

RESEARCH NOTE/NOTE DE RECHERCHE

# Law, Convention and Practice: Governor's Special Warrants

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## Abstract

Within a single month in 2024, media in three provinces wrote about government spending by special warrant. This is unusual public attention to an obscure financial instrument. Governor's special warrants are a practical solution to the problem of government urgently needing to spend money in the public interest when the legislature cannot readily be convened to grant approval. We describe how special warrants are being used less in exigent circumstances and more as a convenience. This practice is evident across jurisdictions and the parties in power and is persistent over decades. This research note shows how legal grey holes and the accelerated pace of decision making can result in changes in the practice of government that go unrecognized in our understanding of law and constitutional convention. Using an original compendium of statutory provisions combined with historical analysis, we raise research questions about public finance and parliamentary constitutionalism in Canada.

## Résumé

Dans l'année 2024, les médias de trois provinces ont publié en un seul mois des articles sur les dépenses publiques effectuées en faisant appel à des mandats spéciaux. Il s'agit là d'une attention inhabituelle de la part du public pour un instrument financier obscur. Les mandats spéciaux du gouverneur constituent une solution pratique au problème posé par la nécessité pour le gouvernement de dépenser rapidement des fonds dans l'intérêt public lorsque le pouvoir législatif ne peut être convoqué rapidement pour donner son accord. Nous décrivons comment ces mesures sont de moins en moins utilisées dans des situations d'urgence et plus couramment dans les faits. Cette pratique est manifeste dans tous les territoires de compétence et les partis au pouvoir, et persiste depuis des décennies. Notre note de recherche montre comment les zones d'ombre juridiques et l'accélération du rythme des prises de décision peuvent entraîner des changements dans la pratique gouvernementale qui passent inaperçus dans notre compréhension du droit et des conventions constitutionnelles. À l'aide d'un recueil original de dispositions légales combiné à une analyse historique, nous soulevons des questions de recherche sur les finances publiques et le constitutionnalisme parlementaire au Canada.

**Keywords:** parliamentary constitutionalism; constitutional convention; executive spending; special warrants

**Mots-clés:** constitutionnalisme parlementaire; convention constitutionnelle; dépenses de l'exécutif; mandats spéciaux

## Introduction

A fundamental principle of Westminster democracy is parliamentary control over public finance: “Responsibility for the public purse in parliamentary democracies lies with parliament, which enjoys constitutional or conventional control over revenue and expenditure” (Wanna, 1997: 148). How meaningful this control is has long been debated. A.V. Dicey saw it as a crowning achievement of parliamentary sovereignty, while Walter Bagehot saw it as “more constitutional fiction than fact” (Bateman, 2020: 10). It is a principle of Canadian government that parliamentary authorization is required for expenditure by the executive (Ward, 1964: 3). Authorization to spend is typically given in advance (budgetary estimates) and for a specified purpose (votes). The object of study in this article—special warrants—is a spending instrument where authorization is granted by parliament retroactively and spending is for an unforeseen purpose. Special warrants trade off a reduction in parliamentary control for an increase in executive velocity.

It is claimed that liberal democracies face challenges adapting to a higher-speed world while maintaining the separation of powers. Whereas legislatures need time for debate and courts need reflection for judgement, the executive is compelled to act in ever-tightening time frames (Scheuerman, 2004). This is no mere esoteric distinction: Some believe “modern bureaucratic conditions make strict compliance with public finance law, particularly appropriations legislation, a practical impossibility” (Bateman, 2020: 211). The rise of the “Schmittian administrative state” leads to legal “grey holes,” where there are “some legal constraints on executive action—it is not a lawless void—but the constraints are so insubstantial that they pretty well permit government to do as it pleases” (Vermeule, 2009: 1069; on “grey holes” see Dyzenhaus 2006). It has thus become a “significant responsibility of the executive to restrain itself” (Health, 2020: 298).

Scholars in Canada and elsewhere are dubious of executive self-restraint, frequently bemoaning “increasing centralization in the hands of the executive” (Thomas and Lewis, 2019: 363). When not constrained by law, executives can be restrained by convention. Constitutional conventions help to control the manner in which power is exercised. Research on constitutional conventions is largely about their nature (Dicey, 1915; Jennings, 1959), their function (Marshall, 1984; Heard, 1991; Forsey, 2020) and the way in which they bind (Jaconelli, 1999; Sirota, 2011; Albert, 2015). Rarely is research dedicated to the history of a specific convention (Brock and Bowden, 2024; Miragliotta and Algra-Maschio, 2025). Historical analysis matters because constitutional conventions have to be more than notional: “Customs and conventions arise from what people do, not from what they agree or promise” (Jaconelli, 2005: 169). As such, we need to understand governing in practice to know whether conventions are indeed commanding restraint in accordance with constitutional principles.

This research note employs special warrants as a case study to examine how constitutional controls over executive power differ in law, convention and practice.

Special warrants are a mechanism to enable executive spending absent typical parliamentary approval. Two examples are: (a) the legislature is not sitting and cannot readily be recalled, but there is urgent need to act (for example, disaster relief), or (b) a general election coincides with the end of the fiscal year and the expiry of the previous year's expenditure authorization, but funding is needed to provide regular public services until a legislature is returned and a budget passed. Special warrants are issued under statute, with the legal conditions for their use differing among Canada's jurisdictions. Special warrants are to be used only when parliamentary authorization cannot be obtained but exigencies of state urgently require expenditure. Evidence in this research note indicates that special warrants are increasingly being used as a convenience. Does the modern use of special warrants constitute a change in Canadian constitutional convention?

We advance three main points. The first is that the laws, conventions and practices that shape the separation of powers in Canadian government result in real trade-offs between control and speed. Historically, it was conceived that "preventing unilateral executive action will *increase* state credibility and revenues but *reduce* the state's capacity to react quickly to events" (Cox, 2016: 178). The speeding up of public administration, not just in response to crises such as war or pandemic but in response to citizen expectations in a continuous state of exception, make special warrants a mechanism potentially attractive to executives to actually *increase* fiscal capacity and government credibility.

Second, in political science it is important to apply historical perspective to analyze Canadian governmental institutions and processes (Lucas and Vipond, 2017). We agree with Bateman that, "historical analysis reveals the pathway upon which the modern design of financial constitutionalism depends" (Bateman, 2020: 19). Historical analysis reveals that the contemporary use of special warrants is less likely to adhere to convention, but also that this phenomenon is more long-standing than is commonly understood. Using historical analysis and a compendium of legislative provisions, we use special warrants as a case study in how our understanding of public administration, based on law and convention, can be reshaped by practice.

