

Fixed Date Elections

BRYAN SCHWARTZ^{zt} & ANDREW BUCK^t

1. INTRODUCTION

For most people, Friday afternoon signals the end of a five day workweek. Computers are shut down for the weekend, voice mail is turned on, and office lights are shut off. Some workers even leave a little early to get a head start on traffic. But 20 April 2007 was not just any Friday in Manitoba's political circles--unbeknownst to just about everyone except Premier Gary Doer and his closest advisors. That was the day Mr. Doer called Manitoba's 39th general election, capitalizing on a longstanding rule that allows the governing party to unilaterally select an election date.

Incumbent political parties hold a massive tactical advantage over their opponents in jurisdictions that allow the government to set its own election date. Unfortunately, as history shows, that advantage is frequently employed in a less than altruistic manner. This has led several provinces and the federal government to remove the incumbent's power to arbitrarily set election dates. Questions about its constitutionality have been raised, but it is argued fixed date election legislation-which sets a maximum duration for Parliament, at the expiry of which an election will be held-is distinct from the sphere of power guaranteed to the Lieutenant Governor and Governor General. The law is constitutionally sound, and as a result Manitoba should move to adopt fixed date election legislation as a means of restoring a measure of fairness, transparency and improved governance to the electoral process.

II. TIME TO SANDBAG UNFIXED ELECTION DATES

Speculation about a Manitoba election had been rampant leading up to Friday, 20 April 2007. But, as in other jurisdictions with unfixed election dates, no one except the premier and his inner circle of advisors knew when the call would come. And so it came, just hours after Prime Minister Stephen Harper visited

Bryan Schwartz, Asper Professor of International Business and Trade Law, Faculty of Law, University of Manitoba.

Andrew Buck, B.A., LL.B. (2009).

Winnipeg to unveil a major good news funding announcement for the Canadian Human Rights Museum. The announcement was made in time to hit the airwaves on the 6 p.m. newscast, but neither the provincial Tories nor the Liberals had time to respond to the announcement.¹ This, combined with a "flurry of pre election advertising" had the desired effect-the NDP's lead in the polls quickly rose into the double-digit mark.³

The governing NDP further benefited from the timing of its announcement at both ends of the campaign. First, its election workers were primed to hit the pavement on Day One, while the PC and Liberal parties were left to call in their foot soldiers from what most had thought would be a routine spring weekend. Second, Manitoba election law allowed the premier to set the polling date on 22 May-the Tuesday after a long weekend.⁴ The Victoria Day long weekend is widely viewed by many Manitobans as the start of summer. Between opening up the cottage, enjoying the outdoors, and otherwise recreating, the public is generally not paying much attention to current events. There were several reasons for the eventual landslide NDP victory in the 2007 Manitoba general election,⁵ but the fortuitous timing made possible by unfixed election dates certainly didn't hurt the governing party's cause. As a subsequent editorial noted:

[T]he results also reflected the manipulation of the timing of the vote, crafted by Mr. Doer, who admitted that, among other considerations, he chose May 22 because the conditions for winning were right for his party. That is the vagary of the current system that leaves in the hands of the government the decision on when to call an election.⁶

Fortunately for the Doer government-but unfortunately for the electorate-abuse of the power to control the timing of the election and its attendant benefits has been commonplace in Canada. Witness, for example, the history of election calls during the Chretien and Martin federal Liberal era:

- Gilles Duceppe was elected leader of the then opposition Bloc Quebecois on 15 March 1997. Canadians went to the polls 2 June that year, despite a catastrophic flood in Manitoba.⁷

Mia Rabson, "Doer's timing as good as it gets" *Winnipeg Free Press* (22 April 2007) AS.

Dan Lett, "How the NDP talked its way to a third term" *Winnipeg Free Press* (17 June 2007) BS.

Ibid.

Elections Act, C.C.S.M. c. E30, s. 49(1) states that an election must be held on a Tuesday and the campaign must be between 32 and 43 days long.

The NDP elected 36 MLAs in Manitoba's 2007 general election, up one MLA from its total in the 2003 general election.

"Tum on the turnout," Editorial, *Winnipeg Free Press* (24 May 2007) A13.

Although, Mr. Chretien famously offered his assistance in the flood fighting efforts, tossing one sandbag for the assembled press and promptly leaving the scene: "Voting in Manitoba," Editorial, *Toronto Star* (6 May 1997) A20.

