

FEDERAL COURT

B E T W E E N

DUFF CONACHER and DEMOCRACY WATCH

Applicants

- and -

**THE PRIME MINISTER OF CANADA,
THE GOVERNOR IN COUNCIL OF CANADA and
THE GOVERNOR GENERAL OF CANADA**

Respondents

**AFFIDAVIT OF DUFF CONACHER
(sworn September 30, 2008)**

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I, Duff Conacher, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Coordinator for the Applicant, Democracy Watch, and as such have personal knowledge of the matters to which I depose, unless expressly stated to be based on information, in which instances I believe such information to be true.

PART I - BACKGROUND TO THIS APPLICATION

SUMMARY OF THIS APPLICATION

2. This application challenges the decision and action of Prime Minister Stephen Harper ("Prime Minister") to advise the Governor General of Canada ("Governor General") to dissolve Parliament on September 7, 2008 (before a vote of non-confidence in the Government of Canada had occurred in the House of Commons) so that an election could be held, and the subsequent decision of the Governor General on September 7, 2008 to

dissolve Parliament on and order Writs of Election to set forth October 14, 2008 as the polling day, and the decision and action of the Governor-in-Council of Canada (Governor-in-Council) of issuing on September 7, 2008 a proclamation of a general election to be held on October 14, 2008. (Attached as **Exhibit “A”** is a copy of the Governor General’s order dissolving Parliament; Attached as **Exhibit “B”** is a copy of the Governor General’s order issuing the Writs of Election, and; Attached as **Exhibit “C”** is a copy of the Governor-in-Council’s order proclaiming the general election)

3. This application challenges these decisions and actions, most particularly the decision and action of the Prime Minister to advise the Governor General to dissolve Parliament so that an election could be held, based on changes made to the *Canada Elections Act* (“*Act*”) in 2007 adding section 56.1 to the *Act*, which was intended to fix the date of federal general elections on a specific day once every four years, the only exception to be if a vote of non-confidence in the Government of Canada occurred in the House of Commons. (Attached as **Exhibit “D”** is copy of the section 56.1 of the *Act*)
4. This application also challenges these decisions and actions based on the unfairness of a sudden election call by a Prime Minister which contravenes the fairness of elections guaranteed under section 3 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”).

DEMOCRACY WATCH

5. Democracy Watch was founded in September 1993 and incorporated pursuant to federal law as a not-for-profit corporation. Democracy Watch is a non-partisan organization that advocates democratic reform, citizen participation in public affairs, government and corporate accountability, and ethical behaviour in government and business in Canada. In doing so, Democracy Watch regularly evaluates the decisions and actions of political parties, candidates, elected officials, political staff, appointees and government employees in governments across Canada in a strictly non-partisan manner and only in comparison to good governance principles and standards established by domestic and international institutions, and responds through public statements, and the filing of complaints with relevant authorities, including applications in court.
6. To give but one example of many available concerning how Democracy Watch acts in a strictly non-partisan manner to conduct such evaluations, the organization usually issues a “report card” on the federal political parties’ good governance election platforms. During the 2000 election campaign, the report card overall rated the platform of the Bloc Quebecois

as the best; in 2004 the report card rated the platform of the NDP as the best, and; in 2006 the report card rated the platform of the Conservative Party as the best. In each case, various parties received the best grades in various categories graded by the report cards. (Attached as **Exhibit “E”** are summary news releases of these three report cards)

7. In pursuit of its mandate, Democracy Watch has initiated various campaigns, including a campaign initiated in June 1997 addressing voter rights in Canada. Democracy Watch’s voter rights campaign is ongoing and seeks to ensure that elections in Canada are honest, ethical, open, fair, efficient and result in representative legislatures and governments.

PART II – CONSIDERATION OF FIXED ELECTION DATE AMENDMENTS

INTENT IS TO REQUIRE VOTE OF NON-CONFIDENCE BEFORE ELECTION CALL

8. In its 2006 federal election platform, the Conservative Party of Canada stated at page 44 that if elected into power it would:

“Introduce legislation modeled on the BC and Ontario laws requiring fixed election dates every four years, except when a government loses the confidence of the House (in which case an election would be held immediately, and the subsequent election would follow four years later).” (Attached as **Exhibit “F”** is a May 30, 2006 news release of the Government of Canada quoting the Conservative Party’s platform under the heading “Election Commitment”)
9. On the January 23, 2006 polling day, the Conservative Party of Canada won the most seats in the House of Commons of any of the political parties contesting the federal general election, and as a result formed the Government of Canada (“Conservative Government”). Given that the Conservatives did not win a majority of seats in the House of Commons, the Conservative Government is a minority government.
10. The Conservative Government called to order the 39th Parliament (1st Session) on April 3, 2006.
11. On May 30, 2006, the Conservative Government introduced for First Reading in the House of Commons Government Bill C-16, *An Act to amend the Canada Elections Act*, containing proposed new section 56.1 of the *Act*.
12. On that same day, the Conservative Government issued a news release about Bill C-16

containing, among others, the following summary statements about the Bill, including quotations from The Honourable Rob Nicholson, Leader of the Government in the House of Commons and Minister for Democratic Reform (Attached as **Exhibit ‘F’** is a copy of this news release):

- “‘Fixed election dates will improve the fairness of Canada’s electoral system by eliminating the ability of governing parties to manipulate the timing of elections for partisan advantage,’ stated Minister Nicholson.”
- “Beyond providing for greater fairness, fixed election dates will improve transparency and predictability. This bill, however, will not change the practice of dissolving Parliament for elections if the government loses the confidence of the House of Commons.”
- “The New System Proposed in the Bill: * Under the proposed system, general elections will be held on a fixed day. Specifically, the bill provides that general elections must be held on the third Monday in October in the fourth calendar year following polling day for the last general election. * This does not affect the prerogative of the Prime Minister to advise dissolution at any time prior to the stipulated date, in the event of a loss of confidence. Where a government loses the confidence of the House of Commons, a general election would be held in accordance with existing practices. The general election following this would then be set for the third Monday in October in the fourth calendar year.”
- “The Powers of the Governor General and Confidence : * The proposed bill explicitly 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. * Thus, the Prime Minister will still be able to advise the Governor General to dissolve Parliament in cases where the government loses the confidence of the House of Commons.”

13. In addition, the Conservative Government’s May 30, 2006 news release contained, among others, the following statements concerning how fixing the date makes federal elections more fair and open and will also result in better policy planning and efficiency in government, as well as higher voter turnout , because of the predictability and advance notice given of the election:

- “There are many advantages to legislation providing for fixed election dates:
Fairness: It is unfair that the governing party should be permitted to time an election to exploit conditions favourable to its re-election. Fixed election dates will level the playing field and provide greater fairness for all parties.

Transparency and Predictability: Fixed election dates will provide transparency as to when general elections will be held. Rather than decisions about election dates being made behind closed doors, general election dates will be public knowledge. Election dates will now be predictable.

Improved Governance: Fixed election dates will allow for better policy planning. For example, members of parliamentary committees will be able to set out their agendas well in advance, which will make the work of committees, and Parliament as a whole, more efficient.

Higher Voter Turnout Rates: Holding elections in October, other than when a government loses the confidence of the House, could improve voter turnout. The weather is generally favourable in most parts of the country, fewer people are transient (e.g., most students will not be in transition between home and school at that time, and seniors will not be deterred from voting, as they might be in colder months), and citizens will be able to plan in advance to participate in the electoral process.”

14. On September 18, 2006, the Conservative Government introduced Bill C-16 for Second Reading in the House of Commons, with The Honourable Rob Nicholson, Leader of the Government in the House of Commons and Minister for Democratic Reform (“Minister Nicholson”) stating, among other things about the Bill, the following concerning how Bill C-16 limits the prerogative of the Prime Minister to advise the Governor General to dissolve Parliament to situations only in which the government has lost a vote of confidence in the House of Commons (Attached as **Exhibit “G”** is a copy of the relevant excerpts from Hansard of September 18, 2006 in the House of Commons):

- “Let me give some of the details of the bill. Legislation providing for fixed date elections has to be structured to meet certain constitutional realities of responsible government. They include 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. The bill before us was drafted carefully to ensure that these constitutional requirements continue to be respected. The bill does not in any way change the requirement that the government must maintain the confidence of the House of Commons. Moreover, all the conventions regarding the loss of confidence remain intact.

