



Secretariat Unit

REVISED

August 11, 2014

Bill Essentials

THE CONSTITUTION (AMENDMENT) BILL, 2014

An Act to amend the Constitution of Trinidad and Tobago

Bill No: 18 of 2014

Introduced in: The House of Representatives

Introduced by: The Honourable Kamla Persad-Bissessar, SC [Prime Minister]

Introduced on: 4th August, 2014

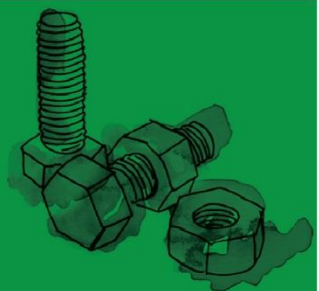


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BACKGROUND

The Constitution Amendment Bill, 2014¹, was introduced and read a first time in the House of Representatives on August 4th, 2014 by the Honourable Prime Minister, Mrs. Kamla Persad-Bissessar. The Bill was preceded by a report of the Trinidad and Tobago Constitution Reform Commission dated December 27, 2013². The Commission conducted a series of consultations across the country in an effort to canvass opinions from the general public on changes to the Constitution.

THE PURPOSE OF THE BILL

The Bill will seek to amend:

- ✓ the Constitution to limit service as Prime Minister to no more than ten (10) years and six (6) months, whether such service is continuous or has been interrupted;
- ✓ section 49(2) of the Constitution to require a member of the House of Representatives to vacate his seat if a petition is supported by at least two-thirds of registered voters in that constituency requesting that the member be recalled and that a bye-election be held in the constituency that the member represents; and
- ✓ section 73 of the Constitution by preventing a candidate in a general election from being elected as the member of the House of Representatives for a constituency, unless he obtains more than fifty percent (50%) of the votes cast in the constituency and provide for a supplementary poll between those candidates who earned the highest and second highest number of votes where none of the candidates in a constituency in a general election obtains more than fifty percent (50%) of the votes cast.

¹ <http://www.ttparliament.org/legislations/b2014h18.pdf>

² <http://www.reformtheconstitution.com/wp-content/uploads/2014/01/TTCRC-Report-Web.pdf>

KEY FEATURES OF THE PROPOSED LEGISLATION

- ✓ By clause 2, the proposed Act would come into operation on such date as is fixed by the President by Proclamation. By clause 3, the proposed Act would be construed as altering the Constitution.
- ✓ With respect to term limits for the office of Prime Minister, the Bill would, by clause 8, amend the Constitution to limit service as Prime Minister to no more than ten years and six months, whether such service is continuous or has been interrupted. A Prime Minister would therefore be required to vacate his office upon attaining that length of service. No account would, however, be taken of any time spent serving as acting Prime Minister for the purposes of calculating length of service. Further, no one would be appointed as Prime Minister who has served ten years or more in that office, whether or not such service is continuous or has been interrupted.
- ✓ In relation to the recall of members of the House of Representatives, the Bill would, by clause 5, amend section 49(2) of the Constitution to require a member of the House of Representatives to vacate his seat where the Speaker informs the House that he has received from the Chairman of the Elections and Boundaries Commission, a petition requesting that the member be recalled and that a bye-election be held in the constituency that the member represents. The petition must be supported by at least two-thirds of all the persons who, on the date of issuance of the petition, were registered voters in that constituency.
- ✓ By clause 6, a new section 49B of the Constitution would be inserted to provide for the procedure relating to the application for, and the issuance of, a recall petition, as well as the casting of ballots in support of the petition and the announcement of the vacancy of the seat of the member of the House of Representatives who is the subject of the recall petition.
- ✓ Two registered voters in a constituency, who also reside in the constituency, would be required to apply to the Elections and Boundaries Commission for the issuance of a

petition for the recall of the member of the House of Representatives who was elected to represent that constituency and for the holding of a bye-election in that constituency.

- ✓ An application for a recall petition would be required to be in a form which would be included in a new Fourth Schedule to the Constitution. A person would not be able to apply for a recall petition before the expiration of three years, or after the expiration of four years, from the first poll of the last general election. The Elections and Boundaries Commission would not, however, approve the application unless it is supported by at least ten percent of all the persons who are registered to vote in the constituency.
- ✓ A person who is registered to vote, and who resides, in the particular constituency would be able to canvass for signatures in support of an application for a recall petition after the expiration of three years from the first poll of the last general election. The text of the petition would need to be on each page containing the signatures of persons who are in support of the application.
- ✓ A person who canvasses for signatures would be required to make a statutory declaration that he is registered to vote, and resides, in the constituency specified in the petition, that the signatures were voluntarily given and were not obtained by means of harassment, intimidation or threat, and that to the best of his knowledge, the signatures were given by persons whose names appear on the list of registered voters in the constituency.
- ✓ Where the Elections and Boundaries Commission is satisfied that the application has received the support of at least ten percent of all the persons who are registered to vote in the constituency specified in the application, the Chairman of the Elections and Boundaries Commission would so certify on the application and the Elections and Boundaries Commission would approve the application in principle. The applicants, the member concerned and the Speaker would then be notified of the approval of the application and the Elections and Boundaries Commission would issue the petition within three days of giving such notice.
- ✓ The Elections and Boundaries Commission would cause the petition to be published in the Gazette, newspapers and on its website and would make it available for inspection and for the casting of ballots in support of it at for a period of twenty-one days. Registered

voters would be able to cast their ballots at advertised locations between 8:00 a.m. and 4:00 p.m., including on Saturdays and Sundays, but not on public holidays. In as much as the Elections and Boundaries Commission may not have the resources to ensure that each registered voter who casts a ballot still resides in the constituency, a person would be required to make a statutory declaration that he is registered to vote, and resides, in the constituency, before he casts his ballot.