Third, attention to special warrants is timely, as this has not been done in over 60 years,<sup>1</sup> and yet, it is again attracting attention from legislatures and media. We seek to provide an up-to-date understanding of this aspect of Canadian parliamentary constitutionalism and public finance that has received scant attention,<sup>2</sup> particularly in light of increased use of special warrants for routine spending. Throughout, we consider law, convention and practice, structuring this research note to examine special warrants through each lens, recalling the classic work of Graham Allison to "demonstrate how alternative conceptual lenses lead one to see, emphasize, and worry about quite different aspects" (Allison, 1971: v).

## Law of Special Warrants

Parliamentary control over executive expenditure was affirmed in the Glorious Revolution of 1688 (Maitland, 1908: 247). In the decades that followed, parliamentary authority was formalized through annual budgets; executive authority moved from the monarch to a cabinet responsible to Parliament. "The

first step,” explains Gary Cox, “was to entrench [rules regarding expenditure] in statute. The next step was to remove all executive discretion in interpreting statutory provisions” (Cox, 2016: 26). As the process of annual budgets matured, parliamentary control over expenditures adapted, and by means of the “confidence convention,” Parliament and the executive spoke together (Ward, 1964: 23; Maitland, 1908; Petit, 2023).

Procedures developed in Westminster were transposed, initially imperfectly, to colonial governments in British North America. In the 1850s, when responsible government was in its infancy, a report on public accounts noted “. . . the Legislative Assembly of Canada often hears, for the first time, of large expenditures, many months after the cash is paid away” (Ward, 1964: 31). Colonial governments were more intent on “nation building” than on structured expenditure controls. As one study of the period observes: “Economic development was a major goal of parliamentary procedure in the pre-Confederation period”<sup>3</sup> (O’Brien, 1988: 413).

The Fenian Raids of 1866 led to the development of special warrants to solve a practical problem. By this time, “the system for ensuring parliamentary supremacy [over financial matters] was almost complete, on paper” (Ward, 1964: 37). No sooner had a system been established than it was challenged by violent incursions of Irish nationalists from the USA.

“Under the former system,” writes H. R. Balls, “expenditures had been made without the sanction of Parliament; under the new [system], when the nation’s security called for action, expenditures were made in defiance of the directions of the Assembly” (Balls, 1963: 186). As Norman Ward wrote in his foundational study of public finance in Canada:

... [In] 1866 the ministry found itself obliged, while the legislature was not sitting, to spend large sums for the defence of the province against anticipated Fenian raids which had not been foreseen in time to ask the legislature for sufficient money to pay the necessary bills. A violation of the law was the only possible alternative to a parliamentary grant, for the legislation of 1864 provided only for such unforeseen expenditures as repairs to public buildings . . . In due course, though not before Confederation, the scope of unforeseen expenditures that could be made on Governor General’s warrants was widened to include, as it still does, not merely repairs to damaged buildings, but “any expenditure not foreseen or provided for by Parliament [which] is urgently or immediately required for the public good” (Ward, 1964: 37).

The practical solution to the problem of urgently needed but unauthorized public expenditure was addressed more fully after confederation. Initially, this was through acts of indemnity for such expenditures and then, in 1871, by legislation providing for special warrants (Balls, 1963: 187–8). In his study of special warrants, H. R. Balls describes early instances of their use federally, as well as changes in legislation. In 1931, the Consolidated Revenue and Audit Act (CRAA) was extensively amended, but “[the] special warrant provision was reenacted virtually unchanged” (Balls, 1963: 190). The same was true when, in 1951, the CRAA was replaced by the Financial Administration Act (FAA). In 1958, the relevant provision was amended “to provide that any special warrant should be deemed included in, and not be in

addition to, the amounts appropriated in the next *Appropriation Act*" (Balls, 1963: 192). The situation then remained unchanged for nearly four decades.

After the November 1988 election, Parliament was convened, but approval of the estimates was deferred until September 1989. When parliamentary authorization for expenditures ended with the fiscal year, the executive repeatedly used special warrants to fund the operations of government. Peter Milliken, then an opposition member of parliament (MP) and later the speaker of the Commons, introduced a private members bill in 1989 to amend the FAA to restrict the use of special warrants. Even though Bill C-211 failed to pass in 1989, in 1997 he introduced a similar bill that was this time adopted. This legislative amendment was in direct response to the 1988–1989 controversy (Milliken, 1990). The "Milliken amendments" constrained the use of special warrants to two situations: (a) when Parliament is dissolved for a general election and (b) up to 60 days following the return of the writs following a general election (Milliken, 1990; Rasmussen, 1989; Government of Canada, 2007; Bosc & Gagnon, 2017).

Reforms to the federal system for special warrants have purposely limited executive flexibility by trying to anticipate and narrow when this instrument can be used. In March 2020, Parliament was adjourned due to restrictions arising from coronavirus disease 2019 (COVID-19); at the same time, major unforeseen expenditures were urgently needed for emergency health and economic measures. The use case for special warrants did not fit the narrow conditions prescribed by the Act. As a consequence, on March 13, Bill C-12, an Act to amend the Financial Administration Act (special warrant) was approved in a single day.<sup>4</sup> Bill C-12 temporarily relaxed the restrictions on the use of special warrants provided for by the Milliken amendments of 1997. There are parallels with the situation that faced government in 1866 in response to the Fenian Raids. The flexibility originally enabled by the innovation of special warrants is now severely curtailed in federal legislation.

Comparable constraints do not exist in provincial legislation (Appendix). Though relevant provincial statutes differ from the federal regime, they are similar to each other; there are, however, notable differences between provinces, including time constraints, conditions for spending and reporting requirements. These provisions are contained in the provincial FAA or similar legislation by another name.<sup>5</sup> All these statutes provide for special warrants to be used for unforeseen expenditures where it is needed "for the public good," even when the legislature is neither prorogued nor dissolved. Special warrants cannot be used when the legislature is in session. For the legislature to be considered "not in session," the duration of an adjournment ranges from 5 days in Nova Scotia to 30 days in Quebec. As provincial legislatures sit on average 50 days a year, this provides considerable scope for the use of special warrants (Gray and Cardoso, 2019).