In particular, the prime minister's prerogative to advise the Governor General on the dissolution of Parliament is retained to allow him or her to advise dissolution in the event of a loss of confidence.” (p.11, between markers 1215 and 1220)

15. On that same day, Minister Nicholson made , among others, the following statements about

how Bill C-16 makes federal elections more:

- “(1210) .Currently it is the prerogative of the prime minister, whose government has not lost the confidence of the House of Commons, to determine what he or she regards as a propitious time for an election to renew the government's mandate. It could be three years into a majority government, which is what we saw in the year 2000 when the government felt it was to its advantage to call a snap election to get another mandate. I also could go back to the early nineties when another government, with which I am very familiar, decided not to go in 1992 but waited until 1993. That particular Parliament lasted almost five years. There is quite a bit of leeway.

When the prime minister, under the current system, requests the dissolution of the House, the governor general, unless there are unusual circumstances, agrees and the country finds itself in an election. What we have is 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. I believe Bill C-16 would address those concerns.

Before going into the details of the bill I would like to discuss the key advantages of a fixed date election. Fixed date elections would provide for greater fairness in election campaigns, greater transparency and predictability.” (p.10, at marker 1210)

- “There would be improved governance, I believe higher voter turnout rates and it would assist in attracting qualified candidates to public life.

Let me discuss the issue of fairness. Fixed date elections would help to level the playing field for general elections. The timing of the general election would be known to everyone. Since the date of the next election would be known to all political parties, they would have equal opportunities to make preparations for the upcoming election campaign. Instead of the governing party having the advantage of determining when the next election will take place and being the single party that may know for up to several months when it will occur, all parties would be on an equal footing.

That has to be of particular interest to opposition parties that have not had the opportunity to call an election. Every party would know when the election will take place and would be able to make the appropriate plans.

Another key advantage of fixed date elections is that this measure would provide transparency as to when general elections would be held. Rather than decisions about general elections being made behind closed doors, general elections would be public knowledge. Instead of the prime minister and a small group of advisers being the only ones who know when the country will move into the next general election, once this bill is passed, all Canadians will have that knowledge, which makes it fair.

I said that it would improve governance and I think it would. For example, fixed date elections would provide for improved administration of the electoral machinery by Elections Canada. The Chief Electoral Officer, in a majority situation, would know with certainty when the next election would occur and would be able to plan accordingly. This would certainly give greater efficiency to the work of Elections Canada and, quite frankly, would save money. All of us know the situation where Elections Canada is trying to make a reasonable guess as to when the election will be called, scrambling to rent space and come up with locations for voting. All these things cost money. It seems to me that this would save money if we knew with certainty when the election would be called.

Another good reason for this bill is that I believe we would have higher voter turnouts. We are suggesting that the elections be held on the third Monday in October, except when the government loses the confidence of the House. That is a time when the weather in most parts of the country is generally the most favourable. Indeed, in my riding of Niagara Falls it is pretty well still summer. I appreciate that it is at the southern end of the country and it is not quite the same for others, but nonetheless the weather is still pretty reasonable in October.

Canadians would be able to plan in advance. Those who are thinking of taking a vacation or who might be outside of their constituencies can make plans to get their votes in when they know with some certainty. That is not the case if they are out of the country or visiting somewhere and the election gets called. Those things pose some difficulty. For those individuals who know well in advance when the election is coming, this is a step in the right direction.

(1215)

This is not just important to the people who are voting. How about candidates? All of us know people who want to or are prepared to get into public life but who want to know when the election is. Right now we do not have a particularly good idea. It could be three years, as it was in the year 2000, or it could be five years, as it was in 1993. This can be very difficult for candidates. People have other lives and they want to know with some certainty when they will be called upon to put their name forward. It would help to attract candidates to the next election.” , and;

- “In conclusion, this bill providing for fixed election dates is an idea whose time has come. I remember recently, I believe in June, there was a poll taken and 78% of Canadians supported this particular idea. It is good to note that the third week in October is already citizenship week in Canada. It is a time when we celebrate what it means to be a Canadian. That is another reason for putting it at that particular time. Of

course, fundamental to being a Canadian citizen is our civic responsibility and duty to vote.

This legislation provides greater fairness, increased transparency and predictability, improved policy planning, increased voter turnout, and will help to attract the best qualified Canadians to public life. I hope that my colleagues will join with us in the House to pass this important piece of legislation.” (pp.10-11, between markers 1210 and 1220)

16. Also on September 18, 2006 in the House of Commons, Minister Nicholson stated, in response to a question specifically about what constitutes a confidence measure “(1230) . . . The hon. member says it might be just limited to money bills. I could not disagree with him more. If this country put before Parliament measures to confirm that Canada will be at war, would that not be an awful lot more important than some spending in a particular government department? To my mind it would be, and of course that would be a confidence measure.” (p.13, after marker 1230)
17. In addition, on September 18, 2006 in the House of Commons, the main representatives concerning the bill from the opposition parties the Liberal Party of Canada (Hon. Stephen Owen), the New Democratic Party of Canada (Joe Comartin), and the Bloc Quebecois (Michel Gauthier) all made statements expressing their agreement with the positive effects of fixing election dates through Bill C-16 as summarized by Minister Nicholson, and their agreement with Minister Nicholson’s assertion that passage of the Bill means that a vote of non-confidence is required before a Prime Minister can advise the Governor General to dissolve Parliament and order an election be held. As a result of these positive effects and common understanding, these members from the opposition parties expressed their support, and their party’s support, for the passage of the Bill. Tom Lukiwski, Parliamentary Secretary to the Leader of the Government in the House of Commons and Minister for Democratic Reform, subsequently made an extensive statement setting out in different words the same positive reasons for the changes made by Bill C-16 as those stated earlier by Minister Nicholson. (pp.22-23, after marker 1345)
18. On September 19, 2006, the debate at Second Reading of Bill C-16 continued in the House of Commons. On that day, the Hon. Carol Skelton, Minister of National Revenue and Minister of Western Economic Diversification, re-stated the positive effects of fixing election dates including stating that “With the passage of Bill C-16, elections will become predictable and stable while still keeping governments accountable. B.C. and Ontario, under Liberal governments, have both adopted fixed dates for elections, with other provinces

considering doing the same. These governments remain accountable because they still allow for votes of non-confidence.” (p.6, para.8 -- Attached as **Exhibit “H”** are the relevant excerpts from the Hansard of September 19, 2006 of the House of Commons) . As well, Russ Heibert, Parliamentary Secretary to the Minister of National Defence,, set out a similar summary list of the benefits of fixed election dates, and several members from the opposition parties spoke in support of the general principles of Bill C-16. (pp.7-9, up to marker 1045)

19. Throughout the debates at Second Reading of Bill C-16 in the House of Commons on September 18 and 19, 2008, members expressed concern that the Bill did not define exactly what constitutes a vote of confidence (or, conversely, a vote of non-confidence) in the Government in the House of Commons. However, all members’ statements made it clear that their understanding of the legal effect of Bill C-16 was that a vote of non-confidence in the Government would have to occur in the House of Commons before the Prime Minister could advise the Governor General to dissolve Parliament and call an election.
20. On September 19, 2006, a motion passed in the House of Commons referring Bill C-16 to the House of Commons Standing Committee on Procedure and House Affairs (“House Committee”). The House Committee held five meetings to review Bill C-16, on September 26 and 28, 2006, and on October 3, 5 and 24, 2006.
21. On September 26, 2006, Minister Nicholson testified before the House Committee and in his opening statement said, among other things, that “This bill does not affect the powers of the Governor General to call an election sooner if a government loses the confidence of the House. For example, if the government were to be defeated tomorrow, a general election would be held according to normal practice . . .” (p.9, para.1 -- Attached as **Exhibit “I”** is the Hansard of September 26, 2006 of the House Committee)
22. The House Committee reported Bill C-16 to the House of Commons on October 25, 2006 without amendment. On November 6, 2006, the House of Commons approved Third Reading of Bill C-16.

