

Harper's snap election call would violate 'principle' he fought for; It will take some twisted rhetoric to justify breaking with fixed election date

Mendes, Errol P . Edmonton Journal ; Edmonton, Alta. [Edmonton, Alta]29 Aug 2008: A.16.

[ProQuest document link](#)

ABSTRACT (ABSTRACT)

Many of the powers of the prime minister and the Governor General are governed not by the written Constitution, but by constitutional conventions, including who has the right to dissolve Parliament and call for elections. Constitutional convention gives the prime minister only the right to advise the Governor General to call for dissolution of Parliament and thereby trigger an election. The Governor General has an uncontested residual power to deny a prime minister's request for dissolution.

Historical precedent demonstrates that the use of the conventional residual power by the Governor General contrary to the advice of the prime minister has the potential to cause political controversy and create trouble for the Crown in Canada. In the 1926 King-Byng affair, governor general Lord Byng refused William Lyon Mackenzie King's request to dissolve Parliament after losing a confidence vote, and called on the Conservative Opposition leader, Arthur Meighen, to form the government. When Meighen could not gain the confidence of the House, Lord Byng granted dissolution of Parliament and Mackenzie King won a majority government, in part by campaigning against the decision of Lord Byng. This precedent, while not a constitutional convention, would present a serious political hurdle for a Governor General to refuse to grant the request of a prime minister for dissolution, no matter how contrived.

ABSTRACT

Ignoring the fact that most of his agenda has passed through Parliament and become law, Harper and other Conservatives point to the dysfunctional nature of parliamentary committees such as the one examining whether the advertising expenses practices of the Conservatives breached the Elections Act.

FULL TEXT

It now seems almost certain that Stephen Harper will visit the Governor General just after Labour Day to seek an early election. This is despite the fixed election date of October 2009, which was established by a law that his own government was eager to pass as a demonstration of political fairness, accountability and transparency. It was also a key Reform party core belief and part of the Conservatives' 2006 election platform.

He will claim the right to do so on two grounds. First, he will claim that he is legally able to do so despite the law he championed. This is because he will claim the law, which is a minor amendment to the Canada Elections Act, still gives the Governor General the right to dissolve Parliament on the advice of the prime minister. **Some experts claim that the prime minister would only be bound by a constitutional amendment that entrenches a fixed date for elections. The experts could well be wrong.**

Many of the powers of the prime minister and the Governor General are governed not by the written Constitution,

but by constitutional conventions, including who has the right to dissolve Parliament and call for elections. Constitutional convention gives the prime minister only the right to advise the Governor General to call for dissolution of Parliament and thereby trigger an election. The Governor General has an uncontested residual power to deny a prime minister's request for dissolution.

Constitutional conventions can be both entrenched in and overridden by statute law. That is precisely what the Conservatives did when they decided to constrain the conventional power of the prime minister to seek dissolution whenever he smelled political advantage to do so.

However, the fixed election law does not constrain the residual power of the Governor General, as it expressly stipulates that "Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion."

Historical precedent demonstrates that the use of the conventional residual power by the Governor General contrary to the advice of the prime minister has the potential to cause political controversy and create trouble for the Crown in Canada. In the 1926 King-Byng affair, governor general Lord Byng refused William Lyon Mackenzie King's request to dissolve Parliament after losing a confidence vote, and called on the Conservative Opposition leader, Arthur Meighen, to form the government. When Meighen could not gain the confidence of the House, Lord Byng granted dissolution of Parliament and Mackenzie King won a majority government, in part by campaigning against the decision of Lord Byng. This precedent, while not a constitutional convention, would present a serious political hurdle for a Governor General to refuse to grant the request of a prime minister for dissolution, no matter how contrived.

Even if the fixed elections law does not constrain the Governor General's discretion to grant dissolution of Parliament, one could argue that the law constrains the prime minister's power to ask for one until October 2009.

Hiding under the political constraints of the Governor General's residual power is nevertheless a violation of a statute. Some aggrieved citizen may even consider seeking court action to stop this legally dubious move.

The imminent violation of the fixed elections law is even more distasteful when one considers the second reason for Harper's plan to ignore his own law. He claims that he may seek the dissolution because Parliament is dysfunctional and will continue to be so with the next session to start soon after Labour Day.

Ignoring the fact that most of his agenda has passed through Parliament and become law, Harper and other Conservatives point to the dysfunctional nature of parliamentary committees such as the one examining whether the advertising expenses practices of the Conservatives breached the Elections Act. The parliamentary channel's coverage of the proceedings has revealed that it was primarily the disruptive antics of the Conservative members on the committee and the failure of Conservative witnesses to appear before the committee that was the cause of the dysfunction of this committee. The secret, 200-page Conservative guidebook to disrupt and manipulate parliamentary committees – including chairs storming out of meetings – is proof that it is the Conservatives who are orchestrating the dysfunction in Parliament and then blaming it on the opposition parties.

It is as if this Conservative government is convinced that opposition parties have no right to object and oppose policies and practices that they may find repugnant.

There is also the damning logic of Harper's own admission that any election will result in another minority government. So why call it now if that is the case? To continue the alleged dysfunctional Parliament with a new minority government at the cost of almost \$200 million to the Canadian taxpayer? Or is it to put off more scrutiny on the alleged wrongdoings of the Conservatives that fly in the face of their promise of transparency, honesty and accountability?

If the prime minister does decide to ignore the fixed election date and ask for an early dissolution of Parliament, it would be akin to a person who has blown up his own house asking the rest of us to build him a new one. If not the rule of law, a most basic sense of political morality should make the prime minister think twice about breaking his own law.

Errol P. Mendes is a professor of international, constitutional and human rights law at the University of Ottawa and editor-in-chief of the National Journal of Constitutional Law

DETAILS

Subject:	Prime ministers; Parliamentary committees; Governor General-Canada; Canada Elections Act; State elections; Political conventions; Political advertising; Legislation; Constitutional amendments; Committees
Publication title:	Edmonton Journal; Edmonton, Alta.
First page:	A.16
Publication year:	2008
Publication date:	Aug 29, 2008
Section:	Opinion
Publisher:	Infomart, a division of Postmedia Network Inc.
Place of publication:	Edmonton, Alta.
Country of publication:	Canada, Edmonton, Alta.
Publication subject:	Business And Economics--Banking And Finance
Source type:	Newspapers
Language of publication:	English
Document type:	Opinion
ProQuest document ID:	250568424
Document URL:	http://proxy.library.carleton.ca/login?url=https://search.proquest.com/docview/250568424?accountid=9894
Copyright:	Copyright Southam Publications Inc. Aug 29, 2008
Last updated:	2017-11-07
Database:	Canadian Newsstream

LINKS

[Linking Service](#)

Database copyright © 2018 ProQuest LLC. All rights reserved.

[Terms and Conditions](#) [Contact ProQuest](#)