- Stockwell Day was elected leader of the then opposition Alliance Party on 8 July 2000. Canadians went to the polls 27 November that year, despite the fact the Liberal Party was only three, and, a half years into its mandate.
- Mr. Harper was elected leader of the then opposition Conservative Party of Canada on 20 March 2004. Canadians went to the polls 28 June that year.

In each of these examples, the governing Grits sought to benefit from the relative newness of opposition leaders.⁸ As the painful performance of Mr. Day in particular shows, the Liberal Party benefited from its ability to catch its opponents off guard with a politically motivated election call.

Incumbent governments frequently use their ability to unilaterally trigger an election for partisan motives. Scholars in both England and Canada acknowledge our Westminster system of parliament allows this. From English constitutional scholar Robert Blackburn:

[A]s everybody knows, a Prime Minister sets an election date at the time when he thinks he is most likely to win it. Conversely, he will avoid such times as he is likely to lose it. The anachronistic state of the law on electoral timing adversely affects the fairness of the election process as a whole.⁹

In Canada, meanwhile, the 2004 New Brunswick Commission on Legislative Democracy found that:

An election will be called at a certain time for a certain date because that is usually viewed as the most politically advantageous time to hold an election for the governing party. This has become a contributing factor to heightened voter cynicism about the democratic process.¹⁰

As the commission noted, the negative repercussions of the incumbent's abuse of the election date go beyond a pervading sense of unfairness. As other commentators have found, voters are becoming increasingly cynical about the electoral process in general.¹¹ This cynicism, unfortunately, is reflected in consistently low voter turnout at the provincial and federal levels. Reform is thus necessary to "fix Canada's unfixed elections".¹²

See the remarks of Michel Guimond, MP for Montmorency-Charlevoix-Haute-Cote -Nord, during Bill C-16's second reading: *House of Commons Debates*, Vol 141 No. 048 (19 September 2006) at 4175.

"Electoral Law and Administration" in Robert Blackburn & Raymond Plant eds., *Constitutional Reform: The Labour Government's Constitutional Reform Agenda* (London: Addison Wesley Longman Limited, 1999) 82 at 84.

¹⁰ New Brunswick, Commission on Legislative Democracy, *Final Report and Recommendations* (Fredericton: Commission on Legislative Democracy, 2004) at 57.

¹¹ Henry Milner, "Fixing Canada's Unfixed Election Date: A Political Season to Reduce the Democratic Deficit" (2005) 6:6 IRPP Policy Matters 3 at 22.

n *Ibid.* at 18.

III. FIXING THE PROBLEM

A. How it Works

The operation of fixed date election legislation is not complicated. Essentially, the law is drafted to ensure voters will head to the polls at a set date in the future. The incumbent's ability to arbitrarily drop the writ is removed, taking with it a massive-and unfair-advantage over its challengers. As will be further discussed below, fixed date election legislation does not lock Parliament into four years of futility in the event of a minority situation where the government has lost the confidence of the House. In these situations, the Lieutenant Governor or Governor General remains free to dissolve Parliament to resolve the issue.¹³ Instead, fixed date election legislation simply removes the incumbent's unfair, unilateral and arbitrary ability to terminate a session of Parliament because to do so is politically expedient. AS fixed date election proponent Henry Milner has noted:

It is unrealistic to expect every legislature to be always capable of replacing a government that has lost the support of its majority. To avoid a stalemate situation in which no government can be formed, parliamentary systems with fixed election dates, as a rule, make it possible, though seldom easy, to bring about early or premature elections.¹⁴

Understood this way, fixed date election legislation should be viewed as restricting the avenues by which an incumbent may call an election (but not eliminating the opportunity for a premature election altogether) and, more importantly, as simply setting a maximum shelf life for Parliament. The term for Parliament may vary depending on the jurisdiction's legislation, but whenever that term expires, an election will be held.

B. Examples from other Provinces

Three prmjnces and the federal government currently operate on a fixed date election system.¹⁵ These laws can serve as a model for similar Manitoba legislation. The B.C. legislation, passed in 2001, was the first of its kind in Canada.¹⁶ It amended the B.C. *Constitution Act* to set a 17 May 2005 election

¹³ *House of Commons Debates*, Vol. 141 No. 047 (18 September 2006) at 2876 (Hon. Rob Nicholson) [*House of Commons Debates* (18 September 2006)]. Speaking to the required flexibility of fixed date election legislation, Mr. Nicholson said that includes "the requirement that the government have the confidence of the House of Commons and we respect the Queen and the Governor General's constitutional power to dissolve Parliament."