SENATE AGREES AND CONFIRMS INTENT OF BILL C-16 IS TO REQUIRE NON-CONFIDENCE VOTE BEFORE ELECTION CALL

23. On November 6, 2006, Bill C-16 was introduced for First Reading in the Senate of Canada. No debate on the Bill took place that day. On November 21, 2006, debate at Second Reading of the Bill in the Senate began, with the representative of the Conservative

Government in the Senate, the Hon. Consiglio Di Nino, setting out in his opening statement the same positive effects of fixed election dates as Minister Nicholson did in the House of Commons, and stating among other things that “. . . the bill in no way changes the requirement that the government must maintain the confidence of the House of Commons. In addition, the practices regarding the loss of the confidence of the House are maintained. In particular, the Prime Minister's prerogative to recommend that the Governor General dissolve Parliament is maintained, in order to allow the Prime Minister to recommend dissolution if the government loses the confidence of the House” (p.19, 5th para. After marker 1530) and “[Translation] The bill sets Monday, October 19, 2009 as the date of the next general election. Needless to say, this will be polling day only if the government maintains the confidence of the House until then [English] For example, if the government were to be defeated tomorrow, a general election would be held according to normal practice.” (p.19, 5th last para. -- Attached as **Exhibit “J”** are the relevant excerpts from the Hansard of November 21, 2006 of the Senate).

24. On November 23, 2006, Bill C-16 passed Second Reading in the Senate and was referred to the Senate's Standing Committee on Legal and Constitutional Affairs (“Senate Committee”). The Senate Committee held hearings about the Bill on December 6, 2006, January 31, 2007, and February 1, 8, 14, and 15, 2007.
25. On December 6, 2006, Minister Nicholson testified before the Senate Committee and, as he had stated on September 26, 2006 before the House Committee, in his opening statement said, among other things: “The government's bill provides that the date for the next general election will be Monday, October 19, 2009. Of course, that will be the date only if the government is able to retain the confidence of the House until then. The bill does not affect the powers of the Governor General to call an election sooner if a government loses the confidence of the House. For example, if the government were to be defeated tomorrow, a general election would be held according to the normal practice.” (Attached as **Exhibit “K”** is the Hansard of December 6, 2006 of the Senate Committee).
26. In addition to this statement as well as setting out the many positive effects of the Bill as he had in the House of Commons and before the House Committee, Minister Nicholson stated to the Senate Committee on December 6, 2006, with regard to Bill C-16:
 - “The Governor General's powers remain those that are held under the Constitution: to dissolve Parliament at any time within the five-year constitutional limit. However, by providing that elections are to be held every four years in October, the bill establishes a statutory expectation that the relevant political and administrative officers will govern

- themselves accordingly to accomplish this end — working within the rules and conventions of parliamentary and responsible government. The aim of the bill is to ensure, to the extent possible within the framework of our constitutional system, that the date on which an election will be held may be known in advance, thereby increasing fairness, transparency, predictability, efficiency and forward planning.” (p.3, para.6), and;
- “. . . if a government were orchestrating its own defeat it would have to be a decision of the House. Again, it would be a situation in which the government, for whatever reason, had lost the confidence of the House. There would have to be non-confidence votes taken by the opposition parties.” (p.4, 3rd last para.), and;
 - “I would expect that any government, in presenting legislation that it hoped would be passed by the House of Commons, would do so believing it to be in the best interests of the country; and that should certainly be its guiding principle. If it was the decision of the opposition parties to defeat the government, the confidence convention as preserved by this bill would apply and, again, it would be within the discretion of the Governor General.” (p.4, last para.)

27. On that same day, Senator Zimmer posed the following specific question to Minister Nicholson concerning what constitutes a loss of confidence of the House of Commons in the Government of Canada: “It is my understanding that the bill ensures that an election could be held before the end of a four-year period in the event that the government clearly does not have the support of the majority of the House of Commons. Would this be determined only through a vote of confidence, or does this bill provide for other means of interpreting a loss of confidence?” (p.6, para.4) Minister Nicholson confirmed that a vote of non-confidence of some sort would have to occur before the Prime Minister advised the Governor General to dissolve Parliament and call an election, stating:
- “It could be done in several ways, senator. You are quite correct that on what we call opposition days, there could be a motion specifically that the government has lost the confidence of the House. On the other hand, in the example I gave to you of the budget implementation bill that we intend to call on Friday of this week, if at some point that bill is rejected by the House of Commons, that will be a clear indication that the government has lost the confidence of the house and an election will ensue.” (p.6, para.5)
28. On that same day, Senator Joyal also posed the following specific question to Minister Nicholson: “for the Prime Minister to be able to go to the Governor General and request dissolution, the Prime Minister would have to have a vote of non-confidence formally registered in Parliament, if I understand the way the prerogative will be acted upon. Am I right or wrong?” (p.8, para.9) Minister Nicholson confirmed that a vote of non-confidence

of some sort would have to occur, stating:

- “You say the only way would be by a motion of non-confidence. I think I indicated that, for instance, if the government lost the confidence of the House of Commons by reason of the defeat of the budget implementation bill, that is not a resolution of the House of Commons. Nonetheless, it affects the confidence convention, and the Prime Minister would be within his or her right of attending upon the Governor General and asking for dissolution of Parliament on that basis.” (p.8, para.10), and;
- “If there was no reason, you are right. I indicated that if for no reason the Prime Minister went after three years and nine months and asked the Governor General to dissolve in the face of legislation, that would be a very difficult constitutional question facing the Governor General. Depending on how the Prime Minister survived that hurdle, it would seem to be an issue for the public of Canada, because it would fly in the face of the legislation before you today.” (p.8, para.12)

29. In response, Senator Joyal posed the following specific question to Minister Nicholson, as follows: “In other words, if you claim that the prerogative of the Governor General would not be impaired by this bill, in that context, the Governor General could send back the Prime Minister asking him to return with a clear vote of non-confidence from the House of Commons?” (p.8, para.13) Minister Nicholson responded as follows:

- “Again, I will not presuppose the Governor General's actions, but I imagine that the Governor General, any Governor General, would want to be satisfied that the Prime Minister had lost the confidence of the House. Whether that was by means of a resolution or by the defeat of an important piece of legislation, as in the example I provided, the Governor General would be within his or her right to ask those questions.” (p.9, para.1)

30. Minister Nicholson also stated the following at a later point in the hearing that day:

- “. . . if a prime minister, after three and a half years, for no reason understandable to the public, demanded a dissolution of Parliament by the Governor General, I believe that under this legislation the Governor General would be within his or her rights to deny that. At this time, there is nothing stopping any prime minister who sees an electoral advantage from asking the Governor General to dissolve Parliament and call an election, even though there is no issue that could in any way be described as a confidence matter. However, under this bill a prime minister would be restricted in that situation.” (p.12, 4th last para.)

