

# Canadian Parliamentary

review

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*Report of the Alberta Select Special Committee on Senate Reform, 1985 • Third report on parliamentary procedure and standing orders of the House of Commons of Canada, Special Committee on Standing Orders and Procedure, (Tom Lefebvre, chair), 1982 • Report of the Special Committee on Reform of the House of Commons, Supply and Services Canada, (James A. McGrath, chair), 1985 • Parliamentary reform: making it work/La réforme parlementaire : comment en assurer, Ottawa: Canadian Study of Parliament Group, 1994 • "Everything Old is New Again: Observations on Parliamentary Reform," Centre for the Study of Democracy, Queen's University, April 2008*

## *Creating blueprints for parliamentary reforms*

Volume 39, No. 1



# Know Your Mace

Alberta's first Legislature was caught off guard just before its first sitting: there was no Mace. Because nobody so much as suggested that a sitting could be held without it, Alexander Rutherford's Liberal government ordered the rush construction of one from Watson Brothers Jewelry of Calgary.

Watson Brothers hired Rufus E. Butterworth to create Alberta's first Mace, which he made entirely from scrap in only a few weeks' time. Its shaft was plumbing pipe and it is rumoured to have been mounted on a toilet tank float. Ornamental decorations around the orb were made from old shaving mug handles, bits of an old bedstead and other scraps of wood. A piece of red velvet and a coat of gold paint provided finishing touches.

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on page 3



Alberta's new Mace was created in 1956.



The *Canadian Parliamentary Review* was founded in 1978 to inform Canadian legislators about activities of the federal, provincial and territorial branches of the Canadian Region of the Commonwealth Parliamentary Association and to promote the study of and interest in Canadian parliamentary institutions. Contributions from legislators, former members, staff and all other persons interested in the objectives of the Review are welcome.

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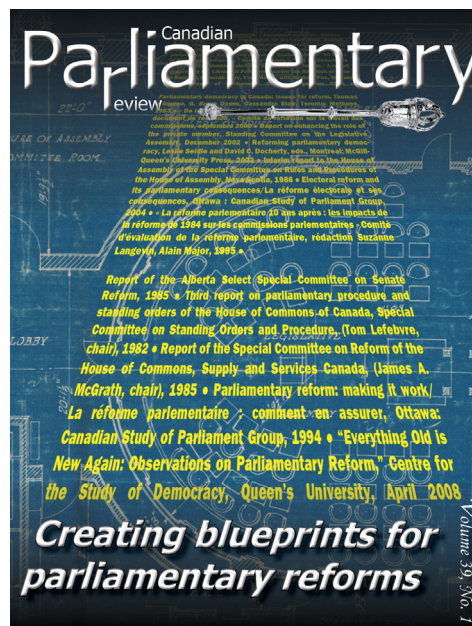
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Department of Public Works and Mines, Province of Nova Scotia  
Province Building, First Floor Plan, Aug. 10th, 1926  
Courtesy of the Nova Scotia Legislative Library

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# *A Focus on Parliamentary Reform*

In May 2015, the Canadian Study of Parliament Group (CSPG) held a one day conference exploring parliamentary reform of procedure and practice. Noting that reform “enables an ancient institution to adapt to a changing environment, including relatively new democratic values and expectations,” the conference surveyed aspects of Canada’s parliamentary evolution and “where it needs to go in order to maximize its contribution to Canadian political life.”

The event brought together scholars, parliamentary officials and other interested observers to hear four excellent panel presentations and to discuss and debate how Canada’s Parliament might continue to adapt to meet the needs of Canadians.

Using that conference as our inspiration, we’re pleased to present a theme issue that continues this discussion.

Some of the CSPG panelists from the conference joined us for a roundtable on parliamentary reform. Not only did this discussion touch upon topics and presentations from the conference, but it also addressed some of the reform agenda emerging out of the last federal election. Participants alternated between optimism and pessimism when contemplating the likelihood of significant change occurring. Conference presenter Louis Massicotte also presents a quantitative review of changes in the Senate since the 1980s in this issue. He finds some notable changes in the diversity of representatives while observing a more mixed record on the Senate’s effect on the legislative business in Parliament.

Still on the topic of the Senate, former Clerk of the New Brunswick Legislative Assembly Ronald Stevenson offers some suggestions for incremental reforms of the Upper Chamber that may lead to an appetite for more substantive and challenging reforms.

Finally, law professor Lorne Neudorf and political scientist Marguerite Marlin address the potential for reform of subordinate legislation

(regulations) and parliamentary committee work, respectively. Neudorf examines the UK model for scrutinizing new regulations to alleviate concerns of governments using the regulation-making process to shield important public policy choices from public scrutiny. Marlin explores the challenges facing non-governmental actors who wish to exert policy influence through committees and how introducing certain accountability mechanisms could ensure governments respond to committee reports and lead to more focused committee studies that contribute to the legislative agenda.

The subject of parliamentary reform is a rich source of diverse material that will continue to be mined over the course of future issues. However, with this theme issue we hope to present a focused selection of material that highlights some of the current thinking on a number of issues and prompts additional discussion and response.

The *Canadian Parliamentary Review* welcomes letters to the editor and/or stand-alone articles responding to these articles or exploring additional related topics.

Will Stos, Editor





Continued from inside cover...

Remarkably, the makeshift Mace was used for 50 years. It was finally replaced on February 9, 1956, when the provincial employees' union presented a new Mace to the Legislative Assembly in honour of Alberta's 50th anniversary. Nevertheless, the first Mace came out of retirement to be carried into the Chamber on one day, March 15, 2006, to mark the 100th anniversary of the Assembly's first sitting.

Designed by Lawrence B. Blain of Edmonton and built by the silversmithing firm Joseph Fray Limited in Birmingham, England, the Mace is about three feet in length and contains 200 ounces, or 5,669 grams, of

sterling silver overlaid with gold. A figure of a beaver mounted on the traditional crown adorns the top of the Mace. Both the royal and the Canadian coats of arms are displayed on the orb. Sheaves of wheat, representing Alberta's prairies, and wild roses, the floral emblem of Alberta, are engraved alternately on the crown. The headband of the crown features seven gems and semiprecious stones, the names of which spell the word "Alberta": amethyst, lazurite, bloodstone, emerald, ruby, topaz and agate. Two bison heads are positioned just below the orb of the Mace, which features the coat of arms of Alberta, and the shaft is decorated with wild roses and capped with a sheaf of wheat.

Submitted by Rhonda Sorensen,  
Legislative Assembly of Alberta



Alberta's original Mace was made entirely from scrap materials.



# Parliamentary Reform: Where We've Been and Where We Might Be Going

In May 2015, the Canadian Study of Parliament Group held a conference in Ottawa to discuss parliamentary reform initiatives of the past, present and future. In this roundtable, some of the presenters from that conference discuss reforms from recent history and the prospects for change in parliament in the near term and whether they are optimistic or pessimistic that positive change will occur.

**Kelly Blidook, Jane Hilderman, Gary Levy, Jonathan Malloy, Jack Stilborn, and Paul Thomas**

**CPR:** The Canadian Study of Parliament Group's conference programme was loosely structured on where we've been, where we are now and where we're going, and I'd like to adopt a similar structure here. Can you tell us a bit about how parliament has changed and evolved over the past 20 to 30 years?

**JS:** With respect to the House committee system, things started out, post-McGrath Report, with very high expectations and high engagement of many of the MPs, especially some of the committee chairs. But it evolved in the direction of diminishing enthusiasm, and the replacement of some of the early elements

of what looked like the beginning of a cross-party working culture in some of the committees with activity more consistently based on party lines. I think this happened partly because the governments of the day discovered they were less enthusiastic about these new committees than they might have expected to be. The MPs liked them but the governments found that they tended to become allied with stakeholders and develop more and more ambitious proposals without paying due heed to money. As budgets were constrained through the 80s and into the 90s I think governments began to view them as a bit of a thorn in their side. That may explain why the formal government responses were frequently ambiguous. The committees were left wondering if the governments were actually doing anything because the committees had recommended it. The ambiguous responses from governments have been a chronic source of the complaint from the MPs and I think the basic lesson here is that the procedural reform doesn't really change the distribution of political power or the incentives that influence how governments and parliamentarians behave. We should really think of it more as a kind of good management for parliament. If you think of the committees that way, I think they actually have accomplished some very useful things, but they haven't really changed in any fundamental way relationships in parliament or how parliament works.

**PT:** If I could just add to that. This question made me think back to Kelly's conference presentation on private members' business. To be honest, the message I took away from your presentation was quite similar

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to what Jack was describing – that once governments come to realize that a change may have made a difference, it comes to be exploited for partisan ends. When you started seeing more and more hand-out bills being given by the party it kind of took away the meaning of the reform. It was just private members' bills being government bills or opposition bills by other means. The question is whether changing the procedure actually changes the culture if you still have the colonization of all these reforms by the old partisan cut and thrust.

**KB:** I wanted to make a similar point. The sorts of reforms that happened in Private Members' business were similarly coming out of the McGrath report. The basic idea was to give MPs more space in which to make proposals and to ensure those proposals would actually come to a vote, whereas earlier private member bills had to be determined to be votable. This built up to the point where MPs could present as many bills as they wanted and everything was votable. In fact, in some cases we saw some MPs later lamenting this change because it could be used for partisan purposes. My research showed that in the interim we actually saw what looked like helpful changes. MPs were coming up with proposals and they were getting the opportunity to lobby and gain support for their proposals. In some cases the laws being passed were having an effect on what the government was proposing – either an indirect or direct effect. It seemed like MPs were directly building on what the department was doing. But the story ends in much the same way as Jack's does because of the power of party leaders, the nature of the MPs requiring party leader support to remain in caucus and to be nominated for upcoming elections, et cetera. These are the sorts of levers that I think ultimately really speak to the power of each member within parliament. Until those levers are changed, I think what we saw in terms of private members' business was that power did seem to shift a little bit in the short term, but in the long term parties were in a perfect position to use these changes to their own ends. We saw far more bills the party wanted to have proposed and they tended to be passed by the governing parties.

**GL:** My overall feeling is quite optimistic after years of gloom and doom about parliament. The main reason is a change in attitude which has to precede reform. And I think this is best exemplified in an article published in a 2008 article in the *Canadian Parliamentary Review* by (former NDP MP) Bill Blaikie. He said, "Parliament is very much driven by the sense of revenge – you exaggerated what we did so

now we're going to exaggerate what you did. What is needed and what is missing is a sense of forgiveness." The first indication that we may have made a step towards that sense of forgiveness was in the last week of the election campaign when (Liberal leader) Justin Trudeau gave a speech in Ottawa. In front of a cheering crowd he said, "the Conservatives are not our enemies they are our neighbors." If that carries over into the new parliament then I think reform can really happen and we can have a much healthier parliament.

**JS:** I have a rejoinder to that. I hate to sound like a jaded old man, but we've been through this before. It seems after every election there's an idealistic cohort of MPs that assume that since they, in contrast to all of the previous MPs, are pure of heart and honourable of intention, it's going to make a difference. And then it all melts away. Changes of attitude collide with realities that haven't gone away. It seems to me, as political scientists we have to ask who's got the power, why do they have the power, and what are the incentives likely to influence what they will do with the power. I don't really think that any of that has changed. Although I certainly would agree with Gary that it is immensely healthy and refreshing to have these new cohorts coming in with a little bit more energy and a little bit more optimism about parliament.

**GL:** These positive statements are not just coming from newly elected members where, I agree with Jack, there will always be some disillusionment that sets in. This is coming from the Prime Minister and the Government House Leader.

**KB:** At the end of the day I wonder if what we're going to have are cabinet ministers with bigger smiles as they answer questions, or are we going to see differences in terms of outcomes. We're simply a little too early in the game to really know if that's where we're going. I would be flabbergasted to find that suddenly MPs have a little more space and time for their Private Members' Business in this new parliament, but if it happens I will be happily surprised. But, my guess would be the trajectory on this particular area would be difficult to reverse.

**PT:** If I could bring a practical example from the current situation. One of the things Gary and I have talked about is the Liberal suggestion to remove the vote of parliamentary secretaries from committees. Many initially thought that that must be just an odd way of saying they would remove parliamentary





**Kelly Blidook**

secretaries from committees. Instead, they still send the parliamentary secretary to advance the government's position. It's one of these reforms whereby you can say that you have done something but if the practical effect is still to have someone there carrying the torch for the government and also keeping an eye on the government members, then it appears good but the proof is not necessarily in the pudding into how it will change in practice. It's just very strange that despite all the talk about empowering backbench MPs, they are not necessarily ready to release the reins and let the MPs be on committees independently. That reform in particular has made me quite skeptical. But we shall see how things progress. One of the problems we have right now is that there are two calls going out for quote-unquote 'all party committees,' one on assisted suicide and one on electoral reform. I think one of the truest tests of how the government is committed to working with parliamentarians is going to be seeing if all-party committee means that all parties have an equal say or if it is just a government majority that will win on questions like whether there should be a referendum for electoral reform.

**JH:** I was reading something that Jay Hill wrote in the *Canadian Parliamentary Review* describing the arrival of almost 200 new MPs in 1993 and optimism that was felt. It was a real reminder that what goes around comes around and whether this time will be any different. The leadership seems to be making some positive changes in tone, but I do worry about observing right now how the promise to listen to backbench MPs is not yet being born out in practise. It's still very much a time to wait and see. What excites me, building on what Kelly said, is that we have some really good – better than in the past, I think – benchmarking data to compare parliaments in a way that's a bit more systematic. We might be more scientific about comparing what effect a change in tone and attitude has on things like time for private members' bills, or heckling (the subject of a recently released report by Samara), between different parliaments. We have a Speaker who has stated that he will be more proactive about limiting the nasty side of heckling in the House, so I'm curious to see if that will change. Are these reforms in structure, or are these reforms in tone, attitude and cultural norms around the Hill? If norms are really fundamental, how do we say that they've changed at some point?

**JM:** My general sense is the reforms that work best are the ones that are difficult to really notice. It's hard to think of a transformative reform that's really changed the place overnight. I think the more successful reforms tend to be gradual. But, over the past 30 years the committee system certainly has strengthened. It's had its ups and downs, but there's never been a giant leap for committees. McGrath tried, but it didn't really happen, though overall things have improved. The election of the Speaker is another example of a reform that has not led to a much stronger Speakership, but it's certainly an improvement. I think that's the story with most parliamentary reforms – it's difficult to think of any that have been transformative. The ones that are enduring tend to be more subdued and long term in their influence and impact.

**GL:** I would add the 'question and comment' procedure to that list. It's not been transformative, but it was important. It's hard to believe that before the McGrath reform speeches in the house were completely disconnected from each other. I mean one person speaks and then someone from another party would rise and they would talk about something completely different. That little five minute period of question and comment allows at least a little bit of genuine dialogue where you don't read from a sheet of paper because you don't know what the other person is going to say.



**KB:** Thinking back to what we were talking about at the CSPG conference, the *Reform Act* hadn't passed yet and we were all wondering what sort of impact it would have. In my opinion, it had the potential to present us with a really big change. But it was changed over time and watered down in terms of amendments and now we've seen most parties have done next to nothing with it in terms of their caucus vote. It comes back to what Jon was pointing out – there are no big magic bullets or changes, and although this had the potential to be one of them, it was watered down to the point where it couldn't be. That's probably always going to be the story of our Parliament. We don't see major shifts quickly in large institutions that have so many processes for how they run. Having said that, we can't just depend entirely upon a culture of good behavior and respect; we also have to depend on rules and things that are actually limiting for the times when we have leadership that wants to push those rules to the nth degree. I'm not that optimistic, but I do recognize that culture on its own plays a valuable role and we might see something come of it. My pessimism just causes me to think that eventually we'll revert back to what we've seen in the past.

**GL:** The move to a Wednesday prime minister's Question Period would be a significant improvement; not transformational, but its impact would ripple through the rest of the Question Periods where the Prime Minister would not be present. I think it makes a lot of sense and it would be something I'd be happy to see.

**JS:** Before we leave the *Reform Act*, I agree with the sentiment of no magic bullets, but incremental improvement. It's not worthwhile to pursue delusional thinking about a magic bullet solving everything, and I think the *Reform Act* crossed into that territory because the basic test of any reform in the short term is 'are MPs going to like it?' If they don't like it, it's not going to happen. And then in the long-term, for sustainability, 'is the government going to like it?' If the government doesn't like it, it won't stay. If you look at the basic incentives that determine political behaviour, it's hard to imagine any political party leader, responsible for getting the party re-elected, agreeing to hand over control of the members who run in the next election entirely to an independent authority. How are you supposed to win elections if you do that? I think there are parts of the *Reform Act* that simply fly in the face of the modern realities that have concentrated power in the hands of party leaders because they need them in order to fight elections effectively.



**Jane Hilderman**

**PT:** Just to backtrack a little bit, the reforms that have been introduced over the past few years may not have necessarily changed the outputs of parliament, but there is something to be said for changing the process as well. It's interesting if you look at the pre-budget consultations where many political scientists lament that they don't have much impact on the actual budget document. But there are actually many more people who request to appear than the committee is able to accommodate. There is something to be said that increasing the process – giving people the opportunity to think their voice is being heard, even if it doesn't matter in the end – and increasing the representative function of parliament might slowly start the ball rolling. Maybe we are too jaded in thinking about this. How did the reforms appear to the average citizen? And how do they change the way they engage with committees?

**CPR:** Perhaps we can use that point about engagement as a jumping off point to talk about electoral reform. Will a national debate over how we elect parliamentarians prompt Canadians to consider or reconsider how they envision the role of an MP?





**Gary Levy**

Will it lead to a change in the way Canadians view their MPs and perhaps change the culture of the institution itself?

**JM:** Whenever there's a discussion about changing the voting system there's always an assumption that parliament itself will remain unchanged or somehow improve. That's not always necessarily the case. Sometimes it can increase partisanship as parliamentarians are even more tied to their party. It can become more fractious like New Zealand and its mixed-member proportional system that is more party-based and unstable. It may be a better system. A lot depends on the kind of electoral system chosen because the MPs will not remain constant themselves. An MP's role is going to change depending on the system, and not necessarily for the better.

**JS:** I'd like to take a more positive position here. If there is a national conversation on electoral reform it could only be positive because it could lead to Canadians paying more attention to how electoral incentives influence behavior in parliament. Preferential voting is especially interesting because it

might offset incentives to micro-target voters for all the parties because political parties would have to think of second choice support and how to marshal that support during election campaigns, and also through their behaviour in the House. Whether there is any empirical evidence to support that theoretical possibility would be very interesting to see.

**KB:** I, for one, would like to see the government take this question to a referendum. I think it would do much to foster citizen engagement on it. There may be cynicism if the consultation process appears to be designed to reach a decision the government already had in mind. But that may simply be how I look at it. I tend to view these important questions as ones which should be decided not just through a majority vote in parliament. I would like to see parliament, and especially government, give up its power on the reins of this one and allow not only for a full debate, but also to ensure that citizens have an opportunity to engage one at a time on an equal level.

**JH:** I have to echo Kelly. The government hasn't revealed its plans for consultation yet, but the 18-month time frame is quite aggressive to have a national conversation that allows the public to get engaged on the subject and talk about it. That is a lost opportunity in our view at Samara. But the focus on electoral reform is also sometimes a bit of a red herring in terms of some of the broader changes our political system might need and the problems we want to solve. Party financial reform is another one that changed a lot in the last 10 years and we haven't really had a good talk about whether reducing donation limits and expenses during campaigns has been positive or negative.

**GL:** On the issue of electoral reform, contrary to what I said at the outset, I'm very cynical. I don't see this happening. I don't see a consensus on it. And I don't think the government will push it. What I see happening might be similar to what happened in the UK on the issue of electing the House of Lords. Tony Blair and Labour pushed this in their manifesto. They won the election, they had the votes to do it, but they knew there was not a consensus. So what they had was many studies and free votes which demonstrated that there was no consensus. Given the lack of consensus, the government did not push it.

**PT:** I was going to make a comparison to the UK, but on their most recent referendum on electoral reform. There, it was seen to be driven by one party, the Liberal Democrats, and the referendum failed



rather miserably. Unless there is consensus that it is solving a particular problem, then I personally think it would be quite dangerous for the government to pursue it because if the electoral system isn't seen as legitimate, there could be more disenchantment and disengagement.

**KB:** I'm not a betting man in terms of money, but on this issue I think the government is set in its plans and we will see a change. I can appreciate the perspective that they will find a way out of it, and actually I would prefer that they did. I think they could have a debate, and stand back from that debate about whether it must change aside from stating they would like it to change. But, nobody would want to be a prime minister if a referendum is held and it is seen to have failed, even if ultimately they stand back from that, so I do believe the government will pass something.

**JS:** I think we might be underestimating how influential the public will be in whatever happens. Even if it's just a parliamentary committee to start with, it will mobilize a lot of stakeholder input and stimulate a conversation. To some extent what the government will do and what it will be able to do will depend on the level of consensus that appears to be present or possible among the public.

**GL:** When you get into it there's not a consensus. Some people support one system, others support another system and still others support a third system. So if there is a free vote on this it will quickly emerge there is no consensus in the House, no consensus in the country, and so the logical thing to do is to drop it. To use a majority to push it through would remind people why they came to dislike the Harper government and I think the Liberals, if they are astute, will avoid that.

**JS:** Perhaps I'm providing a segue here but, like Senate reform, there may be a consensus about what we know we don't want, but not a consensus about what we want to do.

**CPR:** That is a perfect segue to talk about Senate reforms over the past few years and what lies ahead. It appears from the recent Supreme Court reference that substantive reform will not be possible without constitutional amendments. With that in mind, what is the prognosis for any hope of Senate reform?

**GL:** I'm back to optimism when we talk about the Senate. I think the uncoupling of the Liberal caucus



**Jonathan Malloy**

in the Senate from the leadership in the House is positive. The idea of higher quality, less partisan appointments is great. The idea of having ministers from the House coming to answer questions in the Senate is excellent. The theory behind Senate Question Period has always been dubious – to think that one person can answer for 30 government departments is nonsensical. But you could have a good 15-20 minutes with different ministers over periods of time. I don't think there's anything wrong with that and it could be quite positive. There are a lot of good things that could come out of these reforms. I am less happy about not having a government house leader of the Senate. I'm not sure how you get the business done and that's quite fundamental.

**JS:** I think what's happening in the Senate is very interesting, but I wouldn't say that I'm fully optimistic yet. One reality that we have to confront comes out of the Supreme Court decision. Our constitution has become so misaligned with current practise that it doesn't really provide helpful guidance about what to do with the Senate. The Supreme Court is in the unfortunate position of having to enforce a vision of



**Jack Stilborn**

the Senate as a federal institution that is manifestly politically dead. That throws us back on our own resources and should prompt us, I think, to look for incremental reforms and non-constitutional options that could make the Senate work better. Gary pointed to some interesting developments. I have no idea how well the decoupling of the Liberal caucus in the Senate will work. My best guess is that it's almost impossible to sustain anything in Ottawa that is isolated from any political affiliation. I suspect we'll see a discreet informal clustering in the Senate that will replicate political affiliations in the House in order to work. And if it's discreet enough I don't think it will offend the public too much. It may, at least in the short term, provide a way for the institution to work.

**PT:** If I could draw us back to a talk Meg Russell gave at the conference last spring about House of Lords reform, one of the things that happened when they rid the Lords of most of the hereditary peers and established a more transparent process for selecting the new members, was that the new members viewed themselves as more legitimate and began to actually have an impact. The title of her most recent book

is *Bicameralism Revived*. It will be interesting to see if Canadians will be more content with the idea of a reformed Senate that is more legitimate but also content if this reformed Senate starts doing the kinds of things which legitimate actors do such as defeating the government. I think with the provincial orientation of the Senate, you could have a situation where one area of the country could block something desired by another. How will this reformed Senate fit into the broader political system?

**KB:** I would concur with the 'interesting but not necessarily optimistic' view expressed by a number of people here. Building on what Paul mentioned, I think we will see an impact in terms of perceived legitimacy, but unfortunately we won't have accountability. I have a preference for elected and accountable Senators who must answer when they do pass or don't pass laws. I think these reforms maintain some assumptions about the Senate's ongoing lack of legitimacy. They're based on the idea that we will still have a somewhat illegitimate Senate. If we don't tackle these issues we're likely going to end up with one House that doesn't work particularly well beside another when it comes to passing legislation. Of course, it'll take 10-15 years to really know the effect of this because for a while we'll have two sets of Senators and they might view themselves as having different levels of legitimacy. There will be a lot of adaptation and it may be quite some time before we know how this new Senate works in practise. But my concern is the constitutional powers the Senate has. We are possibly moving towards something in the long-term that will end up being quite problematic.

**JH:** Kelly and I are on the same wavelength. I'm more concerned about how changes to the Senate may end up influencing the House of Commons. I do wonder what will happen when a more muscular Senate or Senators take their mandate quite seriously to be a second set of eyes on legislation. What will this mean? Right now a lot of bills will go through the Senate without that rigor and attention if the government states they need to be passed by a certain date. If you have a Senate that takes a much more rigorous process it will affect the way the House works. That will be very interesting to watch.

**JM:** I have to say I'm optimistic about the government's Senate reform proposal right now. I don't know where it will go, so everything that Kelly said is quite right; there's potential to go awry in many ways. We certainly don't know how the Senate is going to function in the coming months with no



government caucus and now this new appointments system. The Senate is probably the single biggest conundrum among Canadian political institutions because it has a legitimacy problem, but it is very strongly constitutionally entrenched and extremely difficult to make major changes to it without opening the constitution. What I like about the government's proposals is that it looks as though it is an attempt to address some of the widespread concerns about the Senate in a way that is constitutionally possible. Prime Minister Harper's ideas for reform were judged not to be possible constitutionally without significant provincial support. It feels shallow to give the government points for trying, but considering these reforms tackle the appointment process and the perception of legitimacy, I'm willing to take a leap of faith and express some optimism that something good will come out of this.

**GL:** I do think there is a way to address the legitimacy issue and it's with a constitutional amendment, a *Parliament Act*-type amendment, that limits the time the Senate can block a bill, as in the UK. If we had that, I don't think there would be an argument about the Senate's legitimacy. It would be able to review legislation, propose amendments and delay legislation up to a point, but it cannot actually stifle a democratically elected chamber. I don't think a single, standalone amendment to make that change is impossible.

**KB:** We'd still be talking about a significant constitutional change at that point – not on the level of unanimity, but you're not talking about something that could simply be changed by the House and Senate itself?

**GL:** No, you'd need the seven out of 10.

**KB:** But if you're going to go that route, you may as well... (*Laughter*)

**JS:** Gary put his finger right back on the issue that Jon raised initially – legitimacy is the problem. As this process of what seems like experimentation goes on, some things will become apparent quite quickly. One is that simply being non-partisan or post-partisan does not in itself confer legitimacy. It may give people some reassurance that some old problems have been addressed, but Senators still have to have a mandate and have to demonstrate legitimacy. Merely preventing them from stopping a bill and permitting them only to hoist it for a little while won't give them legitimacy. The problem of creating legitimacy is still



**Paul Thomas**

there. As long as we have an appointed body, in the absence of becoming some sort of elected body they have to become some sort of belief authority. That brings us to the idea of expertise and hopefully an appointment process that will be more successful in selecting Senators who can be more consistently effective in doing the policy studies and legislative review that is their central contribution at this time.

**CPR:** I'm not sure how many of you do work on comparative politics, but looking at the provincial and territorial level and the international level, are there any recent reforms in other Westminster systems that might be beneficial to consider in the Canadian system?

**PT:** If we look to the UK, I'd say my favourite reform is the election of committee chairs by the whole House. The current process set forth by the government is for committee chairs to be elected by the committee. That looks good on the surface, but if you scratch a bit deeper and note that each party gets to determine which of its members gets to serve on each committee, the government can effectively

limit the pool from which the chair is drawn. If you throw it open to the whole House, you're much more likely to get someone who the government does not necessarily approve of, but who might be a policy expert or who might be a reformer. And you could go further. You could allow elections within each party to determine which of its members will serve on which committees. The two big benefits are that it takes the control out of the whips and it also creates a channel for alternative career advancement. Someone has an incentive to become an expert in healthcare, to make sure other people around Parliament know they are an expert in health care and to work with people in other parties so that someday, when the vote comes for the new chair of the health committee, they might actually wind up getting that job.

