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The New Senate: Still in Transition... p. 2

Know Your Mace

The Mace of the Québec National Assembly was made in 1867 by jeweller Charles O. Zollikoffer. It is decorated with acanthus and lotus leaves. Its cup is surmounted by a crown decorated with a cross and the letters "ER" for "Elizabeth Regina".

Originally saved from the Parliament Building fire in 1883, some of its decorative elements were unfortunately later removed following rudimentary repairs. The crown was modified and the initials "ER" were added to it after 1952.

Considered anachronistic, the Mace almost disappeared from the House during the parliamentary reforms of the 1960s. The presence of symbols linked to British tradition in the Québec Parliament was called into question at the time. The Mace was then stolen by students in 1967: pulling daring pranks of the sort was a tradition at that time, especially during the Québec Carnival. Today, it is stored in a secure location in the office of the Sergeant-at-Arms or that of his Deputy.

Beyond the work of art, the Mace is a powerful symbol of deep-rooted parliamentarism. It reflects a secular tradition shared by many British-style parliaments all over the world that it unites in a common experience.

Frédéric Lemieux,
National Assembly of Quebec

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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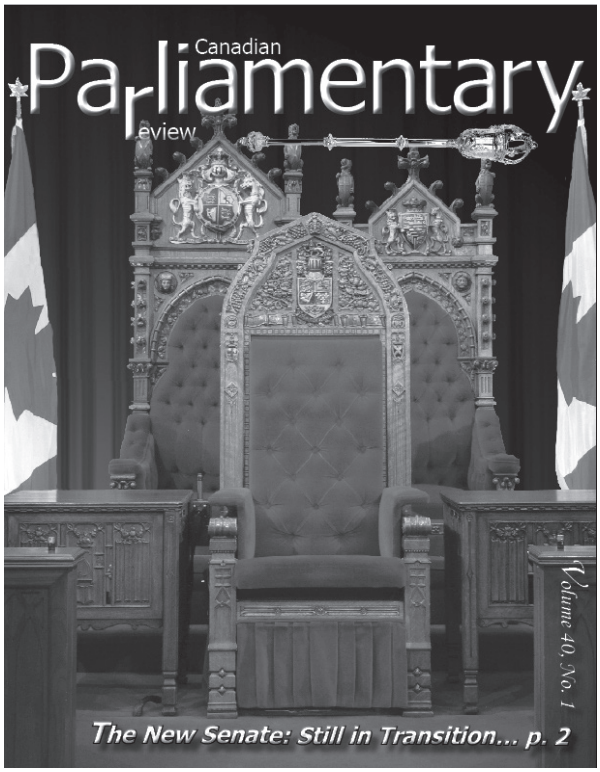


Feature

The New Senate: Still in Transition

Over the course of the past two years, a confluence of events has dramatically altered Canada's Senate. The upper chamber's response to the Auditor General's Report on Senators' Expenses, the absence of a government caucus in the Senate at the start of the 42nd Parliament, and a new appointment process that brought in a significant number of Independent senators have all contributed to institutional change. In this article, based on his remarks to the 34th Canadian Presiding Officers Conference, Senator George J. Furey provides some observations of the impact of these events from his unique vantage point as Speaker. While acknowledging that these changes have created some tensions, he concludes that this transition can be defined by openness, flexibility, adaptability and a general willingness to move forward slowly without forcing permanent rule changes until the landscape is better defined.

Hon. George J. Furey

After decades of reform proposals, a recent change has had a significant impact on the Senate. This change is reducing the partisan character of the Senate and making it a more independent, non-affiliated and deliberative body. What is curious about this change, is that it was achieved by non-constitutional means.

For years, proposals to reform the Senate to make it elected, to limit the mandate and to change the level of representation of each province went nowhere and as we now know, for good reason. The Supreme Court of Canada's decision on the Senate reference in April 2014, noted that any substantive reform of the Senate along these lines would require at a minimum support of seven provinces representing 50 per cent of the Canadian population. The abolition of the Senate would require unanimity. None of this is likely to happen soon. Yet a significant change that has already improved the image of the Senate was achieved by an approach taken by the current government to implement a new non-partisan, merit-based process for Senate appointments. This change did not require any sort of statutory approval, but was done within the framework of the Prime Minister's Office.

Hon. George J. Furey

The Honourable George J. Furey is an unaffiliated senator from Newfoundland and Labrador. He was appointed to the upper chamber on the advice of Prime Minister Jean Chretien in 1999. He became Speaker of the Senate in 2015.

The new appointment process was applied to fill the large number of vacant seats left by the previous government. One might say that timing and circumstances lent themselves to the "real change" that was promised for the Senate. After all, there were 22 vacant seats in the Senate when Prime Minister Trudeau's government took over in October 2015.

Another important factor reinforcing the impact of the large number of appointments was the fact that the Senate, itself, was addressing the fallout from the *Report of the Auditor General of Canada to the Senate of Canada on Senators' Expenses*. In the lead-up to Autumn 2015, invaluable work had already been accomplished by the Standing Committee on Internal Economy, Budgets and Administration, to make the Senate more accountable and transparent.

The Senate now has an online attendance register, as well as a new expense disclosure model which provides more information on travel expenses, service contracts and hospitality expenses. We can expect that over the course of the coming year an independent oversight body will be established. The Communications Directorate has been completely restructured to provide more robust coverage of the work done by the Senate and senators.

Paralleling these changes, a Special Committee on Senate Modernization is considering methods to update our practices and to improve the Senate's capacity to work as a complementary body in our bicameral parliament. The active work of this committee further supports that the senators themselves are fully engaged in the transformation they believe is underway.

We have a convergence of events that, combined, have been very dramatic. The senators themselves feel it and the media has taken notice of it.

Phase 1 – Early Transition (October 2015 to June 2016)

During the first four months of the 42nd Parliament, there was no government presence in the Senate. The Senate Independent Liberals generally helped with government business in an informal capacity. In the history of the Senate, this was an unprecedented role for a political group that did not participate in caucus with the governing party in the House of Commons. This situation gave rise to a question of privilege which I ruled against. In some ways, the ruling helped remind senators that they had already demonstrated their capacity to be flexible and to adapt in ways to function and to work effectively.

For example, with respect to Question Period, we had no leader and no ministers to answer questions. We therefore decided to invite a minister once a week to respond to questions for 30 minutes. This practice has now become widely accepted and the period of time has been expanded to 40 minutes. The result has been a focused exchange between senators and the invited minister on the business of his or her portfolios.

Independent Advisory Board on Senate Appointments

In January 2016, the Independent Advisory Board on Senate Appointments, which was mandated to provide merit-based recommendations on Senate nominations, was established. During what was termed a "transitional phase", the first seven Senate vacancies were filled in March 2016 after broad consultation between the Board and the three provinces with the greatest number of vacancies in the Senate (two from Manitoba, three from Ontario and two from Quebec). All of these new senators agreed to be independent and to not be aligned with a party caucus.

In some ways the appointment of the seven provided an indication of what might actually happen through this transformation. It in itself was not enough to challenge the Government/Opposition model, but it did give rise to tensions in the house.

Government Representation

As part of its commitment to an independent non-partisan Senate, the government chose to identify one of the new appointees as the Government Representative rather than the Government Leader. Senator Peter Harder was named to this position shortly after he was appointed. As Senator Harder explained, he is the voice of the government in the Senate and he is also the voice of the Senate to the government.

Shortly after Senator Harder assumed his responsibilities as Government Representative, two other senators were identified by him as Legislative Deputy to the Government Representative in the Senate and Government Liaison. The Legislative Deputy is Senator Diane Bellemare who was formerly a Conservative before becoming an Independent. The Government Liaison is Senator Grant Mitchell who was a Senate Liberal prior to becoming an Independent.

The appointment of these two prompted a point of order which led to a decision by me with respect to the flexibility in titles. In making my ruling, I also referenced decisions from the House of Commons. In this decision, contrary to normal practice, I chose to elaborate on examples demonstrating the history of this flexibility. The benefit of this approach was that it helped to diffuse the force of the debate and helped settle the house.

Bill C-14

The Senate's capacity to be flexible was not limited to this adaptation of titles in leadership positions. It was also used in working out the debate on third reading of C-14, the medically assisted dying bill. An exceptional meeting took place, involving all interested senators, to discuss how the debate at third reading should be structured. The result was a special order that allowed for open debate on third reading. Senators could intervene more than once and therefore move targeted amendments. This was very different from our normal third reading process but allowed for a coherent, focussed debate. It mimicked, in some ways, the clause-by-clause consideration that takes place in committees.

This experience turned out to be deeply rewarding for the entire Senate. We were proud of the quality of the debate for many reasons. There was a very healthy and frank exchange among the members that did not depend overtly on partisan identity but rather reflected the views of the senators who spoke. The debate on the bill was reasoned, measured and extremely personal for many. This could, perhaps, prove to be a model or example of how an independent Senate might behave when considering legislation and public policy.

Committee Memberships

While the Senate was able to deal with C-14 in a collaborative and effective way, some tensions in the Chamber were still apparent. Committee memberships and substitutions, for instance, were issues for senators who did not belong to a recognized party and did not fall under the responsibility of the whip of one of the parties or of the government. Under the current rules, the Independent senators, with no caucus, were in practice excluded from membership on committees. This was a cause for tension.

After extensive negotiations and discussions, the Selection Committee presented a report in June 2016, allocating two seats for Independents on each of the Standing Committees. The report was adopted on division. The presence of seven additional Independents had started to shift the dynamics in the Chamber enough for a difference to be felt.

Independent vs. Non-affiliated

Even as we came up with some solutions, there remained other problems that didn't allow the tension to fully dissipate. during its work on the issue of proactive disclosure, the Internal Economy Committee made a decision that the Independents would be identified as non-affiliated in all related documents. Done without consultation – the Independents were annoyed. A senator raised a question of privilege which lead to another decision in which I tried to mediate relations between the caucus senators and the Independents.

Phase 2 – Further Adaptations and the Second Wave (September 2016 to December 2016)

The Independent Senators Group

When the Senate resumed after the summer adjournment, the transition process continued. As of late September, 15 Independents had chosen to identify themselves with the Independent Senators Group (ISG), a group set up in March. As stated by the group's "Facilitator", a past Alberta PC cabinet minister, Senator Elaine McCoy, the members of the ISG have individual autonomy in exercising their parliamentary duties. Yet they understand that ensuring the Senate functions smoothly is a shared and collective responsibility. The group is now funded and has a secretariat to support its efforts. As of December 2016, the number of ISG members had risen to 33.

Innovations in Scroll Meetings

Logistically, the increased representation of the various groups in the Chamber had a significant change in the planning meetings for each sitting. During these meetings, representatives of the leaderships meet to review the Order Paper and Notice Paper, and share information about which items are likely to be spoken to and possibly decided.