31. On that same day, Minister Nicholson was joined by Warren J. Newman, General Counsel,

Constitutional and Administrative Law Section, Department of Justice Canada, who stated to the Senate Committee the following with regard to Bill C-16:

- "The preamble [to the Constitution of Canada], in speaking of a Constitution similar in principle to the United Kingdom, reflects the principles of parliamentary and responsible government. Although the preamble has no enacting force, it can be used to interpret the provisions of the Constitution. I think the minister is correct in saying that there is nothing in the bill that in principle violates parliamentary government. On your specific point about whether the confidence rule remains, it does in fact; it remains entirely intact because it is preserved expressly, insofar as legislation can preserve a constitutional convention, which is an unwritten rule. It is preserved in the opening provision, section 56.1(1), which 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." If confidence is lacking in the government, it is always open to the opposition parties to move a vote of non-confidence, and the legislation takes that into account." (p.4, para.7)

32. On February 15, 2007, the Senate Committee reported Bill C-16 to the Senate for Third Reading without amendment. The debate at Third Reading of the Bill took place on February 21, 2007, March 21, 2007, and March 22, 2007. The Senate amended Bill C-16 only by making the minor amendment of adding one factor to the list of factors the Chief Electoral Officer could take into account in special circumstances to recommend a different fixed election polling day other than the third Monday in October, and on March 28, 2008 the Senate sent the amended Bill back to the House of Commons.
33. On April 23, 2007, the House of Commons debated and rejected the Senate amendment, and on April 24, 2007 sent Bill C-16 back to the Senate. On April 26 and May 1, 2007, the Senate debated the rejection of the amendment by the House of Commons, and voted not to insist on its amendment.
34. On May 3, 2007, Bill C-16 received Royal Assent and the fixed election date measures set out in section 56.1 of the *Canada Elections Act* came into force. On that day, the Conservative Government issued a news release in which the new Minister of Democratic Reform Peter Van Loan is quoted as saying: "This important piece of legislation will ensure fairness in the electoral process by eliminating the power of the governing party to call an election to capitalize on favourable political circumstances." (Attached as **Exhibit "L"** is a copy of the Conservative Government's May 3, 2007 news release)

Government when it was a minority government, and was passed with the support of the all of the political parties represented in the House of Commons and the Senate of Canada, and that none of the statements set out above of the responsible Conservative Government minister, Minister Nicholson, which were all made during the review of Bill C-16 by Parliament, made any distinction in terms of the legal effects of the Bill on either a minority government or majority government. All of Minister Nicholson's and Minister Van Loan's statements make it clear that, in either a minority government or majority government situation, the legislative intent, and legal effect, of Bill C-16 is that the Prime Minister cannot legally advise the Governor General to dissolve Parliament and call an election until a vote of non-confidence in the Government of Canada has occurred in the House of Commons.

PART III - VOTE OF NON-CONFIDENCE IN THE GOVERNMENT HAS NOT OCCURRED IN THE HOUSE OF COMMONS

36. No vote in the House of Commons on a confidence measure of any sort has resulted in an expression of non-confidence of any sort in the Conservative Government since the 39th Parliament was called to order on April 3, 2006.

PART IV - CHARTER RIGHTS VIOLATED BY ELECTION CALL

37. I believe that section 3 of the Charter, which sets the fundamental right of voters to vote in elections of members of the House of Commons, has little meaning if elections are not conducted fairly.
38. I agree with Minister Nicholson's statements in the House of Commons, and before the House Committee and the Senate Committee, that it is unfair when the Prime Minister advises the Governor General to dissolve Parliament and call an election at random times (usually when it is most favourable for the Prime Minister's political party) with little or no notice to the public and other political parties.
39. I agree with Minister Nicholson's statements also that this unfairness extends to those wishing to participate in the election as candidates, volunteers, non-partisan organizations, and voters, as they are all hindered to varying degrees, some very considerably, by lack of advance notice of an election.
40. I believe that most Canadians recognize the unfairness of unexpected election calls by the Prime Minister, and that a clear indication of this widespread recognition can be seen in the

results of the survey of Canadians conducted by Environics Research Group in May 2005, which showed that 77 percent of the 1,200 adults surveyed agreed with the statement "Fixed election dates should be held on a fixed date every four years instead of when the party in power wants to call it." (Attached as **Exhibit "M"** is a copy of a news release about the Environics survey results, including the result to question 4(e) about fixed election dates)

41. Democracy Watch's efforts to participate in this election, to inform citizens of its issues of concern, and to issue its comparison "report cards" on the federal parties' election platforms, have all been hindered by the lack of advance notice that the election was going to occur.
42. In addition, I agree with Minister Nicholson's statements about the positive effects of fixed election dates that correct the negative effects of the unfairness of arbitrary and random election calls by the Prime Minister, and that also improve the transparency and predictability of elections.
43. I make this affidavit in support of this application and for no other purpose.

Sworn before me at the City of Ottawa in the Province of Ontario on September 30, 2008.

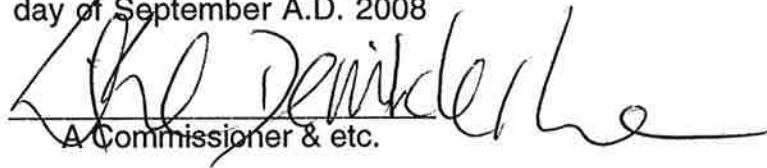


DUFF CONACHER



Commissioner for Taking Affidavits

This is Exhibit "A" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008


A Commissioner & etc.

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SI/2008-105 September 8, 2008

OTHER THAN STATUTORY AUTHORITY

Proclamation Dissolving Parliament

MICHAËLLE JEAN

[L.S.]

Canada

Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith.

To Our beloved and faithful Senators of Canada, Members elected to serve in the House of Commons of Canada, and to all to whom these Presents may in any way concern,

Greeting:

JOHN H. SIMS

Deputy Attorney General

A Proclamation

Whereas We have thought fit, by and with the advice of Our Prime Minister of Canada, to dissolve the present Parliament of Canada;

Now know you that We do for that end publish this Our royal proclamation and do hereby dissolve the Parliament of Canada accordingly, and the Senators and the Members of the House of Commons are discharged from their meeting and attendance.

In testimony whereof, We have caused these Our letters to be made Patent and the Great Seal of Canada to be hereunto affixed. Witness: Our Right Trusty and Well-beloved Michaëlle Jean, Chancellor and Principal Companion of Our Order of Canada, Chancellor and Commander of Our Order of Military Merit, Chancellor and Commander of Our Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.

At Our Government House, in Our City of Ottawa, this seventh day of September in the year of Our Lord two thousand and eight and in the fifty-seventh year of Our Reign.

By Command,
RICHARD DICERNI
Deputy Registrar General of Canada

GOD SAVE THE QUEEN

EXTRA
Vol.
142, No.
4

Canada
Gazette

Part II

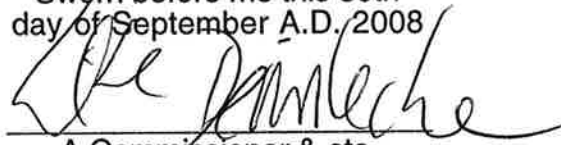
OTTAWA,
MONDAY,
SEPTEMBER
8, 2008

NOTICE:

The format of the electronic version of this issue of the *Canada Gazette* was modified in order to be compatible with hypertext language (HTML). Its content is very similar except for the footnotes, the symbols and the tables.

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This is Exhibit "B" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008



A Commissioner & etc.

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EXTRA Vol. 142, No. 4 — September 8, 2008

Registration

SI/2008-106 September 8, 2008

OTHER THAN STATUTORY AUTHORITY

Proclamation Issuing Election Writs

MICHÈLE JEAN

[L.S.]

Canada

Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith.

To all to whom these Presents shall come or whom the same may in any way concern,

Greeting:

JOHN H. SIMS

Deputy Attorney General

A Proclamation

Whereas We are desirous to meet Our People of Canada as soon as may be and to have their advice in Parliament;

We do hereby make known Our royal will and pleasure to call a Parliament, and do further declare that, by and with the advice of Our Privy Council for Canada, We have this day given Orders for Issuing Our Writs of Election in due form according to law, which Writs are to be dated September 7, 2008, to set forth Tuesday, October 14, 2008 as the polling day and to be returnable to the Chief Electoral Officer on November 4, 2008.

In testimony whereof, We have caused these Our letters to be made Patent and the Great Seal of Canada to be hereunto affixed. Witness: Our Right Trusty and Well-beloved Michèle Jean, Chancellor and Principal Companion of Our Order of Canada, Chancellor and Commander of Our Order of Military Merit, Chancellor and Commander of Our Order of Merit of the Police Forces, Governor General and Commander-in-Chief of Canada.