**JS:** I'm going to be negative again here. I don't know much about other jurisdictions, but there are a few procedures here and there that seem interesting, like Quebec's interpellation procedure, but it seems to me that all representative systems using the Westminster model face a similar existential problem – the traditional model of representation doesn't work nearly as well in the modern environment. The scale of constituencies has grown vastly and relationships with constituents have become less personal, and the 24-7 news cycle puts pressure on parties to control the message and control behaviour in the assembly. Unless we can somehow come to terms with those basic challenges, to some extent we're rearranging deck chairs on the Titanic.

**JM:** I can't speak authoritatively on other jurisdictions, but we do know that there's a history of reforms being copied, usually from the UK House of Commons to the Canadian House of Commons; for example, think of the separate legislative committees that the McGrath Report recommended, that ultimately didn't work for a couple of reasons, including the differences in the size of the parliaments. I think the Canadian House can and should be looking elsewhere for innovations, but they may not always transfer well either due to size or political culture.

**KB:** If I could speak to one area where Canada is fairly unique, it's the party leader having a veto over candidates in individual ridings. I don't really buy the argument that this is a necessary argument for a party to run effective campaigns and to function as a party. I think it's possible for a separate selection committee that doesn't have the same link as the party leader might have to the parliamentary caucus, making decisions of this sort. I would look towards

that reform as something to consider in the future, that we would go further than the changes made in the *Reform Act* and say that this is not a necessary component and rather something that party leaders could still use to leverage power.

**PT:** To build on that, in the UK Conservative Party, which is the one I know best, the party candidates are screened by the party and then put on a list of pre-approved candidates, but once a local riding association selects you, you cannot be removed. This allows some degree of ideological purity, but once you've made it through the threshold, all you need to do is to keep your local constituency association on side. You don't have to be afraid of being thrown out of the party. If you look at the open rebellion that recently happened in the Labour Party you can see it at work. That is definitely detrimental to the party, so you could make the opposite argument. The leader and party do need a certain amount of power. I would never make the argument that MPs should be completely independent and solely answer to their constituencies and that's the end of the story. Parties do need be able to present a collective front to function, but I do believe we have a situation in Canada where MPs have lost the ability to voice concerns, raise issues and to make sure things are debated. There are avenues that are closed to them that shouldn't be. We can find a proper balance.

**JS:** If I can comment on the idea of finding the proper balance, I've become quite skeptical that this is primarily an intellectual exercise. We have a history of our parliamentary institutions evolving, and frequently the members of these institutions don't know where they're headed but end up there anyway. They evolve by responding to public input. As older-style assemblies with more independent members get replaced by parties competing on the floor of the House in what looks like a permanent election campaign, plainly an evolution is happening. It is responding to public input at election time. Parliament will evolve as a result of these successive inputs. It will probably take us to what is seen as a balance.

**CPR:** I'd like to open the floor to any last comments if we haven't covered something during the course of this conversation that you'd like to address, and also, since a theme of our discussion has been alternating between optimism and pessimism about the state of parliamentary reform, perhaps you could tell us overall whether you have a positive or negative outlook for the health of our parliament in the short-term.



**JS:** It seems to me that much of the discussion about the health of our parliament consists of a small group of political scientists telling MPs what they think of our institutions and then those MPs telling the next group of political scientists what they've heard and recycling convictions that don't have much basis in empirical evidence. (*Laughter*) One of the things we need is more solid empirical information about Parliament. There are some people on this roundtable who are contributing really useful studies and I hope we find a way institutionally to foster that more actively.

**KB:** I briefly felt very meaningless and then very meaningful there, so thank you. (*Laughter*). I am somewhat optimistic with the current state of things because parliamentarians are asking the public what parliament should be. I do think we're going to see, at the end of the day, a Prime Minister's Office about as powerful as the previous one and we're still going to see a parliament that is still very much run by the central agencies. But having said that, if democratic elections send messages that this type of management is being rejected, at the very least we'll see a more careful use of that power. Throughout our conversation I've tended to express pessimism, and I do remain that way, but parliament is going to change slowly and it will respond to what the public wants, because all said, we do have a fairly democratic and responsive system.

**JH:** Building on these arguments, to see in the most recent election all of the new or returning voters who went to the polls and increased the turnout, it is a powerful reminder that parliament is an important place. Hopefully the elected members can continue to promote the message that Canadians should spend a bit more of their time being invested in what happens there between elections. If we can maintain that

turnout in 2019 or even grow it, it will be a broader metric of support for parliament. It's complicated by what will happen among the parties and during the campaign, but there's a lot of potential here, and also a great risk of increased cynicism if nothing changes.

**PT:** I think it will be interesting to see what transpires over the next few years because the new government campaigned on a platform which promised many big changes quickly, but it also vowed to be consultative in making these changes. Squaring that circle is going to be challenging. The more you open things up to input, the slower things will be. I think eventually the government will be judged for either not producing enough change or not consulting enough with respect to the change they promised. Knowing that more people will concentrate on output versus process, I think it will err on the side of simply moving things through. It's going to be challenging to live up to all of the expectations created.

**JM:** I think we're all jaded veterans so as not to be too optimistic about the pace of change, but there are some interesting things being talked about and I think we all appreciate that there is currently an appetite for discussion of parliamentary and related reforms. It reminds me a bit of the climate at the start of the Martin government and its six-point plan to end the democratic deficit. That government didn't have time to accomplish much on those points, but we now have a majority government so there may be more time for them to address their commitments. As people have pointed out, there are a lot of contradictions in these plans, but I think we're at a point where there is an appetite for discussion about parliament and reform that hasn't been present in Ottawa for at least a decade and arguably longer – at least not at a high level.

**CPR:** Thank you all for your thoughts on this topic.

# Has the Senate Changed Since the 1980s?: Some Quantitative Indicators

With the 2014 Supreme Court of Canada reference making transformative reform or abolition of the Senate unlikely in the near future, the author asks if informal or incremental reforms have occurred in the past 30 years. Using quantitative data, he finds that the upper chamber has become more representative of aspects of Canadian diversity in the sociological sense. Women, Aboriginal people and official-language minorities are represented in greater numbers in the Senate than in the House of Commons. The data concerning the Senate's effect on legislative business in Parliament reveals a somewhat uneven record.

**Louis Massicotte**

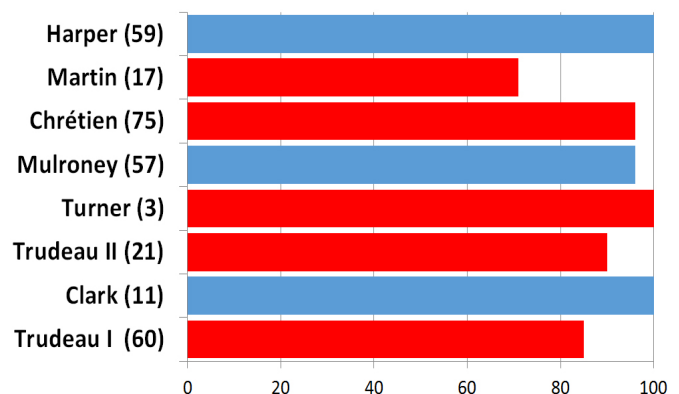
Despite the absence of major constitutional amendments in recent decades, the Senate of Canada has changed in certain respects; however, these changes have not improved Canadians' generally negative view of the Senate.

The 2014 Supreme Court decision in *Reference re Senate Reform* reduced the likelihood that the Senate will be abolished or will undergo substantial structural changes.<sup>1</sup> We now know for sure that abolition would require unanimous provincial consent and that seven provinces, including at least one of the two most populous, would have to agree to anything resembling a significant reform, including a reduction in senators' terms of office. Judging by the long list of failures in this area, success along these lines seems unlikely.<sup>2</sup>

Are we therefore stuck with the status quo? The answer is most likely yes in terms of constitutional reforms proper.<sup>3</sup> However, too often we forget that political institutions can change in less formal ways. The prerogatives of the British monarch have not been formally limited in several

centuries, yet who would argue that Queen Elizabeth II plays as important a role in the British political process as her ancestor Queen Victoria? The Legislative Council of Quebec was very active in the 19th century, but had become a shadow of its former self by the time it was abolished in 1968, even though its powers had not been reduced in the meantime.<sup>4</sup> A static constitutional framework can hide important changes in the identity and behaviour of the actors involved, and in the way they use their powers. Small, seemingly innocuous procedural innovations can prove judicious over time and can restore an institution's prestige.<sup>5</sup> In this article quantitative analysis is employed to determine if this type of change has occurred in the Senate of Canada since the 1980s.<sup>6</sup>

**Figure 1: Percentage of Senators Belonging to Prime Minister's Party on Appointment**



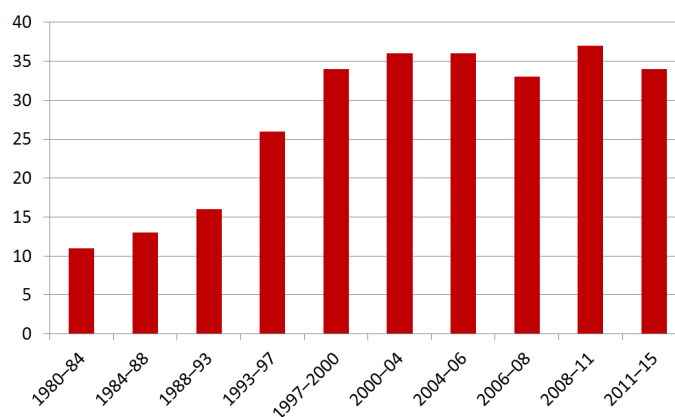
Louis Massicotte is a Professor in the Department of Political Science at Laval University. This is an edited version of his presentation to the Canadian Study of Parliament Group on May 22, 2015.



## Senate composition

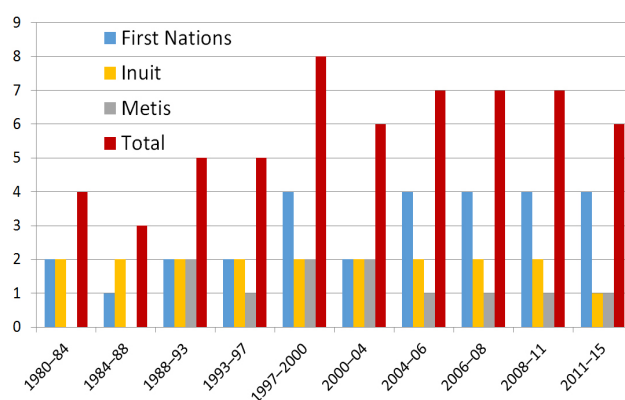
The partisan majority in the Senate has changed hands more often in recent decades than in the past. For 46 years straight, the Liberals had a majority in the Senate. In 1990, the Progressive Conservatives took control, followed by the Liberals in 1996 and the Conservatives in 2009. These transitions are due to more frequent changes in the governing party since the 1980s, rather than a decision to stop appointing party loyalists to the Senate, a practice every prime minister since Macdonald has followed except in very rare cases (Figure 1).

**Figure 2: Number of Women Senators in Each Parliament, 1980–2015**

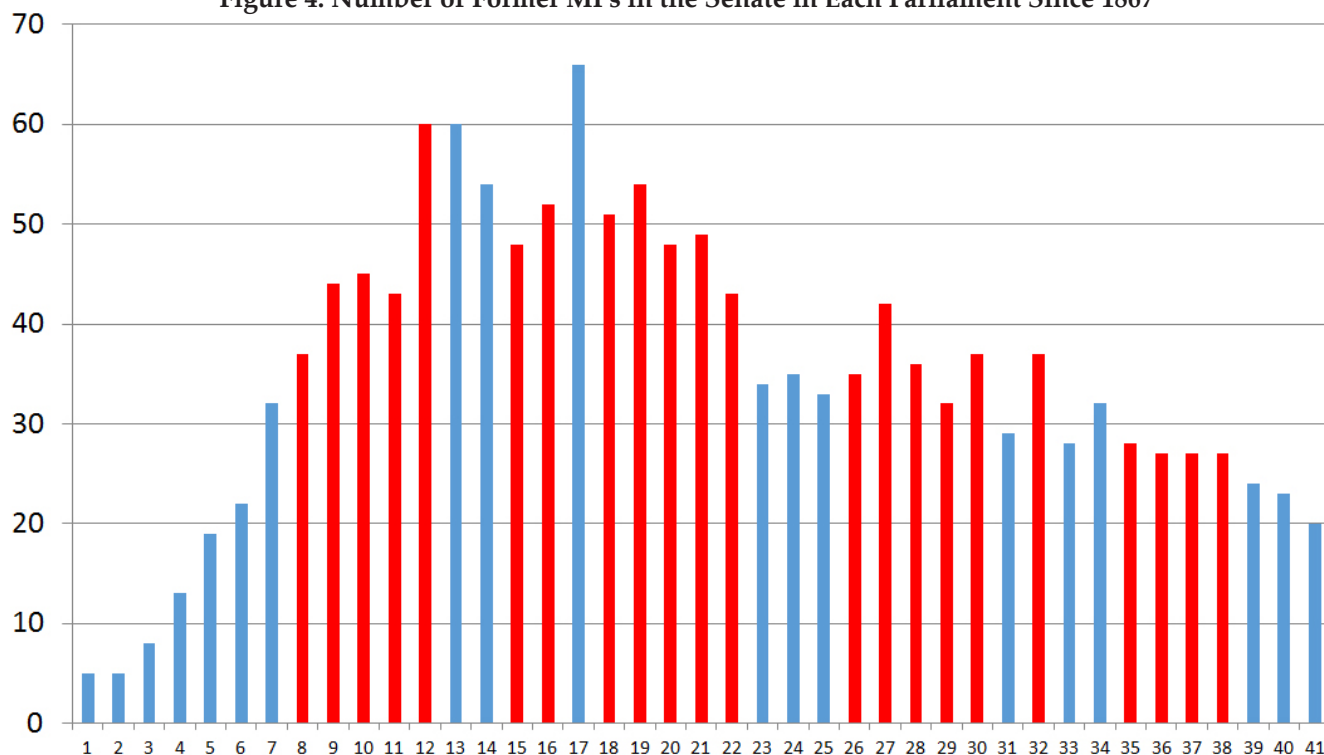


However, a review of the statistical data reveals interesting changes in the types of individuals being appointed to the Senate.<sup>7</sup> Women and Aboriginal people have made important gains in the Upper House. The proportion of women has risen from 10 per cent to over 30 per cent, surpassing the proportion in the House of Commons (Figure 2). This change seems to be primarily the result of appointments made by prime ministers Chrétien and Martin. Aboriginal representation has increased and become more diverse: First Nations, Inuit and Metis are now represented in the Senate (Figure 3).

**Figure 3: Number of Aboriginal Senators in Each Parliament, 1980–2015**

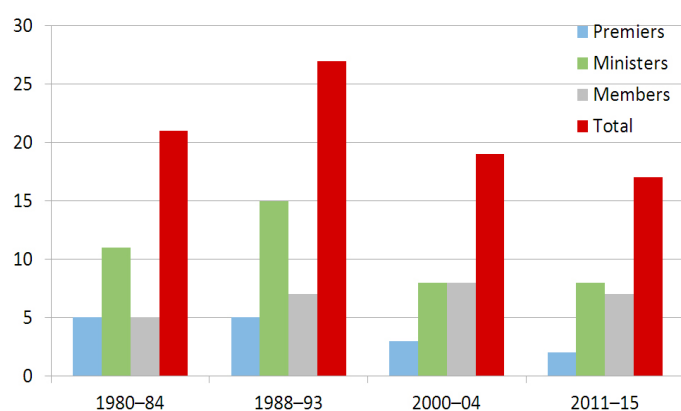


**Figure 4: Number of Former MPs in the Senate in Each Parliament Since 1867**



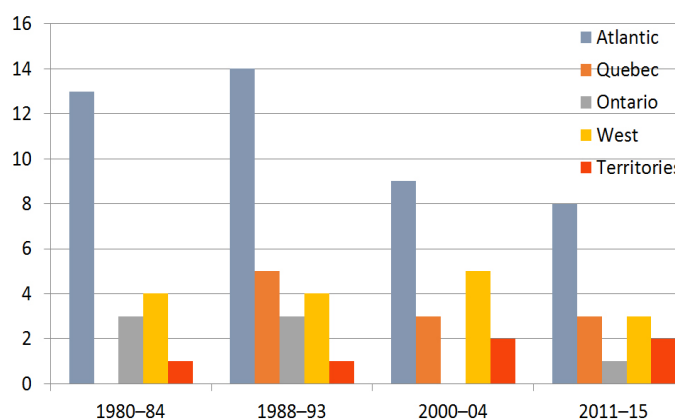
The Senate is home to fewer and fewer former federal MPs, continuing a trend that started in the 1940s and was likely accelerated by the creation of a pension plan for parliamentarians in 1952 (Figure 4). The number of former provincial politicians is also declining (Figure 5). Those former provincial politicians who are appointed to the Senate are disproportionately from the Atlantic provinces, probably because federal and provincial parties are more closely linked in those provinces (Figure 6).

**Figure 5: Number of Former Provincial Politicians in the Senate**

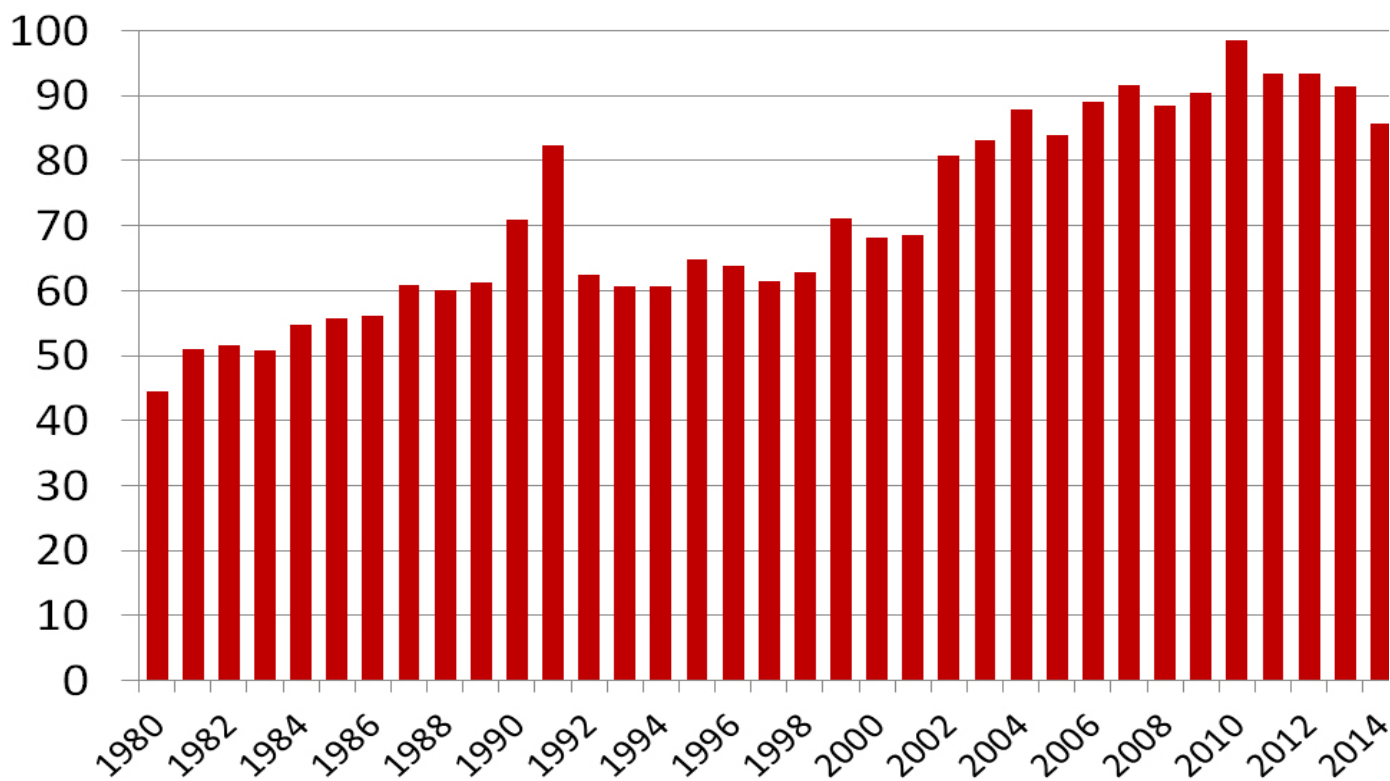


Senators' occupations have also changed (Figure 9). Since the 1980s, the percentage of lawyers has declined (from 42 per cent to 25 per cent), while the percentage of businesspeople has grown (from 22 per cent to 39 per cent) and the percentage of teachers and professors has more than doubled (from 12 per cent to 25 per cent). In addition, since the late 1960s, the number of senators with military experience has dropped dramatically (from 50 to 10).

**Figure 6: Regional Origin of Former Provincial Politicians in the Senate**



**Figure 7: Cost of the Senate, 1980-2014 (\$ millions – 2015 dollars)**





Representation of linguistic minorities has been a perennial concern of Canada's prime ministers and here the figures speak for themselves. Between 1963 and 2006, no less than 17 per cent of Senate appointments went to individuals from official-language minority communities: 15 out of 56 appointees from New Brunswick and Nova Scotia were Acadian, five out of 57 from Ontario were Franco-Ontarian, five out of 64 from the West were francophone, and 18 out of 76 from Quebec were anglophone.<sup>8</sup> In this respect, the Harper era was a clear break with the past, revealing less concern for representation of official-language minorities. From 2006 to 2015, only one Acadian and two Anglo-Quebeckers were appointed, making up just three of 57 appointments, or five per cent of the total.<sup>9</sup>

## Senate business

MPs and senators were compensated equally from 1867 to 2001. The basic sessional allowance for senators is now \$25,000 less than that for MPs. The total cost of the Senate in constant dollars has increased, peaking in the early 1990s owing to the appointment of eight additional senators.<sup>10</sup> The cost has decreased in recent years as Prime Minister Harper declined to fill vacant Senate seats after 2013 (Figure 7).<sup>11</sup> The number of Senate sittings has remained well below the number of House of Commons sittings, but has stayed steady overall, while the House sits less often than in the past (Figure 8). The indicators for Senate committee activities, available only since the early 1990s, have varied substantially from year to year, without revealing a clear overall upward or downward trend.<sup>12</sup>

Figure 8: Sitting Days of Each House of Parliament in Each Calendar Year, 1980–2014

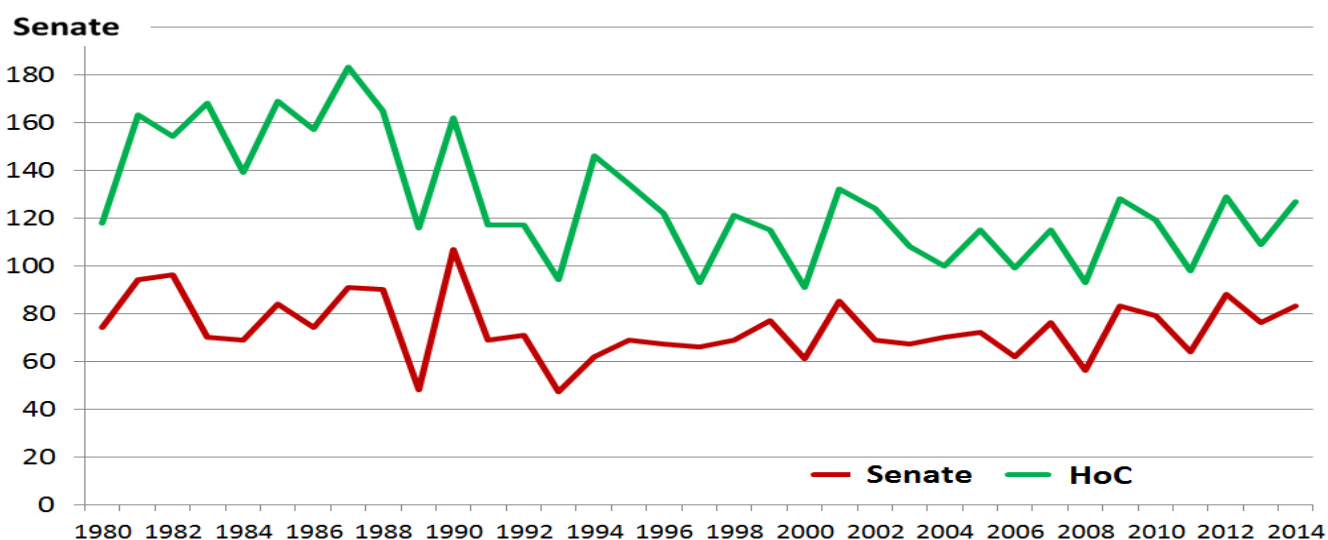


Figure 9: Bills Amended by the Senate

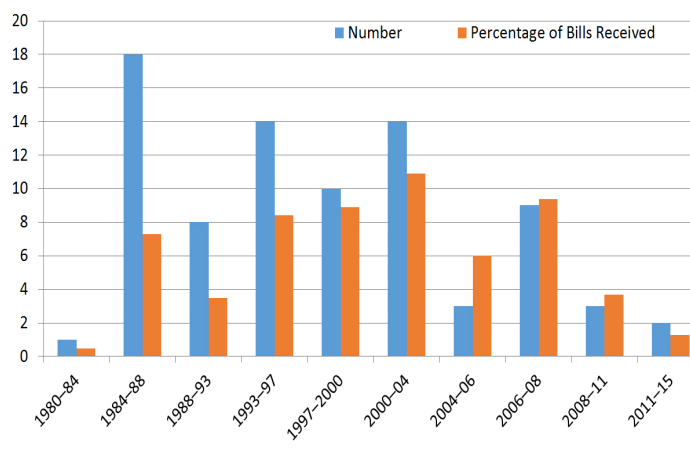
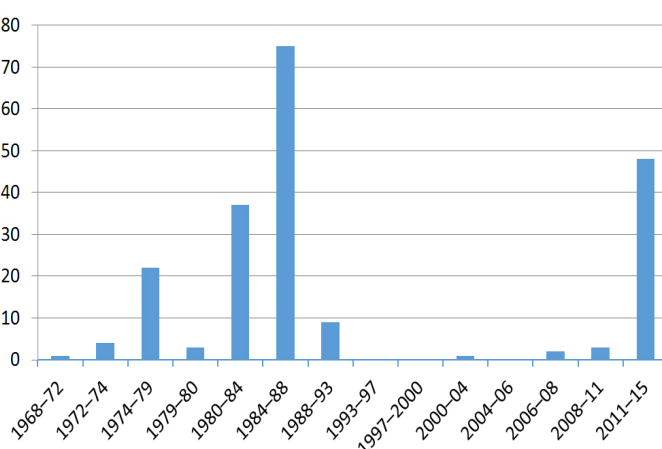


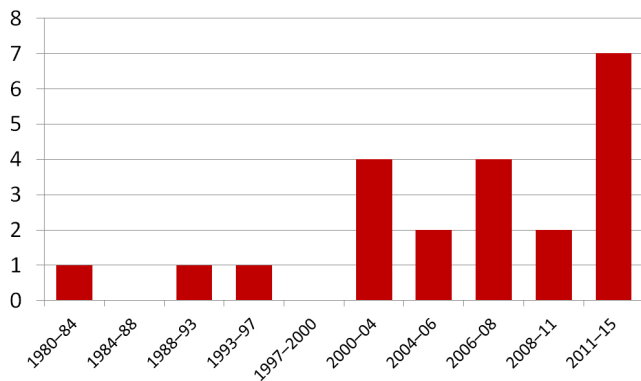
Figure 10: Senate Pre-study of Bills, 1968–2015



## The Senate's impact on the legislative process

The number of House of Commons bills amended by the Senate was insignificant under the second Trudeau government, but has increased since then, especially (but not always) during periods when the Senate was controlled by the opposition. As a percentage of the overall legislative agenda, Senate-amended bills have scarcely exceeded 10 per cent, and this figure dropped considerably during the last parliament (Figure 9). Pre-study of bills, an ingenious procedure that allows the Senate to suggest amendments to the Commons before a bill has officially been sent to it, has been used unevenly. Pre-study was very popular in the 1980s and was formally added to the *Rules of the Senate* in 1991, but fell into disuse thereafter, only to be revived while the Harper government had a majority in the Commons (Figure 10). More private senators' bills have been passed since 2000, but this number has remained modest overall (between zero and seven per parliament) (Figure 11), and most of this legislation was symbolic in nature. However, it is worth noting the success of the Gauthier official-languages bill in 2005.<sup>13</sup>

**Figure 11: Number of Private Senators' Public Bills Enacted, 1980–2015**



## Conclusion

In summary, over the past 30 years, the Senate has become more representative of Canadian diversity in the sociological sense. Women, Aboriginal people and official-language minorities are represented in greater numbers in the Senate than in the House of Commons. These are the principal gains of this period. Has this progress helped improve Canadians' perceptions of the Upper House? That seems doubtful. A comparison of opinion polls conducted on the future of the Senate since 1983 shows that far fewer respondents support the status quo today (5 per cent) than 30 years ago (28 per cent).<sup>14</sup> However, Canadians remain split between abolition and reform.