With the changes that have occurred in the Senate, there is a much larger group of people participating in these meetings. In addition to the Legislative Deputy to the Government Representative, and the Deputy Leader of the Opposition, the Deputy Leader

of the Senate Liberals and a representative of the Independent Senators Group are also in attendance, along with their staff. While the senators continue to share information regarding how they anticipate the sitting unfolding, there is a significantly higher level of uncertainty and unpredictability, as the discipline imposed through political caucuses diminishes. This adds to the challenges of being Speaker, as I am often faced with unexpected events in the Chamber.

The Second Wave

The Senate composition changed dramatically in November and December 2016, when 20 new senators were appointed under the permanent phase of the appointment process, which was open to all Canadians. As the Independents grew to 42 members, pressure mounted for further adjustment to more fully and accurately reflect the emergence of the Independents as a large – and now the largest – group in the Senate. This applied in particular for representation on committees.

Full Representation on Committees

On December 7, 2016, a sessional order regarding committee memberships was moved by the Leader of the Opposition and, with leave, seconded by the Government Representative, the Senate Liberal Leader and the ISG Facilitator. This was unprecedented. It demonstrated a general agreement, and a clear commitment from all groups to properly accommodate the Independents.

The motion renewed the membership of the Committee of Selection. It increased the size of the committees and the number of seats for Independents to better represent their numbers, and established a comprehensive system for committee membership changes. The motion was adopted unanimously and, pursuant to the order, the Selection Committee met and proceeded with the nomination of senators to sit on committees. The committee presented a report to the Senate in short order. It was adopted the following day and resulted in renewed memberships that closely reflect the current proportions within the Senate.

The sessional order is valid for the remainder of the current session or until October 31, 2017, whichever comes earlier. Of course, as the Senate continues to evolve, committee memberships may need to be re-evaluated, and there may well be an openness to this.

Bill C-29

In this new period of accommodation, it is interesting to consider what was happening in terms of the legislative agenda at the time of these 20 appointments. Bill C-29, the second *Budget Implementation Act* (BIA), was an example of openness, sober second thought and collegiality. The Senate amended the bill to remove controversial provisions dealing with consumer and provincial rights specific to banks. Senators met in a spirit of collaboration, with the goal of upholding our country's principles and protecting Canadian consumers. The Senate upheld its constitutional role as a forum for considered reflection and review. It did not allow partisan considerations to overwhelm the Senate's ability to conduct its legislative review. Ultimately, the House of Commons agreed with the Senate's recommendations. It is difficult to imagine that such a major change to a BIA would have occurred in the past.

Conclusion

The structure the Independents will eventually assume has yet to be determined. Will they form a generally cohesive grouping organized like a caucus, or will they act alone as individuals and/or come together in some way on an *ad hoc* basis? Will they choose to remain non-partisan or group together on a regional, professional, linguistic, or other basis?

In incorporating a growing number of Independents into the Senate structure, changes in the way the Senate operates have occurred and will probably eventually require amendments to our procedural rules to ensure that the institution continues to conduct business effectively. Change is never easy and tensions have certainly been evident throughout this period of transformation. However, this transition can be defined by openness, flexibility, adaptability and a general willingness to move forward slowly without forcing permanent changes to the *Rules of the Senate* until the landscape is better defined. It is a time of reflection and, on occasion, a time of tension. It is also a fascinating period to be observing, and assisting colleagues from the Speaker's chair.

Feature

Who Speaks for Parliament?: Hansard, the Courts and Legislative Intent

Two significant Supreme Court rulings from the 1990s have opened the door to using Hansard Debates to divine a parliament's intent in court cases which challenge understandings of laws. Although the Supreme Court rulings stressed that use of Hansard as a source in legal proceedings should be strictly limited, subsequent lower courts have not always observed these limits. In this article, the author outlines these developments and explains how the more liberal use of Hansard in courts can be problematic. He concludes by cautioning parliamentarians to be mindful of how the words they use during debate may be used by the courts in the future, and urges the courts to consider how some parliamentarians might begin using their speeches in parliament to win in court what they could not in a legislature.

Graham Steele

When we're speaking in our assembly, we have to imagine who the audience will be: constituents, activists, lobbyists, researchers, eventually perhaps historians.

There is one audience that probably does not get enough attention from members, and it should: the courts. Our courts may look at Hansard, sometimes many years after the words were spoken, when they are trying to understand the purpose and meaning of legislation. One legislative speech, even one sentence in a speech, can have far-reaching consequences.

There was a time when the courts would not even look at Hansard, but that rule has been relaxed in recent years. The modern principle laid down in a pair of Supreme Court of Canada decisions is that Hansard can be used in court, but should not be given much weight.

Despite this cautionary rule, my study of recent court cases in Nova Scotia shows that the courts refer to Hansard much more regularly than one would expect.

Graham Steele

In this article, I'll sketch the legal rules about how Hansard is used, why the courts should be more cautious, and the implications for members.

Graham Steele teaches in the Faculty of Management at Dalhousie University. After eight years practicing law, he became a political staffer in 1998, then served as an MLA for Halifax Fairview in the Nova Scotia House of Assembly from 2001 to 2013. He was Nova Scotia's finance minister from 2009 to 2012.

The Legal Rule

On the use of Hansard in courts, there are two key Supreme Court of Canada decisions: *R. v. Morgentaler*[1] in 1993, and *Re Rizzo & Rizzo Shoes*[2] in 1998.

Dr. Henry Morgentaler was charged under the Nova Scotia *Medical Services Act* with performing abortions outside a hospital. He challenged the constitutionality of the law, arguing it was a criminal law, and therefore outside the province's authority.

The Supreme Court of Canada agreed with Morgentaler. In reaching its conclusion, the court considered (among many other considerations) whether Hansard evidence is admissible. The court traced the early rejection of Hansard evidence, and the more recent relaxation of that rule:

> The former exclusionary rule regarding evidence of legislative history has gradually been relaxed (*Reference re Upper Churchill Water Rights Reversion Act*, [1984] 1 S.C.R. 297, at pp. 317-19), but until recently the courts have balked at admitting evidence of legislative debates and speeches. Such evidence was described by Dickson J. in *Reference re Residential Tenancies Act, 1979, supra*, at p. 721 as "inadmissible as having little evidential weight", and was excluded in *Reference re Upper Churchill Water Rights Reversion Act, supra*, at p. 319, and *Attorney General of Canada v. Reader's Digest Association (Canada) Ltd.*, [1961] S.C.R. 775. The main criticism of such evidence has been that it cannot represent the "intent" of the legislature, an incorporeal body, but that is equally true of other forms of legislative history. Provided that the court remains mindful of the limited reliability and weight of Hansard evidence, it should be admitted as relevant to both the background and the purpose of legislation. (Emphasis added.)

The last, underlined sentence is the one most commonly cited with respect to Hansard evidence.

As a result, the court in *Morgentaler* considered a ministerial statement by the health minister; remarks by the health minister in the budget debate; and second-reading speeches by the health minister, the opposition health critic, and an opposition backbencher. All of this aided the court in deciding whether the impugned law was indeed a criminal law.

The other leading Canadian case on the judicial use of Hansard is *Rizzo*.

At the heart of *Rizzo* was a question of statutory interpretation. When a company went bankrupt, did the Ontario *Employment Standards Act* apply so as to entitle employees to termination pay, vacation pay and severance?

The court concluded that it did. Justice Iacobucci found support for his interpretation in two statements made in the Ontario legislature by the labour minister, Dr. Robert Elgie. He also makes a brief aside, citing *Morgentaler*, about whether Hansard is admissible at all:

> Although the frailties of Hansard evidence are many, this Court has recognized that it can play a limited role in the interpretation of legislation.

The significance of *Rizzo* is that it takes the idea laid down in *Morgentaler*, and expands it beyond constitutional cases. The rule now applies to every question of statutory interpretation.

In *Rizzo* itself, Justice Iacobucci was very restrained in his use of Hansard. There are three noteworthy elements to his approach:

- Only the bill's sponsoring minister is quoted.
- The quotations are brief.
- The quotations support an interpretation reached by other means.

This approach is a model for other courts.

Why the Courts Should Be Cautious

In *Rizzo*, Justice Iacobucci for a unanimous court noted that "the frailties of Hansard evidence are many" but did not enumerate those frailties. I will list a few that occur to me, based on my 12 years in an assembly.

First, Hansard is a good record, but it is not perfect. I believe that the majority of Hansard does faithfully capture what was said. But very occasionally, I would glance back at what I was reported to have said, and be dismayed at the errors. In Nova Scotia, there is no formal procedure for correcting errors.

Second, Hansard may not capture the *sense* of what is being said. Like any transcript, the words on the page may be literally accurate, yet miss what the speaker was conveying. Humour, sarcasm, emphasis, tone, body language, gestures, and reactions from the audience are essential to the speaker's meaning, but they are absent from a transcript.

Third, punctuation and paragraphing can change the meaning of a sentence. The Hansard staff are transcribing oral speeches. They have to guess where the speaker would put a colon, a dash, or a paragraph break. Unless the speaker is explicit, it may not be evident that the speaker is quoting from something or someone else, or where the quotation begins and ends.

Fourth, the fundamental purpose of speeches in the House is partisan. Of course there are exceptions, but there is very rarely meaningful debate in the sense of persuading other members of one's position. Members' minds are virtually always made up when they walk through the door. Speeches are intended to characterize the content of a bill for political purposes, not to win anyone over.

But the most fundamental frailty of Hansard evidence is the one alluded to by Justice Sopinka in *Morgentaler*, quoted earlier in this paper: "The main criticism of such evidence has been that it cannot represent the 'intent' of the legislature, an incorporeal body." An elected assembly is a multi-member body. It is a concept. It cannot have an intention, any more than a neighbourhood or a sporting club can have an intention.

Nevertheless, the search for legislative intent is at the heart of statutory interpretation. Recall Driedger's modern rule of statutory interpretation, cited approvingly in *Rizzo* and over one thousand other judicial decisions:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. (Emphasis added.)

Every province, and the federal jurisdiction, has an *Interpretation Act* which also encourages a search for the assembly's "intent" or "objects".[3]

The concept of legislative intent makes the most sense when it is taken as a metaphor. The courts imagine the elected assembly as a single person, who is presumed to be knowledgeable about the law; knowledgeable about the subject-matter of the bill; logical, concise, and reasonable. That metaphorical legislator is good at their job and knows what they're doing.

All of the problems associated with the use of Hansard evidence arise when the courts take the metaphor too far; that is to say, when they take it literally, and start searching for legislative intent in the words of real flesh-and-blood individuals.

After all, who speaks for the assembly? Nobody. That is why the courts will always struggle with their use of Hansard evidence. In most cases, the courts slide over the absence of a spokesperson with two leaps of logic: they take the intention *of the minister* and call it the intention *of the government*; and then they take the intention *of the government* and call it the intention *of Parliament*. But they are not the same thing.

Of all the members in the assembly, the sponsoring minister is in the best position to speak knowledgeably to the substance of a bill. The minister's speech on second reading is typically the fullest statement in the House about the purpose of the bill, and about any noteworthy details of policy or drafting. The minister is the spokesperson for the government on that bill. By implication, the minister's intention is shared by all members on the government benches who will vote for the bill.