At Our Government House, in Our City of Ottawa, this seventh day of September in the year of Our Lord two thousand and eight and in the fifty-seventh year of Our Reign.

By Command,
RICHARD DICERNI
Deputy Registrar General of Canada

GOD SAVE THE QUEEN

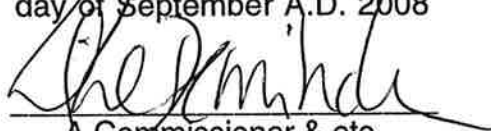
NOTICE:The format of the electronic version of this issue of the *Canada Gazette* was modified in order to be compatible with hypertext language (HTML). Its content is very similar except for the footnotes, the symbols and the tables.

Top of page

Important notices

Updated: 2008-09-08

This is Exhibit "C" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008



A Commissioner & etc.



Government of Canada
Privy Council Office

Gouvernement du Canada
Bureau du Conseil privé

Canada

Privy Council Office > PCO Secretariats

PC Number	Date	Chapter	Bill	Dept	Attachments
2008 -1688	2008 -09-07			PMO	
Order directing that WRITS OF ELECTION do issue for a GENERAL ELECTION, with polling to take place on TUESDAY, OCTOBER 14, 2008.					
Attachments: 1 - OIC / DDC					

[\[New Search\]](#) [\[Modify Search\]](#)

Date Modified: 2008-08-19

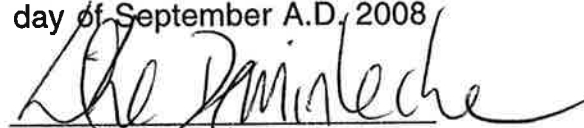
Whereas the Committee of the Privy Council have had before them a report from the Right Honourable Stephen Joseph Harper, the Prime Minister, recommending that writs of election for a general election of persons to serve as members in the House of Commons be issued, those writs of election to be dated September 7, 2008, fixing Tuesday, October 14, 2008 as the polling day and to be returnable to the Chief Electoral Officer on November 4, 2008, and that a proclamation to this effect do issue;

Therefore, the Committee of the Privy Council submit the above-mentioned recommendation for Your Excellency's approval.

Attendu que le Comité du Conseil privé a été saisi d'un rapport du très honorable Stephen Joseph Harper, premier ministre, recommandant d'une part la délivrance de brefs en vue de l'élection des députés de la Chambre des communes, lesquels brefs porteront la date du 7 septembre 2008, fixeront au mardi, le 14 octobre 2008 le jour du scrutin et seront retournés au directeur général des élections le 4 novembre 2008, et d'autre part la prise d'une proclamation à cette fin,

À ces causes, le Comité du Conseil privé a l'honneur de soumettre la recommandation ci-dessus à l'approbation de Votre Excellence.

This is Exhibit "D" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008



A Commissioner & etc.

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Disclaimer: These documents are not the official versions (more).

Full Document for Printing [1332Kb]

Act current to September 11th, 2008

Attention: See coming into force provision and notes, where applicable.

Sections and Schedules 56.1 ... 92.6



Go to...

[Previous](#) [Next](#)**PART 5****CONDUCT OF AN ELECTION****DATE OF GENERAL ELECTION**

Powers of Governor General preserved

56.1 (1) Nothing in this section affects the powers of the Governor General, including the power to dissolve Parliament at the Governor General's discretion.

Election dates

(2) Subject to subsection (1), each general election must be held on the third Monday of October in the fourth calendar year following polling day for the last general election, with the first general election after this section comes into force being held on Monday, October 19, 2009.

2007, c. 10, s. 1.

Alternate day

56.2 (1) If the Chief Electoral Officer is of the opinion that a Monday that would otherwise be polling day under subsection 56.1(2) is not suitable for that purpose, including by reason of its being in conflict with a day of cultural or religious significance or a provincial or municipal election, the Chief Electoral Officer may choose another day in accordance with subsection (4) and shall recommend to the Governor in Council that polling day be that other day.

Publication of recommendation

(2) If the Chief Electoral Officer recommends an alternate day for a general election in accordance with subsection (1), he or she shall without delay publish in the *Canada Gazette* notice of the day recommended.

Making and publication of order

(3) If the Governor in Council accepts the recommendation, the Governor in Council shall make an order to that effect. The order must be published without delay in the *Canada Gazette*.

Limitation

(4) The alternate day must be either the Tuesday immediately following the Monday that would otherwise be polling day or the Monday of the following week.

Timing of proclamation

(5) An order under subsection (3) shall not be made after August 1 in the year in which the general election is to be held.

2007, c. 10, s. 1.

WRITS OF ELECTION**General election — proclamation**

57. (1) The Governor in Council shall issue a proclamation in order for a general election to be held.

By-election — order

(1.1) The Governor in Council shall make an order in order for a by-election to be held.

Contents

(1.2) The proclamation or order shall

(a) direct the Chief Electoral Officer to issue a writ to the returning officer for each electoral district to which the proclamation or order applies;

(b) fix the date of issue of the writ; and

(c) fix the date for voting at the election, which date must be at least 36 days after the issue of the writ.

General election

(2) In the case of a general election,

(a) the date of issue of the writ shall be the same for all electoral districts;

(b) polling day shall be the same for all electoral districts; and

(c) the proclamation shall fix a date for the return of the writ to the Chief Electoral Officer, which date shall be the same for all of the writs.

Election held on a Monday

(3) Subject to subsection (4) and section 56.2, polling day shall be on a Monday.
Exception

(4) In the case of a general election that is not held on a day set in accordance with subsection 56.1(2) or section 56.2, if, in the week in which the election is to be held, the Monday is a holiday, polling day shall be held on the Tuesday of that week.
Times when polling day is a Tuesday

(5) If the day fixed for the vote is a Tuesday because of subsection (4) or section 56.2, any time period specified under this Act before or after polling day is to be calculated as if polling day were the Monday.

2000, c. 9, s. 57; 2001, c. 21, s. 5; 2007, c. 10, s. 2.

Writs forwarded to returning officer

58. The Chief Electoral Officer shall issue a writ in Form 1 of Schedule 1 to the returning officer for the electoral district in which the election is to be held without delay after the proclamation is issued or the order is made under section 57.

2000, c. 9, s. 58; 2001, c. 21, s. 6; 2007, c. 10, s. 3.

Withdrawal of writ

59. (1) The Governor in Council may order the withdrawal of a writ for any electoral district for which the Chief Electoral Officer certifies that by reason of a flood, fire or other disaster it is impracticable to carry out the provisions of this Act.

Duties of Chief Electoral Officer

(2) If the Governor in Council orders the withdrawal of a writ, the Chief Electoral Officer shall publish a notice of the withdrawal in the *Canada Gazette* and issue a new writ ordering an election within three months after publication of the notice.
Polling day

(3) The day named in the new writ for polling day may not be later than three months after the issue of the new writ.
Returning officer to open and maintain an office

60. (1) Every returning officer shall, without delay after receiving the writ or notice by the Chief Electoral Officer of the issue of the writ, open an office in premises with level access in a convenient place in the electoral district and shall maintain the office throughout the election period.

Hours

(2) The Chief Electoral Officer may fix the hours that the office must be open and the minimum number of hours of compulsory attendance at it by the returning officer and the assistant returning officer.
Appointment of staff

61. (1) The Chief Electoral Officer may authorize returning officers to appoint the staff that they consider necessary for the purposes of this Act.

Employment of staff

(2) Staff mentioned in subsection (1) shall

- (a) be appointed in the prescribed form;
- (b) take the prescribed oath; and
- (c) be discharged as soon as their services are no longer needed.

NOTICE OF ELECTION BY RETURNING OFFICER

Notice of election

62. Within four days after the issue of the writ, each returning officer shall sign and issue a Notice of Election in Form 2 of Schedule 1 that indicates

- (a) the deadline for the receipt of nominations;
- (b) the date for polling day;
- (c) the date and time, not later than seven days after polling day, for the validation of results; and
- (d) the address of the returning officer's office.