- ✓ Where the Elections and Boundaries Commission is satisfied that the petition has received the support of at least two-thirds of all the registered voters in the constituency, the petition would be certified by the Chairman of the Elections and Boundaries Commission and forwarded to the Speakers who would inform the House of Representatives and announce that the seat of the member concerned has fallen vacant.
- ✓ A new section 49C of the Constitution would provide for the supervision of the casting of ballots, the daily recording of the number of ballots cast and the announcement of the results of the casting of the ballots on the last day only. The form of the ballot would be included in the new Fourth Schedule.
- ✓ The Bill would amend section 73 of the Constitution by preventing a candidate in a general election from being elected as the member of the House of Representatives for a constituency, unless he obtains more than fifty percent of the votes cast in the constituency. Where none of the candidates in a constituency in a general election obtains more than fifty percent of the votes cast in the constituency, a supplementary poll between those candidates who earned the highest and second highest number of votes would be held within fifteen days of the declaration of the results of the general election and the list of electors for the purposes of the supplementary poll would be the same list which was used for the purposes of the general election.
- ✓ This Bill would amend section 67 of the Constitution to provide that where a supplementary poll is to be held after a general election, no session of Parliament shall commence before the results of the supplementary poll have been declared, except that where an emergency arises of such a nature that in the opinion of the Prime Minister it is necessary for the two Houses of Parliament to be summoned before all the

supplementary polls can be held, the President, acting in accordance with the advice of the Prime Minister, would be able to summon the two Houses of the preceding Parliament.

- ✓ The supplementary polls would, however, proceed and the Parliament that has been summoned would, if not sooner dissolved, again stand dissolved on the day on which the last supplementary poll is held. The Bill would also amend section 76 of the Constitution to prevent the President from appointing a Prime Minister before the results of all supplementary polls have been declared.
- ✓ Finally, the Bill would make consequential amendments to the Representation of the People Act, the Registration Rules and the Election Rules, so as to facilitate the implementation of the proposed Act.

TWO-ROUND SYSTEM (run off)³

The central feature of the Two-Round System is as the name suggests: *it is not one election but takes place in two rounds, often a short time apart*. The first round is conducted in the same way as a single-round plurality/majority election. In the most common form of TRS, this is conducted using FPTP. A candidate who receives a specified proportion of the vote (50% plus 1) is elected outright, with no need for a second ballot. If no candidate or party receives an absolute majority, then a second round of voting is held and the winner of this round is declared elected.

The details of how the second round is conducted vary in practice from case to case. The most common method is for it to be a straight run-off contest between the two highest vote winners from the first round; this is called majority run-off TRS. It produces a result that is truly majoritarian in that one of the two participants will necessarily achieve an absolute majority of votes and be declared the winner. A second method, majority-plurality TRS, is used for legislative elections in France, the country most often associated with the Two-Round System. In these elections, any candidate who has received the votes of over 12.5 per cent of the registered electorate in the first round can stand in the second round. Whoever wins the highest number of

³ <http://aceproject.org/ace-en/topics/es/esd/esd01/esd01e/esd01e01>

votes in the second round is then declared elected, regardless of whether they have won an absolute majority or not. Unlike majority run-off, this system is not truly majoritarian, as there may be up to five or six candidates contesting the second round of elections.

Advantages and disadvantages of Two-Round System (TRS)

Advantages of TRS

- First and foremost, TRS allows voters to have a second chance to vote for their chosen candidate, or even to change their minds between the first and the second rounds. It thus shares some features in common with preferential systems like the Alternative Vote, in which voters are asked to rank-order candidates, while also enabling voters to make a completely fresh choice in the second round if they so desire.
- TRS can encourage diverse interests to coalesce behind the successful candidates from the first round in the lead-up to the second round of voting, thus encouraging bargains and trade-offs between parties and candidates. It also enables the parties and the electorate to react to changes in the political landscape that occur between the first and the second rounds of voting.
- TRS lessens the problems of 'vote-splitting', the common situation in many plurality/majority systems where two similar parties or candidates split their combined vote between them, thus allowing a less popular candidate to win the seat. Also, because electors do not have to rank-order candidates to express their second choice, TRS may be better suited to countries where illiteracy is widespread than systems which use preferential numbering like the Alternative Vote or the Single Transferable Vote.

Disadvantages of TRS

- TRS places considerable pressure on the electoral administration by requiring it to run a second election a short time after the first, thus significantly increasing both the cost of the overall election process and the time that elapses between the holding of an election and the declaration of a result. This can lead to instability and uncertainty. TRS also places an additional burden on the voter in terms of time and effort required to cast the vote as

the voter has to make it to the polling station twice, and sometimes there is a sharp decline in turnout between the first round and the second.