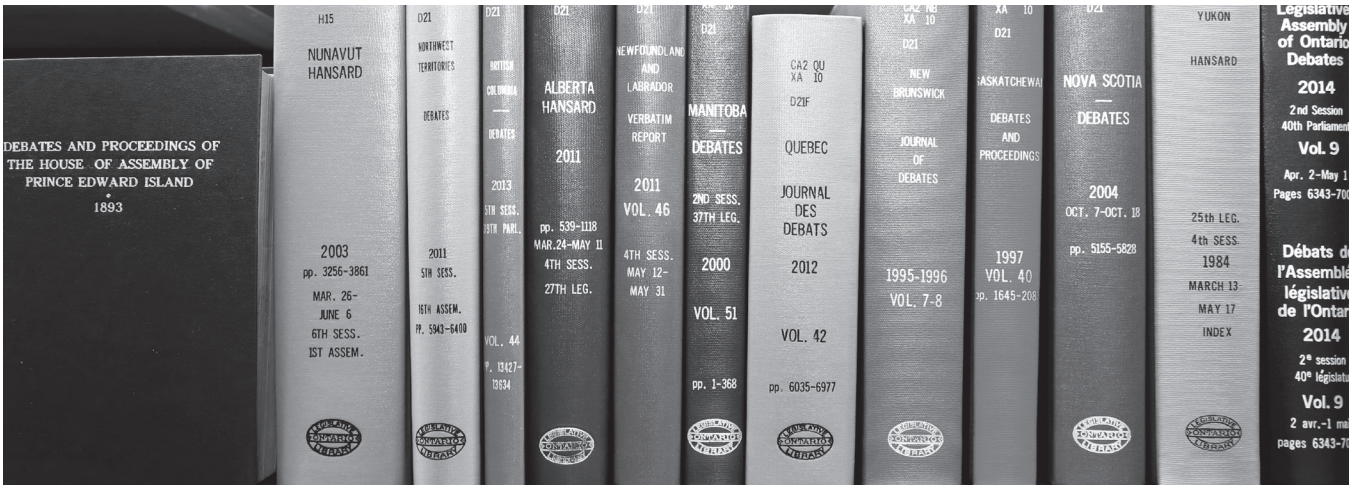
Although the minister's speeches are most likely to be substantive, we still need to be cautious. The intentions of the other members can be all over the map. Some may have a different understanding of the bill. Others may have no understanding at all, and merely wish to vote with their party.

Moreover, political speech is a different beast altogether than sworn testimony in a courtroom. Even sponsoring ministers can have all kinds of motivations for saying what they say. Maybe a deal has been done. Maybe the government is deliberately using ambiguity to win support for legislation. Maybe the sponsoring minister doesn't really believe that the bill does what he says. Maybe the minister doesn't understand the bill at all. These and a thousand other scenarios make Hansard a slippery foundation for subsequent judicial decisions.

The Courts Aren't Cautious Enough

The legal rule is clear enough. The frailties of Hansard are many. The reasons for caution are abundant.

Nevertheless, I had an inkling that the courts looked at Hansard evidence with rather more abandon than the cautionary rule in *Morgentaler* and *Rizzo* rule would suggest. To test that inkling, I studied all citations of Hansard in Nova Scotia's courts for the period 2004-



Albert Besteman

Graham Steele suggests that courts using Hansard in order to determine legislative intent are not exercising sufficient caution and restraint. As politicians become increasingly aware that words in parliamentary debate carry weight in court, he suspects they "may well shape their speeches to try to win in court what they could not win in the legislature."

2014. The same sort of study could be done in any other jurisdiction.

My findings were that Nova Scotia's courts are straying well beyond the restrained use of Hansard evidence suggested by *Morgentaler* and *Rizzo*.[4]

In fact, in most of the cases where Hansard is cited, there is no reference to *Morgentaler* or *Rizzo* at all. Perhaps this is the root of some of the difficulties. If one does not remind oneself of the cautionary rule, there may be a tendency to admit Hansard evidence too readily and weight it too heavily. I'll illustrate that point with two specific Court of Appeal decisions.

In *R. v. Carvery*,[5] the court appeared to open the door to a wide range of legislative evidence.

Justice Beveridge, writing for a unanimous court, was considering whether 2009 amendments to the Criminal Code, known as the *Truth in Sentencing Act*, justified a quasi-automatic 1.5:1 credit for pre-sentence custody. To find the intent of Parliament, Justice Beveridge turned to the grammatical and ordinary use of the words; the scheme of the Act; and the object of the legislation. It is in this last category that he came to legislative history, and Hansard.

"Legislative history of an enactment consists of everything that relates to the conception, preparation and passage of the legislation," wrote Justice Beveridge. This is, on its face, remarkably broad. We have gone well beyond a minister's second-reading speech on the bill. Everything done or said, at any stage of the proceedings, is potentially relevant.

Ironically, such a broadly-stated principle was unnecessary for Justice Beveridge's decision. The Hansard material he actually used was quite limited. When the case went to the Supreme Court of Canada on appeal, that court used only a single quotation from the sponsoring minister.[6] It was, in other words, a model use of Hansard.

A second case illustrates the difficulties that are created when the court ranges widely through Hansard.

At issue in *Hartling v. Nova Scotia (Attorney General)*[7] was the legality of limits imposed on general damages for a "minor injury" suffered in motor vehicle collisions. Three plaintiffs challenged the constitutionality of the law, and they also challenged whether the "minor injury" regulations were authorized by the legislation.

The Chief Justice, writing for the court, uses three quotations from Hansard. The first quotation is from the sponsoring minister's second-reading speech. This comfortably fits within the model use of Hansard. But the next two quotations are from the third-party Liberals: a second-reading speech and a third-reading speech.

How can an opposition member speak to the intention of a bill that is drafted and introduced by someone else? At the time, the Liberals held only 12 seats in a 52-member assembly. Even if the statements made by

Liberal MLAs can be taken as expressing the intent of all 12 Liberals – something that could be problematic in itself – how can they be taken as expressing the intent of the government, or of the legislature?

There are plausible answers to those questions, but Chief Justice MacDonald does not address them explicitly. One must read between the lines. The Chief Justice does mention twice that there was a minority government, but he does not spell out why that is significant.

Because I was there, I know why it is significant. In order for Bill 1 to pass, the government had to attract the support of one of the two opposition parties. The NDP said it would not support Bill 1. That left only the Liberals as a potential partner, but the Liberals were not happy with the original definition of "minor injury." They believed it to be too broad. Negotiations ensued between second and third readings. Bill 1 was subsequently amended. The Liberals voted for the bill as amended. Thus the Liberal MLA's speech on third reading was significant because it expressed the Liberals' view of what the amendments were intended to achieve.

The difficulty is that the Liberal MLA's speech – indeed, any speech recorded in Hansard – is a political speech, not sworn evidence. A political speech can have multiple motivations, including making one's party look as good as possible, or making the best of a bad situation. Telling the truth, the whole truth, and nothing but the truth is not necessarily one of a politician's motivations when speaking to a controversial bill.

To put it gently, there are alternative readings of the facts just as plausible as the Hansard evidence accepted at face value by the Chief Justice.

Implications for Members

Members need to be aware that their words may end up being dissected in a courtroom. Their words in Hansard are admissible in the courts' search for legislative intention. That is especially true of the sponsoring minister.

The sponsoring minister should therefore be ever mindful of the potential impact of his or her words, especially on second reading. The minister's words will be taken as stating the intention of the government, and if the bill passes, as stating the intention of the legislature. That is a weighty responsibility. The second-reading speech should be drafted accordingly.

My own experience, however, is that ministers are rarely thinking about the *judicial* implications of their second-reading speeches. Ministers are more commonly thinking of their *political* audiences. Indeed, there may be a political imperative to keep key points quiet or fuzzy. That political imperative may run counter to the courts' need for a detailed explanation of the minister's intent.

My experience is also that not all second-reading speeches are delivered with care. I have seen second-reading speeches delivered off the cuff. I have seen them be very short. I have seen ministers veer sharply off script. Not all ministers will welcome being told to read a carefully-crafted, lawyerish speech.

When ministers do deliver a prepared second-reading speech, it is typically prepared by expert civil service staff. The civil servants likely know the subject matter, but – and again this is based on my own experience – they are not necessarily aware of how their words may be used in a courtroom.

My study of Nova Scotia court decisions over a 10-year period shows that, despite the cautionary rule in *Morgentaler* and *Rizzo*, the words of members other than the sponsoring minister may also be cited. The danger is obvious: members are political people delivering political speeches in a political forum. If they know that their words may have an impact on how the legislation is interpreted, they may well shape their speeches to try to win in court what they could not win in the legislature.

Notes

1 [1993] 3 SCR 463, 1993 CanLII 74 (SCC), hereafter *Morgentaler*.

2 [1998] 1 SCR 27, 1998 CanLII 837 (SCC), hereafter *Rizzo*.

3 For example, Interpretation Act, RSO 1990, c I.11, s 10; *Interpretation Act*, RSNS 1989, c 235, s 9(5); I*nterpretation Act*, RSC 1985, c I-21, s 12.

4 For more detail, see Graham Steele, "'The Frailties of Hansard Evidence are Many': The Use of House of Assembly Debates in Nova Scotia Courts, 2004-2014" (2015) *Journal of Political and Parliamentary Law*, p. 499-518.

5 2012 NSCA 107 (CanLII).

6 2014 SCC 27 (CanLII), with the substantive reasons given in a companion case delivered the same day, *R. v. Summers*, 2014 SCC 26 (CanLII).

7 2009 NSCA 130 (CanLII).

Feature

What is a Charter of Budget Honesty? The Case of Australia

It is now nearly 20 years since Australia introduced a prominent piece of legislation known as the *Charter of Budget Honesty Act (1998)* to improve the transparency and the discipline of its budget process. This article examines the success of the charter, as well as its limitations, in the context of Australian budget process, including an analysis of its most pertinent components, so as to then reflect more broadly on the impact of budget honesty mechanisms for parliaments with a similar structure and history, including Canada.

Usman W. Chohan

In our time, most Parliamentary democracies in the world are faced with the question of how to maintain budget discipline, particularly with respect to three overarching concerns: a long-run reliance on deficits; the ability to manage unforeseen economic shocks; and the level of transparency and accountability in the budget process. Following the economic crisis of the past decade, more parliaments are finding themselves debating questions of fiscal discipline and fiscal transparency at ever more frequent intervals. Some legislatures have tried to give a more concrete form to their beliefs in budget discipline and budget transparency by enshrining them into charters or acts.

Among such budget-discipline enshrinements, the one that has gained the most prominence in its local legislative budgeting context is Australia's *Charter of Budget Honesty* ([Charter], 1998).[1] Since its promulgation, the Charter has come to occupy a central role in the national budget process, creating a system of processes that *inter alia* involve Parliament, the Treasury, the Department of Finance, and the Parliamentary Budget Office (PBO). The Charter has also initiated a set of rituals which are now considered core aspects of the annual budget, and which much of the Australian public has come to consider standard political and economic practice.