## Notes

- 1 *Reference re Senate Reform*, 2014 SCC 32.
- 2 The Senate's veto on constitutional matters became suspensive under the Constitution Act, 1982, and the number of senators was increased to 105 when Nunavut was created in 1999 through ordinary legislation. The list of failures includes the attempt to reduce the Senate's legislative powers (1985), the Meech and Charlottetown accords, and Prime Minister Harper's repeated reform efforts (2006–2014).
- 3 The new government has ruled out constitutional reforms and proposed the creation of a non-partisan advisory board to screen candidates.
- 4 Louis Massicotte, *Le Parlement du Québec depuis 1867*, Quebec City, Presses de l'Université Laval, 2009.
- 5 One example is the Senate pre-study of bills. Another dates back to 1934, when the Senate acquired an important role in private legislation by declining to increase the fees for introducing such bills, unlike the House of Commons, and becoming the preferred house for originating private legislation. See Robert Marleau and Camille Montpetit (Eds.), *House of Commons Procedure and Practice*, 2nd Edition, 2009, Chapter 23, Note 4, and R.A. MacKay, *The Unreformed Senate of Canada*, Toronto, McClelland & Stewart, 1963, p. 86.
- 6 For a recent overview, see Louis Massicotte, "Le Sénat et son rôle dans la fonction législative," pp. 145–175 in Nelson Michaud (Ed.), *Secrets d'État? Les principes qui guident l'administration publique et ses enjeux contemporains*, Quebec City, Presses de l'Université Laval, 2011.
- 7 Most of the figures accompanying this article were prepared using data from the Parliament of Canada's PARLINFO site at <http://www.parl.gc.ca/parlinfo/default.aspx?Language=E>.
- 8 Louis Massicotte, *Possible Repercussions of an Elected Senate on Official Language Minorities in Canada*, Report prepared for the Commissioner of Official Languages of Canada, March 2007, pp. 13–17.
- 9 Senators Fabian Manning and Larry Smith resigned from the Senate in 2011 to run unsuccessfully in the federal election and were subsequently reappointed to the Senate, bringing the total number of appointments made by Prime Minister Harper to 59.
- 10 Source: Public Accounts of Canada.
- 11 As of November 18, 2015, the Senate had 22 vacancies.
- 12 Source: Senate annual reports on activities. The author wishes to thank Charles Robert, Clerk of the Senate, for providing data.
- 13 Massicotte, *Possible Repercussions of an Elected Senate on Official Language Minorities in Canada*, p. 7 sq.
- 14 Éric Grenier, "Canadians want to reform or abolish Senate: polls," *The Globe and Mail*, May 30, 2013.



# Some Suggestions for Incremental Reform of the Senate

The provisions of the *Constitution Act, 1867* respecting the qualification and disqualification of Senators are outdated. They can be modernized without controversy and early action to accomplish that could be the impetus for Parliament and the Legislatures to address more significant aspects of Senate reform.

*\*Subsequent to the acceptance of this article for publication and immediately prior to publication, on March 10, 2016 Senator Dennis Glen Patterson introduced Bill S-221 and gave notice of a constitutional amendment resolution the combined effect of which, if adopted, will be to substantially effect the first three changes suggested by the author.*

**Ronald Stevenson**

In any discussion of Senate reform there are four givens –

First, all ten provincial legislatures will not agree to a proposal to abolish the Senate.

Second, Prime Ministers will not relinquish their constitutional prerogative and duty to advise the Governor General about who will become Senators.

Third, the six eastern provinces will not agree to any reduction in the number of Senators representing those provinces.

Fourth, the four Atlantic Provinces will not agree to removal of the Constitutional provision<sup>1</sup> that guarantees that no province will have fewer seats in the House of Commons than it has in the Senate. The so-called ‘Senate floor’ already applies to all four of those provinces<sup>2</sup> and will become increasingly significant to them as their populations remain static or decline while populations in other provinces continue to grow.

Whether public respect for and confidence in the Senate will be restored depends on how present and new senators conduct themselves and Senate business in the short term. Two hopeful factors are the advent

of a committee to implement a non-partisan, merit-based process to advise the Prime Minister on Senate appointments and the prospect of a less partisan atmosphere in the Senate.

Neither of those reforms will address the imbalance of western representation in the Senate. As Ronald Watts wrote in *Protecting Canadian Democracy: The Senate You Never Knew*, “That some relatively populous provinces like British Columbia and Alberta have only six senators each, while the much smaller provinces of Nova Scotia and New Brunswick have substantially more with 10 senators each [is] a factor further eroding the legitimacy of the Senate in the eyes of the residents of the western provinces”.<sup>3</sup> In the same volume Lowell Murray suggested that “The only constitutional amendment that might conceivably stand a ghost of a chance is one that would redress the underrepresentation of the western provinces in the Chamber.”<sup>4</sup>

The number 24 figures prominently in the structure of the Senate and has a historic derivation. Because representation in the House of Commons would be based on population, Lower Canada and the Maritime Provinces insisted on equal representation in the Senate as a counterweight to the numerical advantage Ontario would have in the House of Commons.<sup>5</sup> The choice of 24 as the number of Senators allotted to each of the three original divisions (Ontario, Quebec and the Maritime Provinces) was probably made because in the Legislative Council of the United Province of Canada each of Lower Canada and Upper Canada had been represented by 24 Councillors. As the four western provinces became part of the federation they were given 2, 3 or 4 senators until 1915 when

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Ronald Stevenson, a retired judge of the Court of Queen’s Bench of New Brunswick, is a former Clerk of the New Brunswick Legislative Assembly.

the *Constitution Act, 1867* was amended to create a fourth regional division consisting of the four Western Provinces with six senators each, again a regional number of 24. Subsequently Newfoundland and Labrador and the Territories were given “non-regional” representation.

There is no appetite for a full scale reopening of the Constitution, but a federal-provincial constitutional conference is not a prerequisite to constitutional amendment. Part V of the *Constitution Act, 1982* prescribes the procedures for amending the Constitution. There is no obstacle to informal discussion and negotiation about how the inadequate representation of the West might be corrected. The provincial premiers might devise a formula acceptable to all provinces. Or senators themselves might devise a formula acceptable to the provinces.

Assuming, for the purpose of discussion, that a formula is agreed upon, how would it be implemented? Under the constitutionally prescribed procedures any

provincial Legislature, the House of Commons or the Senate, and by extension any member of those bodies, can initiate a resolution to amend the Constitution. Once such a resolution is adopted by one of those bodies it is open for adoption by the requisite others for three years. Thus any member of the Senate, the House of Commons or a provincial Legislature may initiate the process.

Parliament and the Legislatures of Alberta and British Columbia have purported to impose internal restrictions on the initiation or adoption of such resolutions. Those restrictions are discussed below.

Leaving aside the issue of increasing western representation in the Senate, there are provisions in the *Constitution Act, 1867* respecting Senators that are outdated. Some should be repealed and some amended. Those changes would be so innocuous that it is difficult to conceive of any opposition.

First, remove the \$4,000 property requirement found in sections 23(3) and (4) of the *Constitution Act, 1867*.<sup>6</sup> Like the number 24, the property qualification can be traced to the requirements for Legislative Councillors in the United Province of Canada. In fact what was an \$8,000 property requirement for Legislative Councillors was reduced to \$4,000 for Senators.

Second, remove the requirement that each Senator from Quebec must be appointed for one of 24 electoral divisions of Lower Canada specified in an early Act adopted by the Legislature of the United Province of Canada.<sup>7</sup> Those 24 divisions were defined for the purpose of choosing Legislative Councillors and only encompassed the area of Lower Canada (Quebec) as it existed in the 1840s. Some of those divisions were designed to guarantee representation of the Anglo-Protestant minority in Lower Canada.<sup>8</sup> The vast area of northern Quebec is not represented in the Senate unless Senators who reside there have purchased property worth \$4,000 in one of the prescribed districts in the southern part of the province. Indeed, in order to qualify for appointment many Quebec Senators have had to buy property in districts in which they did not reside. There is a story, perhaps apocryphal, of a Senator-designate who went to the district for which he was about to be appointed in search of a suitable property. Seeing a For Sale sign on a rural property he approached the owner and asked what the selling price was. When the owner asked for \$2,000, the Senator-designate asked if the owner would accept \$4,000.



**Some incremental reforms to the Senate could open the doors to more substantive reforms in the future.**





There are antiquated provisions of the Constitution respecting the qualification and disqualification of Senators that can be modernized without controversy. These could be a catalyst for discussion and resolution of the issue of western representation and perhaps more contentious reforms such as term limits.

Third, remove the requirement for Senators to make a Declaration of Qualification<sup>9</sup> that really only relates to the property qualification. Similarly, delete the reference to Property in section 31(5).

Fourth, substitute Canadian citizenship for the antiquated qualification found in section 23(2) of the *Constitution, Act, 1867*.<sup>10</sup>

Fifth, update the disqualification in section 31(3)<sup>11</sup> to use language related to the *Bankruptcy and Insolvency Act*.<sup>12</sup>

Sixth, update the disqualification in section 31(4).<sup>13</sup> The terms “attainment of Treason”, “Felony” and “infamous Crime” no longer have the legal meaning or significance they had in 1867.<sup>14</sup>

With respect to the first two of those changes, the Supreme Court has given its opinion that it is within the legislative authority of Parliament to repeal subsection 23(4) of the *Constitution Act, 1867* but that a full repeal of subsection 23(3) also requires a resolution of the Legislative Assembly of Quebec. It follows that the third suggested change would also require the concurrence of the National Assembly.

The other three suggested changes would not alter the fundamental nature and role of the Senate and could be unilaterally adopted by the two Houses of Parliament.<sup>15</sup>

Early adoption of those innocuous changes could be the catalyst for subsequent discussion and resolution of the issue of western representation. Successful revision of provincial representation could in turn open the door for resolution of other contentious issues, for example, whether there should be term limits for Senators.

I turn now to the supplementary provisions that Parliament and the Alberta and British Columbia Legislatures have attempted to superimpose on the amending procedures set out in Part V of the *Constitution Act, 1982*.

A 1996 Act of Parliament entitled *An Act respecting constitutional amendments*<sup>16</sup> restricts the right of Ministers of the Crown to propose resolutions to authorize some categories of constitutional amendments. The restriction does not apply to members of the House of Commons or the Senate who are not Ministers.

In British Columbia the *Constitutional Amendment Approval Act*<sup>17</sup> says that the government must not introduce a motion for a resolution of the Legislative Assembly authorizing an amendment to the Constitution unless a referendum has first been conducted with respect to the subject matter of the resolution. Again the restriction does not apply to members of the Assembly who are not members of the government. And the *Act* does not explicitly require that the referendum has resulted in an affirmation of the proposed amendment.

In Alberta the *Constitutional Referendum Act*<sup>18</sup> requires that a referendum be held before a resolution is voted on by the Legislative Assembly. The result of such a referendum is binding on the government that initiated the resolution. The result is not explicitly binding if the resolution has been introduced by an MLA who is not a member of the government.

Are such Acts constitutional? An amendment to Part V of the *Constitution Act, 1982* can only be made when authorized by resolutions of the Senate and House of Commons and of the Legislative Assembly of each province. Furthermore, section 52 of the *Constitution Act, 1982* provides that any law that is inconsistent with the provisions of the Constitution is, to the extent

of the inconsistency, of no force or effect. Do the three Acts purport to amend Part V? Are they inconsistent with Part V?

A requirement for a referendum could result in an unintended consequence. Suppose that the federal and provincial governments, each with the support of a majority in its elected legislature, agree on a formula to redress western underrepresentation in the Senate. Adoption of the formula could be frustrated by a negative vote in a referendum if the voters in either or both Alberta and British Columbia feel that a proposed allocation of seats falls short of their aspirations.

Major constitutional changes respecting the Senate, including redressing the imbalance of western representation and term limits, will remain on the national agenda as we approach the sesquicentennial of Confederation. In the near term the antiquated provisions of the Constitution respecting the qualification and disqualification of Senators can be modernized without controversy. As former Senator Dan Hays said in an article in the *Canadian Parliamentary Review* advocating similar amendments, "[Their] adoption could be an important step in encouraging the federal and provincial governments, parliament and the provincial legislatures, and all relevant stakeholders to renew [the] Senate in a more in-depth way and providing it with a new institutional design to better serve Canadians."<sup>19</sup>

## Notes

- 1 "Notwithstanding anything in this Act a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such province." Section 51A of the *Constitution Act, 1867*, enacted by *The British North America Act, 1915*.
- 2 <http://www.elections.ca/content.aspx?section=res&dir=cir/red/alto&document=index&lang=e>
- 3 "Bicameralism in Federal Parliamentary Systems," 82, in Serge Joyal, ed. *Protecting Canadian Democracy: The Senate You Never Knew*. Toronto: Dundurn Press, 2003.
- 4 *Protecting Canadian Democracy: The Senate You Never Knew*, 149.
- 5 *Protecting Canadian Democracy: The Senate You Never Knew*, Lowell Murray at 133.
- 6 S.23(3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in Free and Common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture, within the Province for which he is appointed, of the Value of



Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same. (4) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities.

- 7 "In the Case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated Statutes of Canada." (Section 22).

23(6) In the Case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

- 8 *Protecting Canadian Democracy: The Senate You Never Knew*, Serge Joyal at 274
- 9 128. Every Member of the Senate . . . shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.

#### DECLARATION OF QUALIFICATION

I A.B. do declare and testify, That I am by Law duly qualified to be appointed a Member of the Senate of Canada [or as the Case may be], and that I am legally or equitably seised as of Freehold for my own Use and Benefit of Lands or Tenements held in Free and Common Socage [or seised or possessed for my own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture (as the Case may be),] in the Province of Nova Scotia [or as the Case may be] of the Value of Four thousand Dollars over and above all Rents, Dues, Debts, Mortgages, Charges, and Incumbrances due or payable out of or charged on or affecting the same, and that I have not collusively or colourably obtained a Title to or become possessed of the said Lands and Tenements or any Part thereof for the Purpose of enabling me to become a Member of the Senate of Canada [or as the Case may be], and that my Real and Personal Property are together worth Four thousand Dollars over and above my Debts and Liabilities.

- 10 "He shall be either a natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the

Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union."

- 11 "If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter."
- 12 "Bankrupt" means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person. "Insolvent person" means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and (a) who is for any reason unable to meet his obligations as they generally become due, (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due".
- 13 "If he is attainted of Treason or convicted of Felony or of any infamous Crime." See Edward McWhinney, "Forfeiture of Office on Conviction of an 'Infamous Crime,' *Canadian Parliamentary Review* Vol. 12 No. 1. (1989)- <http://www.revparl.ca/english/issue.asp?param=128&art=300>
- 14 The language in sections 31(3) and (4) can be traced to section VII of the 1840 *Act of Union*.
- 15 Paragraph 75 of the Supreme Court decision in Reference re Senate Reform, [2014] S.C.J. No.32 – "Section 44, as an exception to the general procedure, encompasses measures that maintain or change the Senate without altering its fundamental nature and role."
- 16 SC 1996, c.1.
- 17 RSBC 1996, c. 67.
- 18 RSA 2000, c. C-25.
- 19 Dan Hays, "Updating Some Antiquated Constitutional Provisions Relating to the Senate", *Canadian Parliamentary Review* Vol 32 No. 1 (1999) -<http://www.revparl.ca/english/issue.asp?param=192&art=1321>

# Interest Groups and Parliamentary Committees: Leveling the Playing Field

Parliamentary committees in Canada are undeniably important resources for interest groups – particularly in terms of gaining information, articulating one’s message on public record, and establishing oneself as a legitimate stakeholder in the eyes of politicians, government and the public. However, one of the intended functions of standing committees – to serve as a venue for non-governmental influence on policy – has largely proved to be a canard in Canada’s House of Commons. The first part of this article prioritizes the challenges facing non-governmental actors who wish to exert policy influence through parliamentary committees. It asserts that standing committees’ function of carrying out studies has more surmountable challenges than the function of legislative reviews. The second part of the article emphasizes that two developments are imperative in order to realize the potential committee studies hold: first, the open-ended nature of studies and the inadequacy of follow-up mechanisms should be addressed (with the scope of questions designed to feed into a pipeline of future legislative activity wherever feasible), and second, long-overdue accountability mechanisms should be introduced to ensure that the government responds to committee reports upon request.

**Marguerite Marlin**

As the most recent edition of the *House of Commons Procedure and Practice* stipulates, the general mandate of the Parliament of Canada’s standing committees is to review the policy and performance of their corresponding government departments.<sup>1</sup> To fulfill this mandate, committees may call upon non-governmental witnesses to gather information for studies and consult on the merits of proposed or existing policies. With the exception of the Standing Committee on Finance in Canada (which also has pre-budgetary hearings), the official activities of parliamentary committees that involve hearing from non-governmental representatives take two main forms: reviewing draft legislation and producing studies which lead to the creation of committee reports. Both activities provide opportunities for non-governmental policy input. However, among interest groups in Canada, a distinct strategic preference for informal meetings with Cabinet ministers or

other influential politicians over committee meeting presentations has long been observed; the effectiveness of the former strategy has far outshone the latter.<sup>2</sup> As a result, interest groups without sufficient resources to pour into the burgeoning economy of consultant lobbyists and other costly networking strategies are put at a disadvantage in the realm of policy influence.<sup>3</sup>

The path to improving the potential for impact of non-governmental policy input through parliamentary committees hinges on the committee function being considered. Of two such functions of the Standing Committees of the House in the Parliament of Canada – legislative reviews and committee studies – the tight grip of party discipline in Canada and the timeline of legislative reviews in committees renders the function of committee studies a more fruitful site of reform than legislative reviews. However, in order to improve the transformative potential of committee studies, two issues must be addressed: the open-ended nature of many such studies (which limits the transferability of such studies to the development of legislation) and the inadequacy of follow-up mechanisms to prompt a formal government response to study reports from committees.

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In this article, interviews with three non-governmental witnesses from the environmental sector who appeared before parliamentary committees in recent years – Christine Wenman of Ecology North, Bill Eggertson of the Canadian Association for Renewable Energies and Martin von Mirbach of WWF Canada – are used to illustrate some of the frustrations that emerged among non-governmental representatives following their participation in hearings for committee studies.<sup>4</sup> Two conclusions percolate from this analysis: first, mechanisms combining the timeliness of reports with the specificity of legislative reviews should be developed for committees to avoid overly-broad studies, and second, the continued failure to mandate compulsory government responses to committee reports is a needless hindrance to the effectiveness of parliamentary committees in achieving their mandate.

The path that parliamentary committees have taken by way of reforms throughout Canada's history is a subject that has been adeptly chronicled by Jack Stilborn,<sup>5</sup> with succinct accounts also provided by Christopher Garner in previous editions of this publication.<sup>6</sup> The storied history that has shaped the current processes and protocols for parliamentary committees is thus largely left to these other accounts and others, except for those changes considered the most pertinent to the dynamics of change being proposed.

### **Standing Committee Functions and Non-Governmental Actors**

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The two main functions for non-governmental influence through standing committees are legislative reviews and studies leading to the creation of reports; these have separate institutional frameworks for enacting change. The legislative reviews allow for more focused, specific input toward a clearly delimited policy (as is often not the case for committee reports); however, representatives who are brought in to make presentations at this stage face a more entrenched commitment by government to the details of policy that has in almost all circumstances been reviewed and approved by the executive committees and at least one legislature's chamber (upper, lower, or both). In most cases, bills are referred to committee only after second reading, which further limits the scope for substantive amendments. Legislative consultation in committees also follows decisive caucus meetings on bills; strong party discipline in the Canadian context offers a more significant challenge to influence. This creates a path-dependency that is difficult to re-route and thus precludes more substantive changes that might

otherwise have come about from non-governmental consultation at committees. For example, Wenman admits that she had not anticipated any changes to precipitate as a result of her appearance at committee on behalf of her organization for a bill on devolution of the Northwest Territories, as "it was clear that the government of Canada had an agenda that they were going to pursue in spite of strong protests against that direction from different stakeholders."

To be sure, while essentially barred from changing the core policy objectives of bills that have largely already passed second reading, committees in Canada do often make more technical amendments based on either the convictions of the committee members or on new information brought forward by witnesses. These technical amendments are the primary reason why the clause-by-clause consideration of bills are often scheduled over one or two full committee meetings. However, the ability to make meaningful changes at this stage is dependent upon factors such as whether the party representation on committees is weighted against the executive (in the case of a minority government) and the relative independence of members from the constraints of party discipline.

Thus, opportunities to improve the effectiveness of committees in terms of translating witness testimony heard at committees into policy depend on mechanisms to loosen party discipline in a majority government context. It is possible that electoral reform may precipitate changes in this regard, since a larger number of parties in the legislature (a likely result of proportional representation) could lead to more reform-minded individuals coming to parliament. There is a precedent for this in the aftermath of the 1993 election, where both the Liberals and the Reform Party ran on a reform agenda and a subsequent increase in party dissent was observed: In a study of party dissent under Mulroney and Chrétien, Joseph Wearing found that the percentage of votes which contained any individual votes of party dissent in the 35<sup>th</sup> parliament was 21.8 per cent – compared to 17.4 per cent for 1988–93, 7.7 per cent for 1984–88, and 6.3 per cent for 1980–84.<sup>7</sup>

Building upon this research (Table 1), I found that party discipline in the 38<sup>th</sup> parliament was even looser than it had been in the 35<sup>th</sup> parliament, with 50 per cent of votes containing some form of party dissent.<sup>8</sup> The ramifications of this were apparent at committees; for example, the Standing Committee on Environment and Sustainable Development under the chairmanship of veteran MP Charles Caccia (LPC) from 1994–2004

managed to enact significant amendments to bills such as the *Canadian Environmental Protection Act* and the *Species At Risk Act*. This was noted to have occurred due to the strong leadership of the Chair and the high level of expertise and consistency of the committee members.<sup>9</sup> However, by 2011-2012, this number had drastically dropped far below 38th or 35th parliament levels to 16 per cent – even though this sample contained the vote on a bill which made headlines for party dissent (Bill C-19: *An Act to amend the Criminal Code and the Firearms Act*).

The next section explores how these can be remedied in a more immediate fashion than barriers facing non-governmental influence for legislative reviews.

### Issues with Committee Studies and Implications for Reform

When asked about the challenges to influence presented by the committee study process, non-governmental witnesses often cite a lack of clear direction in the design and conduct of such studies.

**Table 1: Votes Containing Party Dissent (Canada)**

	<b>35<sup>th</sup> Parliament (Jan. 17, 1994 to April 27, 1997)</b>	<b>38<sup>th</sup> Parliament (Oct. 4, 2004 to November 29, 2005)</b>	<b>41<sup>st</sup> Parliament, 1<sup>st</sup> Session (sample from June 2, 2011 to March 28, 2012)</b>
Government Bills	N/A (not calculated by Wearing)	27% (4 votes of 15 – LPC, CPC and Bloc)	7% (1 vote of 15 – NDP)
Private Members' Bills	N/A (not calculated by Wearing)	89% (8 votes of 9 – LPC, CPC and NDP)	33% (3 votes of 9 – CPC)
<b>Total</b>	21.8%	50% (12 votes of 24)	16% (4 votes of 24)

The significance of these findings is that a shift in the outlook of MPs and parties with regard to party discipline that is enshrined by norms alone is vulnerable to backsliding.

By contrast, hearings undertaken in the context of committee studies pre-empt the policymaking process – and thus theoretically allow for more timely contribution of outsider input into its development. Moreover, committees are often able to come to a consensus in their report recommendations, an extremely rare occurrence when considering amendments to legislation. It is for these reasons that reports are considered to hold more promise for policy influence from non-governmental representatives. Reports still come with their own set of problems, including the overly broad scope of many studies and the inadequacy of follow-up mechanisms to the committee reports that are produced from studies.

For example, Martin von Mirbach recalled that when he had received the invitation to appear before committee, he did not have a sense of what the report would feed into or produce. Similarly, Eggertson spoke about the fact that he “was never sure if [the committee members] were looking at renewables as a money-maker or renewables as an enabling adaptation technology in the North” and that while he had hoped to find clear goals for the committee study – perhaps using the questions of committee members as a guide to what specifics they most wanted to explore – he found that the committee had used the study as an opportunity to brainstorm ideas for the North, which proved unhelpful from his perspective.

An additional aspect of committee reports that is less than encouraging for would-be influencers of policy is that while there is a necessary response from the legislature and usually the government



in response to amendments made in committee in the process of legislative review, neither Parliament nor the government are compelled to respond to recommendations in committee reports, or any other part of reports. In Canada, this has been a source of tension for some time; a 1979 study showed that legislators took issue with the frequent lack of responses from government with regard to their report recommendations. In total, 70 per cent of MP respondents to the study agreed that the Government should have to reply to all committee reports containing “substantive” recommendations, and a substantial minority (41 per cent) thought that these should have to be debated as well.<sup>10</sup>

The view of this majority of MPs in the 1979 study is reflected in interviews as well; for example, Von Mirbach opined that parliamentary reports such as the one he appeared before tend to simply “float around in the system” without addressing “who is asking for this report and how it will go into policy, legislation or regulation.” Similarly, Eggertson acknowledged that parliamentary committees “come up with beautiful reports [ . . . ] but the proof is in the pudding. Do they actually do anything with it? In my opinion, the answer is no.”

This lack of mandatory government response to reports results in a considerable waste of resources. To illustrate the full extent of this, Eggertson had been joined by 68 other witnesses over a span of two years’ worth of meetings at the Standing Committee on Aboriginal Affairs and Northern Development for the study in which he participated. Following these hearings, a number of recommendations were articulated by the committee members in their report; however, despite the direct request for a government response to the report in 2010, none followed.

The paradox of legislative reviews coming too late in the policy-making process and studies not focusing enough on specific issues that could feed into legislation is not an insurmountable one; in fact, there have been a few mechanisms already developed for the purpose of solving this conundrum. For example, in 1994 the government enabled the Standing Committee on Finance to hold hearings in anticipation of the annual budget each year; this new capability was extended to FINA alone. Éric Montpetit, Francesca Scala and Isabelle Fortier also documented a case where ongoing public dissent over a policy bill on Assisted Reproductive Technologies (ART) in the late-1990s resulted in the government letting the controversial bill die on the order paper without re-introducing

it – instead sending a new “draft bill” on ART to the relevant committee.<sup>11</sup> The draft bill is different from a regular bill in that it provides more opportunities for MPs to shape the content of a bill that is prepared by a government department – allowing members (who can be influenced directly by non-governmental actors through committee hearings) propose matters for the ministers to consider before a minister initiates a bill. Moreover, bills can be referred to committee before second reading for more substantive input from members, although this is seldom done.

The existence of these institutional conditions suggests another avenue for opening up the process to more influence. As previously noted, the FINA committee is the only committee that is permitted to engage in preliminary hearings. It also has separate working groups for specific upcoming legislation. Both of these innovations could potentially be an option provided to other committees in Canada. Similarly, the use of “draft bills” of the type brought in for policy-making on ART at the Standing Committee on Health in the late 1990s could be expanded through multi-partisan discussions about the role of such bills in the legislative process. Reluctance on the part of the executive to surrender a degree of control can be expected to arise in such discussions; on the other hand, it would have more trouble denying a high public demand for the use of such bills and might even consider instances where it would be politically expedient to give the committees more control over potentially controversial legislation.

On the question of making government responses to reports mandatory when requested by the committee issuing the report, the remedy is simple: such a response should no longer continue to be an option for the government but instead be a requirement. While the existing polling numbers for this issue among parliamentarians is fairly dated, the majority approval ratings among parliamentarians signals a certain receptiveness to this from the side of legislators. Indeed, there are seldom occasions where a majority of MPs are found to be receptive to a particular reform mechanism without great political capital already being devoted to amassing support for it. As such, making government responses to committee reports and recommendations mandatory is here identified as one of most fruitful sites for improving the capacity for influence in the Canadian context. Failure to ensure an appropriate method of government response would perpetuate a long-standing tradition of waste and cynicism about the effectiveness of committees in Canada.