The purposes for which special warrants can be used vary: in Newfoundland and Labrador for "special reasons"; in Nova Scotia when it is "urgently and immediately required for the public good"; in Alberta when a minister attests to the urgency of the expenditure; and in British Columbia only in "states of emergency," as defined in the Emergency Program Act. In Prince Edward Island, Ontario and Manitoba, there is no reference to "urgency" or "emergency." Transparency in reporting also varies. In Newfoundland and Labrador, the Minute of Cabinet authorizing the special warrant is tabled in the legislature, but this does not set out the rationale for its use.

In Ontario, a report explaining the rationale is provided to the treasury board and, thus, within the executive rather than to the legislature. Typically, special warrants are published in the provincial gazette; this records the use of the special warrant but not its rationale.

What is common to all is post facto approval by the legislature in supplementary appropriations. Before special warrants were developed, when faced with an urgent need for expenditures, the executive's only option was to act without legislative authorization, as in the case of the Fenian Raids. Bateman views this type of decision as "unavoidable" rather than "sinister" (Bateman, 2020: 145). To regularize the situation, the legislature would subsequently adopt an indemnifying bill to exonerate ministers and public servants (Ward, 1964: 37). Statutory provision for special warrants replaced post facto "indemnification." "Viewed with maximum optimism," writes Bateman, "the fact that parliaments retrospectively appropriate unlawful expenditure evidences their authority to censure executives that behave unlawfully." Viewed less optimistically, retroactive approvals reveal "the hard limits of parliaments' financial authority" (Bateman, 2020: 145).

### Conventions on the Use of Special Warrants

Restraint on the use of special warrants is a constitutional convention. Conventions are unwritten norms that solve elite coordination and/or cooperation problems over the exercise of political power (Barry et al., 2025). The difference between constitutional conventions and mere political conventions is that the latter—for example, the alternation between English and French leaders of the Liberal party of Canada—only controls political actors, whereas the former—for example, resignation of the ministry on loss of confidence of the legislature—controls political actors use of state power.<sup>6</sup> Moreover, not all constitutional conventions exhibit the same level of restraint. The convention related to the use of special warrants is closest to a constitutional "semi-convention," which can be occasionally disregarded without significantly undermining the constitutional principle of parliamentary control over public finance (Heard, 1989: 73).

Conventions on the use of special warrants are constitutional because they restrain the use of the Crown's powers (Smith, 1995: 18). This is supported by precedent. From the time of their inception until the late twentieth century, the use of special warrants was minimal and infrequent.<sup>7</sup> In 1949, R. MacGregor Dawson described the use of special warrants as "severely restricted" even though, at that time, the CRAA provided a relatively wide scope for their use (Dawson, 1949: 430). Dawson's comments reflect his view as to convention rather than the loose legal constraints. Their treatment by J. R. Mallory is also instructive, especially given his concern with the "aggrandizement of the executive" (Mallory, 1957: 113).<sup>8</sup> In his 1971 *The Structure of Canadian Government*, Mallory refers to special warrants as a "perfectly constitutional device"; however, he notes that they are "rarely used," in part because of embarrassment from "a confession of miscalculation or failure" (Mallory, 1971: 136). Restraint on the use of special warrants is referred to by D. Michael Jackson as a "parliamentary convention," which if flaunted would be "borderline unconstitutional behaviour" (Jackson, 2008: 18).

How legislatures, academics and the public have responded to perceived contraventions of the constitutional convention that restrains the use of special warrants is illustrated by three controversies over the past century, two federally under prime ministers Diefenbaker and Mulroney and the third in Saskatchewan under Premier Grant Devine. The first, involving the Diefenbaker ministry in 1957–1958, was not so much controversial for the purpose (funding to settle Hungarian refugees) or the timing (during dissolution for a general election) of the special warrant, but rather owing to an opposition demand that Parliament should review such expenditures post facto (Sager, 1961; Mallory, 1971: 136–7). Donald Fleming, minister of finance, argued in reply that all that was needed to satisfy the legal requirements of the FAA as well as any constitutional convention was “deemed appropriation” by inclusion of the expenditures in a subsequent grant of supply. Advocating the existence of a convention, the opposition relied on the experiences of two members of parliament who had been provincial finance ministers as well as earlier committee testimony from the deputy minister of finance, all of whom favoured parliamentary review and retroactive parliamentary approval (Sager, 1961: 312). In 1958, the FAA was amended, making clear that special warrants are subject to post hoc parliamentary review, reflecting not only the principle of lawful spending but also legislative scrutiny of expenditures. This continues to be the case, although as we see below, some provincial jurisdictions are diverging in practice.

Controversy in Saskatchewan over special warrants arose three times, in 1982–1983, 1986–1987 and 1991. The government of Grant Devine, on two occasions, used special warrants after a general election to spend beyond the end of the fiscal year; subsequently, and even more controversially, it also used special warrants to finance all public services from the beginning of the fiscal year in 1991 through until late September, when there was a general election (Massie, 2020: 211–6; Jackson, 2013: 152–6).<sup>9</sup> In a highly critical article dealing with the Mulroney and the Devine post-election contraventions, Merrilee Rasmussen—who was also the author of a subsequent legal opinion that became public during the controversy in Saskatchewan in 1991 (Rasmussen, 1991)—stated that these “governments have demonstrated a narrow approach to understanding statutes that ignores the relationship between convention and law” (Rasmussen, 1989: 17).

Although sanctions for breach of convention are more often political than legal, that does not make them any less effective. In the Diefenbaker controversy, the opposition gained acceptance of a requirement for Parliamentary review of special warrants, which was subsequently enacted in the FAA by the Diefenbaker government. In the Mulroney controversy, the Senate chided “a virtually unprecedented move” that, although within the letter of the law, “clearly went against Parliamentary practice and should not be used as a precedent by any other administration” (Milliken, 1990: 24). In the Devine controversies, the use of special warrants placed two consecutive lieutenant governors in awkward positions by making their decisions appear overtly political and incited legislative debate over the existence and nature of the constitutional convention (Massie, 2020: 212–5; Jackson, 2013: 153–4). Recent practices in the provinces, though also inconsistent with convention, have engendered comparatively less scrutiny or controversy. They have been framed as rule bending rather than breaking, as befits a constitutional semi-convention (Heard, 1989; Miragliotta and Algra-Maschio 2025).