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To understand the evolution of such an important document, it is worth quickly visiting the historical context in which the need for such a Charter emerged. Australia has had a long history of fiscal rules at a subnational level: in the 19th century, the Australian colonies passed legislative debt-limits and balanced-budget requirements; and some of those provisions are still in place today.[2] That being said, it was not until the latter half of the 20th century that a significant consensus arose in Australia for budget discipline and transparency at a level underwritten by national fiscal rules. This thinking was in large part inspired by reforms that were pioneered in neighbouring New Zealand, which in 1994 promulgated the *Fiscal Responsibility Act* that placed explicit importance on improving budget transparency. The intent of New Zealand's law was to consolidate the finances of government (debt and deficit), which had accumulated over the 1980s and 1990s; and the promulgation of the Act should be seen in the context of the movement in most anglophone societies at that time towards reducing the size of government and "rolling back the state".[3]

Both the United Kingdom and Australia drew from these reforms in New Zealand, and by 1998, both countries had enacted some form of law addressing financial discipline and transparency. In the UK, this law was called the *Finance Act* (1998) which included a *Code for Stability* of national finances; and in Australia, it was the *Charter of Budget Honesty* (1998). It can be said that some of the important common factors shared by these laws include: guidelines and guiding principles for fiscal policy; an emphasis on clear statement of fiscal objectives; a fairly demanding set of requirements for reporting fiscal statements to the public; and an emphasis on long-term orientation towards fiscal policy.

At the time that it was instituted, the Charter represented the very best in fiscal policy legislation, both in terms of scope and rigour. The stipulated purpose of the Charter is to provide "to improve fiscal policy outcomes," and it provided for this "by requiring fiscal strategy to be based on principles of sound fiscal management and by facilitating public scrutiny of fiscal policy and performance." In order to meet these outcomes, the Charter was comprised of several important moving parts that were to work in concert to collectively push for fiscal discipline and transparency.

The Moving Parts of the Charter

Within the Charter, the most important documents that collectively give it force as budget legislation include:

- a Fiscal Strategy Statement (FSS)
- a Mid-Year Economic and Fiscal Outlook report (MYEFO)
- a Budget Outcome Report (BOR)
- an Intergenerational Report (IR), and;
- a Pre-Election Fiscal Outlook (PEFO).

Under the Charter, the government outlines its budget strategy in an overarching Fiscal Strategy Statement (FSS), which is tabled by the Treasurer and publicly released with each annual budget. According to the Charter, the purpose of the FSS is to "increase public awareness of the Government's fiscal strategy and to establish a benchmark for evaluating the Government's conduct of fiscal policy." It outlines the general procession of the budget and its policy priorities at the current time. In the 2015-16 budget, for example, the FSS highlighted the government's priority on "job growth", and "budget repair" in light of falling iron ore prices which had a large detrimental impact on the revenue side of the national budget.[4]

The Mid-Year Economic and Fiscal Outlook report (MYEFO) acts as an update and a progress report to the annual budget half-way (November) through the fiscal year (beginning May). It apprises the public, the legislature, and the executive branch of any outstanding events or changes that may affect the budget's trajectory. As an example, in the 2015-16 budget, the 250-page MYEFO adjusted the future projected price of iron ore downwards from $48 to $39, and revised other line items to reflect lower revenues in the budget accordingly.[5]

The Budget Outcome Report (BOR) is published by the Department of Finance within three months of the budget's passing (usually by August), and summarizes the post-budget financial statements.

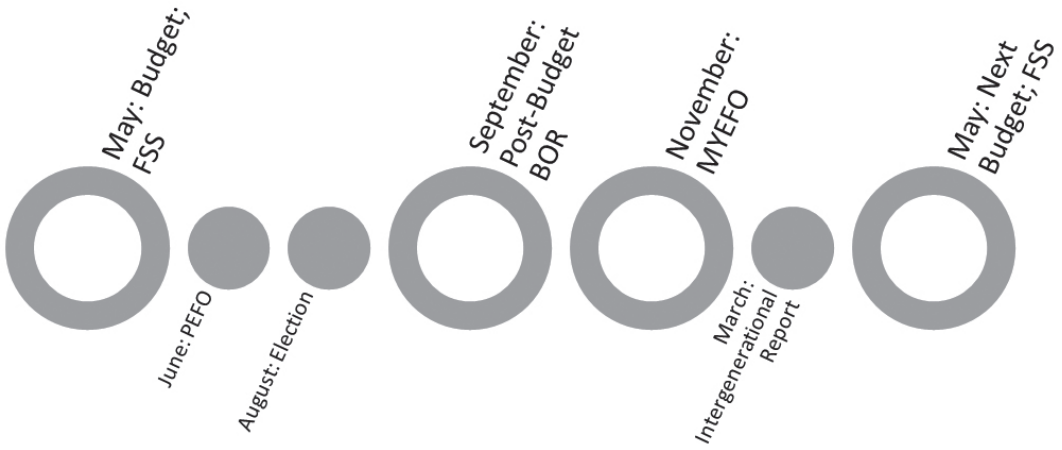
To provide a long-term aspect to the fiscal discipline objectives of the Charter, the Treasury produces an Intergenerational Report (IR) at least once every five years, usually releasing it in the month of March. The purpose of this report is to show how changes to Australia's population size and age profile may impact its economic growth, its workforce, and its public finances over the next 40-year period. For example, the 2015 Intergenerational Report draws attention to the rapid aging of Australia's population, which when coupled with low fertility rates (less than 2.0 children per woman), means that greater stresses will be incurred by public finances over the next 40 years, particularly with respect to healthcare and aged-care provision.[6]

In an election year, there are additional procedures stipulated by the Charter. A Pre-Election Fiscal Outlook (PEFO) is produced two months before the election in which budget estimates are updated by Treasury and the Dept. of Finance. PEFO also divulges to the public any decision of government since the last economic update was published, which ensures that the government, the opposition, the parliament and the public know the country's fiscal position before the election. The year 2016 is an election year in Australia, and the PEFO was released in late May, two months prior to the July 2 election date.

There are some additional clauses in the Charter which do not follow a timetable but which are triggered by significant changes to national financial statements. As an example, in certain cases where the face value of the stock and securities issued by the government increases by $50 billion or more since a previous Charter-related report or statement has been issued, then the Treasurer is expected to table a statement setting out reasons for the increase.

Following the lead of the United States (1974) and Canada (2006)[7], Australia also decided to instate a Parliamentary Budget Officer (PBO) in 2011 to advise legislators, particularly those of the opposition parties, on matters pertaining to the costing and analysis of budget policy. When this office was created, the Australian government amended the Charter of Budget Honesty to incorporate a role for the PBO within the annual budget process.[8] The Australian PBO is mandated to "inform the Parliament by providing independent and non-partisan analysis of the Budget cycle," which is

Figure 1: A Simplified Timetable of the Charter's Components With Respect to the Budget Process in Australia



The diagram above supposes (1) an election in the month of August; and (2) an intergeneration report is issued in that year. The larger dots represent fixed annual events, while the smaller dots represent contingent events.

similar to the stipulated role of the Canadian PBO,[9] but in order to effectuate this work, the Australian PBO has the benefit of several Memoranda of Understanding (MoUs) which enable it to collaborate with, and access information from, various government departments.

The Canadian PBO does not have similar or as strict MOUs with departments, but in terms of collaboration and access to information, its legislation provides that "the PBO is entitled, by request made to the deputy head of a department…to free and timely access to any financial or economic data in the possession of the department that are required for the performance of his or her mandate." [s. 79.3 (1) of the *Parliament of Canada Act.*] Furthermore, the Canadian legislation also stipulates that the "PBO may, in the performance of his or her mandate, enter into contracts, memoranda of understanding or other arrangements in the name of his or her mandate." [s.79.5(1) of the P*arliament of Canada Act.*] In Canada, the past issues related to access to information ended in Court in 2013, but the Court didn't conclude with a formal decision. Instead, a parliamentary remedy was suggested by the Court and was pursued. It culminated with a motion adopted in 2015 by the Joint Committee on the Library of Parliament.

With respect to the Charter's requirements, the Australian PBO is mandated to cost proposed budget policies for the opposition. In this sense, it serves as an instrument to level the playing field between government and opposition, since government already has the tools of Treasury and Department of Finance at its behest. Documentation from these departments includes costing details, while the PBO independently and separately costs the policies as well. In case of discrepancies, department officials and PBO staff may be summoned to parliamentary inquiries to explain the differences. This has happened on various occasions.[10]

These moving parts together build a more cohesive fiscal discipline framework. Collectively, they help to increase transparency by creating a regular stream of government reports that apprise the public, the legislature, and other government branches, of movements in the national fiscal balance. Some of these are event specific (e.g. PEFO), while others are short term in nature (MYEFO), while still others are very long-term by design (IR).

Many proponents argue that this integrated set of statements on budgeting, as demanded by the Charter, helps to foster a more democratic space that is conducive to the driving principle of the Charter: "sound fiscal management." However, in order to appreciate the ability of the Charter to achieve this idealized goal, it is important to first understand just what is meant by "sound fiscal management."

What is "sound fiscal management"?

The Charter defines the principles of "sound fiscal management" as comprising several components. Above all, it considers the management of financial

risks faced by the nation in a prudent manner, "having regard to economic circumstances, including by maintaining […] government debt at prudent levels." This is supported by an expectation that fiscal policy contributes to (1) adequate national saving, and (2) to "moderating cyclical fluctuations in economic activity, as appropriate, taking account of the economic risks facing the nation and the impact of those risks on the Government's fiscal position", while (3) pursing taxation and spending in a manner "consistent with a reasonable degree of stability and predictability in the level of the tax burden; [while maintaining] the integrity of the tax system." These decisions are to be made with "regard to their financial effects on future generations."

When discussing the "financial risks" that must be managed in a prudent manner, the Charter specifically mentions certain groups of risks that it must target, including: risks arising from excessive net debt; commercial risks arising from ownership of public companies; risks arising from an erosion of the tax base; and risks arising from the management of national assets and liabilities.

Is this definition of "sound fiscal management" correct, comprehensive, or sufficient? Today, many Australian budget scholars seem to think that, in the broader scope of things, the Charter's definition is still insufficient because the document remains prone to "interpretive approaches", with high levels of subjectivity about various aspects of the abstract notion of "budget honesty", not least with respect to the definition of "sound fiscal management."[11] Furthermore, a sizeable consensus among budget scholars would seem to assert that the Charter could benefit from greater precision if it were to contain some form of concrete benchmarking against which to gauge government budgetary performance. Such benchmarks are sometimes referred to as "fiscal rules", and are more prevalent in European countries.[12] Nonetheless, it is important to remember in this regard that, as one budget scholar recently noted: "it would be a serious mistake to assume that there is, or could ever be, a set of accounting measures capable of giving precise, unambiguous and readily verifiable expression to given fiscal responsibility principles. Accounting measures are, by their very nature, imprecise and ambiguous."[13]

Assessing the success of the Charter

In the nearly 20 years since the promulgation of the Charter, various budget scholars, government officials, and parliamentarians have had different opinions on the adequacy of the Charter to serve its purported objectives of fostering greater budget discipline and stronger budget transparency, through the pursuit of the "sound fiscal management."