## Conclusions

Overall, a desire to build on nascent potential for influence is discernable in the interviewees' responses; for example, it is telling that witnesses who were interviewed replied that they would return to a committee hearing again despite their frustrations with the process. Thus, the committee system is ripe for further reforms that do not necessarily need to shake up the entire system. Both legislative reviews and studies conducted in committees have potential to be reformed; in the former case, this necessarily involves a more holistic approach – reforming the practices limiting MP voting behaviour in the form of party discipline in the entirety of parliament. Conversely, in the case of committee studies it is clear that much can be changed by channelling pre-legislative committee work through the expansion of legislative pre-study to committees besides FINA and the increased prevalence of draft bills. The lack of executive accountability vis-à-vis committee reports can be quickly remedied by making government responses mandatory. Just like the very policies that are periodically studied in parliamentary committees, a few substantive amendments can be transformative for a political process that has potential to level the playing field for non-governmental influence on policy.

## Notes

- 1 O'Brien, Audrey and Marc Bosc (Eds.). *House of Commons Procedure and Practice*, Second Edition, 2009: "Chapter 20: Committees>Types of Committees and Mandates>Standing Committees> General Mandate." Cowansville, Québec: Co-published by Éditions Yvon Blais. (Retrieved from <http://www.parl.gc.ca/procedure-book-livre/Document.aspx?Language=E&Mode=1&sbid=DC42FA65-ADAA-426C-8763-C9B4F52A1277&sbpid=085013AB-4B16-4B34-8E4C-A5B5C98818C9#157B7C7B-B15D-4B55-9738-382F3DA1BAF4> on February 1, 2016).
- 2 Canadian Study of Parliament Group. *Interest Groups and Parliament*. Ottawa and Quebec City: 1989. p. 3.
- 3 Savoie, Donald J. *What is Government Good At? Canada*: McGill-Queens University Press, 2015.
- 4 Interviews conducted in person or over telephone with Christine Wenman on October 13, 2015, with Bill Eggertson on July 28, 2015 and with Martin von Mirbach on November 19, 2015. For details on committees of interest attended by interviewees Christine Wenman, Bill Eggertson, and Martin Von Mirbach (respectively) see AANO (Canada's Standing Committee on Aboriginal Affairs and Northern Development). 2014. Evidence of meeting #10 (January 27, 2014), 41st Parliament, 2nd Session. Topic: "Bill C-15, An Act to replace the Northwest Territories Act to implement certain provisions", AANO (Canada's Standing Committee on Aboriginal Affairs and Northern Development). 2010. Evidence of meeting #16 (May 11, 2010), 40th Parliament, 3rd Session. Topic: "Northern Territories Economic Development: Barriers and Solutions." (2010), and RNNR (Canada's Standing Committee on Natural Resources). 2012. Evidence of meeting #40 (May 15, 2012), 41st Parliament, 1st Session. Topic: "Resource Development in Northern Canada."
- 5 Jack Stilborn. *Parliamentary Reform and the House of Commons* (Ottawa: Library of Parliament, 2007); Jack Stilborn. "The Investigative Study Role of Canada's House Committees: Expectations Met?" *The Journal of Legislative Studies*, 20(3) 2014. pp. 342-359.
- 6 Christopher Garner. "Reforming the House of Commons: Lessons from the Past and Abroad." *Canadian Parliamentary Review*, 21(4) 1998.
- 7 Joseph Wearing. "Guns, Gays, and Gadflies: Party Dissent in the House of Commons under Mulroney and Chrétien," paper presented at the Annual Meeting of the Canadian Political Science Association, (Ottawa, June 1998).
- 8 Table 1 shows the results of my own compiling of party dissent frequencies for votes on legislation in the 38th parliament (2004-2005) and first session of the 41st parliament (2011-2012). As the 38th parliament contained fewer votes than the first session of the 41st parliament, all non-motion votes in the former parliament are included but votes on the first 15 government bills and the first 9 private members' bills (24 votes overall) are sampled in the latter parliament. To avoid collinearity, 2nd and 3rd Reading votes that did not pass the 2nd or 3rd Reading stage were included, but only 3rd Reading votes for those which passed were included. In this way, the calculations accounted for the most common stage at which bills do not pass, but tabulating votes on the same bill twice was avoided. In rare instances where there appeared to be a free vote in a given party, the lower number between the yes and no votes for the party in question were incorporated into the statistics as votes against a party position – as the implications are the same in terms of measuring levels of party discipline.
- 9 Mark S. Winfield. "Role of parliamentary committees in Canadian environmental policy formulation and evaluation: the case of the Standing Committee on Environment and Sustainable Development 1994-2004." *Journal of Environmental Law and Practice*, 10/2010, Volume 22, Issue 1: p. 59
- 10 Michael Rush. "Committees in the Canadian House of Commons." In Lees, John D. and Malcolm Shaw *Committees in Legislatures: A Comparative Analysis*. Durham, N.C.: Duke UP, 1979. pp. 191-241.
- 11 Éric Montpetit, Francesca Scala and Isabelle Fortier "The Paradox of Deliberative Democracy: The National Action Committee on the Status of Women and Canada's Policy on Reproductive Technology." *Policy Sciences* 7 (2) 2004. pp. 137-157.



# Rule by Regulation: Revitalizing Parliament's Supervisory Role in the Making of Subordinate Legislation

This article highlights the increasing use of regulations, or subordinate legislation, as a source of federal law. Notably, the Supreme Court of Canada has observed the importance of regulations in ascertaining a legislature's intent with regard to a certain matter even though it is the executive and not Parliament that makes regulations. The author explains the current process in place to provide parliamentary oversight to regulations and suggests that Canada may want to adapt the UK model by dividing the existing Joint Committee for the Scrutiny of Regulations into two separate committees. Methodologically screening new regulations under the proposed committee system would play an important role in supporting transparency in government by helping to publicize the exercise of legislative power by the executive, alleviating concern over governments using the regulation-making process to shield important public policy choices from public scrutiny.

**Lorne Neudorf**

Regulations, also known as secondary or subordinate legislation, are made by ministers or specialist bodies under legislative powers delegated to them by Acts of Parliament. Like primary legislation, regulations have the full force of law.<sup>1</sup> Historically, the power to make regulations was delegated to the Governor in Council (effectively the federal cabinet) where particulars needed to be filled in to complete a legislative package. The main benefit was that regulations could be made and updated quickly by the executive through an Order in Council as opposed to the more cumbersome parliamentary process.<sup>2</sup> Historically, many delegated powers were defined in relation to certain details left out of a statute (though the devil is known to reside in legal details).<sup>3</sup> For example, the fee charged for filing an application for a patent is not included in the *Patent Act* but rather prescribed by regulation.<sup>4</sup> As a matter of law, regulations must remain strictly inside the limits of the grant of authority provided by the enabling legislation. Given that they work to supplement primary legislation, regulations are essential to knowing the current state of the law.

In recent decades, the use of regulations as a source of law has grown considerably. Modern regulations touch

every aspect of life and are often detailed and complex, dealing with a wide variety of significant matters that would have been previously set out in primary legislation. Notably, the Canadian law of statutory interpretation reflects this changing locus of decision-making with respect to significant policy matters from within Parliament to the executive. For example, the Supreme Court of Canada has observed that while “a statute sits higher in the hierarchy of statutory instruments, it is well recognized that regulations can assist in ascertaining the legislature's intention with regard to a particular matter, especially where the statute and regulations are ‘closely meshed’”.<sup>5</sup> Arguably, a governmental preference for making policy through regulation instead of primary legislation can be seen as reflecting a desire to avoid opposition or scrutiny of what might be perceived as unpopular policy choices as the making of subordinate legislation, being outside of the highly visible parliamentary process, is significantly less likely to attract media and public attention.<sup>6</sup> While there is an established process for drafting and enacting federal regulations pursuant to cabinet directive and certain legislative requirements, there is no open and public study or debate of regulations akin to the parliamentary process.<sup>7</sup>

Even while regulations are being made by ministers and specialist bodies, Parliament maintains an important supervisory role in relation to regulations. It can, at any time, repeal or amend its initial grant of authority by simply passing new legislation. In addition, the *Statutory Instruments Act* provides that every statutory instrument

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(including regulations) made after December 31, 1971 “shall stand permanently referred to any Committee of the House of Commons, of the Senate or of both Houses of Parliament that may be established for the purpose of reviewing and scrutinizing statutory instruments”.<sup>8</sup> The *Act* also provides a simplified mechanism for the parliamentary revocation of a regulation. Pursuant to the terms of the *Act*, a joint committee may introduce a report to the Senate and the House of Commons containing a resolution that a regulation or part of a regulation be revoked (provided 30 days advance notice is given to the regulation-making authority).<sup>9</sup> Only one report is permitted to be laid before the Senate and or House of Commons during each sitting day.<sup>10</sup> The report is deemed to be adopted by the Senate or the House of Commons after 15 sitting days unless a minister files a motion that the resolution should not be adopted, in which case the resolution is debated by the House.<sup>11</sup> In the case where both Houses adopt (or are deemed to adopt) the joint committee’s report and resolution, the authority that originally made the regulation is required to revoke it within 30 days or a later date specified by the resolution.<sup>12</sup>

In 1971, the Standing Joint Committee for the Scrutiny of Regulations was established. It is comprised of eight members of the Senate and twelve members of the House of Commons and is jointly chaired by a member of the Senate representing the governing party and a member of the Official Opposition in the House of Commons. The Committee’s mandate acknowledges that the work of scrutinizing regulations is important as “Parliament increasingly delegates legislative authority to the Executive branch of government”.<sup>13</sup> In addition to its powers of review and revocation under the *Statutory Instruments Act*, the Committee’s order of reference authorizes it to enquire and report on principles and practices for drafting statutory provisions used to delegate legislative powers and the use of regulations more generally.<sup>14</sup> The Committee scrutinizes regulations based upon the following criteria:

Whether any regulation or other statutory instrument within its terms of reference, in the judgment of the committee:

- is not authorized by the terms of the enabling legislation or has not complied with any condition set forth in the legislation;
- is not in conformity with the *Canadian Charter of Rights and Freedoms* or the *Canadian Bill of Rights*;
- purports to have retroactive effect without express authority having been provided for in the enabling legislation;
- imposes a charge on the public revenues or requires payment to be made to the Crown or

to any other authority, or prescribes the amount of any such charge or payment, without express authority having been provided for in the enabling legislation;

- imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- tends directly or indirectly to exclude the jurisdiction of the courts without express authority having been provided for in the enabling legislation;
- has not complied with the *Statutory Instruments Act* with respect to transmission, registration or publication;
- appears for any reason to infringe the rule of law;
- trespasses unduly on rights and liberties;
- makes the rights and liberties of the person unduly dependent on administrative discretion or is not consistent with the rules of natural justice;
- makes some unusual or unexpected use of the powers conferred by the enabling legislation;
- amounts to the exercise of a substantive legislative power properly the subject of direct parliamentary enactment; or
- is defective in its drafting or for any other reason requires elucidation as to its form or purport.<sup>15</sup>

Even though the Committee enjoys a broad mandate to scrutinize regulations and report on associated matters, it has only recommended revocation on fewer than 20 occasions from 1986 to the end of the 41st Parliament in 2015. In the 41st Parliament, while the Committee did not recommend revocation of any regulations, it used its reporting power to draw to the attention of the Senate and the House of Commons matters related to the existence of concurrent delegated powers to impose fees for national parks and food inspections,<sup>16</sup> difficulties in ascertaining the date of an *Act* coming into force by way of an order,<sup>17</sup> and the problematic use of vague or general terms such as ‘forthwith’, ‘immediately’, ‘as soon as practicable’, and ‘without delay’, within which a person or body must act.<sup>18</sup> What is particularly noteworthy about the reports of the Committee is the dialogue that can be seen between the legislature and the courts. Many of the Committee’s reports discuss recent case law from the courts that provides new interpretations of the law or introduces new legal requirements. In turn, the courts have referred on a number of occasions to Committee reports in deciding cases, particularly when interpreting regulations and the interaction between regulations and primary legislation.<sup>19</sup>

While the Committee has played a positive role in encouraging the executive to correct problematic regulations, and has provided valuable guidance to



Parliament in relation to particular regulations and the use (and misuse) of delegated powers more generally, the committee process must be revitalized given the extensive use of regulations in the modern state and real democratic concerns of government rule by regulation. In the year 2014 alone, 75 new federal regulations and hundreds of additional statutory instruments and orders were made, which comprise several thousand pages. Existing regulations are also routinely amended. Under its current process, Committee staff conduct an “initial review” of all regulations and other statutory instruments, while members of the Committee focus principally on regulations identified by staff as problematic or non-conforming.<sup>20</sup> Notably, the Committee’s past practice evidences a limited use of its power to report to Parliament, with or without a recommendation for revocation. Instead of producing detailed reports, the Committee has adopted a course of action to communicate directly with the ministry or agency responsible when problems are discovered.<sup>21</sup> In many cases it appears that problems can be quickly corrected directly by the regulation-making authority following this communication, which indicates a good working relationship between the legislature and the executive. If, however, a resolution to the problem is not forthcoming, the Committee may write to the responsible Minister.<sup>22</sup> Only if this process fails to resolve the Committee’s concerns, will it consider making a formal report to Parliament.<sup>23</sup>

In choosing to communicate directly with the executive and report to Parliament only on a small number of regulations, the Committee may have proven more effective in having its concerns addressed. It also avoided parliamentary defeat of its recommendations. The downside is that this approach, while providing an important mode of accountability, does little to further transparency by bringing to broader public attention and open parliamentary debate the possible misuse of delegated lawmaking authority. Given that the Committee was not provided with the direct power to set aside, vary or amend regulations under the *Statutory Instruments Act*, it would seem especially important that the Committee provide more frequent reports to Parliament on problematic regulations. It is, after all, exercising its powers as a delegate of Parliament. This also appears to be the intention of Parliament in providing committee scrutiny powers under the *Act*. Following committee study of the proposed amendments to the *Act*, the Minister of Justice observed that “the power of the [scrutiny] committee really is to draw to the attention of the government, Parliament and the public the fact that regulations *may* contravene the criteria which have been advanced by the committee on statutory instruments and *may* go beyond the

powers that are given in the statute”.<sup>24</sup> The Minister also envisioned the Committee as routinely reporting to Parliament and only in “appropriate circumstances” communicating with the ministry or agency concerned to encourage an amendment to the regulation.<sup>25</sup>

It is clear that Parliament must go beyond the existing Committee process to revitalize its supervisory power over regulations. It should implement a new process to achieve a more fulsome review of regulations, including a merits-based assessment on a reasonableness standard, openly and transparently. Precedent exists in other parliamentary systems for a much stronger and more effective role of parliamentarians in the scrutiny of regulations. For example, in the United Kingdom, the House of Lords maintains two committees to review regulations. First, the House of Lords Delegated Powers Scrutiny Committee reviews the extent of legislative powers delegated by primary legislation to government ministers and examines all Bills that delegate legislative authority at the time the Bill is introduced into the House of Lords. In looking at the delegation of law-making authority in a Bill, the Committee:

- considers whether the grant of secondary power is appropriate. This includes expressing a view on whether the power is so important that it should only be one granted by primary legislation;
- always pays special attention to Henry VIII powers - a provision in a bill which enables primary legislation to be amended or repealed by subordinate legislation with or without further parliamentary scrutiny;
- considers what form of parliamentary control is appropriate and, in particular, whether the proposed power calls for the affirmative rather than the negative resolution procedure; and
- considers whether the legislation should provide for consultation in draft form before the regulation is laid before Parliament, and whether its operation should be governed by a Code of Conduct.<sup>26</sup>

Second, the House of Lords Secondary Legislation Scrutiny Committee looks at all regulations (approximately 1200 each year) that are required to be laid before Parliament to determine whether any special attention should be drawn to the House of Lords on one or more of the following grounds:

- it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;
- it may be inappropriate in view of the changed circumstances since the passage of the parent Act;
- it may inappropriately implement EU legislation;

- it may imperfectly achieve its policy objectives;
- the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation; or
- there appear to be inadequacies in the consultation process which relates to the instrument.<sup>27</sup>

This Committee meets and makes recommendations to be considered by the House of Lords every week during a parliamentary sitting. In addition to the two House of Lords committees, the United Kingdom Parliament has also struck a Joint Committee on Statutory Instruments, which meets weekly and can examine in detail the “technical qualities” of any regulation, including:

- that it imposes, or sets the amount of, a charge on public revenue or that it requires payment for a licence, consent or service to be made to the Exchequer, a government department or a public or local authority, or sets the amount of the payment;
- that its parent legislation says that it cannot be challenged in the courts;
- that it appears to have retrospective effect without the express authority of the parent legislation;
- that there appears to have been unjustifiable delay in publishing it or laying it before Parliament;
- that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where the instrument has come into force before it has been laid;
- that there appears to be doubt about whether there is power to make it or that it appears to make an unusual or unexpected use of the power to make;
- that its form or meaning needs to be explained;
- that its drafting appears to be defective;
- any other ground which does not go to its merits or the policy behind it.<sup>28</sup>

The Joint Committee is highly active in reviewing regulations. In 2014, it made 27 reports to both Houses of Parliament drawing special attention to 72 regulations on grounds including that the regulation at issue required further elucidation, was defective in its drafting, was of questionable legality, had an unexpected use of the enabling power, failed to comply with ordinary legislative practice, failed to give effect to a statutory requirement, and that it was unjustifiably delayed in coming before Parliament.<sup>29</sup> This system of committees in the UK Parliament provides a much more robust system of parliamentary supervision of subordinate legislation as compared to the existing Canadian practice.

In Canada, to better give effect to Parliament's important supervisory role in the making of subordinate legislation, it is proposed that the existing Joint Committee for the Scrutiny of Regulations' scope of review, along with some additional powers, be divided into two separate committees. The first committee, the 'Joint Committee for the Scrutiny of Regulations' could examine any existing regulation, under both existing grounds and a new merits-based review on a reasonableness standard, with the power to recommend parliamentary revocation. It could additionally take on the task of scrutinizing provisions in Bills that delegate legislative powers to ensure that these provisions meet appropriate standards in terms of their form and the scope of delegation. This is a critical role as it is increasingly common for legislation to delegate sweeping lawmaking powers. Grants of authority must be carefully calibrated in all cases to provide only what is necessary to complement the legislative scheme as opposed to broad discretion that allows significant policy matters to be determined through subordinate legislation. A second committee, the 'Joint Committee for the Review of New Regulations' would focus on reviewing all newly made regulations published in Part II of the *Canada Gazette*.<sup>30</sup> It could also be required to provide detailed reports to Parliament on its examination of regulations, including the name of each regulation examined, the criteria applied to the regulation, the names of individuals who reviewed the regulation, and any comments on the regulation or the use of the delegated legislative power. While this second committee could not be expected to engage in a fulsome review of every new regulation (which would quickly generate a large backlog), it could act as an open and public 'first response' screening mechanism to identify defects or immediate problems with new regulations. Such regulations could then be referred to the first committee for more detailed study and possible parliamentary revocation.

By screening new regulations and reporting to Parliament, the proposed Committee for the Review of New Regulations would play an important role in supporting transparency in government by helping to publicize the exercise of legislative power by the executive, alleviating concern over governments using the regulation-making process to shield important policy choices from public scrutiny. It would also help to identify problems at an early stage that could be quickly corrected, which could avoid legal challenges in the courts with the associated financial costs and legal risks for the government. The reports produced by the proposed Committee and the subsequent debate in Parliament would provide an important record that could be drawn on by courts and other institutions in



interpreting and applying regulations and primary legislation. And finally, but just as importantly, by highlighting problematic regulations and drawing their attention to the Senate and the House of Commons, the proposed Committee would reassert and reinvigorate the role of our elected Parliament as the ultimate lawmaker in one of the most significant modern sources of law.

## Notes

- 1 Section 41(2) of the *Interpretation Act*, RSBC 1996, c. 238 and *In Re George Edwin Gray*, [1918] SCR 150.
- 2 See Caroline Morris and Ryan Malone, "Regulations Review in the New Zealand Parliament" (2004) *Macquarie Law Journal* 2. In certain cases, the delegation of authority to make regulations is motivated by the expertise of a specialized person or body. For example, pursuant to section 10 of the *Broadcasting Act*, SC 1991, c. 11, the Canadian Radio-television and Telecommunications Commission is empowered to make a variety of regulations in the furtherance of its mandate to regulate radio, television and telecommunications in Canada.
- 3 Although there are earlier illustrations of much broader delegations of legislative authority such as that of section 6 of the *War Measures Act*, 1914, which delegated extensive powers to the Governor in Council do "acts and things and to make from time to time such orders and regulations as he may, by reason of the existence of real or apprehended war, deem necessary or advisable for the security, defence, peace, order and welfare of Canada." This delegation of authority was upheld by the Supreme Court of Canada in the case of *In Re George Edwin Gray*, note 1.
- 4 Sections 12(1)(e) and 27(2) of the *Patent Act*, RSC 1985, c. P-4 provide the grant of authority to make fees by regulation, and section 3(2) and Schedule II of the *Patent Rules*, SOR/96-423 establishes the fees to be paid.
- 5 *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, [2004] 3 SCR 152 at para. 35 (emphasis added). See also *R. v. Campbell*, [1999] 1 SCR 565 at para. 26.
- 6 See, e.g., "Caught in the Act", a report of the Ombudsman of Ontario with respect to Ontario Regulation 233/10 made under the *Public Works Protection Act*, RSO 1990, c. P. 55 in advance of the G20 Summit held in Toronto in 2010, in which the Ombudsman observed at page 6 that the Regulation, which provided police with sweeping powers over a large geographic area, was "hidden in plain sight ... announced not in newspapers, public service messages, or on ministry or police websites, but in the government's seldom-read and little-known electronic legislative database and then in the *Ontario Gazette*, a publication of interest only to civil servants, pundits and the occasional lawyer."
- 7 See the Cabinet Directive on Regulatory Management and the requirements of the *Statutory Instruments Act*, RSC, 1985, c. S-22.
- 8 Section 19 of the *Statutory Instruments Act*, *ibid.*
- 9 Sections 19.1(1) and (2) of the *Statutory Instruments Act*, *ibid.*
- 10 Section 19.1(3) of the *Statutory Instruments Act*, *ibid.*
- 11 Section 19.1(5) of the *Statutory Instruments Act*, *ibid.*
- 12 Section 19.1(9) of the *Statutory Instruments Act*, *ibid.*
- 13 Parliament of Canada, Mandate of the Standing Joint Committee for the Scrutiny of Regulations (<http://www.parl.gc.ca/CommitteeBusiness/AboutCommittees.aspx?Cmte=REGS&Language=E&Mode=1&Parl=41&Ses=2&CmtelInst=joint>).
- 14 *Ibid.*
- 15 Parliament of Canada, First Report of the Standing Joint Committee on Scrutiny of Regulations, 41st Parliament, 2nd Session.
- 16 *Ibid.*
- 17 *Ibid.*
- 18 *Ibid.*
- 19 See, e.g., *Canadian Association of Broadcasters v. Canada*, [2007] 4 FCR 170 (discussing a report from the Committee on the distinction between fees and taxes), *Buenaventura Jr. v. Telecommunications Workers Union*, 2012 FCA 69 (noting the Committee's conclusion that a section of a regulation served no purpose), and *Vancouver Island Peace Society v. Canada*, [1994] 1 FCR 102 (noting the Committee's discussion of a principle that delegation of legislative power should not be interpreted to include the authority to make individual exemptions).
- 20 Parliament of Canada, About the Standing Joint Committee for the Scrutiny of Regulations (<http://www.parl.gc.ca/Committees/en/REGS/About>).
- 21 *Ibid.*
- 22 *Ibid.*
- 23 *Ibid.*
- 24 Parliament of Canada, Commons Debates, 28th Parliament, 3rd Session, vol. 4, March 8, 1971, col. 4068, emphasis added.
- 25 *Ibid.*, col. 4067.
- 26 United Kingdom Parliament, House of Lords: Select Committee on Delegated Powers and Deregulation (<http://www.publications.parliament.uk/pa/ld199798/ldselect/lddelder.htm>).
- 27 United Kingdom Parliament, "Delegated Legislation" (<http://www.parliament.uk/about/how/laws/delegated/>).
- 28 United Kingdom Parliament, First Report of the Joint Committee on Statutory Instruments.
- 29 United Kingdom Parliament, Joint Committee on Statutory Instruments, Publications (<http://www.parliament.uk/business/committees/committees-a-z/joint-select/statutory-instruments/publications/?type=&session=26&sort=false&inquiry=all>).
- 30 Section 11(1) of the *Statutory Instruments Act*, note 7.



# The Great Fire on Parliament



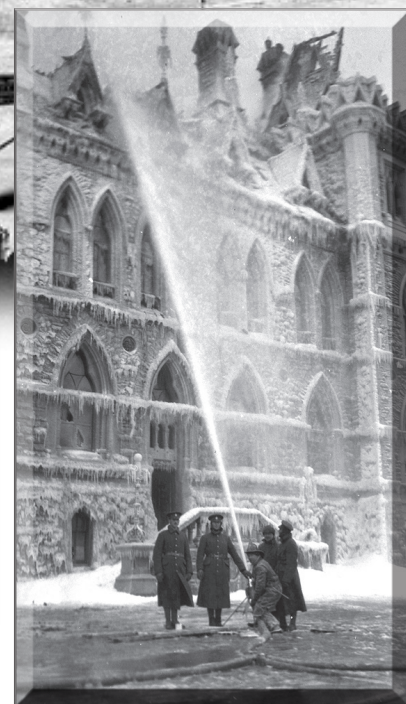
1. Before the fire: The original Centre Block, circa 1880.



2. Centre Block in ruins.



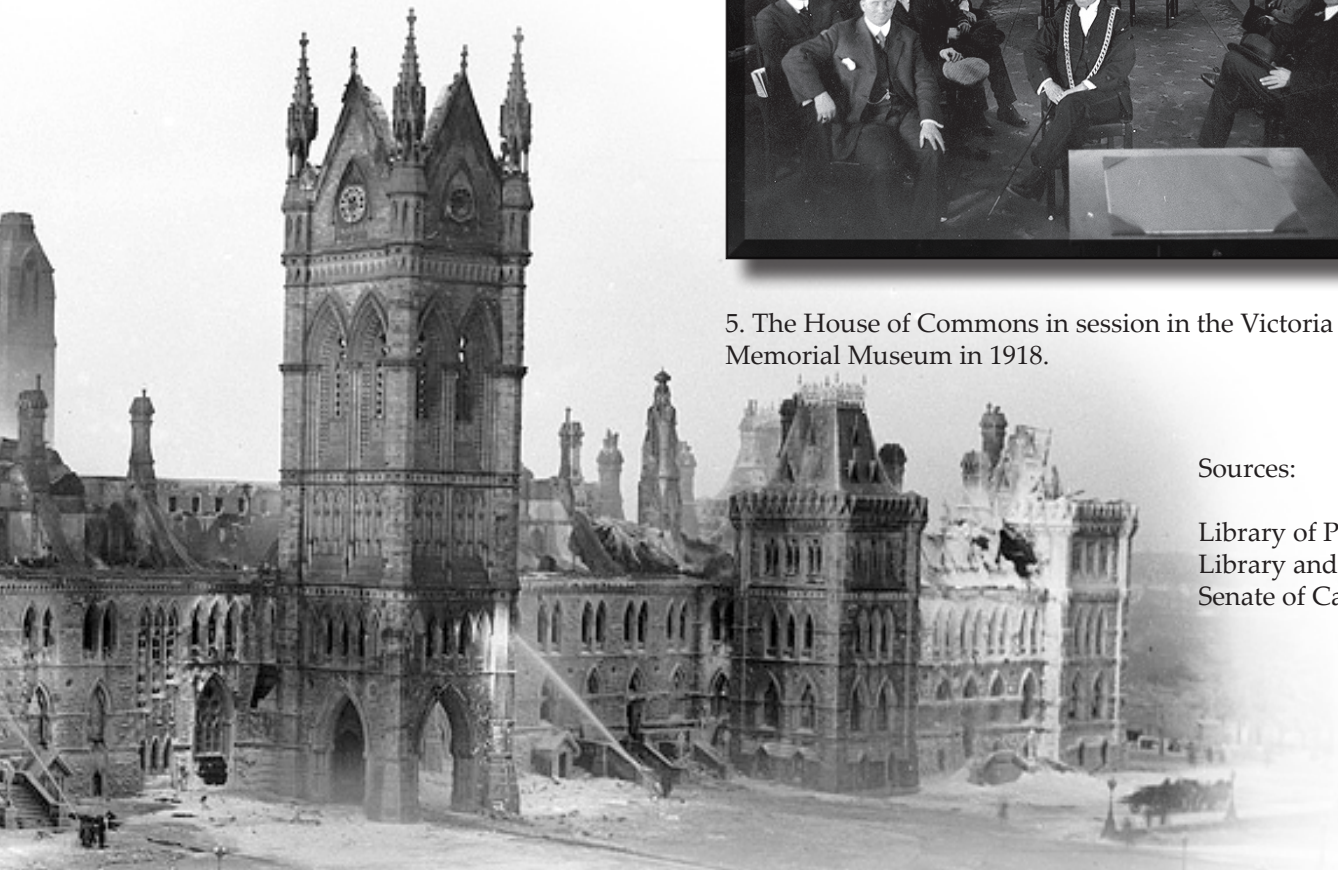
3. A soldier guarding furniture that was saved from the burning building.



id covered in ice, February 4, 1916



# Fire of 1916 Parliament Hill



6. View of Centre Block the morning after the fire, February 4, 1916.



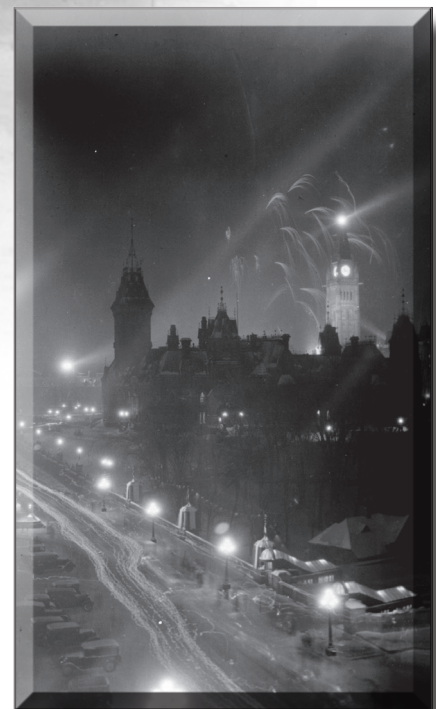
5. The House of Commons in session in the Victoria Memorial Museum in 1918.