¹⁴ *Supra* note 11 at 14.

¹⁵ Ontario, B.C. and Newfoundland have each passed fixed date election legislation.

¹⁶ Bill 7, *Constitution (Fixed Election Dates) Amendment Act*, 2nd Sess., J?h Leg., British Columbia, 2001.

date and provide for elections every four years after that date.¹⁷ Similar forms of this legislation were adopted in Ontario¹⁸ and Newfoundland.¹⁹ More recently, the Harper federal government passed its own fixed date election legislation.²⁰ The federal law was also modeled after B.C.'s legislation.²¹ It amends s. 56.1(1) of the *Canada Elections Act*²² to state that nothing related to fixed date elections will affect the power of the Governor General. This creates a degree of flexibility, allowing premature elections to be called in situations where the government has lost the confidence of the House or there is legislative deadlock. Section 56.1(2) of the *Canada Elections Act* states that, subject to s. 56.1(1), a federal election must be held on a set date at four year intervals.

Then Minister for Democratic Reform Rob Nicholson spoke to the bill during its second reading in the House on 18 September 2006. He said the bill would eliminate: "[A] situation where the prime minister is able to choose the date of the election, not based necessarily on the best interests of the country but on the best interests of his or her political party."²³ Nicholson said the bill should provide five major benefits: fairness, transparency, improved governance, higher voter turnout and the attraction of better candidates.²⁴ These comments are consistent with scholarly analysis of the benefits of fixed date election legislation,²⁵ and they are also in line with the Canadian public's general support for fairness through fixed date election legislation.²⁶ There is no compelling reason why Manitoba shouldn't join B.C., Ontario, Newfoundland and the federal government by passing a law that sets election dates.²⁷

¹⁷ R.S.B.C. 1997 c. 66, s. 23(2) states that "a general voting date must occur on May 17, 2005 and thereafter on the second Tuesday in May in the fourth calendar year following the general voting day for the most recently held general election."

¹⁸ Bill 214, *Election Statute Law Amendment Act*, pt Sess., 38th Leg., Ontario, 2005.

¹⁹ Bill 40, *An Act to Amend the House of Assembly Act and the Elections Act*, pt Sess., 45ch Leg., Newfoundland, 2004.

²⁰ Bill G 16, *An Act to amend the Canada Elections Act*, 1st Sess., 39th Parl., 2007.

²¹ *House of Commons Debates*, Vol. 141 No. 047 (19 September 2006) at 2922 (Randy Kamp). S.C. 2000, c. 9.

²³ *House of Commons Debates* (18 September 2006), *supra* note 13 at 2876. *Ibid.*

²⁵ See for example, Blackburn, *supra* note 9; New Brunswick, Commission on Legislative Democracy, *supra* note 10; and Milner, *supra* note 11.

²⁶ Several polls have indicated strong support for fixed date elections. A June 2006 Ipsos Reid national poll, for example, found "about dght of 10 respondents" agreed with fixed date election reform: Jack Aubry, "Elected Senate, fixed election dates have support of Canadians, poll suggests" *Ottawa Citizen* (12 June 2006).

²⁷ In fact, two private members' bills calling for set election dates have been recently brought forward in the Manitoba Legislature: Bill 219, *The Legislative Assembly Amendment Act (Set Date Elections)*, 5th Sess., 38th Leg., Manitoba, 2006 and Bill 205, *The Legislative Assembly*

IV. THE CoNSTITUTIONALITY QuESTION

Concerns have been raised about the constitutionality of fixed date election legislation. The nature of these concerns and an explanation of why they do not apply to fixed date election legislation will be discussed.

A. The Office of the Lieutenant Governor

Section 41(a) of the *Constitution Act, 1982*²⁸ requires unanimous consent from the Senate, House of Commons and each province's Legislative Assembly for any laws that infringe on the office of the Governor General and the Lieutenant Governor. This poses a problem for fixed date election legislation, some critics argue, because such a law removes the Queen's representative's Royal Prerogative to dissolve or prolong Parliament at any point.²⁹ While the prime minister or premier provides the necessary advice to the Queen's representative (which gives the government the power to set election dates in practice), constitutional convention holds that the Lieutenant Governor or Governor General is always free to unilaterally oppose this advice.³⁰ Thus, it is argued, any attempt to force the Queen's representative to either call an election or to prolong Parliament infringes on the "office of the Lieutenant Governor" or Governor General set out in the Constitution. This has been argued by Eugene Forsey:

Any provincial act attempting to set up such a system would certainly be held void, being ultra vires, since the B.N.A. Act expressly prohibits the legislature from touching 'the Office of the Lieutenant Governor.' Undoubtedly the legal power to dissolve the legislature at any moment is part of 'the Office of the Lieutenant Governor.' Hence, any attempt to curtail that power would be beyond the powers of the legislature, and could be validated only by an amendment to the British North America Act.³¹

Amendment Act (Set Date Elections), 1st Sess., 38th Leg., Manitoba, 2005. Both bills did not pass first reading.

