

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.