Sources:

Library of Parliament  
Library and Archives Canada  
Senate of Canada

On a bitterly cold evening on February 3, 1916, Members of Parliament were in the House of Commons to participate in an evening session when a fire started on one of the lower shelves in a Reading Room at 8:55 p.m. Four minutes later the first fire engine arrived on the Hill as flames engulfed the roof of Centre Block. At 9 p.m., the Chief Doorkeeper of the House of Commons alerted MPs by yelling, "There is a big fire in the Reading Room; everybody get out quickly!" Quick thinking by Librarian Michael Connolly MacCormac saved the structure from complete destruction when he dispatched a messenger to close its iron doors. At the stroke of midnight the bell in the Victoria Tower came crashing down. The fire raged towards the Senate by 12:45 a.m., but firefighters' efforts to contain it allowed many pieces of art to be saved from the Senate side. It was 2:00 a.m. before firefighters had it under control (though it continued to smolder for much of the next day and flared up twice more). Seven people lost their lives in the Great Fire of 1916 and the Centre Block was in ruins. Reconstruction, which began later that year, and was completed in 1922 (with the Peace Tower being completed in 1927).

Credits: All Photos Library and Archives Canada, 1. c015106, 2. a89212, 3. John Boyd/r000244, 4. John Boyd/r000237, 5. a002433, 6. William James Topley/a009249, 7. Samuel J. Jarvis/a025110



7. July 1, 1927: Canada turns 60 and the Peace Tower is inaugurated.

# New and Notable Titles

A selection of recent publications relating to parliamentary studies prepared with the assistance of the Library of Parliament (December 2015 - February 2016)

Blick, Andrew. "Constitutional implications of the [UK] *Fixed-term Parliaments Act 2011*." *Parliamentary Affairs* 69 (1): 19-35 (January, 2016).

- The *Act* was controversial both for its substance and the processes used in its introduction. Regardless of how long it may remain in force, it has already proved to be an important experiment.

Bourke, Chris. "Rules for parliamentarians: Recent developments concerning the codes of conduct for members." *Parliamentarian* 96(4): 282-87, (2015).

- Article discusses the recent Review of the Code of Conduct for Members of the Australian Capital Territory Legislative Assembly, the circumstances which led to the Review, and the outcomes of the Review.

Dance, Anne. "Parliamentary privilege and the evolution of security on Canada's Parliament Hill." *Journal of Parliamentary and Political Law* 9 (3):457-70, (December, 2015).

- This article uses newspaper coverage, Parliamentary reports and debates, publicly available security assessments, and legislation to assess how responses to the events of October 2014 relate to Parliamentary Privilege and public access.

Dawood, Yasmin. "*Senate Reference*: Constitutional change and democracy." *McGill Law Journal* 60 (4): 737-61, (June, 2015).

- The *Senate Reference* is ultimately a decision about how democratic decision making ought to be conducted when the role and function of fundamental democratic institutions are themselves at stake...

Dodek, Adam. "The politics of the *Senate Reform Reference*: Fidelity, frustration, and the federal unilateralism." *McGill Law Journal* 60 (4): 623-72, (June, 2015).

- References are the most political of cases, almost always involving high profile public policy issues. Frequently, references are brought to obtain rulings on the relationship between the federal government and the provinces. Less frequently, references involve questions of inter-branch relations, that is, between two or more of the executive, legislative, and judicial branches of government. The *Senate Reform Reference* was one of the rare cases that featured each of these three elements.

Feldman, Charlie. "Parliamentary practice and treaties." *Journal of Parliamentary and Political Law* 9 (3): 585-619, (December, 2015).

- How does Parliament consider treaties? Although Parliament's power relative to international instruments is limited, Parliamentary discussion of them occurs in a variety of contexts. The first part of this article examines current Parliamentary practices in relation to treaties...the second part will use the 2014 tax agreement between Canada and the United States as a case study to illustrate potential issues in current Parliamentary treaty practice.

Glover, Kate. "The Supreme Court in a pluralistic world: Four readings of a reference." *McGill Law Journal* 60 (4): 839-81, (June, 2015).

- Relying on the *Reference Re Senate Reform* as a case study, this article points to shortcomings of contemporary understandings of the Supreme Court and proposes a way to overcome them...

Gussow, David. "Senate reform and House representation." *Journal of Parliamentary and Political Law* 9 (3): 621-39, (December, 2015).

- Despite adding 30 seats to the House for the 2015 election, proportionate representation of the provinces is still short by 40 seats. The problem has been trying to have both proportionate and



protective representation in the House which is an impossibility. The author - former Clerk-at-the-Table - suggests that the only the only solution is to have proportionate representation of the provinces in the House and protective representation of the provinces in an elected Senate.

Hazell, Robert, O'Brien, Patrick. "Meaningful dialogue: Judicial engagement with parliamentary committees at Westminster." *Public Law* 1: 54-73, (January 2016).

- Increasingly in the UK, the judiciary give evidence to parliamentary committees. This happens less frequently in other Westminster-style parliaments showing how judicial independence can be interpreted very differently even in countries with a shared legal and political tradition.

Hoole, Grant. "The forms and limits of judicial inquiry: Judges as Inquiry Commissioners in Canada and Australia." *Dalhousie Law Journal* 37 (2): 431-79, (Fall 2014).

- In both Canada and Australia the conduct of public inquiries draws heavily from the expertise of the legal profession, with judges frequently serving as commissioners and inquiry hearings often reproducing the popular imagery of a courtroom. Despite this affinity between public inquiries and the legal profession, however, jurisprudential and academic authorities repeatedly stress that public inquiries are non-adjudicative...

Macfarlane, Emmett. "Unsteady architecture: Ambiguity, the *Senate Reference*, and the future of constitutional amendment in Canada." *McGill Law Journal* 60 (4):883-903, (June 2015).

- This article critically examines the Supreme Court of Canada's opinion in the *Senate Reform Reference* from the perspective of its coherence in interpreting the various amending procedures in Part V of the Constitution Act, 1982...

Mendes, Errol P. "Constitutional options after the Supreme Court's decision in *Reference Re Senate Reform*: Restoring trust and credibility through Senate reform." *National Journal of Constitutional Law* 35 (1): 85-104, (December 2015).

- This article examines whether there is a remaining option for Senate reform that focuses on the

appointment process that remains with the Governor General on recommendation by the Prime Minister...

Messamore, Barbara J. "A critique of Bill C-569 of 2014: Some historical background on the appointment and removal of Governors General." *Journal of Parliamentary and Political Law* 9 (3): 641-47, (December, 2015).

- The author contends that Bill C-569, *An Act Respecting the Procedure for the Appointment and Removal of the Governor General* introduced by Scott Reid and which received first reading early in 2014, seeks to solve a problem that does not exist and potentially create one that would be all too real.

Milner, Henry. "Electoral reform: the power of the PMO and Justin Trudeau." *Inroads: The Canadian Journal of Opinion* 38: 58-61, (Winter/Spring 2016).

- The author discusses the relationship between the electoral system and the workings of our democratic institutions.

Mortensen, Melanie J. "Jurisprudence: Notable case law concerning legislative bodies and their members." *Journal of Parliamentary and Political Law* 9 (3): 653-65, (December 2015).

- An annual listing of contemporary and historical case law pertaining to Canadian legislative bodies and their members.

Russell, Meg. "The Lords and tax credits: fact and myth." *The Constitution Unit*, (October 22, 2015).

- The power of the House of Lords over *delegated legislation*, and financial matters, has become a hot topic due to threats to defeat the government's planned cuts to tax credits. There have been claims and counterclaims about the conventions governing these matters, and also some fairly wild claims about how the government might retaliate if defeated.

Ryckewaert, Laura. "Library of Parliament's research branch turns 50." *Hill Times* 30: 21, (November 16, 2015).

- Fifty years later, parliamentarians continue to rely on Library research branch, says Sonia L'Heureux.



Schieiter, Petra and Belu, Valerie. "The decline of majoritarianism in the UK and the *Fixed-term Parliaments Act*." *Parliamentary Affairs*, 69 (1): 36-52, (January, 2016).

- In 2011, the coalition government enacted the *Fixed-term Parliaments Act*, which constrains the prime minister's discretion to dissolve parliament. This article argues that the *Act* not only reflects the secular decline of majoritarianism in the UK, but is also contributing to its further erosion.

Tardi, Gregory. "Perspective: the network of legal development in the legislative branch." *Journal of Parliamentary and Political Law*, 9 (3): 449-55, (December, 2015).

- With the view of preparing for developments over the life of the 42nd Parliament, the author identifies those involved in the long-term gradual development of parliamentary law and explains the roles and functions of each of those officials.

Twomey, Anne. "Royal assent: The business of parliament or the executive?" *Australasian Parliamentary Review* 30 (2): 31-47, (Spring/Summer 2015).

- Although royal assent normally occurs as a matter of course the question arises on rare occasions as to whether there is any discretion, after a bill has been passed by the Houses, for assent to be refused or delayed.

Jutras, Daniel. "Introduction: les silences du renvoi relative à la réforme du Sénat." *McGill Law Journal - Revue de droit de McGill* 60 (4): 595-98, (June 2015).

- Bilingual publication - The articles in this special issue shed light on a number of fundamental issues pertaining to Senate reform in Canada and the contributions of the Supreme Court in this ongoing debate. This introduction discusses various articles within the current issue on topics including the significance of the Supreme Court's opinion in the areas of democracy, constitutional amendment, and a proposed new role of the Canadian Senate.

"Constitution: Une vraie affaire (Dossier)." *L'Action nationale* 105 (10): 61-119, (December 2015).

- The Ligue d'action nationale addresses the following question: a constitution before or

after independence? Report - *Le besoin d'une constitution québécoise* par Guillaume Rousseau; *Dialectique autour de l'idée d'une constitution québécoise* by Guillaume Rousseau; *La constitution pendant la réalisation de l'indépendance de l'État* by Willie Gagnon and Maxime Laporte; *La pratique indépendantiste et la question constitutionnelle* by Simon-Pierre Savard-Tremblay; and *L'indépendance par la voie républicaine* by Danic Parreau.

Karazivan, Noura. "De la structure constitutionnelle dans le *Renvoi relatif au Sénat*: vers une gestalt constitutionnelle?" *McGill Law Journal - Revue de droit de McGill* 60 (4): 793-838, (June 2015).

- In the matter of Canadian constitutional interpretation, structural analysis is traditionally understood as a process that consists of discerning unwritten principles from governmental structures.... the author concludes that the consecration of the relational and functional dimensions of the structural analysis in *Reference re Senate Reform* marks a turning point in the development of a constitutional *gestalt*....

Mathieu, Catherine and Taillon, Partrick. "Le fédéralisme comme principe matriciel dans l'interprétation de la procédure de modification constitutionnelle." *McGill Law Journal - Revue de droit de McGill* 60 (4): 763-92, (June 2015).

- Rendered a few weeks apart, the *Reference re Senate Reform* as well as the *Reference re Supreme Court Act*, ss. 5 and 6 impose significant limitations on the unilateral power of Ottawa to institute reforms, and this is done in the name of a fundamental principle providing a framework principle for the interpretation of the amending formula: federalism....

Zhou, Han-Ru. "La pertinence en contexte canadien de la jurisprudence constitutionnelle du Conseil privé relative à l'indépendance judiciaire." *Revue de droit de l'Université de Sherbrooke* 45 (1-2): 235-71, (2015).

- The study examines the *unwritten* or implied constitutional principle of judicial independence in a comparative perspective.



AGorohov / shutterstock.com

# *The Canadian Scene*



Jackson Lafferty

## **New Speaker – Northwest Territories**

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**Jackson Lafferty** was elected Speaker of the Northwest Territories' Assembly on December 14, 2015. Lafferty, who was the sole nominee for the position, replaces **Jackie Jacobson**.

The Monfwi MLA was first elected to the Assembly in a 2005 by-election and re-elected in 2007 and 2011. He was acclaimed in the 2015 election.

Born in Behchoko, Lafferty attended school in Yellowknife before studying business and community development at Red Deer College and the University of Lethbridge. Prior to seeking office, he worked as superintendent of participation agreements for Diavik Diamond Mines Inc., as community development and empowerment coordinator for the Government of the Northwest Territories and as administrator for the Rae-Edzo School Society and assistant manager for the Rae-Edzo Dene Band Development Corporation.

Within the Assembly he has served as deputy premier, Minister of Education, Culture and Employment and the Minister Responsible for the Workers Safety and Compensation Committee. An advocate of the role of language, culture and heritage revitalization for the North, Lafferty was instrumental in implementing the Francophone Affairs Secretariat and the Aboriginal Languages Secretariat.



Tom Osborne

## **New Speaker – Newfoundland and Labrador**

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Members elected to the House of Assembly in the general election held on November 30, 2015, were sworn in on the morning of December 18, 2015. Lieutenant Governor **Frank Fagan**, summoned the Members in the afternoon to elect a new Speaker as their first order of business.

Two Members submitted their names for consideration: **Tom Osborne**, Waterford Valley, and **Scott Reid**, St. George's – Humber. The Standing Orders had been amended in 1999 to allow for a secret ballot election of the Speaker; however, this was the first ever contested election. After ballots were cast, Osborne was elected Speaker of the 48th General Assembly.

A native of St. John's, Osborne attended Cabot College and Memorial University of Newfoundland. Prior to entering politics he worked for Statistics Canada, Small Business Enterprise, and with the Penney Group of Companies.

He has represented his district of Waterford Valley (formerly St. John's South) since 1996, making him the longest serving Member in the legislature. Speaker Osborne served as Deputy Speaker from 2007-2011. He has also held several cabinet positions, including Minister of Environment, Minister of Labour, Minister of Health, and Minister of Justice.

## Regional Executive Committee, CPA\*

### **PRESIDENT**

Linda Reid, British Columbia

### **FIRST VICE-PRESIDENT**

Tom Osborne, Newfoundland and Labrador

### **SECOND VICE-PRESIDENT**

Yasmin Ratansi, Federal Branch

### **PAST PRESIDENT**

Chris Collins, New Brunswick

### **REGIONAL REPRESENTATIVES**

Alexandra Mendes, Federal Branch

David Laxton, Yukon

Tom Osborne, Newfoundland and Labrador

### **CHAIR OF THE CWP, CANADIAN SECTION**

(Commonwealth Women Parliamentarians)

Linda Reid, British Columbia

### **EXECUTIVE SECRETARY-TREASURER**

Blair Armitage

## Members of the Regional Council\*

### **HOUSE OF COMMONS**

Geoff Regan, Speaker

Audrey O'Brien, Clerk

### **SENATE**

George Furey, Speaker

Charles Robert, Clerk

### **ALBERTA**

Robert Wanner, Speaker

Vacant, Secretary

### **NOVA SCOTIA**

Kevin Murphy, Speaker

Neil Ferguson, Secretary

### **BRITISH COLUMBIA**

Linda Reid, Speaker

Craig James, Secretary

### **ONTARIO**

Dave Levac, Speaker

Deborah Deller, Secretary

### **CANADIAN FEDERAL BRANCH**

Yasmin Ratansi, Chair

Elizabeth Kingston, Secretary

### **PRINCE EDWARD ISLAND**

Francis Watts, Speaker

Charles MacKay, Secretary

### **MANITOBA**

Daryl Reid, Speaker

Patricia Chaychuk, Secretary

### **QUÉBEC**

Jacques Chagnon, Speaker

Émilie Bevan, Secretary

### **NEW BRUNSWICK**

Chris Collins, Speaker

Donald Forestell, Secretary

### **SASKATCHEWAN**

Dan D'Autremont, Speaker

Gregory Putz, Secretary

### **NEWFOUNDLAND AND LABRADOR**

Tom Osborne, Speaker

Sandra Barnes, Secretary

### **NORTHWEST TERRITORIES**

Jackson Lafferty, Speaker

Tim Mercer, Secretary

### **NUNAVUT**

George Qulaut, Speaker

John Quirke, Secretary

### **YUKON**

David Laxton, Speaker

Floyd McCormick, Secretary

\*As of March 31, 2016



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# Alberta

## 1<sup>st</sup> Session of the 29<sup>th</sup> Legislature – fall sitting

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The fall sitting of the 1<sup>st</sup> Session of the 29<sup>th</sup> Legislature took place from October 26 to December 10, 2015. The 2015-2016 main estimates, delayed due to the 2015 spring election, were considered by the Legislative Policy Committees (LPCs) during two weeks in November and passed by Committee of Supply on November 25, 2015. Once main estimates consideration in committee had concluded the Assembly commenced morning sittings, from 10:00 a.m. until noon on Tuesdays and 9:00 a.m. until noon on Wednesdays and Thursdays, pursuant to recent Standing Orders amendments.

One of the most controversial Bills brought forward during the Fall Sitting was Bill 6, *Enhanced Protection for Farm and Ranch Workers Act*. The Bill proposed making farms and ranches subject to occupational health and safety legislation, expanding Workers' Compensation Board coverage to paid farm workers, and making changes to include farms and ranches under other employment and labour relations legislation. Thousands of protesters made their views known online, at the Legislature, and in communities around the province, and Members debated the Bill at length in the Assembly. After considerable debate of Bill 6 at Second Reading, the Government moved and the Assembly passed time allocation motions to limit further debate of the Bill at Second Reading, during

Committee of the Whole consideration, and at Third Reading. The Bill received Royal Assent on December 11, 2015.

The sessional calendar released on January 15, 2016, indicates that the 2<sup>nd</sup> Session of the 29<sup>th</sup> Legislature will convene on March 8, 2016.

## Changes to Caucus Membership

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On January 8, 2016, it was announced that **Deborah Drever**, MLA (Calgary-Bow) would return to the New Democrat (ND) caucus. Ms. Drever was suspended from the ND caucus in June 2015 shortly after her election because of a series of controversial social media posts she made prior to her election. The success of having her Private Member's Public Bill passed with support from all sides of the Assembly has been credited for playing a major part in her return to the Government caucus. Bill 204, *Residential Tenancies (Safer Spaces for Victims of Domestic Violence) Amendment Act, 2015*, makes it easier for victims of domestic abuse to break their leases without penalty in order to escape a violent situation.

## Committee Business

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After consideration of the 2015-2016 main estimates by the LPCs, the committees of the Assembly resumed their usual business.

The Standing Committee on Alberta's Economic Future is continuing its review of the *Protection of Personal Information Act*. It has put out a call to the public and to stakeholders for written submissions on the *Act* with a deadline of February 26, 2016.

The Standing Committee on Families and Communities is moving forward with its consideration of the *Mental Health Amendment Act, 2007*. The amendments under review relate primarily to the criteria for involuntary admissions of persons with mental disorders and the use of community treatment orders for persons requiring ongoing mental health services outside of medical facilities. After hearing from identified experts and interested parties the Committee is now advertising province wide for written submissions, which will be accepted through February 29, 2016.

The Assembly has referred to the Standing Committee on Resource Stewardship consideration of the 2014 annual report of the Alberta Property Rights Advocate. The committee must issue its report within

15 days after the commencement of the spring session.

On November 16, 2015, the Assembly referred Bill 203, *Election (Restrictions on Government Advertising) Amendment Act, 2015*, to the Select Special Ethics and Accountability Committee. The Committee had already been reviewing the province's whistleblower, conflicts of interest, and election legislation. Subsequently, the Committee received from stakeholders written submissions on whistleblower legislation. The Committee also decided to accept written submissions from stakeholders for the conflicts of interest and election legislation and from the public on all the legislation under review.

The Standing Committee on Privileges and Elections, Standing Orders and Printing has been charged with assessing the function of the new morning sittings and must report its recommendations to the Assembly no later than October 27, 2016.

### **Magna Carta**

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From November 23 to December 29, 2015, the Legislative Assembly of Alberta had the great honour of exhibiting the Magna Carta (that is, one version of the document from the year 1300) and its companion document the Charter of the Forest. In addition to these two important historical documents, both of which were on loan from Durham Cathedral, the special exhibit included multimedia features, such as an interactive 3D globe tracing the influence of the Magna Carta around the world, touchscreens providing translations of the great charters, and activities allowing visitors to create their own Magna Carta clauses.

### **In Memoriam – Manmeet S. Bhullar, MLA**

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The usual business of the Assembly was delayed as Members, staff, and the public mourned the unexpected passing of **Manmeet S. Bhullar**, MLA (Calgary-Greenway). On November 23, 2015, Mr. Bhullar was killed in a highway collision after stopping to assist another motorist. Mr. Bhullar was first elected to the Assembly in 2008 and served in a number Cabinet positions during his time in the Government caucus. As a member of the opposition, Mr. Bhullar was well respected on both sides of the House.

**Jody Rempel**  
Committee Clerk



## **British Columbia**

### **Legislation**

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The Fall sitting of the Fourth Session of the 40<sup>th</sup> Parliament adjourned on November 17, 2015. Between October 28, 2015, the date of the previous report, and November 17, 2015, one government bill, the *Electoral Districts Act*, was introduced and received Royal Assent. The *Electoral Districts Act* (Bill 42) enacts the recommendations from the Electoral Boundaries Commission's report by creating two new electoral districts in Surrey and Richmond/New Westminster to reflect growing population in those areas. This statutory change will increase the number of electoral districts in the 2017 provincial general election to 87 from 85. The *Act* also changes the name of the Chilliwack-Hope riding to Chilliwack-Kent and reduces that district's size. Some other changes are made in regard to boundaries in the Chilliwack, Hope, and Fraser Canyon areas.

The Fourth Session prorogued at noon on February 9, 2016 and the Fifth Session of the 40<sup>th</sup> Parliament opened that afternoon with the presentation of the Speech from the Throne.

### **Parliamentary Committees**

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Several parliamentary committees, including the Legislative Assembly Management Committee, were active during the reporting period.



On December 7, 2015, the Legislative Assembly Management Committee released its *Accountability Report 2014-15: A Report to British Columbians*. This annual operational report highlights departmental progress at the Assembly in priority areas such as modernizing governance, transparency initiatives, ensuring accessibility, and business continuity preparedness. The report includes the Assembly's independently audited financial statements. For the second year in a row, British Columbia's Office of the Auditor General provided an unqualified audit opinion that the statements were reliable and fair. The inclusion of key performance indicators and a *Management Discussion and Analysis* section were new additions to this year's report. This new section complements the financial statements by providing additional analysis on the financial results of the Legislative Assembly.

The Special Committee to Review the *Freedom of Information and Protection of Privacy Act* public consultation process concluded on January 29, 2016. The Committee received over 200 submissions in response to its call for written submissions. Under provisions of the *Act*, a Special Committee is required to review the *Act* every six years. A report on the results of its review must be submitted to the Legislative Assembly by May 26, 2016.

The Select Standing Committee on Finance and Government Services released its annual budget consultations report on November 13, 2015, containing 63 recommendations. The unanimous report supported the goal of a balanced budget, proposed measures to promote and enhance BC's natural resource sector, and also recommended increased funding for programs and services for those who face mental health challenges; funding for literacy, Adult Basic Education and English as a Second Language programs; and increased funding for transportation infrastructure and public transit. On January 20, 2016, the Committee issued its second report of the 4<sup>th</sup> session, a report on its annual review of the budgets of BC's eight independent statutory offices. Over the course of 2015, the Committee implemented a series of steps noted in its December 2014 report on how to enhance its review process and legislative oversight. The steps included: an expanded meeting schedule; the development of a new financial reporting template to ensure that financial reporting by all statutory offices is consistent and comprehensive; and encouraging statutory offices to move toward service sharing agreements to promote increased efficiencies.

Following two years of work including public consultations with individuals, youth and families, experts and organizations involved in the delivery of child and youth mental health services, on January 27, 2016, the Select Standing Committee on Children and Youth released its final report, *Concrete Actions for Systemic Change*, in regard to child and youth mental health in BC. The unanimous report contains 23 recommendations which focus on greater coordination, better accessibility, and improved service delivery. The recommendations include: the appointment of a new Minister for Mental Health portfolio to lead and coordinate child and youth mental health services; more school- and community-based hubs where mental health professionals work together in child- and youth-friendly settings; and the development of a coordinated, integrated system where there are 'one child, one file' services for children, youth and young adults.

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### New Legislative Assembly Website

The Legislative Assembly launched a redesigned website at [www.leg.bc.ca](http://www.leg.bc.ca) in October, 2015. The website features a new design, with improved site navigation, integrated content, search tools, and a layout optimized for mobile devices. For the first time, the website provides a combination of static and dynamic content about the work of the Assembly, including social media feeds. Facebook and Twitter accounts provide further opportunities to connect with British Columbians on the work of the Assembly and its parliamentary committees, including current and upcoming public consultations.

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### Cabinet Change

On December 11, 2015, **Mike Morris**, MLA, was appointed Minister of Public Safety and Solicitor General. Mr. Morris took over this portfolio from Hon. **Suzanne Anton**, who remains Attorney General and Minister of Justice. These two roles had previously merged in 2012.

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### By-Elections

Two by-elections, in the ridings of Vancouver-Mount Pleasant and Coquitlam-Burke Mountain, were held on February 2, 2016 as a result of the resignations of **Jenny Wai Ching Kwan** (Vancouver Mount-Pleasant) and **Douglas Horne** (Coquitlam-Burke Mountain) who both resigned to run in the federal election last fall. Preliminary results indicate that the BC NDP candidates were elected in both ridings: **Melanie Mark**

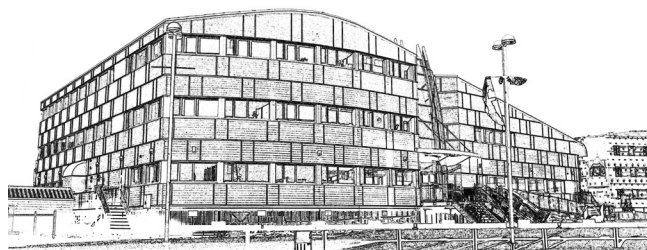
in Vancouver-Mount Pleasant; and **Jodie Wickens** in Coquitlam-Burke Mountain. Melanie Mark is the first First Nations woman elected to the BC legislature.

