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The law's a sham

Laws setting fixed dates for elections are a messy and tricky business in a constitutional democracy. The Queen's representatives exercise sole authority and discretion to dissolve Parliament or a provincial legislature, thereby requiring a new election.

Last week, the Alberta Court of Queen's Bench refused to grant an interim injunction that would have denied Premier Jim Prentice his apparent wish to call an early election. Clear language in section 38.1 of the Election Act states that the next election shall be held "in the fourth calendar year following polling day in the most recent general election." Holding an election in 2015 is a blatant violation of the law, which requires holding elections in 2016, 2020, and so on.

In 2011, the governing Progressive Conservatives stated that this law served to end the unfair partisan advantage that the governing party derives from manipulating the political process. The law would also create fairness for those considering running for office, enabling them to arrange their business, career, family and personal affairs with predictability. The Attorney-General went so far as to claim that "fixed election periods would allow the Government and Public Service to work within clearly established time frames," allowing for "improved governance."

In court, the premier's lawyer argued, correctly, that the lieutenant-governor exercises absolute discretion to dissolve the legislature when he or she sees fit. Regarding elections, the lieutenant-governor follows the advice of the premier as a matter of convention, but he is not bound to

follow that advice.

In allowing the premier to disobey the Election Act, the court ignored the distinction between the lieutenant-governor and the Executive Council (cabinet). Legislation cannot fetter the lieutenant-governor's royal prerogative, but laws can and do restrict the behaviour of cabinet. In written argument, the premier's lawyer provided no reason why the legislature cannot impose restrictions on the premier and cabinet as to when they can — and cannot — advise the lieutenant-governor to dissolve the Legislature.

This same confusion was evident in the Federal Court ruling in *Conacher vs. Canada*, at trial and again on appeal. The court was asked to interpret the Canada Elections Act requirement that "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." The court equated the advice provided by the prime minister to the governor-general with the governor-general's unfettered discretion to dissolve Parliament, as though both enjoy constitutional status.

It's one thing for a court to rule that a politician's election promise is not a legally enforceable contract. In dismissing the Canadian Taxpayers Federation's application to hold Ontario's Dalton McGuinty to his written campaign pledge about taxation, the court held that treating every politician's campaign pledge as a binding contract would undermine the

supremacy of Parliament, and render government dysfunctional. But the laws passed by Canada's Parliament and Alberta's legislature, requiring elections to be held once every four years, are not election promises.

When the government has free rein to break its own laws, it makes the law itself a sham, if not a fraud. This is wholly inconsistent with the Rule of Law, one of Canada's most important constitutional principles. The Rule of Law is one of the pillars of Western civilization, with roots dating back to pre-Christian times. Plato argued that "if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state." Aristotle stated that "it is more proper that law should govern than any one of the citizens." The Roman statesman Cicero noted that, "We are all servants of the laws, in order that we may be free." Closer to home, the Magna Carta made it clear in 1215 that the King of England is not above the law.

If Canadians are to take laws seriously, as we should, then law must apply to everyone as written, including the government. Courts should reject the argument that the government's own law does not apply to it, and prevent governments from abusing the democratic and legislative process.

Calgary lawyer John Carpay is president of the Justice Centre for Constitutional Freedoms (JCCF.ca)