²⁸ *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

²⁹ See, for example, the works of former Canadian senator and constitutional expert Eugene Forsey. Forsey adamantly opposed any attempts at fixed date election legislation on the grounds that it infringed on the office of the Queen's representative.

³⁰ Such an event is rare, but it has occurred in Canada. In 1925, Governor General Lord Byng refused then Prime Minister Mackenzie King's request for dissolution of Parliament and instead asked the opposing Tories, led by Arthur Meighen, to form government.

³¹ Eugene Forsey, "Extension of the Life of Legislatures"¹ (1960) 26 *Canadian Journal of Economics and Political Science* 604 at 609.

The *Constitution Act, 1982*³² and the *Constitution Act, 1867*³³ both set the maximum life of Parliament at five years. Fixed date election legislation in place across Canada, meanwhile, simply reduces the maximum duration of Parliament to four years. This reduction does not offend constitutional provisions, nor does it require unanimous amendment from the Senate, House of Commons and provincial Legislative Assemblies. This is because, as will be seen below, changes made by fixed date election legislation fall outside the office of the Lieutenant Governor.

B. Parliament's Maximum Shelf Life: Outside the Office

Considerable discussion has developed over the question of whether fixed date election legislation infringes on the Royal Prerogative held by the Queen's representative. Constitutional law expert Peter Hogg has given federal fixed date election legislation cautious approval, but his reasoning rests on somewhat creative grounds.³⁴ Essentially, the argument is this: legislation cannot remove the ability of the Queen's representative to dissolve Parliament, thus the Lieutenant Governor or Governor General always retains the ability to refuse the premier or prime minister's advice to call an election because the legislation expressly preserves the Royal Prerogative. Seen this way, the legislation should be viewed as mere persuasive language that forces the premier or prime minister to ask the Queen's representative for an election—as opposed to forcing the Queen's representative to grant one.

There is another simpler answer to the constitutionality question. As has been previously mentioned, the most significant change created by fixed date election legislation is the reduction of Parliament's maximum duration from five years to four years. Fixed date election legislation does not remove the ability of the Queen's representative to call a premature election because constitutional realities—such as the confidence convention—require this to be so.³⁵ As a result, the law could only be unconstitutional if it forces the Queen's representative to call an election in a manner that offends the Royal

³² *Canadian Charter of Rights and Freedoms*, s. 4(1), Part I of the *Constitution Act, 1982*, *supra* note 28.

³³ *Constitution Act, 1867* (U.K.), 30 & 31 Viet., c. 3, s. 50, reprinted in R.S.C. 1985, App. II, No.5.

³⁴ Peter W. Hogg, *Constitutional Law of Canada*, 5th ed. (Scarborough, Ont.: Thomson Carswell, 2005) at 281. In an explanatory footnote related to B.C. fixed date election legislation, Hogg states that: "In order to avoid the possible invalidating effect of s. 41(a) of the *Constitution Act, 1982* ... it might have been preferable to frame the statute as a directive to the Premier to provide the requisite advice for a dissolution in time for the fixed election dates. Perhaps the statute could be read in that fashion in order to avoid any constitutional doubt."¹¹

³⁵ *House of Commons Debates* (18 September 2006), *supra* note 13 at 2876 (Hon. Rob Nicholson).

Prerogative, as opposed to prohibiting the Queen's representative from dissolving the House. The only time a Lieutenant Governor or Governor general would be "forced" to call an election is at the date prescribed by legislation. This date is nothing more than the ceiling for that particular Parliament's life—the only difference between this law and the unfixed election status quo is that the ceiling has been lowered from five years to four years. A mandated election at the end of four years infringes on the office of the Lieutenant Governor or Governor General no more than the current five year requirement does.

The understanding of the scope of the office of the Queen's representative and whether the maximum shelf life of a Parliament falls within it is central to this argument. Constitutional documents that separate the powers of the Queen's representative and the maximum duration of Parliament support the position that it does not. So too does long held Parliamentary tradition.

