: 229-30). Voters may know ahead of time the exact date of an election, but that does not mean that they will bother to show up at the polls.

In spite of their deficiencies, there are amendments that could be proposed to strengthen the current set of FDE laws. Levy suggested that Canadian lawmakers look to their British counterparts for inspiration, noting that several amendments to Canadian FDE laws could be derived from proposed FDE legislation in the United Kingdom (2010: 17). The key changes include setting FDEs five years apart as opposed to the present convention of four years, requiring two-thirds of the House of Commons to vote in favour of early elections, and establishing a fourteen-day period, in the event that a government loses a vote of confidence, during which other parties and members may attempt to form a government (*Ibid.*). While such amendments may address certain shortcomings in legislation, they all come up short in addressing the fundamental flaws that afflict Canadian FDEs. So long as the Royal Prerogative remains a foundational aspect of Canadian parliamentary democracy, general elections in Canada will never truly be fixed. And so long as FDE legislation remains popular with the general public, it is unlikely to ever be repealed.

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