RETURN BY ACCLAMATION

Return by acclamation

63. (1) When, as of 2:00 p.m. on the 19th day before polling day, the returning officer has confirmed a nomination for only one candidate, the returning officer shall

- (a) without delay declare the candidate elected by endorsing the return of the writ in the prescribed form on the back of the writ and returning it to the Chief Electoral Officer; and
- (b) within 48 hours after the return of the writ, send a certified copy of it to the elected candidate.

Report with return

(2) When the returning officer returns the writ to the Chief Electoral Officer, the returning officer shall include with it a report of the proceedings during the election period, including any nomination proposed and rejected for non-compliance with this Act.

HOLDING OF AN ELECTION


Holding of election

64. (1) If the nomination of more than one candidate is confirmed in an electoral district, an election shall be held.

Notice of grant of a poll

(2) The returning officer shall, within five days after the closing day for nominations, if more than one candidate is nominated, post

This is Exhibit "E" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008


A Commissioner & etc.



Media Release

PARTIES DON'T CARE ABOUT DEMOCRACY REPORT CARD ON PLATFORMS REVEALS

Wednesday, November 22, 2000

OTTAWA - Today, Democracy Watch released its Report Card on the Democratic Government Platforms of federal political parties. The Report Card is based upon Democracy Watch's Agenda for a Democratic Government, which is supported by a coalition of citizen groups from across Canada, including the Sierra Club, Canadian Auto Workers, International Fund for Animal Welfare, and Citizens for Public Justice, representing in total over two million Canadians.

The parties were graded based on whether their platforms contain promises to implement 20 measures that would democratize the federal government in five key areas, ensuring that the government is representative, ethical, open, accountable and citizen-driven. Several national surveys over the past few years have shown that a large majority of Canadians support the range of democratic reforms set out in the Report Card.

Despite broad support for democratic reform in Canada, none of the seven parties graded have a comprehensive plan to democratize the government, and most of the parties received poor or failing grades in almost all of the five areas of the Report Card.

"No matter which party Canadians vote for next Monday, the federal government will continue to be unrepresentative, unethical, secretive, unaccountable and driven by wealthy interests and high-powered lobbyists," said Duff Conacher, Coordinator of Democracy Watch. "None of the parties have promised to change the rules of the game to ensure that the key barriers to democratic government are removed."

The Liberal Party is clearly the worst of all the parties, as its platform does not contain even one proposal to democratize the government. Even if the Liberals had made promises to democratize the federal government, it would be difficult to give them good grades because they have broken almost all the democratic reform promises they made in the 1993 "Red Book" and since, including the promises: to establish an independent ethics watchdog who reports directly and only to Parliament (instead they appointed an unethical, toothless lapdog who reports in private to the Prime Minister); to enact ethics rules for MPs and Senators; to strengthen the access-to-information law; and to enact a "whistle-blower" protection law.

The Bloc Québécois received the highest grade overall, C-. Although the Bloc has no proposals to implement a democratic voting system or to track and restrict the influence of lobbyists, it received high grades in other areas for its promises to implement a democratic political finance system, and to ensure strong, effectively enforced ethics rules.

"He who pays the piper calls the tune," said Aaron Freeman, a Board member of Democracy Watch, "and until all political donations are disclosed and limited, as in Québec, the federal government will continue to be corrupted by wealthy interests."

The New Democrats received the highest grade in the area of democratizing the voting system because of their promises to implement proportional representation and to abolish the Senate. Along with the Bloc, the Tories scored well in the area of ethics because of their promises to appoint an independent ethics watchdog, and to protect civil servants who blow-the-whistle on government wrongdoing.

None of the party platforms contained strong, clear promises to strengthen access-to-information laws, to ensure that government acts honestly, or to ensure that the behind-closed-doors activities of lobbyists are publicly disclosed and their

undue influence restricted.

"No matter how clearly Canadians have expressed their desire for democratic government over the past several years, the Liberals have continued their charade and done everything they can to thwart any attempt to check their power or ensure they act in the public interest," said Conacher, "Given the ongoing self-interested, secretive and corrupt activities of the Liberals and other political parties, no one should wonder why Canadians have little trust or faith in politicians or government."

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FOR MORE INFORMATION, CONTACT:

Duff Conacher, Coordinator
Tel: (613) 241-5179
dwatch@web.net

Report Card on the Democratic Government Platforms of the Federal Political Parties

- A - Platform makes clear promise to implement proposal
- B - Platform makes clear promise to explore proposal
- C - Platform makes unclear promise to explore proposal
- D - Platform mentions proposal
- E - Platform mentions theme of proposal
- F - Platform does not mention proposal

OVERALL GRADES

Bloc Quebecois C-
Canadian Action Party F
Canadian Alliance Party F
Green Party E
New Democrat Party E
Liberal Party F
Progressive Conservative Party E

I. Democratic Voting System

SECTION I OVERALL GRADES

Bloc Quebecois F
Canadian Action Party C-
Canadian Alliance Party B-
Green Party C
New Democrat Party A
Liberal Party F
Progressive Conservative Party C

1. Change the current voting system to a proportional representation system to provide more accurate representation in Parliament of the actual support for each political party.

Bloc Quebecois F
Canadian Action Party F
Canadian Alliance Party D
Green Party A
New Democrat Party A
Liberal Party F
Progressive Conservative Party F

2. Abolish the Senate or reform the Senate to render it more directly accountable to the electorate.

Bloc Quebecois F
Canadian Action Party B
Canadian Alliance Party A



Media Release

FEDERAL PARTIES PROMISES NOT ENOUGH TO ENSURE HONEST, ACCOUNTABLE FEDERAL GOVERNMENT AND RESPONSIBLE CORPORATIONS, REPORT CARD ON PLATFORMS REVEALS

Friday, June 25, 2004

OTTAWA - Today, Democracy Watch released its Report Card on the Democratic Reform and Corporate Responsibility Election Platforms of federal political parties (See Report Card set out below).

The Report Card grades the five main parties' platform pledges based upon 20 measures Democracy Watch believes are the changes that will most effectively make the federal government and federally regulated corporations honest, ethical, open, efficient, representative and, if they don't act in these democratic ways, easily and thoroughly held accountable. Of course, there are many other measures that need to be enacted by the federal government to ensure fully democratic government and fully responsible corporations.

The measures are a compilation of the main proposals of the four nation-wide coalitions Democracy Watch coordinates (Canadian Community Reinvestment Coalition, Corporate Responsibility Coalition, Government Ethics Coalition, Money in Politics Coalition) and the two other nation-wide coalitions in which Democracy Watch participates (NGO Working Group on the EDC, Open Government Canada). A combined total of more than 150 citizen groups with a total membership of more than 3 million Canadians belong to the coalitions, groups that work on anti-poverty, bank accountability, community economic development, consumer, corporate responsibility, environment, labour, social justice, women and youth issues. Many national surveys over the past several years have shown that a large majority of Canadians support the democratic reforms set out in the Report Card, as do many commentators on democratic reform and corporate responsibility.

The 20 measures, set out in six sections, all reflect the following five key elements for ensuring that large, powerful government and corporate institutions act responsibly and follow rules: 1. strong laws with no loopholes; 2. requirement to disclose violations; 3. fully independent, fully empowered watchdog agencies to enforce laws; 4. penalties that are high enough to encourage compliance; and 5. empowerment of citizens to hold governments, corporations and watchdog agencies accountable.

The parties were given a grade ranging from A (Platform makes clear promise to implement proposal) to I (Platform does not mention proposal), with grades B for a vague or partial promise to implement the proposal, C and D for clear to vague promises to explore the proposal, E for mentioning proposal and F for mentioning the theme of the proposal. Grades were averaged for each of the six sections, and the average of section grades was used for the overall grades.