1. *Constitutional documents*

In Canada, the *Constitution Act, 1867* and *Constitution Act, 1982* set out the maximum duration for any Parliament at sections 50 and 4(1), respectively. Section 4 of the *Constitution Act, 1982* falls under the "Democratic Rights" heading of the act, many sections removed from s. 41(a), the requirement for unanimous amendment for laws that touch on the "office of the Queen, the Governor General and the Lieutenant Governor of a province". If the maximum duration of Parliament was intended to fall within the scope of the office of the Queen's representative, it stands to reason the sections would be connected in some way. They are not, which suggests the two ideas are not related. The same reasoning also applies to the *Constitution Act, 1867*.³⁶

2. *Parliamentary tradition*

History also suggests the maximum shelf life of Parliament falls outside the office of the Queen's representative. The confusion about the relationship between the two may be due in part to the amorphous nature of the Royal Prerogative itself. AS A. V. Dicey has said,

³⁶ Section 50 of the *Constitution Act, 1867* is located under the "Legislative Power" heading of the document. Compare this to other sections of the same act that speak to the powers to be exercised by the Governor General and Lieutenant Governor: s. 55, which deals with the requirement for royal assent for bills, falls under the "Money Votes; Royal Assent" heading. Moreover, the explicit reference to the "Office of the Lieutenant Governor" noted by Forsey is sourced in the since repealed s. 92(1), which was located under the "Exclusive Powers of Provincial Legislatures" heading in a different section of the act. It stands to reason that the maximum term of Parliament and the delineation of the powers of the Queen's representative would be located in the same section if they were intended to be inclusive of each other.

No one really supposes that there is not a sphere, though a vaguely defined sphere, in which the personal will of the Queen has under the constitution very considerable influence. The strangeness of this state of things is ... that the rules or customs which regulate the personal action of the Crown are utterly vague and undefined.³⁷

To put it another way, the size of the office of the Queen's representative is difficult to define. It is part of the unwritten Constitution³⁸ and as a result makes up one of the many conventions that are woven together to form part of this country's Constitution. This tradition is inherited from our English roots, and in that country governments have changed the maximum duration of Parliament at several times. First, the *Triennial Act 1694* set the maximum duration of Parliament at three years.³⁹ This was followed by the *Septennial Act 1715*, which extended the maximum life of a single Parliament to seven years.⁴⁰ Finally, some 200 years later, the *Parliament Act 1911* set the limit at the current five year mark.⁴¹ Dicey's writings indicate the passing of the *Septennial Act 1715* raised eyebrows not for its change of Parliament's duration itself, but the fact that "an existing Parliament of its own authority prolonged its own existence."⁴²

Other authorities from Dicey's era likewise believed Parliament acted within its authority when it changed its maximum duration. William Anson quickly dismissed contrary arguments in his review of the 1911 act, stating that: "We may leave out the reduction of the life of Parliament to five years."⁴³ James Randall, writing in the *Columbia Law Review*, noted that: "The acts of 1716 and 1911, therefore, did not concern the position of the king with reference to parliament, but the position of parliament in relation to the people and also to parties".⁴⁴ Furthermore, the shortening of Parliament was no more than "a rather obvious concession" the government offered to offset reform that greatly reduced the power of the Lords.⁴⁵ These authorities indicate the prevailing belief at the time was that changes to the duration of Parliament were little more than an afterthought in British parliamentary history. They were certainly not viewed as derogating from the Queen's power.

³⁷ A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 10th ed. (London: MacMillan & Co. Ltd, 1965) at 462.

³⁸ *Ibid.*

³⁹ *Triennial Act 1694* (U.K.) 6 & 7 Will. & Mar. c. 2, s. 3.

⁴⁰ *Septennial Act 1715* (U.K.) 2 Geo I c. 38.

⁴¹ *Parliament Act 1911* (U.K.) 1 & 2 Geo. 5. c. 13, s. 7.

⁴² *Supra* note 37 at 46-47.

⁴³ William R. Anson, "The Parliament Act and the British Constitution" (1912) 12 Colum. L. Rev. 673 at 675.

⁴⁴ James G. Randall, "The Frequency of Duration of Parliaments" (1916) 10 American Political Science Review 654 at 682.

⁴⁵ *Ibid.* at 675.