One poignant criticism arises from the logic that "less is more", whereby the surfeit of budget data produced in order to adhere to the Charter does not significantly increase transparency in the budget process. Rather, it results in an overproduction of fiscal data which in fact restricts the ability of decision-makers to conduct oversight. This point has been voiced in various parliamentary committee reports,[14] and it speaks to a long-standing debate among scholars of accounting and budgeting, that fiscal documentation adheres more to form rather than function; to the letter rather than the spirit, of transparency. To this point, former Australian Senator Andrew Murray conducted a review of the Charter in 2008 as part of the Kevin Rudd government's ''Operation Sunlight'' reforms. His review highlighted various shortcomings of Australia's existing fiscal responsibility legislation, most of which pertained to the idea that the Charter only requires governments to pay "lip service to principles of fiscal soundness, but is otherwise non-prescriptive about fiscal policy outcomes".[15]

A second criticism has been that the Charter is restricted, in that it cannot influence what are constitutionally defined parameters for parliamentary involvement in the budget process. As an example, in Australia, Section 53 of the Constitution prevents the Senate from amending bills for the "ordinary annual services" of government, which represents the majority of annual appropriations.[16] The Charter therefore operates within an existing budget ecosystem, and thus does not change existing legislative powers that are constitutionally enshrined. In other words, the Charter does not override existing parameters for legislative engagement in budgeting.

A third criticism comes from the practitioner experience of other countries and states, and it asserts that regulation of a "balanced budget" or fiscal discipline cannot, on its own, be the full guarantor of sound fiscal management. As evidence, the criticism points to the fact that states with balanced-budget laws have defaulted in the past; for example, New York defaulted in 1974 despite its constitutional balanced-budget requirement. However, this argument is more flimsy because it doesn't address the counterfactual: how many more states *would have* defaulted if they *didn't* have balanced-budget legislation? Simply because balanced-budget legislation cannot *compel* actors to meet fiscal targets, does not mean it cannot encourage

them to exercise fiscal restraint. Furthermore, the fact that states are encouraged to adhere to fiscal prudence, rather than compelled to do so, is an inherent trade-off between the flexibility of governments to act and the discipline they must exercise. There are greater value judgments associated with this perspective. Looking at this from a more theoretical perspective, for fiscal legislation such as the Charter to work in a manner that *compels* as opposed to encourages discipline, there would need to be some additional elements present, including: clear and unambiguous fiscal targets; strong internal and external oversight of budgets to assess levels of compliance; and a strong coherence between the letter of the law and the spirit.[17] What makes these conditions very difficult to meet is that there is always a high degree of uncertainty about the future path of economic growth, particularly with respect to unforeseen economic shocks. Furthermore, there is no consensus among economists on what an ideal fiscal target is, which means that the fiscal discipline goals set into laws are based on the arbitrary nature of what target should be followed. Political parties differ in their fiscal philosophy: some emphasize balanced budgets, while others view the flexibility to run planned deficits as good fiscal policy.[18] Therefore, while balanced budget laws may be in place, they ought not to be a precursor for Charters of Budget Honesty. To address this, a Charter of Budget Honesty should explain how a government plans to meet whatever targets it sets, premised on its own fiscal agenda. Beyond this, It is also difficult to get the timing right on fiscal policy interventions to smooth out the economic peaks-and-troughs, and so many scholars have found that fiscal interventions can sometimes actually make things worse.[19]

Concluding Remarks

In sum, although there are some poignant criticisms of the Charter, it has come to form a cornerstone of Australia's national budget process. So, would such a Charter be suitable for other parliaments? The answer would seem to depend on what the goal of the charter would be. If, on one hand, the objective is to ensure full and rigorous fiscal transparency and discipline, then such a charter, or any other budget honesty mechanism for that matter, would be an insufficient piece of legislation on its own. If, on the other hand, the objective is to incrementally enhance the Parliament's fiscal engagement and budgeting rigour as part of a broader and more abstract commitment to "fiscal prudence", then the charter of budget honesty could be one component within that broader commitment.

Notes

1 The Charter of Budgetary Honesty (1998). Parliament of Australia. Canberra.

2 Robinson, Mark (1996). Can Fiscal Responsibility Legislation be Made to Work? *Agenda: A Journal of Policy Analysis and Reform*, Vol. 3, No. 4, pp. 419-430.

3 Kopits, George (2001). Fiscal rules: useful policy framework or unnecessary ornament? *IMF Working Paper Series.* 01/145. International Monetary Fund: Washington.

4 Government of Australia (2016). *Fiscal Strategy and Outlook*. Budget Papers Vol. 1. Canberra: Australia.

5 Government of Australia (2015). *Mid-Year Economic and Fiscal Outlook*. Canberra: Australia.

6 Australian Treasury (2015). *Intergenerational Report*. Canberra: Australia.

7 Chohan, Usman W. and Jacobs, Kerry (2016). The Presidentialisation Thesis and Parliamentary Budget Offices. *Parliamentary Affairs.*

8 *Parliamentary Service Amendment* (Parliamentary Budget Officer) *Act* (2011). Parliament of Australia. Canberra.

9 Chohan, Usman W, (2013). Canada and the Global Network of Parliamentary Budget Offices. *Canadian Parliamentary Review*. Vol 36. No. 3. Pp. 17-21.

10 Chohan, UW (2016). Business Briefing: How does Australia's policy costing body, the PBO, compare? *The Conversation Australia.* Interview. June 8.

11 Wanna, John (2010). Australia after Budget Reform: a lapsed pioneer or decorative architect? In Wanna, J., Jensen, L., and de Vries, J. (eds.) *The Reality of Budget Reform in OECD Nations*. Edward Elgar Publishing: Gloustershire.

12 Kopits, George (2001). Fiscal rules: useful policy framework or unnecessary ornament? *IMF Working Paper Series.* 01/145. International Monetary Fund: Washington.

13 Robinson, Mark (1996). Can Fiscal Responsibility Legislation be Made to Work? *Agenda: A Journal of Policy Analysis and Reform*, Vol. 3, No. 4, pp. 419-430.

14 Examples include the *Joint Committee of Public Accounts and Audit report on Accrual Budget Documentation* (2002), and the Australian Senate's *Standing Committee on Finance and Public Administration* (2007), titled "Transparency and accountability of Commonwealth public funding and expenditure".

15 Kirchner, Stephen (2011). Reforming Fiscal Responsibility Legislation. *Economic Papers of the Economic Society of Australia*. Vol. 30, No. 1, pp. 29–32.

16 *Commonwealth of Australia Constitution Act* (1901).

17 Robinson, Mark (1996). Can Fiscal Responsibility Legislation be Made to Work? *Agenda: A Journal of Policy Analysis and Reform*, Vol. 3, No. 4, pp. 419-430.

18 Chohan, Usman W. and Jacobs, Kerry. Public Value in Politics: A Legislative Budget Office Approach. *International Journal of Public Administration.*

19 See Robinson (1996) and Hemming (2003) for discussions.

Feature

The 2015 Federal Election: More Visible Minority Candidates and MPs

The federal election of October 19, 2015 established a high water mark in the representation of racial diversity in Parliament with the election of 45 MPs with visible minority origins. Their relative presence jumped over four percentage points compared to the 2011 general election and their larger number markedly narrowed the population-based gap in representation. As an account of this improvement in the representation of visible minority MPs, the focus here is on aspects of the candidate nomination process, with an approach informed by the supposition that heightened competition among the three largest parties engendered a greater degree of vote-seeking among immigrant and minority communities.

Jerome H. Black

For the many observers who monitor and, especially, welcome greater visible minority representation in Parliament, the outcome of the federal election held on October 19, 2015 must have been viewed with a considerable degree of satisfaction. No less than 45 individuals with visible minority origins were elected to the House of Commons![1] Moreover, it constituted a big improvement over the previous record level established in the 2011 election, when 28 visible minority MPs were elected. The increase across these two elections is also apparent in relative (percentage) terms, even as the House was expanded from 308 to 338 seats. While MPs of visible minority origins comprised 9.1 per cent of the House's membership following the 2011 election, they occupied 13.3 per cent of the seats after the 2015 contest.

These two successive record levels are notable for other reasons, as well. Visible minority representation has not followed a pattern of ever increasing numbers (neither in absolute nor percentage terms); rather, starting with the 1993 election, when a noticeable number of visible minorities first entered Parliament, the tendency has been one of little change across most pairings of elections and even decline across several dyads. In this sense, the back-to-back increases in 2011 and 2015 do make the latter election stand out even more. A consideration of the 2015 election result against the backdrop of the entire post-1993 period is also informative because it reveals at least two departures in what had been prevailing trends.

The first interrupted pattern has to do with the level of visible minority representation – or rather under-representation – that characterizes Parliament. One simple way to determine how much that representation is in deficit is to compare the percentage of visible minorities in Parliament with the corresponding percentage in the general population. Over the 1993 to 2011 period, the ratio of these percentages has fluctuated between a low of .39 (in 2008) to a high of .56 (in 1997), meaning that representation was, at best, just about half of what would be required to achieve "full representation." In 2011, the ratio was also in deficit, at an estimated .48 and, remarkably, at the same level as it was in 1993; in other words, over the 1993 to 2011 period, visible minority MPs were being elected in numbers sufficient to keep up with the growth in the visible minority population at large but insufficiently so as to narrow the representation gap. No doubt, the 2015 election did produce a jump in the level of visible minority representation measured this way. However, it is unclear if a specific ratio can be derived because the only available visible minority population figure, 19.1 per cent, is a survey estimate from the four-year old 2011 National Household Survey (and possibly associated with some response bias). Still, if it can be assumed that the figure is at least roughly indicative

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of the visible minority population and if a couple of percentage points can be added to it to account for subsequent population growth, then the ratio would be closing in on the two-thirds mark, which is a notable improvement in visible minority representation.

The second trend that the 2015 election interrupted was the long-term decline in the number of visible minority MPs affiliated with the Liberal party. In the 1993 election, 92.3 per cent of the visible minorities in the House of Commons caucused with the Liberals, but the ensuing elections witnessed a near constant drop in the party's share of such MPs, from 68.4 per cent in 1997, to 42.9 per cent in 2008, only to be followed by a plunge to 7.1 per cent in 2011 (with the election of only two individuals). The reversal for the Liberals in 2015 was nothing short of stunning. Table 1 has the breakdown of visible minority MPs according to their party association for each election covering the 2004-2015 period. The Liberal majority victory in 2015 was accompanied by the election of 38 visible minorities, who constituted an overwhelming 84.4 per cent of all such MPs. The other side of the coin was the sharp depletion of visible minority MPs among the ranks of the second- and third-place finishers. The Conservative party, which over the 1993-2011 period increasingly challenged the Liberals as the party with the largest share of visible minority MPs, saw its portion drop from 42.9 per cent (12 MPs) in 2011 to 11.1 per cent (five MPs) in 2015. As the entries in the table also show, only in 2011 did the NDP achieve a large share of the visible minority MPs elected (46.4 per cent or 13 individuals). Four years later, the party was only able to secure the victory of two such MPs (4.4 per cent of all visible minority MPs).

