

# New and Notable Titles

A selection of recent publications relating to parliamentary studies prepared with the assistance of the Library of Parliament (August 2016 - October 2016)

Bagnall, David. "Reviewing the Standing Orders: How to make dreams come true." *Australasian Parliamentary Review*, 31 (1): 8-25, Autumn/Winter 2016.

- The purpose of this paper is to challenge all people who dream of modernising Parliament to engage with the process through which this can happen, and to provide the impetus for change.

Blackwell, Joel. "A constitutional storm in a teacup?: Delegated legislation, the House of Lords and the inadequacies of the Strathclyde Review." *The Political Quarterly*, 87 (3): 443-49, July-September 2016.

- In a year which has seen the government defeated in the House of Lords no less than 60 times, only one defeat – last October's controversial refusal by the Lords to approve a statutory instrument relating to tax credits – threatened a constitutional stand-off. That decision led to talk of a "constitutional crisis", with ministers arguing that the unelected upper chamber had no right to hold up a financial measure already approved by MPs.

Blunt, David, and Alexander Stedman. "The New South Wales Legislative Council's oral history project." *Australasian Parliamentary Review*, 31 (1): 131-38, Autumn/Winter 2016.

- Beginning in 2013, the Council held a series of interviews with former parliamentarians. This paper outlines the progress and outcomes of the resulting oral history project.

Bochel, Catherine. "Process matters: Petitions systems in Britain's legislatures." *The Journal of Legislative Studies*, 22 (3): 368-84, 2016.

- This article uses the concept of procedural justice, with its emphasis on the fairness of the process by which decisions are made, as an analytical tool to explore four case studies of petitions systems in British legislatures, considering, in particular, the extent to which they enable voice, decision-making and transparency.

Chabot, Geneviève. "Devolution, evolution, confusion: the constitutional status of the Canadian Territories and its potential implications for the duty to consult." *National Journal of Constitutional Law / Revue nationale de droit constitutionnel*, 36 (1) : 141-59, July/juillet 2016.

- The constitutional status of the Canadian Territories within the Canadian federation remains somewhat of an enigma for politicians and jurists alike, who, since their inception, have tried to sort the Territories into familiar constitutional boxes. A review of the recent case law in the area leads to the conclusion that although it has not been explicitly devolved by Parliament, the duty to consult and accommodate has been implicitly transferred from Parliament to the Territories.

Drum, Martin. "How well do parliamentary committees connect with the public?" *Australasian Parliamentary Review*, 31 (1): 42-59, Autumn/Winter 2016.

- This paper looks at how committees go about seeking public input into their inquiries, and whether they plan to broaden their methods of communicating with the public in the future.

Grace, Joan. "Presence and purpose in the Canadian House of Commons: the Standing Committee on the Status of Women." *Parliamentary Affairs*, 69 (4): 830-44, October 2016.

- In Canada, the Standing Committee on the Status of Women (SCSW) was established in the House of Commons in 2004 to report on relevant issues on the status of women. This article suggests that while the Committee contributed a gender presence and feminist voice, its inability to compel the government to act on recommendations rendered it a policy advocate rather than a catalyst for institutional innovation and gender mainstreaming.

Heintzman, Ralph. "Border-crossing: the PBO, PCO and the boundary of the public service." *Canadian Public Administration / Administration publique du Canada*, 59 (3): 357-81, September 2016.

- The Clerk of the Privy Council's (PCO) role in the 2012 confrontation with the Parliamentary Budget Officer is re-examined as a case study in the imperatives of public service leadership in a system of responsible government.

Kelson, Alexandra, Mark Bennister and Phil Larkin. "The shifting landscape of prime ministerial accountability to parliament: An analysis of Liaison Committee scrutiny sessions." *British Journal of Politics and International Relations*, 18 (3): 740-54, 2016.

- This article considers the accountability of the prime minister to parliament by analysing the emergence and development of the Liaison Committee evidence sessions.

Labelle, André. "What ever happened to legislative translation in Canada?" *Statute Law Review*, 37 (2): 133-43, 2016.

- In the 1980s, Canada abandoned the traditional method of drafting Federal legislation in English and translating it into French, and replaced it with what came to be known as *co-drafting*. After briefly reviewing some of the circumstances which led Canada, as a bilingual and *bijural* country, to adopt such a method, this article examines how this method compares to traditional translation in practice, how it has evolved over the past 30 years and the impact it has had on the preparation of bilingual legislation in Canada.

Lindquist, Evert and Chris Eichbaum. "Remaking government in Canada: Dares, resilience, and civility in Westminster systems." *Governance: An International Journal of Policy, Administration, and Institutions*, 1-19, August 2016.

- By 2015 concern had emerged about the trajectory of Canada's Westminster model and the state of democratic governance under successive Harper governments, particularly with respect to transparency and relationships with public servants, which among other things led to the election of the Trudeau government in October 2015. This article compares these developments with the wholesale reform experiences in Australia, New Zealand, and the United Kingdom.