## Practice of Spending by Special Warrant

In February 2024, news media reported on the use of special warrants in Prince Edward Island, Manitoba and Saskatchewan (Brun, 2024; Winnipeg Sun, 2024; Salloum, 2024).<sup>10</sup> What attracted media attention was that special warrants were used as a routine, rather than as an extraordinary, measure. The relative amounts involved are noteworthy. Expressed as a dollar amount and as a percentage of total expenditures for 2023–2024, special warrants were used for \$757 million in Saskatchewan (3%), \$710 million in Manitoba (3%) and \$327 million (10%) in Prince Edward Island. By comparison, the federal government used special warrants for expenditures of \$18.5 million or 0.03 per cent of total expenditures in 1939–1940, at the start of the Second World War.

Although framed by the media as irregular, these instances, perhaps counterintuitively, actually typify a pattern of increased use of special warrants over recent decades by provincial governments for routine spending. In 1996, the auditor general of British Columbia (BC-AG) noted that “[n]ineteenth century conditions—great distances, slow transportation, difficult communications and parliamentarians meeting for only a small portion of the year” could justify the use of special warrants (BC-AG, 1996).<sup>11</sup> The BC-AG went on to quote a recommendation by a 1981 provincial task force on public finances to “eliminate the present routine use of special warrants for expenditures which cannot truly be described as ‘urgently and immediately required for the public good,’ and would thus reserve this instrument for unforeseen emergencies” (BC-AG, 1996: 7). The BC-AG also noted that, in the early 1990s, leaders of the provincial New Democratic and Liberal parties criticized the use of special warrants. “However, despite all this public commentary dating back more than 15 years,” wrote the BC-AG, “. . . the use of special warrants to authorize government spending has increased” (BC-AG, 1996: 14). British Columbia is not exceptional in this practice.

The auditor general of New Brunswick (NB-AG) noted that since 2011 the government has regularly overspent without legislative approval and that post facto legislative authorization had not been obtained in a timely manner (NB-AG, 2018: 134).<sup>12</sup> In 2024, a report by the auditor general of Prince Edward Island (PEI-AG) dealt with both the increase in the amount of expenditures authorized by special warrants and the timing of expenditure and retroactive approval (PEI-AG, 2024: 99). In such instances, legal boundaries are stretched and convention discarded, undermining the legislature’s role (Campbell and Brun, 2024). Recent records of provincial spending by special warrant as well as reports from auditors general in multiple provinces spanning decades illustrate the partial erosion of a constitutional convention that once restrained executive spending by special warrant. This is demonstrated across jurisdictions, by various political parties and over four decades.

## Discussion

Special warrants were developed to deal with situations where expenditures, when urgently needed, had not been authorized by the legislature and where obtaining legislative authorization in a timely way was not practically possible. Special warrants provide a lawful means to deal with excess spending in emergencies. However, the statutory basis for the use of special warrants does not fully

incorporate a requirement for exigent circumstances. This leaves to convention interpreting the appropriateness of use. What historical analysis of spending by special warrant reveals is not so much the breaking but the bending of convention.

Controversies during the Diefenbaker and Mulroney ministries led to legislative amendments to, firstly, secure in federal law the right of Parliament to retroactively review and approve spending by special warrant and, secondly, to restrict the terms of use. There has been no “diffusion of innovation” for comparable legal reforms in the provinces (Poel, 1976). This makes possible the routine use of special warrants as a convenient legal “grey hole.” Notwithstanding intermittent criticism by the provincial media or auditors general, rarely does elite or mass public concern rise to the level of controversy seen in the Devine case in Saskatchewan. This is so despite a documented pattern of provinces using special warrants in recent decades as a convenient way to exceed approved annual appropriations.

This raises research questions about the way in which constitutional conventions change, the legitimacy of change and the way we know when change has occurred. Where practice no longer conforms to convention, it is thought that the convention is modified or ceased; change is possible, but alteration cannot be so fluid and frequent as to merely become a guideline (Heard, 2012). It is perhaps true that, in some circumstances, constitutional conventions are changed by “stealth” (Albert, 2015), as a result of “populism” (Barry, 2025; Mailey, 2019; Walker, 2019), or in a preference for written rules rather than discursive interpretation by elites in accordance with the circumstances (Aucoin, 2011). The case of special warrants is satisfied by none of these explanations. When the constitutional convention on the use of special warrants is contravened so severely as to undermine the constitutional principle upon which the convention is based, as it was with Devine in 1991, a corresponding level of political sanction follows. This is not so when the contravention is minimal or temporary or conditional, as with recent provincial cases, and where political actors still profess to be generally restrained by convention in broad adherence to the constitutional principle. Arguably, it has become reasonable for finance officials to advise ministers that using special warrants for routine excess spending, and not just for emergencies, is consistent with past practice, even if contrary to constitutional convention. In light of practice over the past 40 years, perhaps we need a theory of change in constitutional conventions that better reflects empirical data on the pace, volume and incrementalism of government decision making (Scheuerman, 2004; for example, Campagnolo, 2022).

More recent scholarship offers an alternative to the typical binary view of respect for constitutional conventions, whereby it is possible for actors to claim a temporary or partial exemption to adherence to a constitutional convention with respect to what is permissible, to whom the convention attaches, and when it must be observed (Miragliotta and Algra-Maschio, 2025). Without regard to aberration, others will be expected to follow the convention in the future. Special warrants seem to fit this case, where the convention has not fallen into complete disuse or fundamental alteration, and where outright contravention is still rejected by opposition parties, elites and the public, but limited claims to partial exemption are no longer forbidden. This sets up a future line of research for students of Canada’s unwritten constitution about where and how exemptions facilitate a convention’s evolution.

This research note also raises questions about the separation of powers in a fast-paced society. One might think the discursive (and thus slower) nature of legislatures is a dead letter in an age of accelerating government decision making. The decline of Parliament has been bemoaned by political scientists for generations, though there is limited empirical study on the practical influence of parliamentary procedure on the exercise of power (Brodie, 2018: 78–79). Even though parliamentary scrutiny of spending is foundational to Westminster democracy, a lot has changed since the Fenian Raids (Good, 2011; 2017; Goldenberg, 2006; Maslove and Cutt, 1989). Given that Canada's Westminster parliamentary democracy is lauded for its adaptability (Smith, 2017; Scott, 1945), scholarship should account for this fundamental characteristic. We now broadly accept other between-budget innovations such as fall economic outlooks ("mini-budgets") and formal administrative mechanisms for "off-cycle" spending proposals. Perhaps scholarly descriptions of the annualized budget cycle of review and approval insufficiently reflect contemporary rhythms of public finance. We need research that documents how the machinery of government works in Canada, based not only on the federal government but also provincial practices; this should be based not just on normative claims about how it ought to be but also on patterns of change from historical analysis.