More Visible Minority Candidates?

Can the considerable increase in the number of visible minority MPs elected in 2015 be attributed to a corresponding bump up in the number of visible minority candidates? Can it be particularly connected to a greater number of visible minority candidates nominated by the winning party in the election, the Liberal party? It is not axiomatic that "more visible minority candidates mean more visible minority MPs," and, indeed, in the 2011 election the uptick in the presence of visible minority MPs (relative to 2008) was actually accompanied by a slight decline in the percentage of candidates. What ultimately contributed most to the increase in visible minority MPs were victories by NDP candidates who were elected following the party's surge in the final stages of the campaign. That said, there may be a basis for anticipating that the 2015 election did witness the parties boost the number of visible minorities that they

Table 1
Visible Minority MPs, 2004-2015

Party	2004	2006	2008	2011	2015
Bloc Québécois	9.1	16.7	14.3	3.6	--
Conservative	31.8	25.0	38.1	42.9	11.1
Liberal	59.1	54.2	42.9	7.1	84.4
NDP	--	4.2	4.8	46.4	4.4
(N)	(22)	(24)	(21)	(28)	(45)

Source: For 2004-2011 data, see Jerome H. Black, "Racial Diversity in the 2011 Federal Election: Visible Minority Candidates and MPs," *Canadian Parliamentary Review,* Vol. 36, No. 3, 2013, pp. 21-26. MP data assembled by author.

ran as candidates. The contest was, after all, marked by a highly competitive race involving all three of the large national parties, thus amplifying the importance of vote-seeking within all segments of Canadian society. In turn, this might have led to the advancement of more diverse candidate teams. Moreover, the parties might well have had more opportunities to recruit new candidates, visible minorities among them, in light of the addition of 30 federal electoral districts that accompanied redistribution, and as well as the decision of many incumbent MPs not to seek re-election.[2]

That vote competition serves as an incentive to field more visible minority candidates is hardly a novel proposition. Parties have long been mindful of the growing demographic and political weight of visible minorities in Canada's urban centres – their relevance enhanced by continuing high immigration levels and extensive and fairly rapid rates of citizenship acquisition. Looking back over the last few decades, it is also fair to surmise that these trends have more than a little to do with the parties' response to recruit more visible minority candidates, even if, admittedly, the response has been at times uneven. The main point is that in the 2015 election, party competition was taken to a whole new level and likely made vote-solicitation among minority communities all the more imperative. To be more specific, even before the election was called, all three major parties could claim that they had a realistic chance of forming the government (at the very least, in a minority capacity). Never before had the NDP begun a campaign as the official opposition, allowing the party to plausibly declare that it could assume power; indeed, the national polls showed the NDP to be very much in the running from about the spring of 2015 until the end of the following September. The same surveys indicated that the Conservatives, while polling below their previous support levels, also remained very much competitive – in fact, from the beginning of the same year all the way to the late stages of the campaign. For their part, the Liberals' third-place finish in 2011 was well behind them. The party led the national polls throughout 2014 and was quite competitive with the Conservatives in the first quarter of 2015 and then for a while with both the Conservatives and NDP, before it pulled out in front decisively in the last few weeks of the campaign.

The candidate data do lend some credence to the supposition that enhanced party competition and minority vote-seeking in 2015 led to the fielding of a greater number of visible minority candidates. Shown in the top panel of Table 2 are the percentages of visible minorities among the candidate teams of four[3] parties (the BQ, Conservatives, Liberals, and NDP) for 2015 and, to give some context for their assessment, for the previous four elections as well. As can be seen, in the preceding election of 2011, visible minority candidates (97 individuals) made up 9.7 per cent of all of the contestants nominated by the four parties, a percentage that is actually slightly lower than the corresponding figure for the 2008 election (10.1 per cent). More generally, the 2008 and 2011 figures, along with those for the two earlier elections (9.3 per cent, and 9 per cent, for 2004 and 2006, respectively) depict a period of stasis in the presentation of visible minority candidacies. Juxtaposed against these four elections, the 2015 contest clearly stands apart. The same four parties nominated 152 visible minority candidates or 13.9 per cent of their pooled total (based on, it is worth reiterating, a larger denominator of electoral districts). The increase in visible minority candidates is even more impressive if the BQ's faded electoral performances in 2011 and 2015 are taken into account. That is, if the focus is restricted to the three largest parties, then the tabulation for 2015 works out to 150 visible minority candidates, which amounts to 14.8 per cent of the three-party total. The comparable percentage for 2011 is 9.9 per cent.

The second panel in the table provides answers to party-specific questions that might be raised. Did all three parties run more visible minority candidates in 2015 compared to 2011 (and earlier elections)? Did the Liberal party, with so many visible minority MPs elected, take the lead in nominating visible minority candidates? The percentages shown for the 2004-2011 contests have already been commented upon in the author's earlier studies.[4] Here, it suffices to note that those data show variability across both parties and elections and, altogether, little in the way of consistent patterns; different parties in different years fielded the largest percentage of visible minority candidates, but the margins were typically small and in no instance do party-specific figures rise monotonically across time.

The percentages for the recent election are, once again, distinctive. In 2015, each of the three parties nominated (relatively) more visible minority candidates than they did in 2011 and, indeed, more than in any other previous election. The increment from 2011 to 2015 is smallest, but still notable, in the case of the NDP. Visible minorities made up 10.4 per cent of the party's candidate team in the earlier election and comprised 13.4 per cent of the party's lineup of contestants this time around. For their part, the Conservatives could point to a four point increase in visible minority candidacies across the 2011-2015

Table 2
Visible Minority Candidates, 2004-2015

	2004	2006	2008	2011	2015
All Candidates (%)	9.3	9.0	10.1	9.7	13.9
By Party (%)					
Conservative	10.7	8.1	9.8	10.1	14.2
Liberal	8.4	11.0	9.8	9.1	16.9
NDP	9.4	7.8	10.7	10.4	13.4
New Candidates (%)					
Conservative	12.0	9.2	11.2	13.4	18.0
Liberal	9.4	13.2	7.8	9.1	17.5
NDP	9.8	7.3	12.3	12.0	14.3

Source: For 2004-2011 data, see Jerome H. Black, "Racial Diversity in the 2011 Federal Election: Visible Minority Candidates and MPs," *Canadian Parliamentary Review*, Vol. 36, No. 3, 2013, pp. 21-26. Candidate data assembled by author.

pairing, from 10.1 per cent to 14.2 per cent. The largest jump, by far, occurred within the ranks of the Liberal party. Visible minority candidates comprised 9.1 per cent of the party's pool of candidates in 2011 but a substantial 16.9 per cent in 2015. About one in six candidates nominated by the party had visible minority origins, almost doubling the number from the previous election. In short, these results are at least consistent with the notion that intensified competition helped to drive the three main parties to nominate more visible minority candidates in 2015, and, as well, are suggestive that the Liberals' large contingent of visible minority candidates played a role in setting a record for the election of visible minority MPs.

More New Visible Minority Candidates?

An examination of *new* candidates – those who did not participate in the previous election – lends even more support to these suppositions. Restricting the analysis to this subset of office-seekers has the advantage of ruling out incumbency effects – in particular, the tendency for previous candidates to be re-nominated – and thus allows for a clearer sense of each party's specific commitment to particular categories of candidates in advance of the upcoming election. It turns out that the parties did make a greater effort than ever before to promote racial diversity in 2015 among their new candidates. While visible minorities made up 14.8 per cent of all of the

candidates recruited by the three main parties, they formed 16.8 per cent of all of the new candidates nominated. Moreover, this figure is more than five points larger than the comparable percentage for 2011 (11.1 per cent).

Additionally, this enhanced recruitment effort is evident for each party, but it does noticeably vary, as data in the third panel in Table 2 indicate. Within the NDP, the share of visible minorities among the party's new candidates was 14.3 per cent, which is slightly larger than the total candidate figure of 13.4 per cent. At the same time, the former number is several points larger than the comparable figure for the party's new candidates in 2011 (12.0 per cent). The percentages are more telling for the two other major national parties. Within the Conservative party, visible minorities comprised 14.2 per cent of the party's candidate team, but a decidedly larger 18.0 per cent of their new candidates. Note as well that the latter percentage also compares quite favourably with the 13.4 per cent associated with the party's recruitment of new candidates in 2011. As for the Liberals, visible minorities also formed a larger share of the party's new candidates relative to their portion of the party's candidates as a whole, 17.5 per cent versus 16.9 per cent, respectively. This is only a modest difference but what is really striking is how the 17.5 per cent *represents a near doubling of the Liberal's recruitment effort of new visible minority candidates in 2011* (9.1 per cent). In short, this view of new candidates also suggests that all of the parties, but particularly the Liberals, fostered greater racial inclusiveness among their candidates in the 2015 election.

The Role of Constituency Competitiveness?

Party competitiveness at the *constituency* level provides yet another perspective on the promotion of more visible minority candidates in 2015. Taking account of district-level competitiveness is generally important because it plainly matters whether candidates (in whatever social category being considered) are recruited to contest constituencies where the party has reasonable prospects of winning or are nominated in hard-to-win districts. If larger numbers of visible minorities were put up to run in constituencies with favourable prospects, this would signify some degree of commitment to boosting racial diversity among the candidate team. As well, fairness in the recruitment process would be signaled if similar proportions of visible minority and non-visible minority candidates were recruited to contest electorally viable constituencies.[5]

As parties contemplate how would-be individual candidates might fare in the upcoming election, they are naturally guided and influenced by the immediately previous constituency results. At the same time, they well recognize that past performance will provide only an inexact indication of future prospects – the exercise being subject to the intrusion of dominating national- and subnational-level electoral forces and unexpected campaign developments. The caveat is easily grasped by recalling how many visible minority MPs were elected under the NDP banner in the 2011 election, not because they were nominated in what were expected to be potentially competitive ridings but rather because of the party's unprecedented surge in the latter stages of the campaign. For the NDP in that election, past performance in 2008 in many constituencies proved to be quite unrelated to outcomes in 2011.

There may be similar ambiguity surrounding past constituency performance in connection with the Liberals in 2015. The party's disastrous electoral showing in 2011 meant that there were far fewer districts that ordinarily could have been regarded as being in play for the upcoming 2015 contest. However, most Liberal candidates were nominated throughout a long period when the party was polling fairly strongly at the national level, so some previously lost constituencies might well have been ultimately regarded as winnable. In addition, the Liberals, along with all of the parties, faced some uncertainty when taking past electoral performance into account because of the larger than usual number of open seats, that is, districts without an incumbent running, and the redrawing of constituency boundaries and the addition of new ones (though parties did have access to officially produced transposed vote results – with the 2011 constituency vote appropriately rearranged to fit the new constituencies.) All this said, the parties would continue to especially value those (however many) constituencies where they had fared reasonably well in 2011; so, the question remains if they privileged visible minority candidacies among their pool of new candidates in those districts or at least fairly balanced visible minority with non-visible minority candidacies.