- TRS shares many of the disadvantages of FPTP. Research has shown that in France it produces the most disproportional results of any Western democracy, and that it tends to fragment party systems in new democracies.
- One of the most serious problems with TRS is its implications for deeply divided societies. In Angola in 1992, in what was supposed to be a peacemaking election, rebel leader Jonas Savimbi came second in the first round of a TRS presidential election to Jose dos Santos with 40 per cent of the vote as opposed to dos Santos' 49 per cent. As it was clear that he would lose the run-off phase, he had little incentive to play the democratic opposition game and immediately restarted the civil war in Angola, which went on for another decade. In Republic of the Congo in 1993, prospects of a government landslide in the second round of a TRS election prompted the opposition to boycott the second round and take up arms. In both cases, the clear signal that one side would probably lose the election was the trigger for violence. In Algeria in 1992, the candidate of the Islamic Salvation Front (Front Islamique du Salut, FIS) led in the first round, and the military intervened to cancel the second round.

UNITED KINGDOM ALTERNATIVE VOTE REFERENDUM, 2011⁴

The Alternative vote is a preferential system whereby a voter ranks candidates in order of preference. Under this system, a candidate must win an absolute majority of votes, that is 50% plus 1, in order to be elected.⁵

If no candidate receives an absolute majority, the candidate with the lowest number of first preference votes is eliminated and their votes are redistributed according to the second (or next available) preference marked on the ballot paper. This process continues until one candidate has half of the votes and is elected.

⁴ <http://www.electoral-reform.org.uk/alternative-vote/>

⁵ International Institute for Democracy and Electoral Assistance. *The International IDEA Handbook of Electoral System Design* pg. 39

On May 5, 2011, a nationwide vote was held to decide whether the first-past-the-post method of electing Members of Parliament ought to be replaced by an alternative vote. The public voted against this proposal.

AMENDMENTS TO EXISTING LEGISLATION

The Bill will amend the following:

- ✓ The Constitution of the Republic Trinidad and Tobago Act⁶
- ✓ The Representation of the People Act, Chap. 2:01⁷
- ✓ The Registration Rules made in accordance with the Representation of the People Act, Chap. 2:01⁸
- ✓ The Election Rules made in accordance with the Representation of the People Act, Chap. 2:01⁹
- ✓ The Prescribed Forms Rules made in accordance with the Representation of the People Act, Chap. 2:01¹⁰

⁶ <http://www.ttparliament.org/documents/1048.pdf>

⁷ <http://www.ttparliament.org/legislations/a2000-51.pdf>

⁸ http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/2.01.pdf

⁹ Ibid.

¹⁰ Ibid.

COMPARATIVE TABLE OF PROPOSED AMENDMENTS

The Constitution

ORIGINAL	AMENDED
<p>Section 49(2):</p> <p>(2) A member of the House of Representatives shall also vacate his seat in the House where—</p> <p>(a) he resigns it by writing under his hand addressed to the Speaker or, where the office of Speaker is vacant or the Speaker is absent from Trinidad and Tobago, to the Deputy Speaker;</p> <p>(b) he is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House;</p> <p>(c) he ceases to be a citizen of Trinidad and Tobago;</p> <p>(d) subject to the provisions of subsection (3), any circumstances arise that, if he were not a member of the House of Representatives, would cause him to be disqualified for election thereto by virtue of subsection (1) of section 48 or any law enacted in pursuance of subsection (2) of that section;</p> <p>(e) having been a candidate of a party and elected to the House, he resigns from or is expelled by that party.</p>	<p>New Section 49(2):</p> <p>(2) A member of the House of Representatives shall also vacate his seat in the House where—</p> <p>(a) he resigns it by writing under his hand addressed to the Speaker or, where the office of Speaker is vacant or the Speaker is absent from Trinidad and Tobago, to the Deputy Speaker;</p> <p>(b) he is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House;</p> <p>(c) he ceases to be a citizen of Trinidad and Tobago;</p> <p>(d) subject to the provisions of subsection (3), any circumstances arise that, if he were not a member of the House of Representatives, would cause him to be disqualified for election thereto by virtue of subsection (1) of section 48 or any law enacted in pursuance of subsection (2) of that section;</p> <p>(e) having been a candidate of a party and elected to the House, he resigns from or is expelled by that party; or</p> <p>(f) subject to section 49B, the Speaker informs the House of Representatives that he has received from the Chairman of the Elections and Boundaries Commission, a petition under section 49B which-</p> <p style="padding-left: 40px;">(i) requests that the member be recalled and that a bye-election be held in the constituency that the member represents; and</p> <p style="padding-left: 40px;">(ii) is certified by the Chairman of the Elections and Boundaries Commission as having received support of at least two-thirds of all the persons who, on the date of issuance of the petition, were registered voters in the constituency that the member represents.</p>
	<p>New Section 49B:</p> <p style="padding-left: 40px;">49B. (1) Two persons who are registered to vote, and who reside, in a constituency may, in the form set out as Form No. 1 in the Fourth Schedule, apply to the Elections and Boundaries</p>

Commission for the issuance of a petition for the recall of the member who represents that constituency.