## Notes

- 1 The most recent scholarly paper on special warrants was written by H. R. Balls in 1963.
- 2 For example, there is no mention of special warrants in Genevieve Tellier (2019), Andrew Graham (2014) or Bruce Doern et al. (2013). The most comprehensive treatment of special warrants is found in Marc Bosc and Andre Gagnon (2017) in chapter 18.
- 3 Gary O'Brien adds that legislators were determined not to let procedure stand in the way of economic development, and especially private benefits resulting from state investment (O'Brien, 1988: 413).
- 4 This has not been addressed in scholarship to date on constitutional issues that arose during the COVID-19 pandemic. No mention is made of Bill C-12 in Kathy L. Brock and Geoffrey Hale (2023) and Emmett Macfarlane (2020: 299–303); it is at least noted, but merely as a matter of fact, in Lori Turnbull and Luc Bernier (2022: 538–46) and K. Srikanth Reddy (2021: 458–84).
- 5 In Quebec, it is the *Public Administration Act*, s. 51–52. This is a change. Until at least 2000, provision for special warrants was in the FAA.
- 6 See Jaconelli (2005: 150), noting "a standard requiring adherence" and citing as an authority H. L. A. Hart. For typologies of constitutional conventions, see Heard (1989).
- 7 Higher spending by special warrant in the years 1896 and 1926 was because dissolution early in the fiscal year left the government with only interim supply for public services; comparatively higher spending by special warrant was also observed in connection with depression relief and the war years.
- 8 Over his career, Mallory became increasingly concerned about the derogation of parliamentary sovereignty to executive authority (Smith, 2004: 715–29).
- 9 Michael Jackson notes, albeit briefly, that Premier Bill Vander Zalm in British Columbia attempted something similar in 1991 with prorogation and special warrants, though this was upended by a caucus revolt (Jackson, 2013: 156).
- 10 In the same month, there was similar media commentary about spending by special warrant by the Government of Yukon, but the sums and percentages were considerably smaller (See Waddell, 2024).
- 11 Similar historical framing is found in Bosc and Gagnon (2017) at note 381.
- 12 Moreover, the NB-AG notes that legislative approvals are regularly coming 12–15 months after the close of the fiscal year (NB-AG, 2018: 139).

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## Appendix: Compendium of Statutory Provisions for Special Warrants

Jurisdiction	Financial Admin Act	Notes
Newfoundland and Labrador	<p>Financial Administration Act, s. 28</p> <p>(3.2) A warrant issued under subsection (3.1) <i>[dissolution]</i><sup>1</sup> shall not authorize the expenditure of amounts greater than those required to defray expenses of the public service for a period not exceeding the first 4 months of the following fiscal year for which appropriations were made in the previous fiscal year.</p> <p>(4) Each Minute of Council authorizing</p> <p>(a) a special warrant;</p> <p>(b) the creation of an additional subhead of a Head of Expenditure to which countervailing savings can be transferred; or</p> <p>(c) the creation of an additional subhead to which countervailing savings can be transferred and a special warrant, shall quote the special reasons for doing so, and a certified copy of the Minute of Council shall, together with certified copies of the reports referred to in subsection (2) or (3), the recommendation of the board and the special warrant, where issued, be tabled in the House of Assembly,</p> <p>(d) in the case of a special warrant issued under subsection (2) while the Legislature is in session, within 3 days of the issue of the special warrant; or</p> <p>(e) in all other cases, within 15 days from the opening of the next ensuing session.</p>	<p>Original legislation passed in 1973.</p> <p>Places a hard limit of 4 months into the new fiscal year. Contemplates the issuance of special warrants while the Assembly is in session.</p> <p>Reasons must be tabled.</p> <p>No mention of “urgency” or use of synonyms.</p>
Nova Scotia	<p>Finance Act, s.29</p> <p>29 (1) A special warrant may only be requested by the head of an appropriated entity when it appears that the expenditure of money or the incurrence of an expense is urgently and immediately required for the public good and either</p>	<p>Special warrants not to be issued when legislature in session, but only require a 5-day period of rise to enable issuance of warrants.</p>

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Jurisdiction	Financial Admin Act	Notes
	<p>(a) was not provided for by the Legislature in the Appropriations Act, and is a new program or activity for which funds have not previously been provided; or</p> <p>(b) the authority for such expenditure or expense under Section 26 will be exhausted before the granting of appropriations for the then current fiscal year by the Legislature.</p> <p>(2) 15 A request pursuant to subsection (1) must include a report to the Minister estimating the amount of the necessary expenditure or expense.</p> <p>(3) Upon receipt of such report, the Minister may make a report to the Governor in Council that the expenditure or expense is in accordance with subsection (1), and the Governor in Council may issue a special warrant authorizing the expenditure or expense to be charged to the General Revenue Fund.</p> <p>(4) A special warrant pursuant to this Section may not be issued when the Legislature is in session unless the House of Assembly has not sat for any of the five days immediately preceding the issue of the special warrant. 2010, c. 2, s. 29.</p>	
New Brunswick	<p>Financial Administration Act. s.28</p> <p>28 (1) The Lieutenant-Governor in Council may order a special warrant prepared, to be signed by the Lieutenant-Governor, authorizing payment out of the Consolidated Fund of the amount included in the special warrant if</p> <p>(a) the Legislature is not in session,</p> <p>(b) expenditures not foreseen or provided for by the Legislature are required urgently for the public good, and</p> <p>(c) the Board approves.</p> <p>28 (2) For the purposes of this section, the Legislature shall be deemed to be not in session when it has been adjourned indefinitely or for a period in excess of 30 days.</p> <p>28 (3) A special warrant made under this section is deemed to be an appropriation for the fiscal year for which the warrant is made.</p>	<p>Original legislation passed in 1973.</p> <p>Includes language “deemed to be an appropriation for the fiscal year” reflective of federal amendment from 1958.</p> <p>Stipulates requirement for publication in the <i>The Royal Gazette</i>.</p>