The highlights of the Report Card are as follows:

- The NDP had the best overall grade of C (and the best grades in five of the six sections), with the Bloc Québécois close behind with a C- grade (and the best grade in one section);
- The Liberals had the worst report card, with an overall E- grade;
- The strongest overall section grades for all the parties were in the "Efficient Government" section, with the Conservatives the best with an A- grade;
- The worst overall section grades for all the parties were in the "Honest, Ethical Government" and "Open

Government" sections, in which none of the parties had better than a C- grade (although four of the five parties promise action on some access-to-information problems);

- Four of the five parties promise action to strengthen ethics enforcement, however none of the parties promise the key ethics tool of an "honesty in politics" law;
- Four of the five parties promise increasing Parliament's role in reviewing appointments currently made solely by the Prime Minister; and
- Four of the five parties also promise action on corporate responsibility measures, including creating regulatory agencies in new areas and increasing penalties for corporate wrongdoing.

"Given the lack of a federal honesty in politics law, and the lack of pledges by any of the parties to pass such a law, voters should be wary of trusting any political promises," said Duff Conacher, Coordinator of Democracy Watch. "However, a positive sign is that unlike in the past three elections most parties are addressing some of the key flaws in federal government and corporate responsibility systems."

"Based on the report card results, no matter what the results of the election next Monday Canadians have a right to expect the federal government to take action on government waste and spending accountability, ethics, patronage appointments, and corporate responsibility, as all of the parties makes pledges in these areas," said Conacher. "However, details are very important in policy-making but unfortunately many of the parties' promises are too vague to know exactly what they plan to do."

"Voters are fooling themselves if they believe that federal politicians who can legally lie, act unethically and secretly, waste money and win majority power without majority support will ever consistently uphold the public interest," said Conacher.

The 2004 Report Card is an updated version of the Report Card issued by Democracy Watch during the 2000 federal election, reflecting changes that have occurred in federal laws since 2000. In the 2000 Report Card, the Bloc Quebecois received the highest overall grade of C- mainly because of its promises to implement a democratic political donations system, and to ensure strong, effectively enforced ethics rules.

Democracy Watch graded the parties' election platforms by reviewing the platforms. Statements by party leaders or representatives were not taken into account as they are not fully accessible to all voters, nor are they binding in any way on the party (as admitted by many party leaders) and as a result are even less reliable than promises made in the parties' platforms. (Please see Backgrounder set out below)

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FOR MORE INFORMATION, CONTACT:

Duff Conacher, Coordinator
Tel: (613) 241-5179
dwatch@web.net

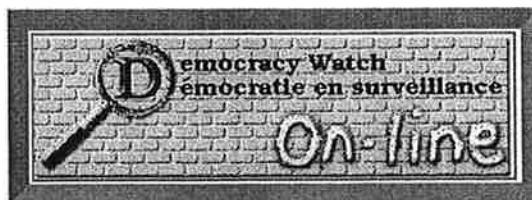
Voter Rights Campaign

Report Card on the Democratic Reform and Corporate Responsibility Election Platforms of the Federal Political Parties

See Backgrounder set out below for details about parties' platforms

GRADING SYSTEM

- A - Platform makes clear promise to implement proposal
- B - Platform makes vague or partial promise to implement proposal
- C - Platform makes clear promise to explore proposal
- D - Platform makes vague or partial promise to explore proposal
- E - Platform mentions proposal
- F - Platform mentions theme of proposal
- I - Platform does not mention proposal



Media Release

FEDERAL CONSERVATIVE PARTY HAS BEST GOVERNMENT ACCOUNTABILITY PLATFORM -- NDP, GREENS, BLOC TIED NOT FAR BEHIND, LIBERAL GRADES MUCH WORSE -- ALL PLATFORMS STILL HAVE KEY GAPS -- LACK OF HONESTY-IN-POLITICS LAW MEANS NONE OF THE PARTIES' PLEDGES SHOULD BE TRUSTED

Wednesday, January 18, 2006

OTTAWA - Today, Democracy Watch released its Report Card on the 2006 Government Accountability Election Platforms of the five main federal political parties (See Report Card set out below).

The Report Card grades the five main parties' platform pledges based upon 16 sets of changes Democracy Watch believes are the changes that will most effectively require everyone in the federal government to act honestly, ethically, openly, efficiently, representatively and, if they don't act in these democratic ways, easily and thoroughly held accountable. In total, the 16 sets of changes add up to about 70 changes to the federal government's accountability system.

The measures are a compilation of the proposals of the four nation-wide coalitions Democracy Watch coordinates (Government Ethics Coalition, Money in Politics Coalition, Corporate Responsibility Coalition, Canadian Community Reinvestment Coalition). A combined total of more than 140 citizen groups with a total membership of more than 3 million Canadians belong to the coalitions, groups that work on anti-poverty, bank accountability, community economic development, consumer, corporate responsibility, environment, labour, social justice, women and youth issues.

Many national surveys over the past several years have shown that a large majority of Canadians support the government accountability reforms set out in the Report Card, as do many commentators on democratic reform.

The 16 sets of changes, divided into five areas, all reflect the following five key elements for ensuring that large, powerful government institutions act responsibly and follow rules: 1. strong laws with no loopholes; 2. requirement to disclose details of operations and violations; 3. fully independent, fully empowered watchdog agencies to enforce laws; 4. penalties that are high enough to encourage compliance; and 5. empowerment of citizens to hold governments and watchdog agencies accountable.

The parties were given a grade ranging from A (Platform makes clear promise to implement proposal) to I (Platform does not mention proposal), with grades B for a vague or partial promise to implement the proposal, C and D for clear to vague promises to explore the proposal, E for mentioning proposal and F for mentioning the theme of the proposal. Grades were averaged for each of the five sections, and the average of section grades was used for the overall grades.

The highlights of the Report Card are as follows:

- The overall grades for every party, except the Liberals, are better than in all past election platform Report Cards Democracy Watch has produced, a clear sign that most of the parties are finally making comprehensive, effective pledges to strengthen the federal government's accountability system;
- The Conservatives had the best overall grade of B (mainly because of they made many specific pledges), and the best grade in two of the five areas (the Open Government area, and the Representative, Citizen-Driven Government area);
- The NDP also had the best grade in two of the five areas (the Honest, Ethical Government area, and the General Government Accountability Measures area), and tied with the Bloc and the Green Party with an overall grade of C+;
- The Liberals had the worst results, with an overall F grade, and the worst grades in all five areas;
- The strongest overall area grades for all the parties were in the "Open Government" area, with the Conservatives the best with a B+ grade;
- The worst overall area grades for all the parties were in the General Government Accountability Measures area, in which none of the parties had better than a B- grade (although in this area all the parties except the Liberals promise strong action on whistleblower protection);
- The main area in which all of the parties are weak is in empowering citizens and citizen groups to hold the federal government directly accountable;
- All of the parties except the Liberals promise action to strengthen ethics enforcement, lobbying disclosure and enforcement, auditing resources and enforcement, and election reforms, and;
- All of the parties except the Liberals promise to increase Parliament's role in reviewing appointments currently made solely by the Prime Minister, and ensuring merit-based nomination and appointment processes.

"Given the lack of a federal honesty in politics law, and the lack of a clear pledge by any of the parties to pass such a law, voters should be wary of trusting any political promises," said Duff Conacher, Coordinator of Democracy Watch. "However, a positive sign is that unlike in the past four elections most parties are addressing many of the key flaws in the federal government's accountability system."

The 2006 Report Card is an updated version of the Report Card issued by Democracy Watch during the 2004 and 2000 federal elections, reflecting changes that have occurred in federal laws since 2004. In the 2004 Report Card, the NDP received the highest overall grade of C mainly because of its promises to strengthen enforcement and standards in almost all of areas the Report Card covered (the NDP had the best grades in five of the 2004 Report Card's six areas).