(2) An application under subsection (1) (hereinafter in this section referred to as "the application") shall not be made –

- (a) before the expiration of three years; or
- (b) after the expiration of four years,

from the first poll of the last general election.

(3) The Elections and Boundaries Commission shall not approve the application unless it is supported by at least ten percent of all the persons who are registered to vote in the constituency specified in the application.

(4) A person who is registered to vote, and who resides, in the constituency specified in the application may, at any time after the expiration of three years from the first poll of the last general election, canvass for signatures in support of the application.

(5) The text of the petition applied for shall be printed on each page containing the signatures of persons who are in support of the application.

(6) A person shall not submit to the Elections and Boundaries Commission, the signatures of persons who are in support of the application, unless he first makes a statutory declaration in the form set out as Form No. 2 in the Fourth Schedule declaring that he is registered to vote, and resides, in the constituency specified in the petition, that the signatures were voluntarily given and were not obtained by means of harassment, intimidation or threat, and that to the best of his knowledge, the signatures were given by persons whose names appear on the list of registered voters in the constituency.

(7) Where the Elections and Boundaries Commission is satisfied that the application has received the support of at least ten percent of all the persons who are registered to vote in the constituency specified in the application, the Chairman of the Elections and Boundaries Commission shall so certify in the appropriate place on the application and the Elections and Boundaries Commission shall approve the application in principle.

(8) Where the Elections and Boundaries Commission approves the application in principle, it shall –

- (a) notify the applicants, the member specified in the application and the Speaker of the approval; and

- (b) issue the petition in the form set out as Form No. 3 in the Fourth Schedule within three days after notice is given under paragraph (a).

(9) The Elections and Boundaries Commission shall cause a petition issued under subsection (8)(b) (hereinafter in this section referred to as “the petition”) to be –

- (a) published in the *Gazette*, at least two newspapers in daily circulation in Trinidad and Tobago and on its website, within seven days of issuing the petition; and
- (b) available for inspection and the casting of ballots in support thereof –
 - (i) between the hours of 8:00 a.m. and 4:00 p.m. for a period of twenty-one days from the date of its first publication in a newspaper, including inspection and the casting of ballots on Saturdays and Sundays, but not on public holidays; and
 - (ii) at such locations as the Elections and Boundaries Commission shall advertise in at least two newspapers in daily circulation in Trinidad and Tobago and on its website.

(10) The Elections and Boundaries Commission shall ensure that ballots in support of the petition are cast only -

- (a) during the twenty-one day period and at the locations referred to in subsection (9)(b);
- (b) by persons who, on the date of the issuance of the petition, were registered voters in the constituency specified in the petition; and
- (c) once by a registered voter referred to in paragraph (b).

(11) A person shall not cast a ballot in support of the petition unless he resides in the constituency specified in the petition and first makes a statutory declaration in the form set out as Form No. 4 in the Fourth Schedule declaring that he is registered to vote, and resides, in that constituency.

(12) Where the Elections and Boundaries Commission is satisfied that the petition has received the support of at least two-thirds of all the persons who are registered to vote in the constituency specified in the petition and that the requirements

	<p>of subsections (10) and (11) have been met, the Chairman of the Elections and Boundaries Commission shall so certify in the appropriate place on the petition and shall immediately forward the petition to the Speaker.</p> <p>(13) At the next sitting of the House of Representatives after he receives the petition, which sitting shall be convened as soon as practicable and, in any event, before the expiration of four years from the first sitting of Parliament after the last general election, the Speaker shall inform the House of Representatives of his receipt of the petition and announce that the seat of the member specified in the petition is vacant.”.</p>
	<p>New Section 49C:</p> <p>49C. (1) For the purposes of the casting of ballots in support of a petition under section 49B, there shall be a Presiding Officer, a Deputy Presiding Officer and such number of Poll Clerks as may be necessary for each location.</p> <p>(2) Immediately after the last registered voter has cast his ballot in support of a petition under section 49B after 4:00 p.m. on any day, the Presiding Officer shall announce the close of the casting of ballots for that day.</p> <p>(3) The Presiding Officer shall, in a diary kept for the purposes of this subsection, record the hour at which the casting of ballots is closed on each day and the number of persons who cast ballots at that location as recorded on the numbered stub of the last ballot paper issued, excluding the total number of destroyed and spoiled ballots.</p> <p>(4) The Presiding Officer shall sign the record in the diary referred to in subsection (3) and cause the Deputy Presiding Officer, the Poll Clerk, any petitioner or his agent, and the member specified in the petition or his agent, to append their signatures thereto.</p> <p>(5) Immediately after the closing of the casting of ballots on the last day of the twenty-one day period referred to in section 49B(9)(b), the Chief Election Officer shall ascertain the result of the casting of the ballots and publicly declare and announce the same.</p> <p>(6) No result of the casting of ballots under section 49B shall be publicly declared or announced, except in accordance with subsection (5).</p> <p>(7) For the purposes of section 49B, a ballot in support of a petition shall be in the form set out as Form No. 4 in the Fourth Schedule.</p>

