

# The Unravelling of Fixed Election Dates

NOVA SCOTIA IS POISED to become the first province to repeal its fixed-date election law, even as it was the last to enact one of the futile and redundant laws on Nov. 5, 2021.

Despite numerous examples before 2021 in which both Prime Ministers and Premiers called snap elections in defiance of scheduled election dates, Nova Scotia's Progressive Conservative leader, Tim Houston, introduced the legislation shortly after becoming Premier.

Worse still, Houston decided to set fixed election dates for the third Tuesday every fourth July starting in 2025 — an absurdity which none of the other provinces or territories had ever attempted. The others at least had the decency to try to schedule elections in late spring and early fall instead of the middle of summer.

Mr. Houston found even his own pending election, scheduled for July 15, 2025 too absurd to respect. He decided instead to advise the Lieutenant Governor on Oct. 27, 2024 to dissolve the legislature for a snap election seven months early. His gambit paid off. The PC's won 43 out of 55 seats in the election held on Nov. 26 and 52.49% of the popular vote, compared to 31 seats on 38.55% last time, Aug. 17, 2021.

I predicted last November that Houston would introduce legislation to shift the schedule of the next election. But he did something even better: on Feb. 18 he tabled a bill to repeal fixed elections outright.

The omnibus Bill 1, *An Act Respecting Government Organization and Administration*, quietly buried the provision in one line in section 11 and says simply: "Section 29A of Chapter 5 of the Acts of 2011, the Elections Act, is repealed." Houston's ministry commands the support of an overwhelming majority of the House of Assembly, which is therefore expected to pass the bill in the current sitting.

Section 4(1) of the *Constitution Act, 1982* already sets the maximum life of a House of Commons and legislative assembly at five years, which means that Parliament and the legislatures can decrease their maximum lives through normal statute — as the fixed-date elections laws have done — but also means that that only a constitutional

amendment (under the General Amending Procedure, in this case) could increase their maximum lives beyond five years. Therefore, repealing a fixed-date elections law simply allows section 4(1) of the *Constitution Act, 1982* to reassert itself as the baseline of federal and provincial law; Nova Scotia would have to hold its next provincial general election by Nov. 26, 2029.

These futile laws had to preserve the constitutionally entrenched authority of the

Governor General and Lieutenant Governors to dissolve parliament and the legislatures on ministerial advice, or else they would have run afoul of section 41(a) of the *Constitution Act, 1982*, which protects the authorities of the Crown. Consequently, the Prime Minister or Premier can still advise and obtain early dissolutions at will, in either a minority or a majority parliament, without first having lost the confidence of the House of Commons or assembly. And precisely this scenario has happened fifteen times between Sep. 2008 and Jan. 2025, eight times under minority legislatures and seven under majority legislatures.

Fixed election dates were always a bad fit in our parliamentary system. All the other provinces and Ottawa should follow Nova Scotia's lead. They should recognize that such laws represent a failed experiment which has *not* stabilized the life-cycle of parliaments at four years — as its original proponents in the early 2000's promised — and repeal them. ♣

— J.W.J. Bowden

*Repealing fixed-date elections allows s. 4(1) of the Constitution Act (maximum five years) to reassert itself as the baseline.*