To investigate this, transposed vote information was employed to divide constituencies into those that were considered to be relatively non-competitive in 2011, where the party lost by 11 per cent or more, and those that were competitive, where the party won or, if they lost, did so by a margin of 10 per cent or less. Taken together, the three parties were somewhat more likely to favour new visible minority over new non-visible minority candidates in competitive

ridings (33 per cent vs. 26 per cent). Table 3 considers the three parties separately. It also breaks down the competitive category by whether or not an incumbent MP contested the election in 2015, the rationale being that an open constituency would be more valued. As a general rule, each of the parties did promote visible minority candidacies in districts that were judged to be more winnable, and in noteworthy numbers. The Conservatives were most likely to nominate visible minority candidates in winnable constituencies. A very large 53 per cent of their new visible minority candidates ran in previously competitive ridings, including 32 per cent who were placed in open constituencies. The Liberals were next with 27 per cent, divided between 19 per cent and 8 per cent in incumbent-contested and open constituencies, respectively. The NDP followed with 21 per cent (12 per cent and 9 per cent, respectively). At the same time, note that the Conservatives also nominated their non-visible minority candidates in near equal measure, with 49 per cent selected to run in competitive districts and slightly more of them in open ones (37 per cent). A similar comparison for the NDP indicates a bias, albeit a slight one, for non-visible minority, compared to visible minority, candidates: 27 per cent vs. 21 per cent. It is the Liberals that unequivocally privileged visible minority candidacies. The party was three times more likely to nominate visible minorities in competitive ridings compared to their non-visible candidates: 27 per cent versus 9 per cent, and slightly more in the subset of open constituencies, 8 per cent vs. 3 per cent.[6]

The Role of Constituency Diversity?

The promotion of visible minority candidates in racially diverse districts is the final constituency characteristic considered here that possibly ties together competitive pressures and efforts to win minority votes. In fact, a cornerstone of the promotion of racial diversity among the parties' candidate teams is the purposeful concentration of their visible minority candidates in districts with large visible minority populations (even if it can be argued that this approach needlessly limits the promotion of such candidates[7]); indeed, the evidence from past elections has been overwhelming in this regard though, again, the data show fluctuation across elections and parties. For instance, in 2011, visible minority candidates newly recruited by the Liberals competed in districts where the visible minority population averaged 27 per cent, compared to 8 per cent in ridings where their non-visible minority counterparts ran; the comparable percentages for the two other parties show an even wider gap, 47 per cent vs. 12 per cent for the Conservatives, and 35 per cent vs. 12 per cent for the NDP. For present purposes, the more immediate question is whether in 2015 the parties stepped up their efforts to nominate more visible minority candidates in diversity-rich constituencies (as might be anticipated by the competition thesis). Viewing quite diverse districts, where visible minorities formed 31 per cent or more of the population, the general answer is yes. In 2011, the Conservatives had nominated so many of their new visible minority candidates in such districts (75 per cent) that the drop off in 2015 to 65 per cent in these districts seems less consequential. The NDP is the party that most increased its concentration of new candidates in such constituencies: 50 per cent in 2011 to 77 per cent in 2015. The Liberals, too, accentuated their promotion of new visible minority candidates in these districts, from a surprising low of 28 per cent in 2011 to 53 per cent in 2015.

Summing Up

The federal election of October 19, 2015 established a high water mark in the representation of racial diversity in Parliament with the election of 45 MPs who have visible minority origins. Their relative presence jumped over four percentage points compared to the 2011 general election and their larger number markedly narrowed the population-based gap in representation.

In seeking to provide an account of this improvement in the representation of visible minority MPs, the focus here has been on aspects of the candidate nomination process, with an approach informed by the supposition that heightened competition among the three parties engendered a greater degree of vote-seeking among immigrant and minority communities. The evidence considered here plausibly sustains this presumption (and, to be clear, certainly does not attempt to indicate the degree to which the promotion of visible minority candidacies actually paid off electorally – a task for survey-based research). To sum up, together and individually, the three main national parties nominated a record number of visible minority candidates and as well the largest percentage ever of visible minorities among their new contestants. Moreover the parties appeared to nominate their first-time visible minority candidates in electorally attractive constituencies in a generally fair, and sometimes privileged, manner. Finally, all three parties maintained or accentuated their efforts to run (new) visible minority candidates in districts with large visible minority populations.

Table 3
Visible Minority Candidates, Parties, and Constituency Competitiveness, 2015
(New Candidates Only)

Party	Non-Competitive Constituencies	Competitive Constituencies		(N)
		Incumbent MP?		
		Yes	No	
Visible Minorities				
Conservative	47	21	32	(34)
Liberal	73	19	8	(48)
NDP	80	12	9	(34)
Non-Visible Minorities				
Conservative	50	12	37	(155)
Liberal	91	6	3	(227)
NDP	72	12	15	(203)

Row percentages.
See text for definition of competitive and non-competitive constituencies.

Of course, it is important that these characterizations particularly hold for the Liberal party given that more than eight of every 10 visible minority MPs elected won under the party's banner. Again, the Liberals did more than any other party to increase their promotion of visible minority candidates from 2011 to 2015, nearly doubling the percentage of such candidates both among their candidate team as a whole and among the subset of their new candidates. They also decidedly favoured (new) visible minority candidates over their non-visible minority counterparts in competitively attractive constituencies in 2015 and, as well, concentrated more visible minority candidates in diverse constituencies. Within the context of the Liberal national-level sweep, these facts help explain much of the large boost in visible minority MPs elected in 2015. Finally, while the particularly competitive environment in the election likely played a large role in motivating the party to do more to engage minority voters, a concerted effort to re-establish what had been the party's once dominant position within minority and immigrant communities may also have been a factor. Is it possible that this significant step up in the party's promotion of visible minority candidacies from 2011 to 2015 is partially a recognition that more could have been done in 2011?

As a final thought, it is not absolutely clear that the increase in visible minority MPs occurred only because of the combination of the Liberals' nomination efforts and the party's subsequent electoral victory. Had the campaign unfolded more to the decided advantage of either the Conservatives or NDP (or, some "mixed" outcome), it is not difficult to imagine scenarios where a record number of visible minority MPs might still have been elected. After all, both parties, though the Conservatives more so, also did a great deal to favour the election of more visible minority candidates. Moreover, 11 of the Conservative's 12 incumbent visible minority MPs contested the election as did nine of the NDP's 13 incumbents, so both parties potentially had a base to build upon as they advanced the cause of visible minority candidacies.

Notes

1 This count excludes an individual of Argentinian origin. For some brief background on this reasoning, see Jerome H. Black, "Racial Diversity in the 2011 Federal Election: Visible Minority Candidates and MPs," *Canadian Parliamentary Review*, Vol. 36, No. 3, 2013, pp. 21-26, at footnote 1.

2 This discussion is mostly about the "demand" side of the candidate recruitment process, as parties seek out visible minority candidates whom they regard as qualified and having the appropriate characteristics. It is also possible that "supply" side aspects are at play, as visible minority individuals push for elected positions in keeping with their communities' growing integration into Canadian society.

3 The table includes only parties that achieved official party status at least once during the 2004-2015 period, and therefore does not report information on the Green Party of Canada. However, it can be noted that with the Greens included, the overall total of visible minority candidates in 2015 diminishes somewhat (from 13.9 per cent to 13.2 per cent); the party, itself, nominated 36 such candidates, 10.9 per cent of its total candidate pool.

4 See, for instance, Jerome H. Black, "Racial Diversity in the 2011 Federal Election: Visible Minority Candidates and MPs," *Canadian Parliamentary Review*, Vol. 36, No. 3, 2013, pp. 21-26.

5 As a general statement, over the last few elections the parties have been fairly balanced in nominating both visible minority and non-visible minority candidates in electorally winnable ridings, though there has been considerable variation by party and election.

6 Not shown in the table is an indication of the limitation of past constituency performance as a predictor of future outcomes, connected, of course, to the Liberals' electoral turnaround from 2011 to 2015. Of the 35 perceived non-competitive constituencies where the Liberals' visible minority candidates competed, nearly half (17) ended up winning. All of their candidates won in constituencies designated as competitive for the party.

7 For a discussion about the wisdom of running visible minority candidates in relatively homogeneous ridings, see Jerome H. Black, "The 2006 Federal Election and Visible Minority Candidates: More of the Same?" *Canadian Parliamentary Review*, Vol. 31, No. 3, 2008, pp. 30-36.

Feature

Religion, Faith and Spirituality in the Legislative Assembly of British Columbia

This article aims to further a conversation about the role of religion, faith, and spirituality in public institutions in Canada by examining the practice of prayer in the Legislative Assembly of British Columbia. The authors provide a background of prayer in the Legislative Assembly of British Columbia, an overview of the differing customs in provincial and territorial legislative assemblies in Canada, and also public controversies and court cases which have arisen in response to these conventions. Following an analysis of prayers delivered at the opening of legislative sessions of the Legislative Assembly of British Columbia from 1992 to 2016, the article concludes by comparing the content of prayers delivered to self-reported rates of religiosity, spirituality, and faith amongst the general British Columbia population.

Chardaye Bueckert, Robert Hill, Megan Parisotto and Mikayla Roberts

Introduction

Contemporary Canada is largely conceived of as a secular society; yet some historic religious elements remain entrenched in Canadian democratic institutions, including the practice of prayer in provincial legislatures. This article aims to further a conversation about the role of religion, faith, and spirituality in public institutions in Canada by examining the practice of prayer in the Legislative Assembly of British Columbia. We provide a background of prayer in the Legislative Assembly of British Columbia, an overview of the differing customs in provincial and territorial legislative assemblies in Canada, and also public controversies and court cases which have arisen in response to these conventions. Following an analysis of prayers delivered at the opening of legislative sessions of the Legislative Assembly of British Columbia from 1992 to 2016, the article concludes by comparing the content of prayers delivered to self-reported rates of religiosity, spirituality, and faith amongst the general British Columbia population. By examining these opening prayers, we hope to illuminate the representation of different religions within the Legislative Assembly of British Columbia. It is important to note that due to data limitations, this examination will be a "snapshot" of faith-based conventions in the Legislature Assembly of British Columbia, rather than a comprehensive analysis of how different faith groups are represented in practice.