<p>Section 67:</p> <p>67. (1) Each session of Parliament shall be held at such place within Trinidad and Tobago and shall commence at such time as the President may by Proclamation appoint.</p> <p>(2) There shall be a session of each House once at least in every year, so that a period of six months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session.</p>	<p>New Section 67:</p> <p>67. (1) Subject to subsection (3), each session of Parliament shall be held at such place within Trinidad and Tobago and shall commence at such time as the President may by Proclamation appoint.</p> <p>(2) There shall be a session of each House once at least in every year, so that a period of six months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session.</p> <p>(3) Subject to subsection (4), where one or more supplementary polls are, or are to be, held in accordance with section 73(4), no session of Parliament shall commence before the results of all the supplementary polls have been declared.</p> <p>(4) Where, between the first poll and one or more supplementary polls referred to section 73(4), an emergency arises of such a nature that in the opinion of the Prime Minister it is necessary for the two Houses of Parliament to be summoned before all the supplementary polls can be held, the President, acting in accordance with the advice of the Prime Minister, may summon the two Houses of the preceding Parliament but the supplementary polls shall proceed and the Parliament that has been summoned shall, if not sooner dissolved, again stand dissolved on the day on which the last supplementary poll is held.</p>
<p>Section 73:</p> <p>73. (1) The election of members of the House of Representatives shall be by secret ballot and in accordance with the first-past-the-post system.</p> <p>(2) For the purposes of subsection (1), the votes shall be cast in ballot boxes of a design calculated to ensure their efficiency and reliability.</p>	<p>New Section 73:</p> <p>73. (1) The election of members of the House of Representatives shall be by secret ballot and in accordance with the first-past-the-post system.</p> <p>(2) For the purposes of subsection (1), the votes shall be cast in ballot boxes of a design calculated to ensure their efficiency and reliability.</p> <p>(3) A candidate shall not be elected in accordance with subsection (1) as the member of the House of Representatives for a constituency, unless he obtains more than fifty percent of the votes cast in the constituency.</p> <p>(4) Where a poll (hereinafter in this section referred to as “the first poll”) is held and no candidate is elected in accordance with subsections (1) and (3) as the member of the House of Representatives for a constituency a supplementary poll between those candidates who earned the highest and second highest number of votes shall be held –</p>

	<p>(a) on the fifteenth day following the date of the first poll; or</p> <p>(b) if the fifteenth day under paragraph (a) falls on a Saturday, Sunday or public holiday, on the first following day that is not a Saturday, Sunday or public holiday,</p> <p>and the list of electors for the purposes of the supplementary poll shall be the same list which was used for the purposes of the first poll</p>
<p>Section 76:</p> <p>76. (1) Where there is occasion for the appointment of a Prime Minister, the President shall appoint as Prime Minister—</p> <p>(a) a member of the House of Representatives who is the Leader in that House of the party which commands the support of the majority of members of that House; or</p> <p>(b) where it appears to him that that party does not have an undisputed leader in that House or that no party commands the support of such a majority, the member of the House of Representatives who, in his judgment, is most likely to command the support of the majority of members of that House,</p> <p>and who is willing to accept the office of Prime Minister.</p>	<p>New Section 76:</p> <p>76. (1) Where there is occasion, whether following a general election or otherwise, for the appointment of a Prime Minister, the President shall appoint as Prime Minister; save that no one shall be appointed who has served ten years or more as Prime Minister, whether or not such service is continuous or has been interrupted—</p> <p>(a) a member of the House of Representatives who is the Leader in that House of the party which commands the support of the majority of members of that House; or</p> <p>(b) where it appears to him that that party does not have an undisputed leader in that House or that no party commands the support of such a majority, the member of the House of Representatives who, in his judgment, is most likely to command the support of the majority of members of that House,</p> <p>and who is willing to accept the office of Prime Minister.</p> <p>(1A) No person shall hold the office of Prime Minister for more than ten years and six months, whether or not such service is continuous or has been interrupted, and on attaining that length of service the Prime Minister shall vacate his office.</p> <p>(1B) In calculating the length of service of a Prime Minister, no account shall be taken of any time spent serving as acting Prime Minister without having been appointed Prime Minister.</p> <p>(1C) Where, after the first poll of a general election, one or more supplementary polls are, or are to be, held in accordance with section 73(4), the President shall not appoint the Prime Minister before the results of all the supplementary polls have been declared, but the current Prime Minister and Ministers shall remain in office until they are required to vacate office in accordance with section 77(2)(a) and (3)(a), respectively.</p>