McCormick, Peter. "'By the Court': the untold story of a Canadian judicial innovation." *Osgoode Hall Law Journal*, 53 (3): 1048-82, Summer 2016.

- What do the *BCE* case of 2008, the *Securities Reference* case of 2010, the *Senate Reform Reference* case of 2014, and the *Carter* (assisted suicide) case of 2015 have in common? All are unanimous decisions of the Supreme Court of Canada in which the reasons for judgment are not attributed to any specific named judge or judges on the Supreme Court, but rather to a mysterious entity called *The Court*.

Morley, Gareth. "Dead hands, living trees, historic compromises: the *Senate Reform and Supreme Court Act References* bring originalism debate to Canada." *Osgoode Hall Law Journal*, 53 (3): 745-98, Summer 2016.

- The Supreme Court of Canada has only twice referred to originalism—and never positively. But in two 2014 decisions about how central institutions of government - the Senate and the Supreme Court of Canada itself - might be changed, the Court relied on the underlying historic political compromises to interpret the Constitution, rejecting arguments from the text or democratic principle.

Nowak, Ann. "Demystifying ambiguity in legislative writing." *Statute Law Review*, 37 (2): 164-71, 2016.

- This paper (i) examines reasons for ambiguity in legislative writing as well as some of the problems that can be created by that ambiguity and (ii) offers strategies for avoiding ambiguity while drafting legislation, including the use of mathematical set theory to examine potentially ambiguous sentences.

Pal, Michael. "The fractured right to vote: Democracy, discretion, and designing electoral districts." *McGill Law Journal / Revue de droit de McGill*, 61 (2): 231-74, December/décembre 2016.

- Electoral boundary commissions and Parliament have recently transformed Canada's federal electoral map. The 2015 federal election was contested on a new map of 338 ridings, after 30 seats were added to the House of Commons by the *Fair Representation Act* and commissions set the boundaries of each district. The introduction of independent, non-partisan commissions in 1964

to draw the maps has achieved great success in eliminating the previously entrenched practice of gerrymandering. The extensive discretion granted to commissions to set boundaries, however, generates a new series of potential problems that can undermine the fairness of the electoral map.

Purser, Pleasance. "Overseas parliamentary news – July 2016." *New Zealand Parliamentary Library*, 5p.

- France - Measures to strengthen the National Assembly's ethics regime - The Bureau of the National Assembly has decided to ban the use of the word parliamentary to denote clubs or other structures created by lobbyists for the purpose of offering stakeholders an opportunity to engage with deputies.

Purser, Pleasance. "Overseas parliamentary news – August 2016." *New Zealand Parliamentary Library*, 6p.

- Australia – Privilege claimed over seized documents - A senator has claimed parliamentary privilege over material seized by the police in a search of documents on the Parliament House computer servers.

Purser, Pleasance. "Overseas parliamentary news – September 2016." *New Zealand Parliamentary Library*, 7p.

- United Kingdom – Use of Royal Prerogative to trigger Brexit - After a ruling by the High Court, the government disclosed its argument in the case that has been brought to challenge the government's intention to use the Royal Prerogative to trigger Brexit.

Reynolds, Daniel and George Williams. "Petitioning the Australian Parliament: Reviving a dying democratic tradition." *Australasian Parliamentary Review*, 31 (1): 60-79, Autumn/Winter 2016.

- This article examines the right to petition in Australia's federal Parliament with a view to determining whether reforms like those undertaken in other jurisdictions should be adopted.

Schmitz, Gerald. "Commentary – Renewing Canadian foreign policy as if parliamentary democracy matters." *Canadian Foreign Policy Journal*, Forthcoming, 2016.

A former Library of Parliament analyst says Canada needs creative thinking to be successful in an enormously complex global environment.

Taft, Jordan. "From change to stability: Investigating Canada's Office of the Auditor General." *Canadian Public Administration / Administration publique du Canada*, 59 (3): 467-85, September 2016.

- Through its audits and recommendations, Canada's Office of the Auditor General (OAG) has promoted financial probity and good governance for over a century. While OAG recommendations may have inherent value, their full value is realized only when implemented by government. By investigating implementation rates and the OAG's interaction with Parliament, this paper evaluates whether OAG performance and interactions with Parliament have changed over time.

Walker, Charles (Chair). "Private Members' Bills: Observations on the Government response to the Committee's Third Report of Session 2015-16 HC 684". *House of Commons Procedure Committee - Second Report of Session 2016-17 - Report*, together with formal minutes relating to the report. HC 701: 27p. Published on 18 October 2016.

- The Procedure Committee believes that too often the present system for considering legislation promoted by backbenchers operates in a way which manifestly misleads the public. This Committee and previous Committees have suggested many sensible and modest reforms, but nothing of any significance has happened. In this report we return to a limited range of proposals for reform which we believe the House should trial.