### **William (Bill) R. Bennett 1932-2015**

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Former Premier **William (Bill) R. Bennett** passed away on December 3, 2015. The son of former Premier W.A.C. Bennett, Mr. Bennett first became a Member of the Legislative Assembly of BC in 1973 when he was elected to represent the constituents of South Okanagan. He became leader of the BC Social Credit Party in 1973 and won the first of three general elections in 1975. Mr. Bennett served the province as Premier from 1975 to 1986.

**Jennifer Arril**  
Committee Researcher



## **Nunavut**

### **House Proceedings**

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The fall 2015 sitting of the 3<sup>rd</sup> Session of the 4<sup>th</sup> Legislative Assembly convened on October 21, 2015. The last sitting of the calendar year was held on November 9, 2015.

The proceedings of the Committee of the Whole during the fall 2015 sitting were dominated by the consideration of the Government of Nunavut's proposed 2016-2017 capital estimates.

Nine bills received Assent during the fall 2015 sitting:

- Bill 1, *Supplementary Appropriation (Operations and Maintenance) Act*, No. 3, 2014-2015;
- Bill 2, *Supplementary Appropriation (Operations and Maintenance) Act*, No. 1, 2015-2016;
- Bill 3, *Appropriation (Capital) Act*, 2016-2017;

- Bill 4, *Write-Off of Assets Act*, 2014-2015;
- Bill 5, *An Act to Amend the Safety Act*;
- Bill 6, *Supplementary Appropriation (Capital) Act*, No. 3, 2015-2016;
- Bill 7, *An Act to Amend the Labour Standards Act (Minimum Wage)*;
- Bill 8, *Legislative Assembly Statutes Amendment Act*; and
- Bill 9, *An Act to Amend the Nunavut Elections Act and the Plebiscites Act*.

Speaker of the Legislative Assembly and Amittuq MLA **George Qulaut** appeared before the Committee of the Whole on the occasion of its clause-by-clause consideration of Bills 8 and 9.

Among other measures, Bill 8 amended the *Legislative Assembly Retiring Allowances Act* and the *Supplementary Retiring Allowances Act* to halt the accrual of pensionable service during the period in which a Member is suspended from the Legislative Assembly. Bill 8 also changed the length of the term of the Languages Commissioner of Nunavut, an independent officer of the Legislative Assembly, from four to five years. A majority of independent officers of the Legislative Assembly have statutorily-prescribed terms of five years.

Among other measures, Bill 9 provides the Legislative Assembly's Management and Services Board with broader regulation-making powers in respect of elections and plebiscites, in addition to repealing the prohibition on the sale of liquor on election day.

The Legislative Assembly's winter 2016 sitting convened on February 24, 2016.

### **Mid-Term Leadership Review of the Executive Council**

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On November 7, 2015, the Mid-Term Leadership Review of the Executive Council was conducted under the auspices of the Nunavut Leadership Forum. The Forum is an informal body consisting of all Members of the Legislative Assembly. By convention, its decisions concerning such matters as the selection of the Speaker, Premier and Cabinet Ministers are ratified by way of formal motions in the House. The televised proceedings of the Forum take place in the Chamber of the Legislative Assembly.

Similar mid-term reviews of the Executive Council were held during the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Assemblies. The

2015 review followed a similar process wherein Premier **Peter Taptuna** and his Ministers delivered statements and responded to questions from the Regular Members of the Legislative Assembly. The process culminated in all Members present being entitled to cast secret ballots expressing confidence or non-confidence in each member of the Executive Council.

The balloting resulted in an expression of non-confidence in Minister of Family Services and Netsilik MLA **Jeannie Ugyuk**, who subsequently announced her decision to resign from the Legislative Assembly on November 9, 2015, thereby precipitating a by-election in the constituency, which was held on February 8, 2016.

The Nunavut Leadership Forum reconvened on November 9, 2015. Iqaluit-Tasiluk MLA **George Hickes** and Arviat South MLA **Joe Savikataaq** were elected to serve on the Executive Council. Premier Taptuna subsequently announced their portfolio assignments on November 12, 2015.

### **Committee and Caucus Activities**

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The *Final Report* of the Legislative Assembly's Special Committee to Review the *Education Act* was presented to the House during its fall 2015 sitting.

The first report of the current Legislative Assembly's Standing Committee on Rules, Procedures and Privileges was also presented to the House during its fall 2015 sitting. The standing committee, which is chaired by Tununig MLA **Joe Enook**, made a number of recommendations for amendments to the *Rules of the Legislative Assembly of Nunavut*. The recommendations were accepted by the House and will come into effect on the first sitting day of the winter 2016 sitting.

The Legislative Assembly's Standing Committee on Oversight of Government Operations and Public Accounts has held a number of televised hearings in recent months concerning the annual reports and/or business plans of various entities.

From September 23-29, 2015, witnesses from the Nunavut Development Corporation, the Nunavut Business Credit Corporation, the *Inuit Qaujimajatuqangit Katimajit* and the Office of the Information and Privacy Commissioner of Nunavut appeared before the standing committee to present the entities' most current annual reports and/or business plans. The standing committee's reports on

these hearings, as well as those that were held in June 2015 concerning Nunavut Tourism, were presented to the House during its fall 2015 sitting.

The Office of the Languages Commissioner of Nunavut and the *Inuit Uqausinginnik Taiguusiliuqtiit* (Inuit Language Authority) appeared before the standing committee from November 24-25, 2015. These hearings were presided over by newly-elected Chairperson and Iqaluit-Niaqunngu MLA **Pat Angnakak**.

A formal motion was passed by the House during its sitting of November 3, 2015, inviting representatives from Calm Air, Canadian North and First Air to appear at a special televised meeting of the Legislative Assembly's Full Caucus, which consists of all MLAs, concerning codeshare agreements entered into by the airlines. The motion was moved by Government House Leader and Aggu MLA **Paul Quassa**. The motion was seconded by Rankin Inlet South MLA **Alexander Sammurtoq**. The special televised meeting was held on January 26, 2016. Representatives from all three airlines responded to questions and comments from Ministers and Regular MLAs.

This special televised meeting of the Full Caucus constituted the second initiative of its type since the establishment of the Legislative Assembly. In October of 2011, a special televised meeting was held concerning the federal Nutrition North Canada Program.

### **Order of Nunavut**

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On September 18, 2015, the Order of Nunavut Advisory Council announced that the 2015 appointments to the Order would be Messrs. **Tagak Curley**, **William Lyall**, and **Father Robert Lechat**. The investiture ceremony was held in the Chamber of the Legislative Assembly on October 29, 2015. The ceremony was presided over by Commissioner **Nellie Kusugak** in her capacity as Chancellor of the Order of Nunavut and Speaker Qulaut in his capacity as Chairperson of the Order of Nunavut Advisory Council.

### **Tabled Documents Online**

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A total of 2,168 documents have been tabled to date in the Legislative Assembly since its first sitting on April 1, 1999. A recent initiative of the Office of the Legislative Assembly is making downloadable versions of tabled documents available on the



institution's website at: <http://www.assembly.nu.ca/tailed-documents>.

### Netsilik By-Election

On February 8, 2016, a by-election was held in the constituency of Netsilik, which includes the communities of Kugaaruk and Taloyoak. Newly-elected Member **Emiliano Qirngnuq** was scheduled to take his seat on February 24, 2016.

**Alex Baldwin**

Office of the Legislative Assembly of Nunavut



## Manitoba

The Fifth Session of the 40<sup>th</sup> Legislature began on November 16, 2015 with the first Speech from the Throne delivered by Her Honour **Janice C. Filmon**, the newly appointed Lieutenant Governor. This was also the last Speech from the Throne before the April 19, 2016 general election, and the address highlighted a range of commitments and proposals, including:

- extending the province's core infrastructure plan by three years;
- working with the federal government to lift the cap for immigrants and refugees and strengthen settlement services;
- providing stable, predictable and long-term

funding to municipalities, including investments in education and infrastructure projects for the city of Brandon;

- forging new partnerships with Indigenous communities, business leaders and educators to provide more opportunities to Indigenous youth;
- creating a new trades training centre in partnership with the University College of the North to help northern students;
- investing in community-based strategies to expand the local production of healthy foods across the north;
- initiating a plan to move rail lines out of Winnipeg and supporting the city with \$1 billion under a new partnership over the next five years; and
- committing to partner on future phases of rapid transit;

**Brian Pallister**, the Leader of the Official Opposition, moved a non-confidence amendment to the Address in Reply motion, which noted that the provincial government:

- broke promises to balance the budget by 2014 without raising taxes and failing to respect the right to vote on tax increases;
- failed to recognize Manitobans are paying more in taxes and getting less in services, since front-line services like health care and education are being ranked last in the nation;
- caused the provincial debt to double since 2008, because of self-promotion and wasteful government spending, requiring Manitobans to pay more than \$800 million in debt interest charges; and
- threatens Manitoba's future, as money spent servicing the debt cannot be invested to protect essential front-line services, reduce health-care wait times or improve education results.

Mr. Pallister's amendment was defeated on November 26, 2015 by a vote of yeas 18, nays 32, while the main motion carried on a vote of yeas 32, nays 19.

The fall session saw the introduction of a number of bills, addressing various governance areas including:

*Bill 3 – The Post-Secondary Sexual Violence and Sexual Harassment Policies Act*, which would ensure that post-secondary educational institutions have policies in place to counter sexual violence and sexual harassment.

*Bill 8 – The Employment Standards Code Amendment Act (Leave for Victims of Domestic Violence, Leave for*

*Serious Injury or Illness and Extension of Compassionate Care Leave*), which would enable an employee who is a victim of domestic violence to take up to 10 days of leave, either intermittently or in a continuous period, as well as a continuous leave period of up to 17 weeks, with up to five days to be paid leave

*Bill 11 – The Domestic Violence and Stalking Amendment Act*, which would make a number of changes to the process for obtaining protection orders against someone who has engaged in domestic violence or stalking.

*Bill 16 – Children’s Advocate Act*, which implements recommendations of the Commission of Inquiry into the death of Phoenix Sinclair to provide the Children’s Advocate with a broader mandate.

The House sat until December 3, 2015 before recessing for the holidays. In addition to the legislative package introduced in the fall, three bills have been re-instated from the 4<sup>th</sup> Session. Prior to the recess, the re-instated bills, together with other two bills, received second reading and will be considered by standing committees intersessionally.

The House resumed on February 24, 2016, sitting until March 15. Dissolution of the 40<sup>th</sup> Legislature for the next provincial general election can take place between March 15 and 22, 2016, with election day set for April 19, 2016.

### **Standing Committees**

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Since our last submission, Manitoba Standing Committees held numerous intersessional meetings to consider a range matters:

The Standing Committee on Legislative Affairs met in late November to complete the steps for the process for hiring a new Conflict of Interest Commissioner, Lobbyist Registrar and Information and Privacy Adjudicator. It also met twice intersessionally to consider annual reports from the Children’s Advocate and from Elections Manitoba.

The Standing Committee on Social and Economic Development also met in December to consider the last two *Annual Reports* of the Manitoba Poverty Reduction and Social Inclusion Strategy (All Aboard).

Finally, the Public Accounts Committee met before the end of the year to continue its consideration of Chapter 10 of the *Auditor General’s Report – Annual*

*Report* to the Legislature (dated March 2014) on the topic of Waiving of Competitive Bids. It also considered the Follow-Up Recommendations on the same topic, dated November 2015.

### **Members not seeking re-election**

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Since our last submission, two Members have indicated that they would not be seeking re-election. **Jennifer Howard**, MLA for Fort Rouge, first elected in 2007, announced on January 27, 2016 that she would retire from politics once the 40<sup>th</sup> Legislature dissolves prior to the next provincial election. Ms. Howard served as a minister in several portfolios: from 2009 until 2012 she was Minister of Labour and Immigration and then she served for a year as Minister of Family Services and Labour. Following a cabinet shuffle, she was then appointed Minister of Finance, a position that she held until November 2014. In addition, throughout her time in cabinet, Ms. Howard was also the Minister responsible for Persons with Disabilities. Prior to becoming an MLA, Ms. Howard held a number of public positions, including: Executive Director of the Women’s Health Clinic, policy advisor to Premier Gary Doer on health care issues, and Chairperson of the Manitoba NDP Status of Women Committee.

On January 29, **Gordon Mackintosh**, MLA for St. Johns, announced that he would not seek re-election. First elected in a by-election in 1993, Mr. Mackintosh sat on the opposition benches before the NDP election victory in 1999, when he was appointed Minister of Justice. He served in this portfolio until 2006, when he was appointed Minister of Family Services and Housing. Next, he served as Minister of Conservation and Water Stewardship from 2013 until 2015, when he was once again appointed Minister of Justice on April 29, 2015. Prior to his life in politics, Mr. Mackintosh served as Deputy Clerk of the Legislative Assembly of Manitoba from 1980 to 1984 before practicing as a lawyer, including work with the Manitoba and Canadian Human Rights Commissions and later serving as an advisor to Elijah Harper during the Meech Lake debate in 1990.

### **New Conflict of Interest Commissioner and Information and Privacy Adjudicator**

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As mentioned above, on November 25, 2015, the Legislative Affairs committee recommended the appointment of a new Conflict of Interest Commissioner and Information and Privacy Adjudicator. Historically, the two positions have been held by the same person. In addition, the Conflict of Interest Commissioner has

also been invested with the role of Lobbyist Registrar, even though this is a direct cabinet appointment.

On December 2, 2015, Mr. Jeffrey Schnoor, Q.C., has been appointed, effective January 1, 2016, to serve in the above mentioned positions. He takes the place of Mr. Ron Perozzo, Q.C., who held the position of Commissioner since the beginning of 2010 and who was the first Adjudicator appointed when the position was created in October 2010.

### **Visit of the Grey Cup to the Legislative Chamber**

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On November 25, 2015, the Grey Cup was brought to the Legislature for a ceremony held on the front lawn of the building. Following the ceremony, the House recessed for a brief period and representatives from each party accompanied the Grey Cup, held by two RCMP officers in Red Serge, into the Legislative Chamber where the Members could enjoy it for a few minutes. After the Chamber visit, a group picture was taken on the grand staircase. Next, the Cup continued its visit and was taken to Government House.

### **Current Party Standings**

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The current party standings in the Manitoba Legislature are: NDP 35, Progressive Conservatives 19, 1 Liberal, and 2 vacancies.

**Andrea Signorelli**

Clerk Assistant/Clerk of Committees



## **Northwest Territories**

### **Territorial General Election**

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The *2015 Polling Day Act* passed by the Legislative Assembly in November 2014, provided that if, as of April 1, 2015, the federal and territorial election periods were scheduled to overlap, the territorial election would be postponed from October 5, 2015 to November 23, 2015.

The federal election was scheduled for October 19, 2015, and subsequently the territorial general election was held on November 23, 2015.

Seventeen of the 19 members of the 17<sup>th</sup> Assembly stood for re-election. A single candidate was acclaimed, with 60 candidates standing for election in the remaining 18 electoral districts.

In the electoral district of Nahendeh seven candidates stood for election, making it the longest ballot paper in the 2015 election. Ten women stood for election in nine districts, representing 17 per cent of the total number of candidates.

The election resulted in 11 new Members and eight returning Members, with two women elected.

In accordance with the *Elections and Plebiscites Act*, close polling results triggered judicial recounts in the electoral districts of Nunakput, Range Lake and Yellowknife North. The results of the three recounts upheld the unofficial results.

### **Legislative Assembly Priority Setting**

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All Members of the 18<sup>th</sup> Legislative Assembly were sworn in by the Commissioner of the Northwest Territories, **George L. Tuccaro**, on December 7, 2015.

Following the swearing in and in accordance with the recently adopted *Process Convention on Priority Setting and Reporting*, all Members met to begin working collectively on establishing the priorities that will provide the basis for a government mandate. After extensive consultation with all Members, a draft mandate was scheduled to be introduced by the Executive Council for debate in the Assembly during its February sitting.

As part of the priority setting process, Members of the 18<sup>th</sup> Legislative Assembly held a roundtable discussion in the Assembly Chamber. In an important departure from past practice, the discussion was open to the public and the media, with live broadcasting on the Assembly television network and web streaming on the Assembly web site.

### **Territorial Leadership Committee**

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Members of the 18<sup>th</sup> Legislative Assembly agreed on a revised process for the Territorial Leadership Committee. The Committee met on December 9, 2015, allowing any Member who wished to run for the



position of Premier to announce their intention and deliver a speech in support of their candidacy. The Territorial Leadership Committee would then recess for one week to allow all Members to consult with constituents before voting on December 16, 2015. This is, once again, a departure from past practice. Meetings of the Territorial Leadership Committee are held in the Chamber of the Legislative Assembly and are open to the public.

Two Members rose to put their names forward for the position of Premier; **Glen Abernethy**, MLA for Great Slave and **Robert R. McLeod**, MLA for Yellowknife South and Premier of the 17<sup>th</sup> Legislative Assembly.

The Territorial Leadership Committee reconvened on December 16, 2015. With the agreement of all Members, the first order of business was the election of the Speaker. The Members of the 18<sup>th</sup> Legislative Assembly acclaimed **Jackson Lafferty**, Member for Monfwi, as Speaker-elect.

Following a secret ballot election process, Mr. McLeod was chosen as Premier-elect, making him the first two-term premier in Northwest Territories modern history.

The final order of business was the selection of six Members, who, together with the Premier would form the Executive Council. This selection process followed the established practice of maintaining regional balance by selecting two Members to represent each of the three distinct geographic areas of the NWT; northern, Yellowknife and southern. Members put their names forward, and after several ballots the following Members were selected: **Robert C. McLeod**, **Alfred Moses**, **Wally Schumann**, **Louis Sebert**, Mr. Abernethy, and **Caroline Cochrane**.

### **First Session of the 18<sup>th</sup> Legislative Assembly**

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The First Session of the 18<sup>th</sup> Legislative Assembly convened on December 17, 2015 with motions adopted by the House to formally elect Mr. Lafferty as Speaker of the 18<sup>th</sup> Legislative Assembly, to formally appoint Mr. McLeod as Premier of the Northwest Territories, and to recommend all appointments to the Executive Council.

Further motions adopted by the Assembly established the Board of Management and the Standing Committee on Priorities and Planning, a committee of all Regular Members.

During the one day sitting, the Assembly also debated and adopted a motion to formally invoke a new set of *Members' Conduct Guidelines*. The motion also directed that all Members sign the *Guidelines* and that signed copies be available for public scrutiny. Finally, the Assembly referred the *Guidelines* to the Standing Committee on Rules and Procedures, once established, for a comprehensive and public review.

A final motion debated and adopted during the sitting directed the Assembly to conduct a public mid-term accountability review of the adopted mandate of the 18<sup>th</sup> Legislative Assembly, including the performance of the Executive Council and standing committees. This review shall take place in the Chamber prior to the fall 2017 sitting. The Assembly once again referred this matter to the Standing Committee on Rules and Procedures to recommend a process for such a review.

The First Session of the 18<sup>th</sup> Legislative Assembly prorogued on December 17, 2015, with the Second Session scheduled to open on February 18, 2016.

### **New Speaker**

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Acclaimed as Speaker on December 17, 2015, Mr. Lafferty was first elected to the 15<sup>th</sup> Legislative Assembly in a by-election, was re-elected in the 2007 and 2011 general elections, and was acclaimed by his constituency of Monfwi in November 2015. He has served as Deputy Premier, Minister of Education, Culture and Employment, Minister Responsible for Official Languages, and Minister Responsible for the Workers' Safety and Compensation Commission.

Mr. Lafferty was born and raised in the Tlicho community of Behchoko and is a dedicated advocate of language, culture and heritage revitalization for the North. Fluent in the Tlicho language, the Speaker committed in his opening address to the Assembly to promote the use and preservation of all aboriginal languages in the Northwest Territories.

### **Committees**

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At its first official meeting, the Standing Committee on Priorities and Planning elected **Tom Beaulieu** as its Chair and **Kieron Testart** as the Deputy Chair. The Committee met for several weeks in January to continue its orientation and receive technical briefings from a number of departments.

**Gail Bennett**

Principal Clerk, Corporate and Interparliamentary Affairs



## New Brunswick

### Throne Speech

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Lieutenant-Governor **Jocelyne Roy Vienneau** opened the Second Session of the 58<sup>th</sup> Legislature on December 1, 2015 with the delivery of the Speech from the Throne. The speech emphasized that the government would focus the first part of the legislative session on the completion of their Strategic Program Review, a government initiative to evaluate departmental spending and control costs.

The speech outlined the need for job creation, economic opportunity, and investments in health and education. Highlights included the development of a new innovation strategy to increase competitiveness in the global economy; a revision of export strategies to benefit from the European Union's Comprehensive Economic and Trade Agreement and developing Asian markets; a strategy to increase immigration and to accommodate up to 1,500 Syrian refugees; the release of a Climate Change Action Plan; continued advancement opportunities with First Nations communities; the development of a 10-year education plan and aggressive literacy strategy; the requirement of four publicly-funded post-secondary institutions to appear annually before the Standing Committee on Public Accounts; and the development of a council on aging.

### Reply to Throne Speech

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On December 3, Official Opposition Leader **Bruce Fitch** gave his reply to the Speech from the Throne. Mr. Fitch highlighted a number of successful business start-ups such as RtTech and Resourceful Redneck. He also announced the appointment of **Brian Macdonald**, Fredericton West-Hanwell, to the newly created position of refugee transition critic for the Official Opposition. Mr. Fitch raised concerns about the Strategic Program Review, the public debt, the 10-year education plan, and the impact of the shale gas moratorium on natural gas prices and economic development. He also expressed his hope that a modified version of the Official Opposition's previously-introduced Bill, concerning the eligibility of first responders diagnosed with post-traumatic stress disorder to receive workers' compensation, would be introduced by the government during the session.

### Capital Budget

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The 2016-17 Capital Budget totals \$656.1 million, representing a \$53.4 million decrease from the planned spending projections announced last year. Specifically, \$413.3 million will be allocated for road and bridge construction, their maintenance, and building upgrades; \$108.6 million for K-12 schools; and \$72.1 million for the maintenance and improvement of healthcare facilities.

### Committees

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Auditor General **Kim MacPherson** met with the Standing Committees on Public Accounts and Crown Corporations on December 15, 2015 to release her *2015 Report*, Volumes III and IV. Volume III focuses on matters arising from the annual financial audit of the provincial government and Crown agencies including observations on pension plans, administration of school raised funds, and the financial audit of the New Brunswick Lotteries and Gaming Corporation. Volume IV presents performance reports including Public Debt, Centennial Building (civil service office space), and follow up on prior years' performance audit chapters.

On November 12, the Standing Committee on Procedure, Privileges and Legislative Officers met with seven of the Legislative Officers. The Committee was briefed on their respective roles and mandates. The Committee also received input from the Officers on how the Committee may serve as an effective forum in the future.

## Legislation

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Seventeen Bills were introduced during the fall session, including:

Bill 15 - *Regulatory Accountability and Reporting Act* - introduced by Premier **Brian Gallant**, is intended to reduce and better align regulations in New Brunswick, Nova Scotia, and Prince Edward Island to help create the conditions for economic growth and job creation. The bill requires each provincial government to take action on opportunities for regulatory reform and to measure and report on such actions.

Bill 11 - *An Act to Amend the Personal Health Information Privacy and Access Act* - introduced by Health Minister **Victor Boudreau**, clarifies an individual's right to receive an interpretation of his or her personal health information when the information is not available in the individual's language of choice; provides for the sharing of personal health information for the purposes of an appeal; and removes barriers to research using government administrative data sets.

Bill 12 - *An Act to Amend the Crown Construction Contracts Act* - introduced by Transportation and Infrastructure Minister **Roger Melanson**, exempts certain non-routine capital projects of NB Power from the application of the *Act*; permits the Minister to create standard terms for performance bonds and payment bonds furnished to the Crown in relation to a contract; and permits Crown entities to negotiate with the low or sole bidder on a contract.

Bill 16 - *An Act to Amend the Motor Vehicle Act* - introduced by Public Safety Minister **Stephen Horsman**, strengthens the ability to identify and deter alcohol-impaired driving. Amendments include escalating sanctions for short-term licence suspensions, creating an impoundment program, and introducing a mandatory component to the alcohol ignition interlock device program.

Bill 9, *An Act Respecting the Right to Work*, introduced by Fredericton-Grand Lake Member **Pam Lynch**, introduces amendments to protect government employees and service suppliers when changes are made to language requirements.

Bill 5 - *Green Jobs Act* - introduced by Green Party Leader **David Coon**, would create a new Crown Corporation called Renew New Brunswick Inc. to promote, develop jobs and invest in renewable energy, energy efficiencies, and public transportation.

## Conference

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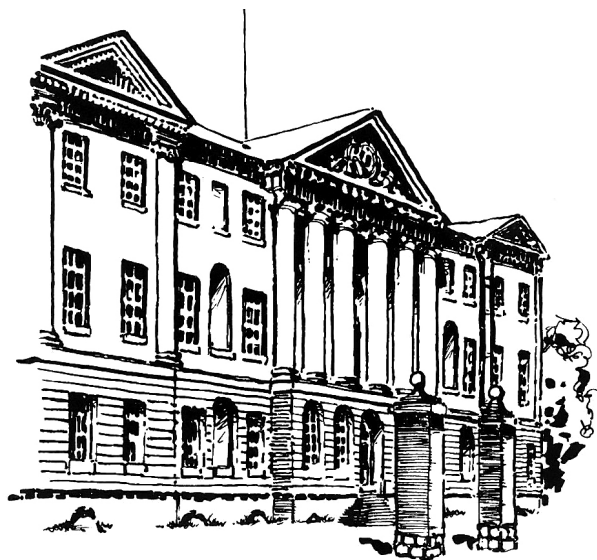
The 33<sup>rd</sup> Canadian Presiding Officers' Conference was hosted on January 28-31 in Fredericton. Business sessions included the Speaker's casting vote, democratic renewal in PEI, decorum in the House, challenges and opportunities of being a new Deputy Speaker, the Speaker's role regarding the Independent Member, and policies on preventing and managing harassment.

## Standings

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The Second Session of the 58<sup>th</sup> Legislative Assembly adjourned on December 15, 2015 to resume on February 2, 2016. The current House standings are 26 Liberal Members, 22 Progressive Conservative Members, and one Green Party Member.

**John Patrick McCleave**  
Committee Clerk



## Nova Scotia

The Fall 2015 sitting commenced on November 12 and ended December 18, 2015.

The sitting was highlighted by a variety of situations that in some cases were a bit out of the ordinary.

## Emergency Debates

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On the first sitting day, the Speaker received two Emergency Debate requests within 18 minutes of each



other. The Speaker determined that both requests met the threshold test set out in the Rules and he thus proceeded to put the request received first in time to the House. The House unanimously agreed that the matter would be debated at the time of adjournment and the first debate took place from 3:41 to 5:41 pm in accordance with the Rules. On November 13, the second day of the sitting, the Speaker put the second Emergency Debate request to the House to determine whether the debate would take place. As several “Nos” were recorded on the verbal vote, the Speaker, in accordance with the Rules, asked the Members who supported the motion to stand in their places and be counted – as more than 10 Members stood, the Speaker determined, in accordance with the Rules, that the debate would take place at the moment of adjournment that day. The debate commenced at 11:10 am and concluded at 1:04 pm

### Parliamentary Privilege

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In the days leading up to the commencement of the Fall sitting, the then Minister of the Environment, **Andrew Younger**, invoked his parliamentary privilege and chose not to testify at a criminal proceeding wherein he was the alleged victim of an assault. A series of events followed resulting in the Premier removing the Member from both Cabinet and the Government Caucus. On November 12, Mr. Younger took his place in the Chamber as an Independent Member. During Question Period on the first sitting day four of the 17 questions touched on the events surrounding Mr. Younger.

On November 13, each and every one of the 18 questions asked by the two Opposition parties during Question Period related to matters involving Mr. Younger.

On November 19, Government Notice of Motion # 2455 was passed unanimously in response to the release to the media of a partial recording of a taped conversation between Mr. Younger and the Premier’s Chief of Staff on February 12, 2015. The motion directed Mr. Younger to produce the entire tape recording of February 12, 2015 conversation to the Chief Clerk by noon on November 20, failing which the Speaker would issue a Warrant and authorize the Sergeant-at-Arms to obtain the recording from Mr. Younger and transmit it to the Chief Clerk who would copy it and provide it to any person requesting a copy.