Representation of the People Act

<p>Section 33:</p> <p>(2) In the case of a general election, the writs of election for all electoral districts for which the election is to be held shall be dated on the same day and shall fix the date for the nomination of candidates and the date for the taking of the poll.</p> <p>(3) Every writ of election shall be in the form set out as Form No. 2 in the Prescribed Forms Rules and shall specify—</p> <p>(a) the day of the nomination of candidates, being not less than fourteen days after the day of issue of the writ;</p> <p>(b) the day upon which, if necessary, the poll shall be taken, being not less than twenty-one days after nomination day;</p> <p>(c) the day the writ is returnable to the Commission.</p>	<p>New Section 33:</p> <p>(2) In the case of a general election, the writs of election for all electoral districts for which the election is to be held shall be dated on the same day and shall fix the date for the nomination of candidates and the date for the taking of the first poll and the date for the taking of any supplementary poll.</p> <p>(3) Every writ of election shall be in the form set out as Form No. 2 in the Prescribed Forms Rules and shall specify—</p> <p>(a) the day of the nomination of candidates, being not less than fourteen days after the day of issue of the writ;</p> <p>(b) the day upon which, if necessary-</p> <p>(i) in the case of a general election-</p> <p>(A) the first poll shall be taken, being not less than twenty-one days after nomination day; and</p> <p>(B) a supplementary poll shall be taken, which date shall be on the fifteenth day following the date of the first poll or, if that day falls on a Saturday, Sunday or public holiday, on the first following day that is not a Saturday, Sunday or public holiday;</p> <p>(ii) in the case of an election other than a general election, the poll shall be taken, being not less than twenty-one days after nomination day;</p> <p>(c) the day the writ is returnable to the Commission.</p>
	<p>New Section 96 – insert after subsection (6):</p> <p>(6A) A person is guilty of bribery who, directly or indirectly, by himself or by any other person on his behalf—</p> <p>(a) gives any money or procures any office to or for any elector or to or for any other person on behalf of any elector or to or for any other person in order to induce any elector to support, or refrain from supporting, an application for a recall petition or a recall petition;</p> <p>(b) corruptly does any act as in paragraph (a) on account of any elector having supported or refrained from supporting, an application for a recall petition or a recall petition; or</p> <p>(c) makes any gift or procurement as in paragraph (a) to or for any person in order to induce that person to procure, or endeavour to procure, the supporting, or abstention from the</p>

	<p>supporting, of an application for a recall petition or a recall petition,</p> <p>or if upon or in consequence of any such gift or procurement he procures or engages, promises or endeavours to procure the supporting, or abstention from supporting, of an application for a recall petition or a recall petition.</p> <p>(6B) An elector is guilty of bribery who, directly or indirectly by himself or by any other person on his behalf, receives, agrees to receive, or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person for supporting or agreeing to support an application for a recall petition or a recall petition, or for refraining or agreeing to refrain from supporting an application for a recall petition or a recall petition.</p> <p>(6C) A person is guilty of bribery who, directly or indirectly by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having supported or refrained from supporting an application for a recall petition or a recall petition, or having induced any other person to support or refrain from supporting a recall petition.</p> <p>(6D) A person is guilty of bribery who –</p> <p>(a) advances or pays or causes to be advanced or paid any money to or to the use of any other person with the intent that the money or any part thereof will be expended in bribery under subsection (6A), (6B) or (6C);</p> <p>(b) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery under subsection (6A), (6B) or (6C).</p> <p>(6E) Subsections (1), (6A) and (6D) do not extend and shall not be construed to extend to any money paid or agreed to be paid for or on account of any legal expense incurred in good faith concerning a recall petition.</p>
	<p>New Section 97 (2A)– insert after subsection (2):</p> <p>(2A) A person is guilty of treating who corruptly, by himself or by any other person on his behalf, directly or indirectly gives or provides or pays wholly or in part the expense of giving or providing any food, drink, entertainment or provision to or for any person –</p> <p>(a) for the purpose of corruptly influencing that person or any other person to support or refrain from supporting an application for a recall petition or a recall petition; or</p>

	<p>(b) on account of that person or any other person having supported or refrained from supporting, or being about to support or refrain from supporting, an application for recall petition or a recall petition.</p>
	<p>New Section 98(3) – Insert after subsection (2):</p> <p>(3) A person is guilty of undue influence who –</p> <p>(a) directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to support or refrain from supporting an application for a recall petition or a recall petition, or on account of that person having supported or refrained from supporting an application for a recall petition or a recall petition;</p> <p>(b) by abduction, duress or any fraudulent device or contrivance, impedes or prevents the free exercise of the franchise of an elector with respect to the supporting of an application for a recall petition or a recall petition or thereby compels, induces or prevails upon an elector either to support or refrain from supporting an application for a recall petition or a recall petition; or</p> <p>(c) by duress, induces a public officer to use his office to prevail upon an elector to support or refrain from supporting an application for a recall petition or a recall petition.”;</p>
	<p>New Section 99 (3A):</p> <p>(3A) A person is guilty of personation if he casts a ballot in support of a recall petition –</p> <p>(a) as some other person whether that other person is living or dead or is a fictitious person; or</p> <p>(b) for a person whom he knows or has reasonable grounds for supposing to be dead or to be a fictitious person.”.</p>