Democracy Watch graded the parties' election platforms by reviewing the platforms. Statements by party leaders or representatives were not taken into account as they are not fully accessible to all voters, nor are they binding in any way on the party (as admitted by many party leaders) and as a result are even less reliable than promises made in the parties' platforms. (Please see Backgrounder set out below for details and relevant excerpts from the parties' platforms)

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FOR MORE INFORMATION, CONTACT:

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Democracy Watch's Federal Election Campaign webpage

Bloc Québécois platform webpage

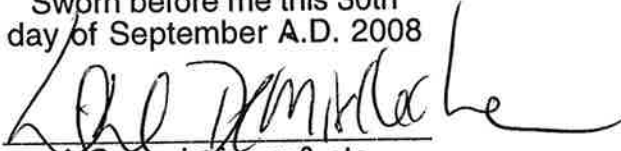
Conservative Party of Canada platform webpage

Green Party of Canada platform webpage

Liberal Party of Canada platform webpage

NDP platform webpage

This is Exhibit "F" referred
to in the affidavit of Duff Conacher
Sworn before me this 30th
day of September A.D. 2008


A Commissioner & etc.



Government
of Canada

Gouvernement
du Canada

Canada

Democratic Reform > Canada's New Government Proposes Fixed Election Dates

Canada's New Government Proposes Fixed Election Dates

30 May 2006
Ottawa, Ontario

The Honourable Rob Nicholson, Leader of the Government in the House of Commons and Minister for Democratic Reform today introduced in the House of Commons a bill providing for fixed election dates every four years.

The bill also establishes Monday, October 19, 2009 as the date of the next general election. Once the general election is held, the following election would be set for the third Monday in October, four calendar years in the future.

"Fixed election dates will improve the fairness of Canada's electoral system by eliminating the ability of governing parties to manipulate the timing of elections for partisan advantage," stated Minister Nicholson.

Currently, the Prime Minister is able to select a date for a general election and to advise the Governor General to dissolve Parliament. This allows the governing party to set the timing of a general election to its own advantage.

Beyond providing for greater fairness, fixed election dates will improve transparency and predictability. This bill, however, will not change the practice of dissolving Parliament for elections if the government loses the confidence of the House of Commons.

"Establishing fixed election dates fulfills one of this government's key campaign commitments," added Minister Nicholson. "It is an important step in improving and modernizing Canada's democratic institutions and practices," concluded Minister Nicholson.

For information, contact:
Office of the Leader of the Government in the House of Commons
and Minister for Democratic Reform (613) 952-4930

Background Fixed Election Dates

Election Commitment

- The Conservative Party's election platform for the January 23, 2006 federal election indicated that it would: "introduce legislation modelled on the BC and Ontario laws requiring fixed election dates every four years, except when a government loses the confidence of the House (in which case an election would be held immediately, and the subsequent election would follow four years later)" (p. 44).

Current System

- Currently, it is the prerogative of the Prime Minister, having the confidence of the House of Commons, to select what he or she regards as an opportune time for an election to renew the government's mandate and to advise the Governor General to dissolve the House in time for that election.

The New System Proposed in the Bill

- Under the proposed system, general elections will be held on a fixed day. Specifically, the bill provides that general elections must be held on the third Monday in October in the fourth calendar year following polling day for the last general election.
- This does not affect the prerogative of the Prime Minister to advise dissolution at any time prior to the stipulated date, in the event of a loss of confidence. Where a government loses the confidence of the House of Commons, a general election would be held in accordance with existing practices. The general election following this would then be set for the third Monday in October in the fourth calendar year.
- The bill also sets out that the date for the next general election will be October 19, 2009, unless the government loses the confidence of the House prior to this time.

The Powers of the Governor General and Confidence

- The power to dissolve Parliament, an historical prerogative of the Crown considered essential to the principle of responsible government, is expressly conferred on the Governor General in section 50 of the *Constitution Act, 1867*. Section 50 of the *Constitution Act, 1867* provides: "Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer."
- The proposed bill explicitly 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."
- Thus, the Prime Minister will still be able to advise the Governor General to dissolve Parliament in cases where the government loses the confidence of the House of Commons.
- Should an election be held as a result of a loss of confidence, the next election would be held on the third Monday in

October in the fourth calendar year following the election that results from a loss of confidence.

Other Jurisdictions with Fixed Election Dates

Provincial Governments

- British Columbia, Newfoundland and Labrador and Ontario have legislated fixed election dates, and other governments have indicated that they are considering recommendations for similar legislation.

Other Countries

- Countries that have a fixed term include: Chile, Costa Rica, Cyprus, Estonia, Finland, South Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Sweden, Switzerland, and the United States.
- Countries that have a fixed term, but that allow for some degree of flexibility (e.g., an election must be held within a period of two months) include: Austria, Belgium, Czech Republic, France, Germany, Greece, Hungary, Israel, Italy, and Spain.
- Those countries that have unfixed election dates include: Australia, Canada, Denmark, Iceland, India, Ireland, Japan, Malta, New Zealand, South Africa, Turkey, and the United Kingdom.

Key Advantages Of Fixed Election Dates

- There are many advantages to legislation providing for fixed election dates:

Fairness: It is unfair that the governing party should be permitted to time an election to exploit conditions favourable to its re-election. Fixed election dates will level the playing field and provide greater fairness for all parties.

Transparency and Predictability: Fixed election dates will provide transparency as to when general elections will be held. Rather than decisions about election dates being made behind closed doors, general election dates will be public knowledge. Election dates will now be predictable.

Improved Governance: Fixed election dates will allow for better policy planning. For example, members of parliamentary committees will be able to set out their agendas well in advance, which will make the work of committees, and Parliament as a whole, more efficient.

Higher Voter Turnout Rates: Holding elections in October, other than when a government loses the confidence of the House, could improve voter turnout. The weather is generally favourable in most parts of the country, fewer people are transient (e.g., most students will not be in transition between home and school at that time, and seniors will not be deterred from voting, as they might be in colder months), and citizens will be able to plan in advance to participate in the electoral process.

The Third Monday In October As The Fixed Date For General Elections

- One objective of setting fixed election dates is maximizing voter turnout. Given weather conditions in Canada, the best available months for a fixed date for general elections are from May to October. July and August are not advisable because of the high number of vacationers. May and June are not recommended as many university students have ended their terms by then and are in places where they may be less likely to vote.
- Weather conditions for election campaigns are normally favourable in the Fall in all parts of Canada. Seniors will not be deterred from voting during this period. Moreover, most snowbirds will not have departed for the south before the late Fall.
- The third Monday in October was chosen as a day that is least likely to conflict with provincial fixed election dates, statutory and religious holidays, and municipal elections.
- Another factor to consider in choosing a fixed date is the Parliamentary financial procedures. The business of supply is the historical heart of parliamentary procedure. The Standing Orders require that the Main Estimates be tabled by March 1. Elections held in the spring would disrupt the normal process for Parliamentary review and approval of the spending plans of the government.
- Finally, Citizenship Week is celebrated by the Government of Canada in the third week of October each year. It aims to raise awareness of the privileges, rights and responsibilities of citizenship. Participation in a general election is a fundamental right and responsibility of citizenship.

Election Day Conflicts (Cultural or Religious Significance or Elections in Other Jurisdictions)

- In the current system, the date of the general election is chosen by the government, so it is rare that a polling day is chosen that comes into conflict with a date of cultural or religious significance or with elections in other jurisdictions. However, with the introduction of legislation providing for fixed election dates, there is some possibility that the stipulated election date will occasionally be the same as a day of cultural or religious significance or as an election in another jurisdiction.
- The Ontario fixed election dates legislation provides that, if there is a conflict with a day of cultural or religious significance, the Chief Election Officer may recommend an alternate polling day to the Lieutenant Governor in Council, up to seven days following the day that would otherwise be polling day. (The Newfoundland and Labrador and the British Columbia fixed election dates legislation is silent on this issue.)
- Using a variation of the Ontario legislation providing for fixed election dates, our bill empowers the Chief Electoral Officer to recommend an alternate polling day to the Governor in Council should he or she find that the polling day is not suitable for that purpose (e.g., because it is a day of cultural or religious significance or a polling day for a municipality or province). The alternate day would be either the Tuesday or the Monday following the Monday that would otherwise be

polling day.

- Allowing alternate polling days to be held on the following Tuesday or Monday is consistent with the current practice of holding elections on a Monday or a Tuesday.

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