Recent authorities likewise support Dicey's view. The House of Lords acknowledged the question of whether Parliament could reduce its duration with the *Parliament Act 1911* (as fixed date election legislation purports to do) borders on redundant: "No one doubts, of course, that it was open to Parliament to restrict its maximum duration to five years, which is the current rule".⁴⁶ Blackburn similarly states that: ((To justify the present method by arguing that dissolution has always been a prerogative act taking place outside either chamber is to rely upon practices and ideas from a bygone era."⁴⁷

Both the construction of our own Constitution and our parliamentary history indicate Parliament has the right to set limits on its own duration. Fixed date election legislation remains constitutional to the extent that it does this without denying the Lieutenant Governor or the Governor General the ability to dissolve the House before the set election date occurs.

C. Addressing the Critics

Forsey, a staunch critic of fixed date election legislation, has termed it "illegal; futile even if it were legal; and if it were both legal and effective, it would tie the Government's hands without performing any useful function whatsoever."⁴⁸ He supports his position by referring to *Re The Initiative and Referendum Act*, where the Judicial Committee of the Privy Council found Manitoba legislation that would have eliminated the need for the Lieutenant Governor's royal assent for bills in limited circumstances was *ultra vires* the province.⁴⁹ Forsey concludes his argument by stating that: "Exactly the same reasoning would apply to any attempt to take away or curtail the power to dissolve. The judgment is conclusive."⁵⁰ It is not disputed that the Queen's representative must retain the power to dissolve Parliament prematurely. The shortcoming of Forsey's argument, however, is that it pulls the authority to set the maximum duration of Parliament from government and gives it to the Queen's representative. As stated above, our constitution and parliamentary tradition do not support this view. Most fatal to Forsey's argument, however, is his own admission that legislatures *do* have the ability to set their own lifespan. As he notes, Manitoba's government passed legislation to extend the life of future legislatures from four to five years in 1908.⁵¹ If Manitoba's Legislature could extend its maximum

⁴⁶ *Jackson and others v. Her Majesty's Attorney General*, [2005] UKHL 56, [2006] 1 A.C. 262 at para. 108.

⁴⁷ Robert Blackburn, "The Dissolution of Parliament: The Crown Prerogatives (House of Commons Control) Bill 1988" (1989) 52 Mod. L. Rev. 837 at 839.

⁴⁸ *Supra* note 31 at 610.

⁴⁹ [1919] A.C. 935.

⁵⁰ *Supra* note 31 at 609.

⁵¹ *Ibid.* at 605, where Forsey refers to a number of similar provincial acts including Manitoba's: *An Act to amend "The Legislative Assembly Act"*, 7-8 Ed. VII, c. 25, s. L

duration without infringing on the office of the Lieutenant Governor, surely it can also reduce its duration without offending s. 41(a) of the *Constitution Act, 1982*.

Critics of fixed date election legislation also refer to *Ontario Public Service Employees' Union v. Ontario (Attorney General)*, where the Supreme Court of Canada held that government cannot remove the Lieutenant Governor's power to dissolve Parliament:

The fact that a province can validly give legislative effect to a prerequisite condition of responsible government does not necessarily mean it can do anything it pleases with the principle of responsible government itself. Thus, it is uncertain, to say the least, that a province could touch upon the power of the Lieutenant Governor to dissolve the legislature... without unconstitutionally touching his office itself.⁵²

Those who extend this case to support an attack on the constitutionality of fixed date election legislation fall into the same trap as Forsey. Again, such an attack takes the breadth of this statement outside its scope-OPSEU stands for the proposition that the Lieutenant Governor always retains the power to dissolve the House *before* the statutorily prescribed maximum duration has been exceeded. Fixed date election legislation respects his power. However, the Lieutenant Governor does not have the power to refuse to dissolve parliament when its maximum duration—as determined by the law—has been met. To do so would be to act outside the office of the Lieutenant Governor. Thus OPSEU like *Re The Initiative and Referendum Act* before it, simply cannot be used to support the proposition that fixed date election legislation infringes on the office of the Lieutenant Governor and is therefore unconstitutional.

V. CONCLUSION

Manitoba's unfixed election dates allow the incumbent to use its ability to set an election date for purely partisan purposes. History has shown repeated abuse of this power to the detriment of the electoral process, governance, and in the end, the electorate itself. Other provinces and the federal government have already established their own fixed date election legislation—it can be done, and it should be done. There are no compelling reasons why Manitoba's government should resist a move to set election dates.

⁵² [1987] 2 S.C.R. 2 at para. 101 [OPSEU].