The Election Rules Chap 2:01 Amendments

	<p>Rule 14 – insert after subrule (6):</p> <p>(7) Notwithstanding the provisions of this rule, where a candidate in a supplementary poll withdraws his candidature under this rule, the Returning Officer shall countermand notice of the poll, and all</p>
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	<p>proceedings with reference to the first poll and any supplementary poll shall be commenced afresh in all respects as if the writ had been received on the day on which the candidature was withdrawn, but no fresh nomination shall be necessary in the case of a person shown in the notice of taking of the first poll as standing nominated.</p> <p>(8) Where proceedings are commenced afresh under subrule (7), the Returning Officer shall fix –</p> <p>(a) a new date for the nomination of candidates being a date not more than fourteen days after the date on which the candidature was withdrawn;</p> <p>(b) a new date for the taking of the first poll, which date shall not be less than seven days from the new date fixed for the nomination of candidates; and</p> <p>(c) a new date for the taking of a supplementary poll, if necessary, which date shall be on the fifteenth day following the new date fixed for the first poll or, if that day falls on a Saturday, Sunday or public holiday, on the first following day that is not a Saturday, Sunday or public holiday.</p>
	<p>Rule 16A– Insert after rule 16:</p> <p>16A (1) When a supplementary poll is to be taken, the Returning Officer shall, as soon as practicable, give notice by publication in one or more daily newspapers of-</p> <p>(a) the day on which and the hours during which the supplementary poll will be taken;</p> <p>(b) the location of each polling station;</p> <p>(c) the name and address and occupation of each candidate as given in his nomination paper, and the symbol assigned to him.</p> <p>(2) The Returning Officer shall also cause notices in the form set out as Form No. 46A in the Prescribed Forms Rules to be posted at his office and at such places in his electoral district as he may deem necessary.</p>
<p>Rule 17(2):</p> <p>(2) Where by reason of the death of a candidate, proceedings are commenced afresh under this rule, then the Returning Officer shall fix—</p> <p>(a) a new date for the nomination of candidates being a date not more than fourteen days after the date on which proof was given to him of the death of the person shown as standing nominated; and</p> <p>(b) a new date for the taking of the poll which date</p>	<p>New Rule 17(2):</p> <p>(2) Where by reason of the death of a candidate, proceedings are commenced afresh under this rule, then the Returning Officer shall fix—</p> <p>(a) a new date for the nomination of candidates being a date not more than fourteen days after the date on which proof was given to him of the death of the person shown as standing nominated;</p> <p>(b) in the case of an election other than a general election a new date for the taking of the poll which date</p>

<p>shall not be less than seven days from the new date fixed for the nomination of candidates.</p>	<p>shall not be less than seven days from the new date fixed for the nomination of candidates; and</p> <p>(c) in the case of a general election-</p> <p>(i) a new date for the taking of the first poll, which date shall not be less than seven days from the new date fixed for the nomination of candidates; and</p> <p>(ii) a new date for the taking of a supplementary poll, if necessary, which date shall be on the fifteenth day following the new date fixed for the first poll or, if that day falls on a Saturday, Sunday or public holiday, on the first following day that is not a Saturday, Sunday or public holiday.</p>
<p>Rule 40:</p> <p>(3) After having completed the action referred to in subrule (1), if the Presiding Officer or his nominee is satisfied that the person in question is the correct person and is entitled to vote at the election and at the polling station, he shall, where the elector has a hand with any fingers thereon, in the presence of the Poll Clerk and of any Polling Agent, candidate or Election Agent who may be present, inspect all the fingers of the elector.</p> <p>(4) If no mark of electoral ink appears upon any of the fingers of the elector, the Presiding Officer or his nominee shall signify his permission for the elector to vote by—</p>	<p>New Rule 40:</p> <p>(3) After having completed the action referred to in subrule (1), if the Presiding Officer or his nominee is satisfied that the person in question is the correct person and is entitled to vote at the poll and at the polling station, he shall, where the elector has a hand with any fingers thereon, in the presence of the Poll Clerk and of any Polling Agent, candidate or Election Agent who may be present, inspect all the fingers of the elector.</p> <p>(4) Subject to subrule (4A), if no mark of electoral ink appears upon any of the fingers of the elector, the Presiding Officer or his nominee shall signify his permission for the elector to vote by—</p> <p>New subrule 4: (4A) In the case of a supplementary poll, the Presiding Officer or his nominee shall, for the purposes of subrule (4) or (7), disregard any mark of electoral ink which he reasonably believes to be electoral ink from the first poll.</p> <p>New subrule (6A): (6A) For the purposes of a general election, the colour of the electoral ink used in the first poll shall be different from the colour of the electoral ink used in any supplementary poll.</p>
<p>Rule 101:</p> <p>101. (1) Where by 12.00 noon on the day following the closing of the poll neither a candidate nor his agent requests the Returning Officer to conduct a final count the Returning Officer shall confirm the count conducted by the Presiding Officer as set out in his Statement of the Poll. The Returning Officer shall then declare in writing the candidate who is found to have the most votes to be</p>	<p>New Rule 101:</p> <p>101. (1) Where by 12.00 noon on the day following the closing of the poll neither a candidate nor his agent requests the Returning Officer to conduct a final count the Returning Officer shall confirm the count conducted by the Presiding Officer as set out in his Statement of the Poll, and the Returning Officer shall then-</p>

elected and a copy of the declaration shall be delivered by the Returning Officer to each candidate or his agent present and where any candidate is neither present nor there represented, the Returning Officer shall forthwith transmit by registered post to the candidate a copy of the declaration.

- (a) in the case of a poll other than the first poll of a general election, declare in writing the candidate who is found to have the most votes to be elected;**
- (b) in the case of the first poll of a general election, declare in writing-**
 - (i) the candidate who is found to have more than fifty percent of the votes to be elected; or**
 - (ii) that a supplementary poll between those candidates who earned the highest and second highest number of votes shall be held within fifteen days,**

and a copy of the declaration shall be delivered by the Returning Officer to each candidate or his agent present and where any candidate is neither present nor there represented, the Returning Officer shall forthwith transmit by registered post to the candidate a copy of the declaration.