On November 20, at the beginning of the proceedings at 9 am, Mr. Younger advised that he had delivered

the 2 minute clip of a recorded conversation between himself and the Premier’s Chief of Staff of February 12, 2015 to the Chief Clerk along with a sworn oath wherein he advised he did not have any additional recording of the conversation in question. Seven questions during Question Period were devoted to this ongoing matter.

At 12:07 pm on November 20, the Speaker delivered his ruling regarding Resolution # 2455. He concluded that the recording of the entire conversation of February 12, 2015 between Mr. Younger and the Premier’s Chief of Staff had not been delivered as required by the resolution and he advised he had issued the Warrant for the production of the entire tape recording by November 23, at 12 noon and had given the Warrant to the Sergeant-At-Arms who had served it on Mr. Younger.

The House next sat at 1 pm on November 24 and the Speaker commenced the proceedings by updating the House on the Warrant he had issued on November 20 relating to Resolution # 2455. He advised that Mr. Younger had delivered to the Chief Clerk before 12 noon on November 23, a compact disc, a letter and an affidavit – it stated that notwithstanding his previous affidavit of November 20 he had located a file on the cloud backup system containing the entire recorded audio conversation of February 12, 2015 and it was contained on the delivered disc. The Speaker concluded that the Warrant had been complied with by Mr. Younger. During Question Period 10 of the 18 questions related to the recorded conversation between Mr. Younger and the Premier’s Chief of Staff. It is important to note that subsequent to the release of the entire audio recording, the Chief of Staff disclosed, in several media interviews that Mr. Younger suffered from post-traumatic stress disorder and a brain tumor. The Government House Leader stood up on each and every question and indicated that Mr. Younger had filed an official complaint regarding the disclosure of his personal health information and that no questions relating to the matter would be answered to allow the complaint process to unfold. At 4:22 pm on November 24 the Premier’s Office issued a press release advising that the Premier had accepted the resignation of his Chief of Staff.

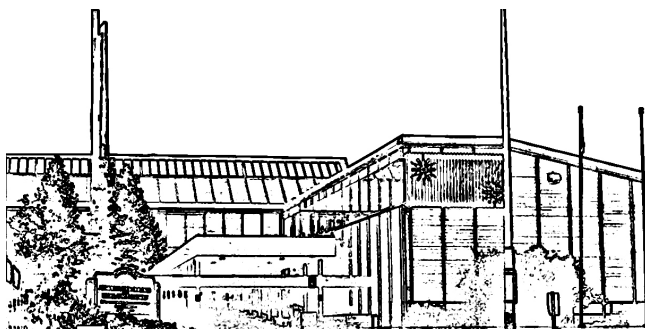
During Question Period on November 25, a large number of questions related to the disclosure of private health information to the media by the Premier’s Chief of Staff.

## Bill # 148

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By December 14, 2015 all the Government Bills introduced during the Sitting had received 3<sup>rd</sup> reading. However, that evening the Government introduced Bill # 148 – the *Public Services Sustainability (2015) Act*. In the purpose clause it is stated that the *Act* creates a framework for compensation plans for public sector employees. The Bill was moved for second reading at 12:24 am on December 15, and debate ended with a recorded vote for second reading at 1:23 pm that day. The Bill was then referred to the Law Amendments Committee for public presentations. On December 16 at 7:03 pm Bill # 148 was reported back to the House from the Law Amendments Committee with the indication that a presenter would be heard before the Law Amendments Committee on the Bill the following morning. The Leader of the New Democratic Party raised a Point of Order indicating that it was highly inappropriate for the Bill to be reported back to the House before all witnesses were heard. Clause-by-clause debate on Bill # 148 commenced before the Committee of the Whole House on Bills at 1:53 am on December 17, 2015. The Bill contained 30 clauses and recorded votes were called in the Committee on 11 clauses. Twelve hours later the Bill was reported by the Committee to the House. On December 18, Bill # 148 was moved for third reading at 1:54 am and at 7:42 am a recorded vote was taken and the Bill passed third reading. At 9:31 am the Lieutenant Governor gave Royal Assent to all the Bills and the House rose to meet again at the call of the Speaker.

**Annette M. Boucher**  
Assistant Clerk



## Yukon

The 2015 Fall Sitting of the First Session of the 33<sup>rd</sup> Legislative Assembly began on October 22 and adjourned on December 15, after 29 sitting days.

## Assent

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During the course of the Sitting, a total of eight government bills were assented to by Yukon Commissioner **Doug Phillips** or (on one occasion) by Yukon Administrator **Gerald Isaac**:

- Bill No. 19, *Fourth Appropriation Act, 2014-15*
- Bill No. 20, *Second Appropriation Act, 2015-16*
- Bill No. 89, *Act to Amend the Municipal Act*
- Bill No. 90, *Land Titles Act, 2015*
- Bill No. 91, *Act to Amend the Elections Act and the Electoral District Boundaries Act*
- Bill No. 92, *Act to Amend the Travel for Medical Treatment Act*
- Bill No. 93, *Act to Amend the Oil and Gas Act*
- Bill No. 94, *Act to Amend the Education Act*

## Elections Act and Electoral District Boundaries Act amendments

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The *Act to Amend the Elections Act and the Electoral District Boundaries Act*, as outlined in Yukon's preceding Legislative Report, implements a major revision of key aspects of Yukon's electoral law. The revisions are based upon recommendations contained in a report by Yukon's Chief Electoral Officer, **Lori McKee**.

Yukon does not have a fixed date for its general elections. The current Legislative Assembly was elected on October 11, 2011 and will dissolve by law on October 14, 2016. However, in keeping with parliamentary practice, it is anticipated that the Premier will ask the Commissioner to dissolve the Legislative Assembly prior to that date.

## United Nations Climate Change Conference (COP 21)

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Yukon's delegation to COP 21, which took place in Paris November 30<sup>th</sup> – December 14<sup>th</sup>, included Yukon Premier **Darrell Pasloski**, Official Opposition Leader **Liz Hanson**, Third Party Leader **Sandy Silver**, and Council of Yukon First Nations Grand Chief **Ruth Massie**. Ms. Hanson, Mr. Silver, and Grand Chief Massie joined the delegation at the invitation of the Premier.

## Territorial funding formula change

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The current Territorial Formula Financing (TFF), through which the Government of Canada allocates funds to Yukon, the Northwest Territories and

Nunavut, is two years into a five-year funding agreement. In December, 2015, the federal government revealed that technical changes to the way that Statistics Canada calculates territorial funding would decrease federal base funding to the territories by two percent.

Although the revised TFF would not have seen Yukon's net federal grant decrease in 2016-17, it would have reduced the amount of the increase by \$23 million dollars. Premier Pasloski asked the federal government to reconsider the proposed reduction in grants to the territories. Similar requests were made by Nunavut and the Northwest Territories.

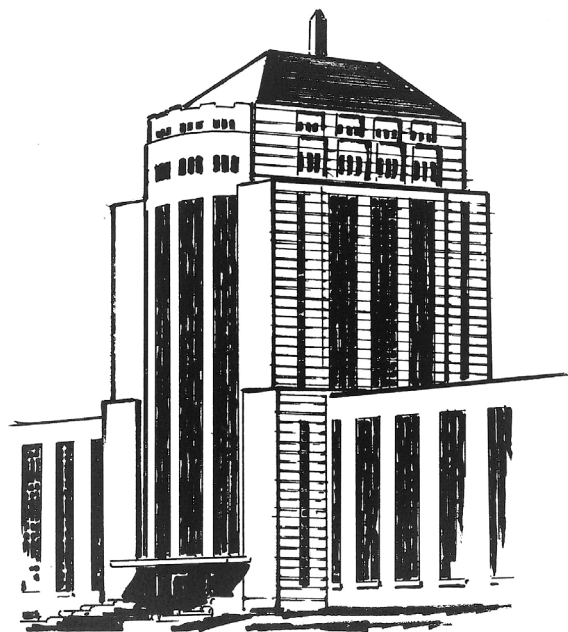
On February 16, 2016, federal Finance Minister **Bill Morneau** announced that legislative amendments would be introduced to "improve the stability and predictability" of TFF payments and "address the impact of a recent Statistics Canada data revision." If adopted, the amendments would reduce by \$16.5 million dollars the anticipated federal funding shortfall for Yukon for the fiscal year beginning April 1, 2016.

#### **Yukon Government – Kaska framework agreement**

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On January 25, 2016, a resource-development framework agreement seeking to establish a cooperative, collaborative approach to land and resource management in the southeast area of Yukon was reached between the territorial government and the Kaska. The signatories to the agreement were the Premier, the chiefs of Yukon's two Kaska nations – Liard First Nation Chief **Daniel Morris**, and Ross River Dena Council Chief **Jack Caesar** – and Kaska Dena Council Chair **George Miller**. The framework agreement was preceded by months of reconciliation talks between the territorial government, and the two First Nations, and presents an alternative approach to preceding years of legal disputes.

**Linda Kolody**  
Deputy Clerk



## **Newfoundland and Labrador**

### **General Election 2015**

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At the dissolution of the 47<sup>th</sup> General Assembly which took place on November 5, 2015 the standings in the House of Assembly were: 39 Progressive Conservatives, 16 Liberals and 3 New Democrats. At the November 30, 2015 General Election the Liberals under Premier **Dwight Ball** elected 31 Members, the Progressive Conservatives 7 and the New Democrats 2. The 48<sup>th</sup> General Assembly comprises 30 men and 10 women and is evenly divided between re-elected and first-time Members. Included among the first-time MHAs are two former MPs.

The Members-elect were sworn before Lieutenant Governor **Frank Fagan** on December 18, 2015 in the morning. In the afternoon the House elected their Speaker. For the first time since the practice of electing the Speaker by secret ballot was introduced in 1999 two Members offered for the position: **Tom Osborne**, MHA, Waterford Valley and **Scott Reid**, MHA St. George's-Humber. The House selected **Tom Osborne**, MHA, Waterford Valley as Speaker. **Lisa Dempster**, MHA, Cartwright-L'Anse au Clair was elected Deputy Speaker and **Paul Lane**, MHA, Mount Pearl-Southlands was elected Deputy Chair of Committees.



## Cabinet appointed

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Premier Ball's 13-member Cabinet, comprising 10 male and 3 female Ministers was sworn on December 13, 2015.

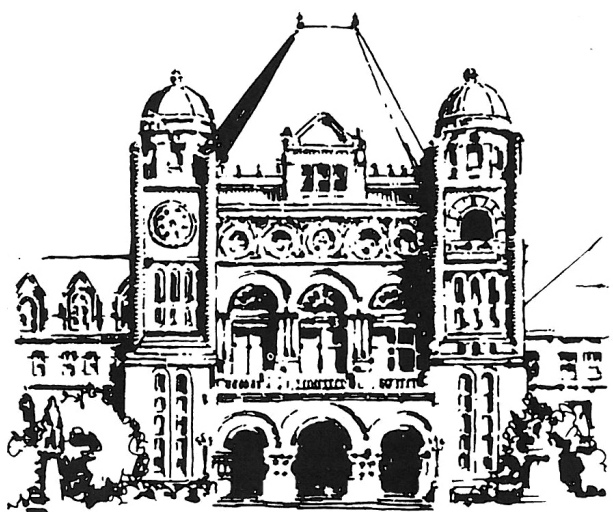
## Resumption of 1<sup>st</sup> Session of 48<sup>th</sup> General Assembly

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The 48<sup>th</sup> General Assembly is expected to re-convene for the Throne Speech and continuation of the First Session in March.

**Elizabeth Murphy**

Clerk Assistant



## Ontario

With the House scheduled to adjourn for the winter recess on December 10, the preceding weeks saw the House work to fulfill its fall legislative agenda, completing the consideration of all the bills it had included in a June 2015 “programming motion”, as well as many new bills. The House took advantage of a Standing Order which permits the Government House Leader to propose a motion to extend the hours of meeting during the last eight sessional days, and the Legislature sat late three nights to ensure the completion of its business prior to adjournment.

Much like a time allocation motion, the June programming motion had included provisions for the arrangement of business into the fall, including details at the Committee stage. Filed as a substantive motion,

it applied to four bills. Several later bills considered by the House in the Fall sitting were also subject to Orders of the House arranging their progress through the legislative stages, and the House would appear to have adopted regular use of such Orders. Of the 18 bills that received Royal Assent since November, all but four were subject to the provisions of either a time allocation or a programming motion.

While it is most frequently arranged that **Elizabeth Dowdeswell**, Lieutenant Governor of Ontario, assents to bills in her Office, on December 10 Her Honour entered the Chamber, took her seat upon the Throne, and assented to the 17 bills passed in the last week of the fall sitting period, lending an air of ceremony to the Legislature's last sitting of 2015.

## Parliamentary Officers

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The House received *Annual Reports* from **Bonnie Lysyk**, Auditor General of Ontario; **Irwin Elman**, Provincial Advocate for Children and Youth; and **Barbara Finlay**, Acting Ombudsman of Ontario. The Assembly's newest Parliamentary Officer, **Stephen LeClair**, Financial Accountability Officer, tabled two reports: *An Assessment of Ontario's Medium-term Economic and Fiscal Outlook* and *An Assessment of the Financial Impact of the Partial Sale of Hydro One* (tabled at the end of October). Excerpts from the latter report formed the basis for an opposition day motion put forward by the New Democratic Party, that “in the opinion of the House, the government shall immediately stop the sale of any more shares of Hydro One,” debated on November 18, two weeks after the November 5 initial public offering of 15 per cent of the province's electrical transmission and distribution utility on the Toronto Stock Exchange.

On December 31, **Lynn Morrison** resigned as Integrity Commissioner. Ms. Morrison had held various roles within the Office of the Integrity Commissioner since its creation in 1988, and was appointed Acting Commissioner in 2007, then Commissioner in 2010.

On the Address of the Legislative Assembly of Ontario to the Lieutenant Governor in Council, **Cathryn Motherwell**—Director of the Office of the Integrity Commissioner of Ontario—was appointed Acting Integrity Commissioner, to hold office from January 1 to 31, 2016; and **David Wake** was appointed Integrity Commissioner, for a term of five years, commencing February 1, 2016.

## Accessibility

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On December 3 – the United Nations’ International Day of Persons with Disabilities – the House adopted a motion to permit sign-language interpreters onto the Chamber floor to interpret the proceedings during Statements by the Ministry and Responses. In their statements, **Brad Duguid**, Minister of Economic Development, Employment and Infrastructure, and **Helena Jaczek**, Minister of Community and Social Services, remarked that 2015 marked the 10-year anniversary of the *Accessibility for Ontarians with Disabilities Act* (AODA), and laid out the priorities of Ontario’s Accessibility Action Plan.

Under the AODA, the Government of Ontario has been developing mandatory accessibility standards that identify, remove and prevent barriers for people with disabilities in key areas of daily living. The standards apply to private and public sector organizations who, according to their size, have different schedules of deadlines by which they must be AODA-compliant, with the goal of making Ontario fully accessible by 2025.

The Legislative Assembly of Ontario has worked to meet its January 1, 2016 deadline for compliance with the AODA in ensuring its public spaces and public information are accessible. Following on improvements to the physical setting, such as the installation of accessible service counters, a number of improvements were made to the Assembly’s website, including behind-the-scenes modifications that allow assistive devices to read the web pages properly and, more visibly, a new interface for the Hansard indexes, an improved Hansard search function and a revamped sessional papers index. The *Orders and Notices* papers, the *Votes and Proceedings*, and Committee reports are all now accessible.

The Assembly has made great strides toward accessibility and, in the process of working to meet our AODA targets, staff have begun factoring accessibility considerations into increasingly more areas of their work, from producing accessible documents to piloting a sensory “touch tour” of the building for visually impaired guests. The January 1 deadline proved less of an endpoint than a milestone in making our Legislative Building truly barrier-free for all.

## Condolences

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On Wednesday, December 9, 2015, the House expressed its condolences on the passing of **Howard**

**Nicholas Sheppard**, Member for the riding of Northumberland from 1981 to 1987.

## Committees

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The Standing Committee on the Legislative Assembly completed a 10-month review of the petition procedures currently in place at the Legislative Assembly of Ontario. The Committee was particularly interested in the use of e-petitions in other jurisdictions as a means to increase public participation in the Parliamentary process. The Committee is scheduled to Table its report when the House resumes in February.

The Standing Committee on Estimates met to review the 2015-2016 Expenditure Estimates of Ministries and Offices selected for consideration. The Committee completed the review of three Ministries over the course of 13 meetings and presented its report on November 26, 2015.

During the fall session, the Standing Committee on Regulations and Private Bills met to consider nine private bills, as well as one government bill: Bill 85, *Strengthening and Improving Government Act, 2015*. Introduced by Attorney General **Madeleine Meilleur**, this bill proposed changes to acts falling under the jurisdiction of several ministries.

The Select Committee on Sexual Violence and Harassment tabled its *Final Report* on December 10, 2015. The Committee chose to structure its report around recommendations found in the Ontario government’s initiative, *It’s Never Okay: An Action Plan to Stop Sexual Violence and Harassment*, which was released in March 2015. The Committee’s report touches on issues it considers to be of particular importance based on the testimony it received during its hearings and provides further recommendations in areas that it believes were not fully addressed in *It’s Never Okay*.

The Standing Committee on Social Policy considered two government bills: Bill 73, *An Act to amend the Development Charges Act, 1997* and the *Planning Act*, which makes various amendments relating to the growth of communities in the province; and Bill 115, *An Act to enact the Representation Act, 2015, repeal the Representation Act, 2005 and amend the Election Act, the Election Finances Act and the Legislative Assembly Act*. This bill provides for 122 electoral districts in Ontario, to replace the current 107. The 11 northern electoral districts that were first established by the *Representation Act, 1996* are maintained, and the rest of Ontario is divided into 111 electoral districts whose names and

boundaries are identical to those of the corresponding new federal electoral districts.

Pursuant to an Order of the House, the Committee also considered four private members' public bills, with public hearings on all four bills taking place on November 30, and clause-by-clause consideration on December 1. All four of the following bills were passed by the Committee, reported to the House, and went on to receive Royal Assent:

Bill 12, *An Act to amend the Employment Standards Act, 2000 with respect to tips and other gratuities*. Introduced by **Arthur Potts**, MPP for Beaches-East York, the bill amends the *Employment Standards Act, 2000* to prohibit employers from withholding tips or other gratuities from employees.

Bill 33, *An Act to reduce the abuse of fentanyl patches*. Introduced by **Vic Fedeli**, MPP for Nipissing, the bill required a person prescribing fentanyl patches to record on the prescription the name and location of the dispensing pharmacy and to notify the pharmacy about the prescription. It also sets out rules governing persons who dispense fentanyl patches. Bill 33 was amended in Committee, its provisions extended to other controlled substance patches, and its long title was changed to "*An Act to reduce the abuse of fentanyl patches and other controlled substances*."

Bill 117, *An Act to amend the Provincial Advocate for Children and Youth Act, 2007 with respect to notices of critical injury or death*. Introduced by **Monique Taylor**, MPP for Hamilton Mountain, the bill was amended in Committee, resulting in a title change to "*An Act to amend the Provincial Advocate for Children and Youth Act, 2007 with respect to notices of serious bodily harm or death*." The bill creates an obligation for agencies and service providers to inform the Provincial Advocate for Children and Youth after they become aware that a child or youth has died or incurred serious bodily harm, and the child or youth or the child or youth's family had sought or received a children's aid society's service within 12 months of the death or incurrance of harm.

Bill 141, *An Act to require research to be undertaken and programs to be developed for pregnancy loss and infant death and to proclaim October 15 as Pregnancy and Infant Loss Awareness Day*. Introduced by **Mike Colle**, MPP for Eglinton—Lawrence, the bill sets out a duty for the Minister of Health and Long-Term Care with respect to pregnancy loss and infant death; and establishes a commemorative day.

During the winter adjournment the Committee held hearings in Peterborough, London and Toronto on Bill 132, *An Act to amend various statutes with respect to sexual violence, sexual harassment, domestic violence and related matters*. The bill is part of the government's *It's Never Okay* initiative.

In November 2015, the Standing Committee on Public Accounts tabled two reports on the following sections of the *2014 Annual Report of the Office of the Auditor General*: Section 4.01 (Cancer Screening Programs); and Section 3.11 (Smart Metering Initiative).

The Standing Committee on General Government considered the following two bills, which were both reported with amendment to the House, and went on to receive Royal Assent:

Bill 112, *An Act to amend the Energy Consumer Protection Act, 2010 and the Ontario Energy Board Act, 1998*. The bill prescribes requirements for electricity retailers and gas marketers to follow when determining the prices charged for electricity or gas, and sets out rules regarding the manner, time and circumstances under which a supplier or salesperson may advertise or market the sale of electricity or gas to a consumer at the consumer's home.

Bill 122, *An Act to amend the Mental Health Act and the Health Care Consent Act, 1996*. This bill amended the *Mental Health Act* to provide the Consent and Capacity Board with new order-making powers when confirming an involuntary patient's certificate of continuation. Among other things, the bill gives the Board power to direct the officer in charge of a psychiatric facility to provide different security levels, different privileges, and access to various services. The bill addressed the statutory deficiencies identified in December 2014 by the Court of Appeal in its decision in *P.S. v. Ontario*, in which it ruled that provisions of the *Mental Health Act* governing the review process for long-term involuntary patients were unconstitutional. The court had suspended the effect of its judgment for one year, to give the Legislature the opportunity to consider how best to deal with the issue.

On January 27, the Standing Committee on Government Agencies took advantage of its standing authority to meet under limited circumstances during an adjournment for the purpose of considering intended appointments to agencies, boards and commissions.

**Sylvia Przedziecki**  
Committee Clerk





## Prince Edward Island

### First Session, Sixty-fifth General Assembly

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The First Session of the Sixty-fifth General Assembly resumed on November 12, 2015 and adjourned to the call of the Speaker on December 2 after 12 sitting days. The First Session will be prorogued on April 1, 2016, and the Second Session of the Sixty-fifth General Assembly will officially open with a Speech from the Throne on April 5, 2016 at 2:00 p.m. in the Legislative Assembly Chamber, Hon. George Coles Building.

### Significant Legislation

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Twenty-six bills received Royal Assent during the fall sitting. These included:

*An Act to Amend the School Act* (Bill No. 42), which removes reference to the English Language School Board from the *School Act* in keeping with Government's plan to integrate the functions of the School Board into the Department of Education, Early Learning and Culture. The Department will take full responsibility for the English language public education system. The French Language School Board will continue to operate under the *School Act*.

*An Act to Amend the Electric Power Act* (Bill No. 46), which requires that public utilities seeking to acquire new generating equipment or additional generating capacity lease that equipment or capacity from the PEI Energy Corporation if directed to do so by Government. It also requires Maritime Electric Company, Limited to consult with and involve the PEI Energy Corporation in any negotiations with a third party for the supply or generation of electrical energy from any source.

Two Private Member's Bills were put forward during the fall sitting:

*An Act to Amend the Pesticides Control Act* (Bill No. 100) would require inspectors to have reasonable and probable grounds to believe the *Act* has been or is being contravened in order to enter upon land, premises or vehicles for the purposes of inspection. This bill was promoted by **Jamie Fox**, Leader of the Official Opposition. It passed second reading but was not recommended in Committee of the Whole House.

*Well-being Measurement Act* (Bill No. 101) would begin a process to develop a series of indicators of economic, social and environmental well-being of communities, people and eco-systems in the province, and ultimately task the Minister of Finance with annually reporting the current state of well-being in the province based on these indicators. This bill was promoted by **Peter Bevan-Baker**, Leader of the Third Party. It was referred by motion to the Standing Committee on Health and Wellness for further consideration.

### Capital Budget

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On November 18, 2015 Government issued its capital budget for 2017-2018, with \$77.9 million invested in schools, health care and transportation. Highlights include new equipment for the Prince Edward Island Cancer Treatment Centre, wireless internet access and modern computers in Island schools, and further realignment of the Trans Canada Highway.

### Special Committee on Democratic Renewal

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After intensive study of electoral systems, a broad communications strategy and public consultation across the Island, the Special Committee on Democratic Renewal tabled its interim report to the Legislative Assembly, entitled "Recommendations in Response to The White Paper on Democratic Renewal", on November 27, 2015.

The committee heard from 112 individuals and groups on the subject of democratic renewal. Over 400 people attended public meetings across the province. Many strong arguments were made in favour of keeping PEI's current voting system, introducing moderate changes, or implementing an entirely different system. On the fundamental principles of democracy, witnesses often divided according to whether it is most important that individual members represent their constituencies or that the Assembly

as a whole be socially representative of PEI. Some witnesses favoured electoral systems that tend to produce strong majority governments empowered to carry out their mandates, while others preferred systems productive of coalition governments that must seek consensus. The various voting systems highlighted by witnesses were generally divided between single member constituencies (for example, first-past-the-post and preferential voting) and multi-member constituencies (for example, mixed member proportional representation and dual member proportional representation).

The desired outcomes of an ideal electoral system were discussed, and included proportionality, representation, responsibility, influence of voters, stable government, accountability and strong voter turnout. The committee is of the view that no single electoral system can perfectly deliver all of these outcomes in a balanced manner. Only a clear and neutrally-worded plebiscite question can gauge what Islanders want the most from their electoral system. To that end, the committee put forward seven recommendations, which can be summarized as follows:

That after further public consultation, the committee shall formulate a plebiscite question on PEI's voting system, and the question shall be in two parts, the first to gauge Islanders' interest in changing PEI's electoral system, and the second to indicate their preferred system among several options;

That four electoral systems shall be presented to the public for greater discussion alongside PEI's current first-past-the-post system; these are a first-past-the-post system with the addition of seats for political party leaders which receive a certain threshold of the popular vote; the preferential ballot method of selecting members of the Legislative Assembly; mixed member proportional representation; and dual member proportional representation;

That a plebiscite on PEI's electoral system shall be supervised by Elections PEI, and that Elections PEI shall consider alternative methods of voting in the plebiscite;

That the right to vote in the plebiscite shall be extended to Island residents 16-17 years of age; and

That additional public consultation shall take place in January to March, 2016; a plebiscite question shall be drafted in April, 2016 and presented to the Legislative

Assembly in May, 2016; an educational campaign on the voting options appearing on the plebiscite shall be carried out from June to October, 2016; and in November, 2016 the plebiscite shall be held.

The committee will also consider additional parliamentary reforms suggested by witnesses and the *White Paper on Democratic Renewal*. These include improvements to the role of members, election financing, and political party activities. The committee will submit recommendations on these and other areas in addition to its recommendations on the plebiscite.

The interim report of the Special Committee on Democratic Renewal can be found at the committee's website, <http://www.assembly.pe.ca/democraticrenewal/>.

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### Changes to Cabinet

On January 7, 2016, Premier **Wade MacLauchlan** announced changes to the provincial Cabinet. **Doug Currie** moved from his portfolio of Health and Wellness; Family and Human Services to replace **Hal Perry** in Education, Early Learning and Culture. **Robert Henderson** and **Tina Mundy** were added to Cabinet in the portfolios of Health and Wellness, and Family and Human Services, respectively. Mr. Perry was not reappointed. Cabinet membership now stands at ten, whereas there were nine members prior to the changes.

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### Appointment of Assistant Sergeant-at-Arms

On November 12, 2015 **Brian Weldon** was appointed Assistant Sergeant-at-Arms via unanimous resolution of the House. Frederick Fordham had held this position until his retirement on November 5, 2015.

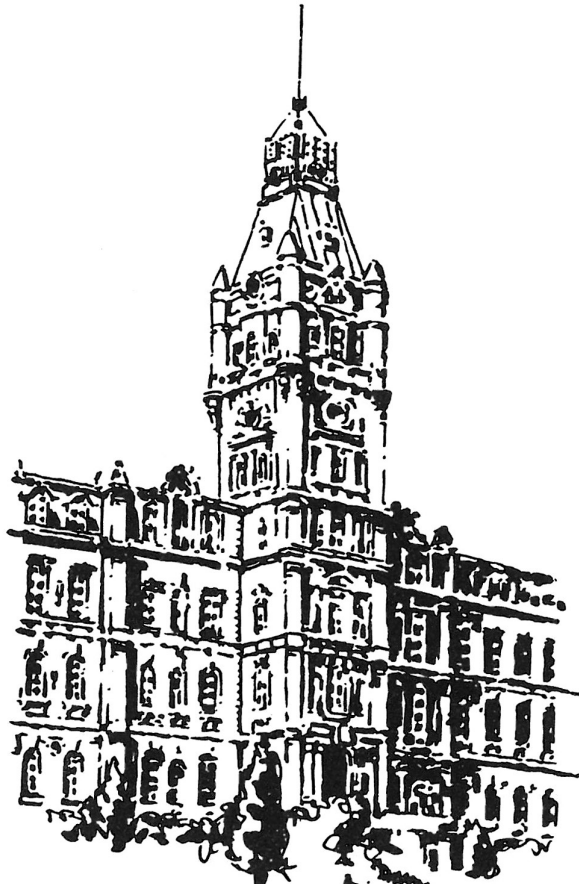
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### Table Officers In-Training

During the fall sitting, as a new initiative of the Office of the Clerk, committee clerks **Emily Doiron** and **Ryan Reddin** worked at the Table as Table Officers In-Training under the supervision of the Clerk and Clerk Assistant. Both found the perspective from the Table to be unique and highly enjoyed the experience. An historical first also occurred on November 19 when Ms. Doiron and Clerk Assistant **Marian Johnston** formed the first all-female staffing of the Table in the PEI legislature.