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Jurisdiction	Financial Admin Act	Notes
	<p>28 (4) When a special warrant has been issued under this section, the amounts appropriated by it shall be submitted at the next ensuing session of the Legislature by means of a special Appropriation Act for the amounts so appropriated in each fiscal year.</p> <p>28 (5) Every special warrant issued under this section shall be published in <i>The Royal Gazette</i> within 30 days after it is issued.</p> <p>28 (6) Subsections (4) and (5) shall apply to special warrants issued in relation to expenditures that are made in, and chargeable to, fiscal years commencing on or after April 1, 1971.</p>	
Prince Edward Island	<p>Financial Administration Act, s.37</p> <p>37. (1) Where</p> <p>(a) Special Warrants the Legislative Assembly is not in session; and</p> <p>(b) a payment is required for the public good and there is no other appropriation pursuant to which payment may be made, the Lieutenant Governor in Council may order a special warrant prepared, to be signed by the Lieutenant Governor in Council, authorizing payment out of the Operating Fund of the amount specified in the special warrant.</p> <p>(2) Deemed an appropriation</p> <p>A special warrant made under this section is deemed to be an appropriation for the fiscal year for which the warrant is made.</p> <p>(3) Supplementary Appropriation Act</p> <p>Where a special warrant has been issued pursuant to this section, a schedule of the amounts appropriated thereby shall be submitted at the next session of the Legislative Assembly by means of a supplementary Appropriation Act for the amount so appropriated.</p> <p>(4) Adjournment</p> <p>For the purposes of clauses (1)(a) and subsection 37.1(1), the Legislative Assembly shall be deemed to be not in session when it has been adjourned indefinitely or for a period in excess of thirty days.</p>	<p>There is no timeline for introducing the supplementary appropriation, so long as it is done in "the next session."</p> <p>No mention of "urgency" or use of synonyms.</p>

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Jurisdiction	Financial Admin Act	Notes
Quebec	<p>Public Administration Act s. 51–52</p> <p>51. Where the National Assembly is not in session by reason of a scheduled adjournment of at least 20 days and an unforeseen expenditure for which provision has not been made by Parliament is urgently and immediately required for the public good, the Government may, upon the report of the chair of the Conseil du trésor and of the Minister of Finance that there is no legislative provision under which payment of the unforeseen expenditure may be authorized and the report of the minister responsible that the payment is urgently required in the public interest, order a special warrant to be prepared authorizing payment of the amount it considers necessary; the warrant shall be signed by the Lieutenant-Governor and the amount shall be placed by the Minister of Finance in an account established for that purpose.</p> <p>52. A special warrant issued under section 51 shall be an appropriation for the fiscal year in which it is issued.</p>	<p>Quebec’s <i>Financial Administration Act</i> is largely silent on special warrants, save for standard financial reporting by the comptroller and review by the auditor general.</p>
Ontario	<p><i>Financial Administration Act</i>, s. 1.0.7–1.0.8</p> <p>Special warrants</p> <p>1.0.7 (1) If the Legislature is not in session and a matter arises that requires an expenditure that has not been authorized by an appropriation or that exceeds the amount authorized by an appropriation, the Lieutenant Governor in Council, on receiving the report of the Board estimating the amount of the expenditure or additional expenditure, may order a special warrant to be prepared and signed by the Lieutenant Governor authorizing an expenditure in the amount estimated to be required, and the expenditure may be paid or recognized as specified in the special warrant.</p> <p>Where appropriation exists</p> <p>(2) Subject to subsection (4), if a special warrant is issued with respect to an expenditure that is in addition to an expenditure</p>	<p>Revised in 2009.</p> <p>No mention of “urgency” or use of synonyms.</p> <p>“Deemed . . .” provision is common, but Ontario is the only jurisdiction that allows that the expenditure could be for the next fiscal year.</p> <p>Much more discretion for the treasury board expressed in legislation in Ontario.</p> <p>Only jurisdiction that contemplates an “offset.”</p> <p>Only jurisdiction that contemplates an excess expenditure after “books are closed” (presumably this is after March 31).</p>

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Jurisdiction	Financial Admin Act	Notes
	<p>that has been authorized by an appropriation, the amount of the additional expenditure authorized by the special warrant shall be added to and deemed to be part of the expenditure authorized by the appropriation for the fiscal year in which the special warrant is issued.</p> <p>Where no appropriation exists</p> <p>(3) Subject to subsection (4), if a special warrant is issued with respect to an expenditure and no expenditure in respect of the same item has been authorized by an appropriation, the expenditure authorized by the special warrant is deemed to be an expenditure authorized by an appropriation for the fiscal year in which the special warrant is issued.</p> <p>Warrant may apply to next fiscal year</p> <p>(4) A special warrant issued in a fiscal year may provide that it applies with respect to the next fiscal year, in which case the expenditure to which it relates is deemed to be an expenditure authorized by an appropriation for that next fiscal year.</p> <p>Board orders, supplementary expenditures</p> <p>1.0.8 (1) Despite section 11.2, the Board may by order authorize supplementary expenditures in addition to the expenditures authorized by an appropriation for a fiscal year if the amount of the expenditures authorized by the appropriation is insufficient to carry out the intended purpose for which they were authorized.</p> <p>Report required</p> <p>(2) An order may be made under subsection (1) only if the Board has received from the Ministry responsible for the program to which the proposed supplementary expenditures relate, or from a person prescribed by the regulations made under this Act, a report in writing setting out the need for further expenditures and the reason why the amount that was authorized by the appropriation is insufficient without the supplementary expenditures.</p>	

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Jurisdiction	Financial Admin Act	Notes
	<p>Board orders in favour of contingency fund</p> <p>(3) Despite section 11.2, the Board may by order authorize supplementary expenditures for a reserve for future contingencies authorized by an appropriation, if the Board considers it advisable to do so.</p> <p>Expenditures to be offset by reduction on other appropriation</p> <p>(4) An order under subsection (1) or (3) shall provide that the supplementary expenditures be offset by reducing the amount of other expenditures authorized by an appropriation for the same fiscal year if not all of those authorized expenditures have been paid or recognized and, in the opinion of the Board, are unlikely to be paid or recognized for the fiscal year.</p> <p>Timing</p> <p>(5) An order under subsection (1) or (3) may be made at any time before the books of the Government of Ontario for the fiscal year are closed.</p> <p>Post fiscal year-end Board orders to be reported in the Public Accounts</p> <p>(6) If the Board issues an order under this section at any time after the end of a fiscal year to authorize a supplementary expenditure for that fiscal year because the amount authorized by an appropriation is no longer sufficient due to an adjustment being made that arose out of the audit of the Public Accounts for that fiscal year, the ministry responsible for the program in respect of which the supplementary expenditure is authorized shall prepare a statement setting out the circumstances that gave rise to the need for the order, and the statement shall be included in the Public Accounts for that fiscal year.</p>	
Manitoba	<p>Financial Administration Act, s. 32</p> <p>32(1) When</p> <p>(a) an expenditure for a public service not foreseen or provided for, or not sufficiently provided for, is required for the public good; and</p>	No mention of "urgency" or use of synonyms.