New Rule 101. (16):

101. (16) In the case of the first poll of a general election, where a final count results in an equality of votes-

- (a) between two candidates obtaining the most votes, the Chief Election Officer shall so certify to the Returning Officer who shall make a declaration in accordance with subrule (1)(b)(ii);**
- (b) among three or more candidates obtaining the most votes, the Chief Election Officer or an officer designated for the purpose shall conduct a recount not later than four days after the closing of the poll; or**
- (c) between two, or among three or more, candidates obtaining the second most votes and no candidate obtains more than fifty percent of the votes, the Chief Election Officer or an officer designated for the purpose shall conduct a recount not later than four days after the closing of the poll.**

101. (17) Where a recount under subrule (16)(b) or (c) results in-

- (a) one candidate obtaining the most votes and another candidate obtaining the second most votes; or**
- (b) an equality of votes between two candidates obtaining the most votes,**

and no candidate obtains more than fifty percent of the votes, the Chief Election Officer shall so certify to the Returning Officer who shall make a declaration in accordance with subrule (1)(b)(ii).

101. (18) Where a recount under subrule (16)(b) or (c) does not result in-

- (a) one candidate obtaining the most votes and one other candidate obtaining the second most votes; and**

	<p>(b) one candidate obtaining more than fifty percent of the votes,</p> <p>the Chief Election Officer shall so certify to the Returning Officer who shall declare the poll void and a new poll shall, as soon as possible, be held in accordance with these Rules.</p>
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SIMILAR LEGISLATION IN OTHER JURISDICTIONS

NO.	COUNTRY	NAME OF STATUTE	NOTED SIMILARITIES
1	Bolivia	Political Constitution of the State, 2009 ¹¹	<input checked="" type="checkbox"/> Two 5 year terms for Head of State/Government
3	United States of America	Constitutional Act, 1791 ¹²	<input checked="" type="checkbox"/> Two 4 year terms for Head of State/Government <input checked="" type="checkbox"/> Provides for the recall of all elected representative officials
4	Canton of Bern, Switzerland	Constitution of the Canton of Bern ¹³	<input checked="" type="checkbox"/> Article 57 provides that 30,000 persons who are eligible to vote may at any time request that a general election to the Cantonal Parliament or to the Cantonal Government be held
5	Venezuela	Constitution of the Bolivarian Republic of Venezuela Act, 1999 ¹⁴	<input checked="" type="checkbox"/> Pursuant to Article 72 of the Constitution of the Bolivarian Republic of Venezuela, all offices filled by popular vote are subject to revocation by petition provided one half term of the office has elapsed.
6	South Africa	Constitution of the Republic of South Africa No. 108 of 1996 ¹⁵	<input checked="" type="checkbox"/> Section 88 provides for the Term of Office of the President of South Africa and is limited to no more than two terms.
7	Mexico	Constitution of Mexico ¹⁶	<input checked="" type="checkbox"/> Section 83 of the Constitution of Mexico provides that The President (who is elected by the people) shall assume the duties of office for a term of six years. A citizen who has held the office of President of the

¹¹ https://www.constituteproject.org/constitution/Bolivia_2009.pdf

¹² <http://www.usconstitution.net/const.pdf>

¹³ http://www.be.ch/portal/de/veroeffentlichungen/gesetze.assetref/content/dam/documents/portal/gesetze/constitution_of%20the_canton_of_bern.pdf

¹⁴ <http://www.venezuelaemb.or.kr/english/ConstitutionoftheBolivarianingles.pdf>

¹⁵ <http://www.gov.za/documents/constitution/1996/a108-96.pdf>

¹⁶ http://www.oas.org/juridico/mla/en/mex/en_mex-int-text-const.pdf

NO.	COUNTRY	NAME OF STATUTE	NOTED SIMILARITIES
			Republic, by popular election or by appointment as ad interim, provisional, or substitute President, can in no case and for no reason again hold that office.
8	France	Constitutional law on the Modernisation of the Institutions of the Fifth Republic, 2008	<input checked="" type="checkbox"/> A President cannot serve more than two consecutive terms.
9	British Columbia, Canada	The Recall and Initiative Act Chapter 398 ¹⁷	<input checked="" type="checkbox"/> Section 19 of the Recall and Initiative Act provides that a registered voter for an electoral district may apply for the issuance of a petition for the recall of the Member of the Legislative Assembly for that electoral district.
10	Kenya	The Elections Act 2011	<input checked="" type="checkbox"/> Section 45 of the Elections Act 2011 of Kenya provides for the right to recall members of Parliament. It can only be initiated by a judgment of the High Court and shall be initiated 24 months after the election of the Member.
11	Uganda	The Constitution of Uganda 1995	<input checked="" type="checkbox"/> Section 84 provides for the right of recall which is to be initiated by petition, before the expiry of the term of Parliament.

¹⁷ http://www.bclaws.ca/Recon/document/ID/freeside/96398_00