**Ryan Reddin**

Clerk Assistant - Research, Committees and Visitor Services



## Quebec

### National Assembly proceedings

#### *Composition of the Assembly*

On October 22, 2015, Parti Québécois MNA **Stéphane Bédard** handed in his resignation as Member for the electoral division of Chicoutimi. Furthermore, the following candidates were elected in the by-elections held on November 9, 2015: **Paul Busque**, Québec Liberal Party candidate in the riding of Beauce-Sud, **Monique Sauvé**, Québec Liberal Party candidate in the riding of Fabre, **Martin Ouellet**, Parti Québécois candidate in the riding of René-Lévesque, and **Dominique Anglade**, Québec Liberal Party candidate in the riding of Saint-Henri-Sainte-Anne. The new Members officially took their seats in the National Assembly on November 17, 2015.

The composition of the Assembly is now as follows: Québec Liberal Party, 71 Members; Parti Québécois, 29 Members; Coalition Avenir Québec, 20 Members; 4 independent Members, three of whom sit under the Québec Solidaire banner; and one vacant seat (electoral division of Chicoutimi).

#### *Bills passed*

During the sessional period that ended on December 4, 2015, the Assembly passed 21 bills (17 public and 4 private). Notable among these are:

- Bill 20, *An Act to enact the Act to promote access to family medicine and specialized medicine services and to amend various legislative provisions relating to assisted procreation*;
- Bill 54, *An Act to improve the legal situation of animals*;
- Bill 78, *An Act to regulate the granting of transition allowances to Members who resign during their term of office*.

#### *Directive and rulings from the Chair*

Among the directives given by the Chair, the directive of October 21, 2015, followed a question raised by the Deputy Government House Leader on October 6, 2015, concerning written questions that were made public before being published in the *Order Paper and Notices*. The Chair indicated that jurisprudence is silent on whether the content of written questions placed on the *Order Paper and Notices* may be disclosed before the *Order Paper and Notices* is published. However, decisions have been handed down on whether a bill can be made public before it is introduced in the Assembly. A Member may definitely disclose the subject of a bill he or she intends to introduce and even release a broad outline. However, given that written questions must be placed on the *Order Paper and Notices* and that the *Order Paper and Notices* is confidential until published, the text of a written question may not be disclosed before the *Order Paper and Notices* publication. This way, all Members—Cabinet members and others—receive this information at the same time. However, as in the case of a bill, nothing prevents a Member from discussing the subject matter of a written question.

On November 3, 2015, the Chair handed down a ruling on the receivability of a motion to divide moved within the framework of the passage in principle of Bill 59, *An Act to enact the Act to prevent and combat hate speech and speech inciting violence and to amend various legislative provisions to better protect individuals*. Parliamentary jurisprudence has often recognized that, for a motion to divide to be declared receivable, a bill must contain more than one principle and each bill resulting from the division must be coherent, complete and able to stand alone. It appears that Bill 59 contains



more than one principle. First of all, the title of the bill clearly suggests two distinct principles. Furthermore, the bill's structure highlights these two principles. Given the importance of both parts, the Chair concludes that they must be considered separately, as two essential components of the bill, and that the motion to divide moved by the Member clearly seeks to divide these principles into two separate bills. In light of receivability criteria, the motion to divide was declared receivable.

On November 17, 2015, the Chair gave a ruling following a request for an urgent debate on the upcoming reception of Syrian refugees by Québec. According to the Standing Orders of the Assembly and jurisprudence, the request concerned a specific subject that undeniably fell within the jurisdiction of the Québec State. Furthermore, recent developments in the situation and the security-related considerations raised by the Member showed that the situation had worsened and that the scope of the issue met the criteria established by jurisprudence. Moreover, the timeline for the reception of refugees showed that the issue was relatively urgent in nature. Given that this was the last week of regular proceedings and that priority had to be given to legislation in extended hours of meeting, the Members would not have had any other opportunity to discuss the matter. Therefore, the request for an urgent debate by the Member was receivable.

#### *National Assembly infrastructure improvement project*

On November 12, 2015, the Office of the National Assembly unanimously approved the National Assembly infrastructure improvement project. It provides for the construction of an underground hospitality pavilion, detached from the Parliament Building, allowing for security controls to be carried out outside of the current building, in addition to improving the Assembly's hospitality infrastructure. Substantial infrastructure upgrading work will be carried out and two committee rooms adapted to the needs of parliamentarians, the media and the public will be built. The Parliament Building will thus be safer, while remaining accessible and welcoming.

The National Assembly will cover the full cost of the project, estimated \$60.5 million cost and is not requesting any additional budget for its completion. Excavation work is scheduled to begin in spring 2016 and construction will be completed in spring 2019.

## **Standing committee proceedings**

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### *Public consultations*

A dozen public consultations were held in the fall and witnesses appeared before seven parliamentary committees to present their points of view.

Among the busier standing committees, the Committee on Labour and the Economy (CLE) held four public consultations during the fall sessional period. All of these consultations concerned public bills and dealt with matters such as the improvement of the regulation of tourist accommodation, supplemental pension plans and university-sector defined benefit pension plans. In the latter case, consultations began on December 1, 2015 and will continue when the House resumes in February. As regards the Committee on Transportation and the Environment (CTE), some forty witnesses expressed interest in sharing their positions on the Government's greenhouse gas emission targets for 2030, within the framework of an order of reference.

A number of orders of initiative were also held. The Committee on Public Finance (CPF) began hearing groups within the framework of its order of initiative on tax havens. Over a dozen experts, banking institutions and public bodies took part in the Committee's proceedings. Several Committee members also attended the TaxCOOP conference held in Montréal on November 3, 2015. TaxCOOP is an international conference on tax competition and the weaknesses of the current taxation system in the era of trade globalization and the web.

The Committee on Citizen Relations (CCR), on its own initiative, examined Aboriginal women's living conditions as affected by sexual assault and domestic violence, while the Committee on Institutions (CI) examined the restructuring plan announced by the Director of Criminal and Penal Prosecutions as well as the policy directions, activities and administrative management of the Anti-Corruption Commissioner.

### *Clause-by-clause consideration of bills*

More than 15 bills were examined by the standing committees between October and December. First, we should mention the conclusion of the clause-by-clause consideration of Bill 20, *An Act to enact the Act to promote access to family medicine and specialized medicine services and to amend various legislative provisions relating to assisted procreation*. The Committee on Health and

Social Services (CHSS) held a total of 28 sittings on this bill's clause-by-clause consideration, which began in May 2015 and ended on October 28, 2015. The Committee members subsequently examined two other bills, undertaking the examination of a legislative proposal on funeral operations and completing another on tobacco control.

The Committee on Agriculture, Fisheries, Energy and Natural Resources (CAFENR) set aside 14 sittings for the consideration of over 100 sections introduced by Bill 54, which concerned animal welfare. A total of 48 amendments that had been discussed by the parliamentarians were accepted and integrated into the bill. This examination followed up on the hearings held a few weeks earlier with some 40 interested parties within the framework of special consultations.

The members of the CI also set aside several sittings for the consideration of Bill 51, which introduces legislative changes with regard to the administration of justice. Members examined this bill during 11 sittings held between September 30 and November 10, 2015.

#### *Composition of committees*

Changes were made to the composition of the steering committees of three standing committees. The members of the CAFENR elected the Member for Labelle, **Sylvain Pagé**, as Committee chair. This election had become necessary owing to the resignation of **Stéphane Bédard** as Member for Chicoutimi on October 22, 2015.

The Member for Rousseau, **Nicolas Marceau**, was elected vice-chair of the CI on October 28 in place of **Jean-François Lisée**. The members of the CPF appointed Mr. Lisée to the position of Committee vice-chair, which had been left vacant by Mr. Pagé's appointment.

**Nicole Bolduc**

Parliamentary Proceedings Directorate  
Sittings Service

**Pierre-Luc Turgeon**

Parliamentary Proceedings Directorate  
Committees Service



## Saskatchewan

The fourth session of the twenty-seventh legislature closed on November 26, 2015. Seven bills received Royal Assent.

### Significant Legislation

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Several significant pieces of legislation were passed. *The MRI Facilities Licensing Act* will allow individuals to pay a private facility for an MRI scan. *The Saskatchewan Farm Security Amendment Act, 2015* clarifies who is eligible to own farm and ranch land in Saskatchewan and provides the Saskatchewan Farm Land Security Board with more power to enforce the legislation. *The Saskatchewan Employment (Essential Services) Amendment Act, 2015* brings current legislation in line with a recent Supreme Court ruling regarding essential services.

### Expanded Mandate for the Provincial Ombudsman of Saskatchewan

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Following an inquiry into a conflict of interest complaint regarding a former reeve of a rural municipality and a proposed development in that municipality, the legislature passed *The Municipal Conflict of Interest Amendment Act, 2015* to improve processes that address and prevent municipal conflict of interest situations. One of the changes expands the mandate of the Provincial Ombudsman to investigate complaints regarding council administrative processes, conflicts of interest, and code of ethics breaches at the municipal level.

## Canadian Parliamentary Association Canadian Region Parliamentary Seminar

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The Legislative Assembly had the honour of hosting the 37th Canadian Parliamentary Association Canadian Region Parliamentary Seminar from November 12 to November 15, 2015. Thirty-eight delegates attended from 11 Canadian jurisdictions.

Business session topics included *The Officers of the Legislative Assembly Standardization Amendment Act, 2015*, the 2015 Alberta election, respect for the rights of linguistic minorities in Canada, the Commission for Public Administration and Parliamentary Control, and the implications of fixed election dates.

### Upcoming Provincial Election

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The provincial election is mandated for April 4, 2016. This will be the first election since legislation passed in May 2013 to adopt redefined electoral boundaries and add three new constituencies. This will increase the total number of MLAs in the next legislature from 58 to 61. Eleven members have decided not to seek re-election in the upcoming election.

**Anne Drake**  
Committee Clerk



## House of Commons

The First Session of the Forty-Second Parliament opened on December 3, 2015, adjourning for the winter break on December 11, 2015. The House resumed sitting on January 25, 2016. The information below covers the period from November 1, 2015, to February 2, 2016.

## General Election and Party Leadership

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As a result of a federal general election on October 19, 2015, a majority Liberal Government was formed. On November 4, 2015, the new Ministry was sworn in at Rideau Hall, including 30 Ministers and **Justin Trudeau** (Papineau) as Canada's 23rd Prime Minister.

**Rona Ambrose** (Sturgeon River — Parkland) was elected as Interim Conservative Party Leader and therefore interim Leader of the Official Opposition following the resignation of **Stephen Harper** (Calgary Heritage) as Leader of the Conservative Party. After failing to win his own seat in Laurier Sainte-Marie, **Gilles Duceppe** resigned as leader of the Bloc Québécois and on October 22, 2015, **Rhéal Fortin** (Rivière-du-Nord) was named interim leader.

### Opening of Parliament: Election of a New Speaker and Speech from the Throne

The First Session of the 42<sup>nd</sup> Parliament opened on December 3, 2015. Its first order of business, pursuant to Standing Order 2, was to elect a new Speaker. **Louis Plamondon** (Bas-Richelieu—Nicolet—Bécancour), the Member with the longest period of unbroken service in the House, presided accordingly over the election of the Speaker, which was accomplished, for the first time, by means of a preferential ballot. After the counting of ballots, it was announced that **Geoff Regan** (Halifax West) had been elected as the 36<sup>th</sup> Speaker of the House of Commons, the first Atlantic Canadian to be elected to the position in nearly 100 years.

Over the course of the next few sitting days, the other three presiding officers were appointed, including **Bruce Stanton** (Simcoe North) as Deputy Speaker and Chair of Committees of the Whole, **Carol Hughes** (Algoma—Manitoulin—Kapuskasing) as Assistant Deputy Speaker and Deputy Chair of Committees of the Whole, and **Anthony Rota** (Nipissing—Timiskaming) as Assistant Deputy Speaker and Assistant Deputy Chair of Committees of the Whole.

On December 4, 2015, Governor General **David Johnston** delivered the Speech from the Throne in the Senate Chamber to open the 42<sup>nd</sup> Parliament and outline the Government's agenda. The Standing Orders provide for six additional days of debate on the motion and on any amendments proposed thereto. On December 11, 2015, the third of six days of debate, a second subamendment was moved to the motion for an Address in Reply to the Speech from the Throne.



This is a very rare occurrence but procedurally in order as the first subamendment had already been disposed of. The Speech from the Throne was adopted without amendment on January 27, 2016.

### Financial Procedures

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With fewer sittings due to the general election, the number of supply days in the period ending December 10, 2015, was reduced from seven to one sitting day in accordance with Standing Order 81(10)(b). Further, standing committees were not yet constituted to consider the Supplementary Estimates (B) for the fiscal year ending March 31, 2016, tabled on December 7, 2015. As a result, on December 9, 2015, following the adoption of a motion by unanimous consent the previous week, the House resolved itself into Committee of the Whole for the consideration of all Votes in the Supplementary Estimates (B), and following debate, the considered Votes were deemed reported. On December 10, 2015, it being the only and final day of the supply period, and further to concurrence in the Supplementary Estimates (B), Bill C-3, *An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2016*, was considered and adopted at all stages.

### Points of Order and Procedure

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On December 4, 2015, during debate on the motion for an Address in Reply to the Speech from the Throne, **Pierre Poilievre** (Carleton) rose on a point of order regarding the absence from Bill C-3, *An Act for granting to Her Majesty certain sums of money for the federal public administration for the financial year ending March 31, 2016*, which had been adopted the previous day, of the schedule containing the actual amounts in the supplementary estimates – this notwithstanding the fact that the Government had assured the House that the Bill was in its usual form. **Kevin Lamoureux** (Winnipeg North), the parliamentary secretary to the Leader of the Government in the House of Commons, speaking to the same point of order, informed the House that there was indeed an administrative error in the print of the bill that had been before the House. The Speaker informed the House that steps had been taken to remedy these administrative errors and that the Senate had been sent a corrected copy of the bill.

On January 26, 2016, **Mauril Bélanger** (Ottawa—Vanier) used text-to-speech software in the House of Commons. Mr. Bélanger has been diagnosed with amyotrophic lateral sclerosis (Lou Gehrig's disease)

and used the voice generating software on his tablet to introduce his private Member's bill, Bill C-210, *An Act to Amend the National Anthem Act (gender)*. This marks the first use of voice generating technology in the Chamber.

### Committees

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On December 4, 2015, the Standing Committee on Procedure and House Affairs was constituted. On January 28, 2015, **Dominic Leblanc** (Beauséjour), Leader of the Government in the House of Commons, appeared before the Committee to discuss his mandate letter and areas for parliamentary and procedural reform that the Committee could consider, including Question Period reform, limiting omnibus legislation, enhancing the effectiveness of committees and ways to modify the sittings of the House or voting times to allow for a more family-friendly schedule.

On February 2, 2015, **Marc Bosc**, the Acting Clerk of the House of Commons, appeared before the Standing Committee on Procedure and House Affairs to address initiatives towards a family-friendly House of Commons. The Acting Clerk provided an overview of past changes to the Standing Orders aimed at making the House more family-friendly, such as the elimination of evening sittings, modifications to voting times and the adoption of a fixed parliamentary calendar. Mr. Bosc also highlighted that technological advancements such as the e-notice system for written questions and motions have allowed Members to do a portion of their work remotely. Finally, he outlined areas for the Committee to consider during their deliberations, including further modifications to voting times, changes to days and times of sittings and the possibility of a parallel Chamber. In responding to questions, the Acting Clerk indicated that the impact of changes could be wide-reaching and touch many of the current procedures and practices. The Committee intends to pursue its study in the coming weeks.

On January 29, 2016, the Standing Committee on Procedure and House Affairs presented its First Report outlining the list of members and associate members for Standing Committees. The Report was subsequently concurred in by unanimous consent. The following week, committees began organizing with the election of committee chairs as the first order of business.

On December 11, 2015, it was agreed by unanimous consent that a Special Joint Committee of the Senate and the House of Commons be appointed to review

the report of the External Panel on Options for a Legislative Response to *Carter v. Canada* and other recent relevant consultation activities and studies, to consult with Canadians, experts and stakeholders, and to make recommendations on the framework of a federal response on physician-assisted dying. The committee met for the first time on January 18, 2016 and must present its final report no later than February 26, 2016.

### Other Matters

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On December 4, 2015, in recognition of the distinguished and faithful service of **Audrey O'Brien** as Clerk of the House of Commons, the House agreed to her designation as Clerk Emeritus and an Honorary Officer of the House of Commons with permanent entrée to the Chamber and a seat at the Table.

#### *Moments of Silence*

On December 4, 2015, Members observed a moment of silence in memory of the victims of the tragic events of December 6, 1989 at École Polytechnique in Montreal.

On December 8, 2015, during the debate on the subamendment to the Address in Reply to the Speech from the Throne, **Luc Berthold** (Mégantic—L'Érable) called for the observance of a moment of silence in commemoration of the victims of the July 6, 2013 tragedy in Lac Mégantic. He did not seek unanimous consent but the House spontaneously observed a moment of silence and this was noted in the Debates.

On January 25, 2016, Members observed a moment of silence in memory of the victims of the mass shooting at La Loche Community School in Saskatchewan. During the same sitting, Members observed a moment of silence in memory of the victims of the terrorist attacks in Burkina Faso and Indonesia.

#### *Technology*

Following the adoption of the 33<sup>rd</sup> Report of the Standing Committee on Procedure and House Affairs in the previous Parliament, the House of Commons began accepting electronic petitions on December 4, 2015. In addition to using the existing paper-based petitions system, Canadians are now able to create and sign petitions online and follow the progress of their electronic petition through the House of Commons e-petitions site. Government responses to electronic petitions will also be posted to the new website.

### *Organizational Changes*

**Luc Fortin**, Deputy Principal Clerk (Committees) and Table Officer, retired at the end of 2015. Effective January 2016, **Guillaume LaPerrière-Marcoux**, Deputy Principal Clerk (Information Management Group), and **Natalie Foster**, Deputy Principal Clerk (Table Research Branch), were appointed as Deputy Principal Clerks with Table Duty. **Scott Lemoine** was appointed Acting Deputy Principal Clerk (without Table Duty) for Committees.

**Stephanie Bond**  
Table Research Branch



## The Senate

The Senate was summoned by Proclamation to meet on December 3, 2015. On this initial day of the First Session of the 42nd Parliament of Canada, a new Speaker was appointed by the Governor General on the advice of Prime Minister **Justin Trudeau**. **George Furey** is a native of St. John's, Newfoundland, where he was an educator and lawyer. Before his appointment as Speaker, he was Deputy Chair of the Standing Committee on Internal Economy, Budgets and Administration.

In his statement on the appointment of Speaker Furey, the Prime Minister noted that the Senate would be undergoing important changes as it moved towards becoming a more independent and less partisan chamber. Speaker Furey demonstrated this by becoming an independent senator shortly after his appointment. Senators **John Wallace** and **Jacques Demers** have also recently become independents.

There is currently no Leader of the Government in the Senate. The government has indicated that it will choose a government representative from the first list of candidates submitted by the Independent Advisory Board for Senate Appointments. The lack of a government leader led to a question of privilege by Senator **Leo Housakos**. On February 4, 2016, the Speaker ruled that there was no breach of privilege as the appointment of a leader is a Crown prerogative.

Senator **Céline Hervieux-Payette** revived her question of privilege from last fall related to leaks of the content of the report of the Auditor General on Senate expenses. The Speaker ruled, on January 26, 2016, that a *prima facie* case of privilege had been established.

### **Committees and Legislation**

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The Standing Senate Committee on National Finance was created very early in the new session, with leave of the Senate and notwithstanding its Rules, so that the Supplementary Estimates (B) could

be studied at the earliest opportunity. The Committee of Selection met thereafter to nominate the Speaker *pro tempore* (Senator **Nicole Eaton**) and to recommend the membership of the Senate's standing committees. Two other committees have been established this session: the Special Joint Committee on Physician-Assisted Dying and the Special Senate Committee on Senate Modernization.

Within a few days of the start of the session, the Senate received Bill C-3, based on the Supplementary Estimates (B). Almost immediately after proceedings in the Senate began, the absence of a critical Schedule was noted. After a suspension, the Speaker explained that the Senate had received a defective bill and leave was granted to declare proceedings on the bill null and void. Leave was then granted to consider the correct version of the bill, received by message from the Commons, immediately at second and third reading. The Governor General subsequently came to the Senate to grant Royal Assent.

The Senate gave first reading to a raft of Senate Public bills and debate on most of these bills is ongoing. Bill S-201, *An Act to prohibit and prevent genetic discrimination*, was read for a second time and referred to the Standing Senate Committee on Human Rights for study.

**Céline Ethier**  
Procedural Clerk



# Paul Martin Sr.: 'A Good House of Commons Man'

Most remembered today for his leadership ambitions and signature programs from ministries he led, Martin was widely regarded as a strong parliamentarian and a 'good House of Commons man' in both government and opposition.

**Greg Donaghy**

Born over a century ago, Paul Martin Sr. is mostly remembered today for his strong attachment to his Windsor Ontario area riding and his vaunting ambition – he ran unsuccessfully for Liberal Party leader three times. Older Canadians might recall his major accomplishments: Canada's first citizenship act in 1946, the introduction of universal old age pensions in 1951, and laying the foundations for today's health care in 1956-57. He served as Secretary of State for External Affairs from 1963-68. But few now remember his deep commitment to Canada's Parliament, where he served from 1935 to 1974, or his reputation as "a good House of Commons man."

First elected in Essex East in 1935 (and re-elected in the next nine general elections), Martin was a shrewd and effective parliamentarian. Nicknamed "The Cardinal," he came into his own over the next decade and was a dominant House presence. Courteous and good-humoured, balancing every partisan riposte with soothing compliments, he rarely yielded ground willingly. When Tory MP General George Pearkes



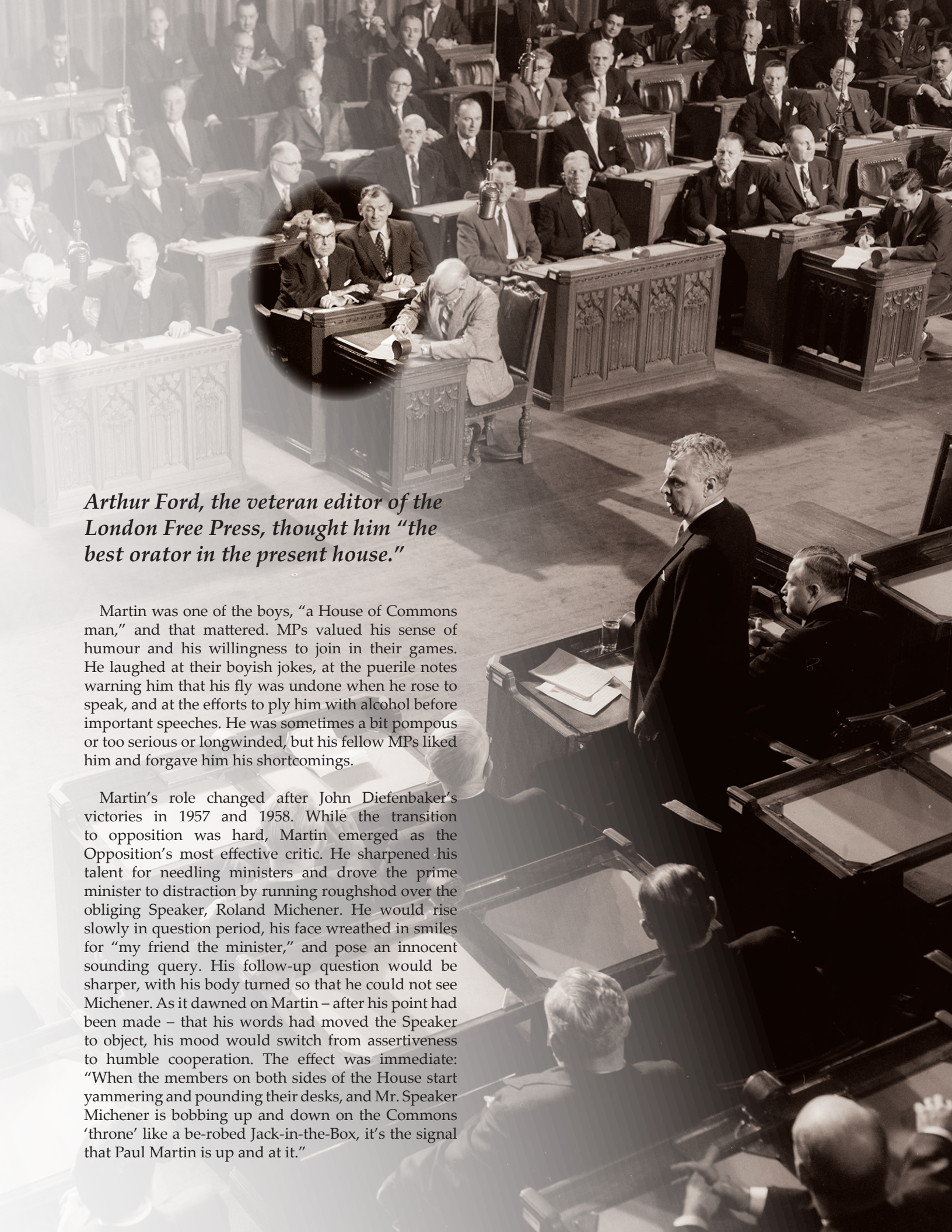
tackled him in committee, the General knew what was coming: "Now he's going to reply and I know what he'll do. He'll praise my war record and what I have done in other fields, and then he'll throw everything at me but that bust of Mackenzie King in the committee room." Margaret Aitken, Toronto columnist and Conservative MP, described Martin as the most "adroit" minister at handling probing Opposition members. "He manages to turn the question around so it becomes a plug for his department," she complained. "Every answer is a miniature speech."

*"The huge Conservative majority will sit still," marvelled journalist Richard Jackson, "and from this well regarded friend take such abuse as would be tolerated from no other member of the Opposition. It makes him the Liberals' fightingest member."*

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*Greg Donaghy is head of the Historical Section in Global Affairs Canada, and an adjunct professor in the Department of History at St. Jerome's University. His book *Grit: The Life and Politics of Paul Martin Sr.* was published by UBC Press in 2015.*





*Arthur Ford, the veteran editor of the London Free Press, thought him "the best orator in the present house."*

Martin was one of the boys, "a House of Commons man," and that mattered. MPs valued his sense of humour and his willingness to join in their games. He laughed at their boyish jokes, at the puerile notes warning him that his fly was undone when he rose to speak, and at the efforts to ply him with alcohol before important speeches. He was sometimes a bit pompous or too serious or longwinded, but his fellow MPs liked him and forgave him his shortcomings.

Martin's role changed after John Diefenbaker's victories in 1957 and 1958. While the transition to opposition was hard, Martin emerged as the Opposition's most effective critic. He sharpened his talent for needling ministers and drove the prime minister to distraction by running roughshod over the obliging Speaker, Roland Michener. He would rise slowly in question period, his face wreathed in smiles for "my friend the minister," and pose an innocent sounding query. His follow-up question would be sharper, with his body turned so that he could not see Michener. As it dawned on Martin – after his point had been made – that his words had moved the Speaker to object, his mood would switch from assertiveness to humble cooperation. The effect was immediate: "When the members on both sides of the House start yammering and pounding their desks, and Mr. Speaker Michener is bobbing up and down on the Commons 'throne' like a be-robed Jack-in-the-Box, it's the signal that Paul Martin is up and at it."