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Jurisdiction	Financial Admin Act	Notes
	<p>(b) the Legislature is not in session or is in session but is adjourned indefinitely or for a period of at least 10 days; the Lieutenant Governor in Council, on the report of the Minister of Finance that there is no legislative provision or no sufficient provision for the expenditure and on the report of the minister having charge of the public service that the expenditure is for the public good, may order a special warrant to be prepared and to be signed by the Lieutenant Governor authorizing the expenditure to be made out of the Consolidated Fund.</p> <p>When appropriation exists</p> <p>32(2) When a special warrant is issued with respect to an expenditure for a public service for which there is an appropriation, the amount provided by the special warrant shall be added to and is deemed to be part of the appropriation specified in the warrant for the fiscal year for which the warrant is issued.</p> <p>When no appropriation exists</p> <p>32(3) When a special warrant is issued with respect to an expenditure for a public service for which there is no appropriation, the amount provided by the special warrant is deemed to be an appropriation for the public service specified in the warrant for the fiscal year for which the warrant is issued.</p> <p>Special warrants to be reported</p> <p>32(4) A statement of special warrants issued for a fiscal year shall be reported in the public accounts for the fiscal year.</p>	
Saskatchewan	<p>Financial Administration Act, s.14</p> <p>14(1) The Lieutenant Governor in Council may order a special warrant to be prepared for the signature of the Lieutenant Governor authorizing an expense in the amount estimated by the minister to be required where:</p> <p>(a) the Legislature is not in session and a matter arises for which</p>	Express language that the expenditure is “urgently and immediately required.”

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Jurisdiction	Financial Admin Act	Notes
	<p>an expense is not foreseen or provided for, or is insufficiently provided for;</p> <p>(b) the member of the Executive Council responsible for the matter reports to the Lieutenant Governor in Council that there is no appropriation for the expense or that the appropriation is exhausted or insufficient and that the expense is urgently and immediately required for the public good; and</p> <p>(c) the minister recommends to the Lieutenant Governor in Council that a special warrant be issued.</p> <p>(2) For the purposes of subsection (1), the Legislature is not in session where it:</p> <p>(a) is prorogued or dissolved; or</p> <p>(b) is adjourned for an indefinite period or to a day more than seven days after the Lieutenant Governor in Council made the order directing the preparation of the special warrant.</p> <p>(3) Where a special warrant is issued pursuant to this section:</p> <p>(a) it is deemed to be an appropriation for the fiscal year in which it is issued;</p> <p>and</p> <p>(b) the amount appropriated by the special warrant shall be submitted to the Legislative Assembly as part of the next Appropriation Act that is not an Act for interim supply.</p>	
Alberta	<p><i>Financial Administration Act</i>, s. 26</p> <p>26(1) When at any time the Legislative Assembly is not in session the Minister responsible</p> <p>(a) reports that the minister having charge of any matter has certified that, in the public interest, an expenditure of public money is urgently required with respect to that matter and</p> <p>(b) reports either that</p> <p>(i) there is no supply vote under which an expenditure with respect to that matter may be made or</p> <p>(ii) there is a supply vote under which an expenditure with respect</p>	<p>Express requirement for “urgency” and the claim to be urgent must be certified by the Minister.</p> <p>Alberta affords discretion both to “the Minister” as well as, separately and distinctly, “the LG-in-Council.”</p>

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Jurisdiction	Financial Admin Act	Notes
	<p>to that matter may be made but the authority available under the supply vote is insufficient,</p> <p>the Lieutenant Governor in Council may order a special warrant to be prepared to be signed by the Lieutenant Governor authorizing the expenditure of the amount of money estimated to be required.</p> <p>(2) For the purposes of subsection (1), if the Legislative Assembly is adjourned for a period of more than 14 days, the Assembly is deemed not to be in session during the period of the adjournment.</p> <p>(3) When a special warrant has been prepared and signed under subsection (1) on the basis of a report referred to in subsection (1)(b)(i), the authority to spend the amount of money specified in the special warrant for the purpose specified in the special warrant is deemed to be a supply vote for the purposes of this Act.</p> <p>(4) When a special warrant has been prepared and signed under subsection (1) on the basis of a report referred to in subsection (1)(b)(ii), the authority to spend the amount of money specified in the special warrant is, for the purposes of this Act, added to and deemed to be part of the supply vote to which the report relates.</p> <p>(5) When a special warrant has been prepared and signed pursuant to this section, the amounts authorized by it are deemed to be included in, and not to be in addition to, the amounts authorized by the Act, not being an Act for interim supply, enacted next after the signing of the warrant for granting to His Majesty sums of money to defray certain expenditures of the Public Service of Alberta.</p> <p>26.1(1) Notwithstanding section 26 or any Act authorizing the expenditure of public money by special warrant, the Lieutenant Governor in Council may not, subject to subsection (2), order a special warrant to be prepared authorizing the expenditure.</p>	

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Jurisdiction	Financial Admin Act	Notes
British Columbia	<p>(2) The Lieutenant Governor in Council may order a special warrant authorizing the expenditure of public money in accordance with this Act or any other Act only in the following circumstances:</p> <p>(a) if the Legislative Assembly is dissolved and is not yet convened after a general election;</p> <p>(b) at any time if, in the opinion of the Lieutenant Governor in Council, the money is urgently required because of a public emergency or disaster.</p>	
	<p>Financial Administration Act, s.24</p> <p>24 (1) In this section:</p> <p>“appropriate minister” means, in relation to</p> <p>(a) an Act or a ministry, the minister charged with its administration,</p> <p>(b) an appropriation, the minister who has charge of the appropriation or</p> <p>(c) any other matter,</p> <p>(i) the minister in whose portfolio the matter falls in the usual course of government business or</p> <p>(ii) in any case where there is doubt, the minister specified by the Lieutenant Governor in Council,</p> <p>and includes a minister acting in the place of the appropriate minister, but does not include a deputy minister;</p> <p>“Designated date” has the same meaning as in section 1 of the Budget Transparency and Accountability Act except that the references in section 1 (5) of that Act to “a provision of this Act” and “the applicable provision” are to be read as references to subsection (2) of this section;</p> <p>“State of emergency” means a state of emergency declared under section 9 of the Emergency Program Act.</p> <p>(2) If, while the Legislative Assembly is not in session,</p> <p>(a) during a general election of the members of the Legislative</p>	<p>The BC statute is considerably more detailed than most other jurisdictions.</p> <p>Only jurisdiction with 150 day period of grace after election.</p> <p>Only jurisdiction with legislation that expresses “urgency” but of a “state of emergency” as a defined term.</p> <p>Only jurisdiction with a formula in the statute.</p>

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Jurisdiction	Financial Admin Act	Notes
	<p>Assembly, and for the ensuing period ending 150 days after the designated date following the general election, a matter arises for which an expenditure is required,</p> <p>(a.1) during a state of emergency a matter arises for which an expenditure is required, or</p> <p>(b) a disaster or emergency occurs or is anticipated and a matter arises for which an expenditure is required, and the expenditure is not provided for or insufficiently provided for and is urgently and immediately required for the public good, the Lieutenant Governor in Council,</p> <p>(c) on the report of the appropriate minister that there is no appropriation for the expenditure or that the appropriation is exhausted or insufficient, and that the expenditure is urgently and immediately required for the public good and</p> <p>(d) on the recommendation of Treasury Board,</p> <p>may order a special warrant to be prepared for the signature of the Lieutenant Governor authorizing the payment of an amount the Lieutenant Governor in Council considers necessary out of the consolidated revenue fund.</p> <p>(3) For the purpose of subsection (2), the Legislative Assembly is not in session if it is prorogued or dissolved, or is adjourned following a resolution to adjourn for an indefinite period or for a period that exceeds 7 days.</p> <p>(3.1) If the main estimates for a fiscal year are to be presented to the Legislative Assembly on or before a date established under section 6 (2) or (3) of the Budget Transparency and Accountability Act and a Supply Act has not been enacted for that fiscal year, on or after March 22 preceding that fiscal year the Lieutenant Governor in Council may, on the recommendation of Treasury Board, order a special warrant to be prepared for the signature of the Lieutenant Governor authorizing payment of one or both of the following in that fiscal year:</p>	

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Jurisdiction	Financial Admin Act	Notes
	<p>(a) the payment of an amount the Lieutenant Governor in Council considers necessary out of the consolidated revenue fund towards defraying the charges and expenses of the public service of British Columbia, which amount may not exceed the portion determined by the following formula of the total amount of the votes of the main estimates presented to the Legislative Assembly for the previous fiscal year:</p> <p>portion = <math>x + 1</math> 24 24 where <math>x</math> = the number determined by</p> <p>(i) dividing the number of days in the fiscal year from the beginning of the fiscal year to the latest date on which the main estimates for the fiscal year are to be presented under section 6 (2) or (3) of the Budget Transparency and Accountability Act by 365,</p> <p>(ii) multiplying the quotient obtained under subparagraph (i) by 24, and</p> <p>(iii) rounding the product obtained under subparagraph (ii) to the nearest whole number;</p> <p>(b) the payment of an amount the Lieutenant Governor in Council considers necessary out of the consolidated revenue fund towards capital expenditures and disbursements for loans, investments and other requirements, which amount may not exceed 1/3 of the total of the voted amounts for capital expenditures and disbursements referred to in the Schedules of the main estimates presented to the Legislative Assembly for the previous fiscal year.</p> <p>(4) If a special warrant is issued under this section in respect of an expenditure for which there is no appropriation, the special warrant is deemed to be an appropriation for the fiscal year in which the warrant is issued.</p> <p>(5) If a special warrant is issued under this section in respect of an</p>	

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Jurisdiction	Financial Admin Act	Notes
	<p>expenditure where an appropriation for that expenditure is exhausted or insufficient, the special warrant must be added to and is deemed to be part of the appropriation for the fiscal year in which the warrant is issued.</p> <p>(6) The amount appropriated by a special warrant must be submitted to the Legislative Assembly as part of the next ensuing Supply Bill.</p>	
Canada	<p>Financial Administration Act, s.30</p> <p>30 (1) Subject to subsection (1.1), where a payment is urgently required for the public good</p> <p>(a) at any time that Parliament is not in session from the date of a dissolution until 60 days following the date fixed for the return of the writs at the general election immediately following that dissolution, and</p> <p>(b) there is no other appropriation pursuant to which the payment may be made,</p> <p>the Governor in Council, on the report of the President of the Treasury Board that there is no appropriation for the payment and the report of the appropriate Minister that the payment is urgently required for the public good, may, by order, direct the preparation of a special warrant to be signed by the Governor General authorizing the payment to be made out of the Consolidated Revenue Fund.</p> <p>(1.1) The Governor in Council shall not, in the 60 days referred to in subsection (1), direct the preparation of a special warrant referred to in that subsection when Parliament is not in session on any of those days by virtue of the fact that it is prorogued.</p> <p>(2) A special warrant issued pursuant to this section shall for the purposes of this Act be deemed to be an appropriation for the fiscal year in which the warrant is issued.</p> <p>(3) Every warrant issued under this section shall be published in the <i>Canada Gazette</i> within 30 days after it is issued, and a</p>	<p>Specifies "date of dissolution through until 60 days after return of the writs."</p> <p>Role of treasury board as advisor.</p> <p>Does not allow for urgent or emergency spending, the original purpose of special warrants.</p>

(Continued)

(Continued)

Jurisdiction	Financial Admin Act	Notes
	statement showing all warrants issued under this section and the amounts of those warrants shall be laid by the President of the Treasury Board before the House of Commons within 15 days after the commencement of the next ensuing session of Parliament. (4) Where a special warrant has been issued pursuant to this section, the amounts appropriated thereby shall be deemed to be included in and not to be in addition to the amounts appropriated by the Act of Parliament enacted next thereafter for granting to Her Majesty sums of money to defray expenses of the federal public administration for a fiscal year.	

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