Building on existing literature about religion in Canadian legislatures, particularly Martin Lanouette's 2009 article[1] for the *Canadian Parliamentary Review* which compared legislature prayer at the national level in Commonwealth countries and the United States of America, we provide an interprovincial overview with a special focus on the Legislative Assembly of British Columbia. We hope it will also supplement research conducted by Ontario Legislative Intern Christiana Fizet in 2009 about the use of the Lord's Prayer in the Ontario Legislature,[2] and a 2014 report presented by Rosalie Jukier and José Woehrling to the XVIIIth International Congress of Comparative Law about the role of faith in Canadian law, society, and public institutions.[3]

Chardaye Bueckert, Robert Hill, Megan Parisotto and Mikayla Roberts were participants in the 2016 British Columbia Legislative Internship Program.

History and Practice of Legislative Prayer

The practice of legislative prayer began around 1558 in the United Kingdom, when the early British Parliament met within a church.[4] This practice has been imitated in Canadian legislatures – a legacy of their British parliamentary origins.[5] In British Columbia, before the beginning of daily proceedings, the routine business of the Legislative Assembly includes an interdenominational prayer provided by a Member of the Legislative Assembly (MLA).[6] The reading of a prayer also occurs prior to the Speech from the Throne, a practice that marks the opening of a new legislative session by outlining the government's legislative priorities for that session. This prayer is delivered by a representative of a faith group rather than an MLA. An invitation to deliver this opening prayer is facilitated through the Office of the Speaker, who may also assist the Office of the Premier when that office has expressed an interest in inviting someone to deliver the prayer. It has become practice to invite representatives of different faith groups on a rotating basis. MLAs may also make suggestions to the Office of the Speaker about whom to invite to deliver the prayer, though ultimately the Office of the Speaker makes the necessary arrangements.

Across Canada and within other Commonwealth countries, prayers were traditionally seen as a private practice for the benefit of the elected members of each respective legislature and, therefore, not necessarily recorded as part of Hansard, the transcript of legislative proceedings. The Parliament of Britain does not transcribe prayers, and even prohibits the public from entering the public gallery until after the prayer has been completed.[7] In the Legislative Assembly of British Columbia, prayers delivered prior to the Speech from the Throne were not initially transcribed when a Hansard was first implemented in 1972. These opening prayers have been transcribed from 2001 onward, while daily prayers delivered by MLAs have never been entered into the written record.[8] Audio visual broadcasting of the proceedings of the Legislative Assembly of British Columbia began in 1991, and both daily prayers and prayers delivered prior to the Speech from the Throne have been recorded and publicly broadcast since.[9]

The Canadian Comparative Perspective

Practices related to prayer vary widely across the legislative assemblies of Canada's provinces and territories. The legislatures of Newfoundland and Labrador and Québec do not recite any form of opening prayer. The Newfoundland and Labrador House of Assembly has never opened its proceedings with a prayer. The National Assembly of Québec (Assemblée nationale du Québec) ended the practice of prayer in 1976, opting instead for a moment of quiet reflection. The provinces of Prince Edward Island, New Brunswick and Ontario continue to recite the Lord's Prayer before daily House proceedings, while Nova Scotia uses a shortened form of the traditional prayer.[10] In Ontario, after the recitation of the Lord's Prayer, the Speaker chooses from a rotating list of other prayers reflecting Indigenous, Buddhist, Muslim, Jewish, Baha'i and Sikh faiths – a change which was introduced in 2008 after a contentious public debate.[11] All other provinces and territories have opted to use a non-denominational prayer, although each legislative assembly approaches this practice in a different manner. For example, British Columbia and Nunavut allow an MLA to deliver a prayer of their choice prior to House proceedings, while Alberta, Manitoba, the Yukon, the Northwest Territories[12] and Saskatchewan[13] use set non-denominational prayers.

Recent Public Controversy & Legal Action

Prayer in political assemblies has been the subject of considerable controversy in Canada in recent years. In 2008, Ontario Premier Dalton McGuinty proposed an all-party committee to examine the role of the Lord's Prayer in the Ontario Legislative Assembly. A public outcry about a proposal to stop reciting the Lord's Prayer ensued, with more than 25,000 petitions from the public submitted to the all-party committee that was tasked with review of the prayer. The Legislative Assembly ultimately decided to recite the Lord's Prayer in addition to a prayer from the rotating list from different faiths, as well as adding a moment of silence.[14] In Saskatchewan, a petition calling for an end to the practice of daily prayers in the Saskatchewan Legislative Assembly was presented. The petition also called for the Premier to end his practice of delivering an annual Christmas message, or to make the message religiously neutral. The Premier of Saskatchewan responded by saying that both practices would continue while he remained in office.[15]

Controversy about the practice of opening public proceedings with a prayer reached the Supreme Court of Canada with the case of *Mouvement laïque québécois v. Saguenay (City), 2015.* The case was initiated by Alain Simoneau, an atheist, and the Mouvement laïque Québécois, a secular-rights organization, against the city of Saguenay and its mayor, Jean Tremblay. In 2011, Québec's human rights tribunal ordered the city

to stop opening municipal council's public meetings with a prayer, as this practice breached the state's duty of neutrality and interfered with Simoneau's freedom of conscience and religion. Tremblay appealed this ruling in the Court of Appeal, which reversed the tribunal's decision on the basis that the prayer could not interfere with Simoneau's rights, as it was non-denominational and fundamentally inclusive.[16] Upon final appeal, the Supreme Court of Canada sided with the tribunal in a unanimous decision, ruling that the recitation of the prayer infringed on Simoneau's freedom of conscience and religion because it was "above else a use by the council of public powers to manifest and profess one religion to the exclusion of all others."[17] The judgment noted that Canadian society has evolved to give rise to a "concept of neutrality" which requires that "the state neither favour nor hinder any particular belief," including non-belief.[18] The Supreme Court's decision was based primarily on the content of the *Québec Charter of Human Rights and Freedoms*, however the ruling is applicable to municipalities nationwide. As held in the *Saguenay* case, it is likely that prayers in legislative assemblies are protected by parliamentary privilege and therefore outside of the jurisdiction of the courts.[19] The Court's ruling nonetheless sparked a debate about the role of religion in provincial and territorial legislatures.

Table 1: Breakdown of the opening prayers for each legislative session by religious affiliation from 1992 to 2016.

Religion	Number of Prayers	Percentage (%)
Muslim	1	3.2
Jewish	2	6.5
Indigenous	3	9.7
Non-denominational	4	12.9
Christian	21	67.7

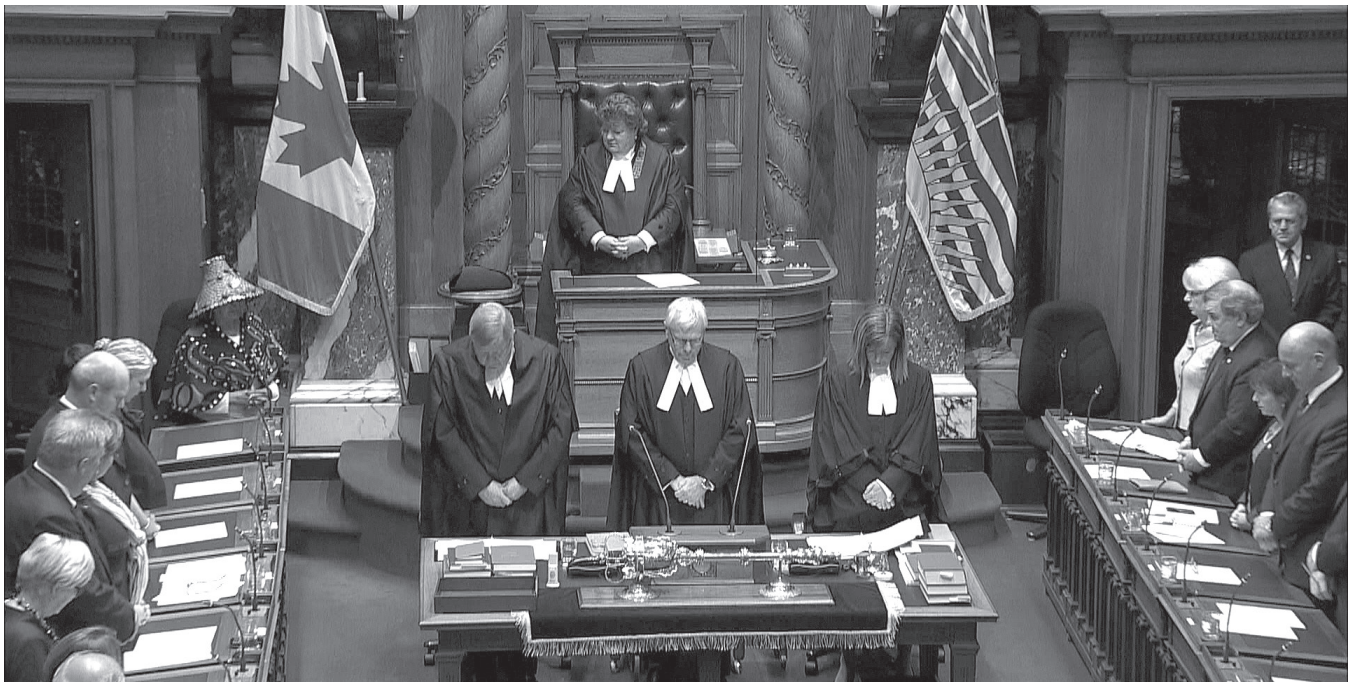
Prayer in British Columbia's Legislature

Recent public controversy about prayer in Canadian legislatures makes study of this practice especially topical. In order to better understand practices of religion and spirituality in the Legislative Assembly of British Columbia, we analyzed every prayer delivered at the start of a new legislative session from 1992 to 2016, when Hansard Broadcasting Services began to record them, to date. These prayers, rather than the daily prayers, were chosen as the focus of analysis because daily prayers are not transcribed into Hansard.

To appropriately categorize each prayer, criteria to determine which religion was reflected in a given prayer were established. Prayers categorized as Christian referenced "Jesus", "God", "Father", and other words commonly associated with the Christian faith. The speaker of the prayer was also taken into consideration, as a Christian prayer would often be delivered by a representative from a Christian church, such as a pastor or reverend. Prayers delivered by representatives of other religions, faiths, and groups, such as Imams, Rabbis, and First Nation Elders, were analyzed for keywords typically associated with their positions in order to confirm evidence of such a link. Prayers coded as non-denominational were delivered by individuals unaffiliated with a religious or spiritual organization and ones that did not contain words associated with a specific religion to the exclusion of others. For instance, references to Allah or Lord were coded as relating to Islam or Christianity respectively, although they may both have also referenced the "divine" and "spirituality" and concluded with "amen".

In total, 31 prayers were delivered prior to the opening of session from the first session of the 35th Parliament in 1992 to the fifth session of the 40th Parliament in 2016. Of the 31 prayers delivered in this period, 21 (67.7 per cent) were Christian in nature, four (12.9 per cent) were non-denominational, three (9.7 per cent) were Indigenous, two (6.5 per cent) were Jewish, and one (3.2 per cent) was Muslim. (See Table 1)

All non-denominational prayers included in this study were delivered in the first five years of the sample, from 1992 to 1996. These prayers were delivered by either a military officer or MLA. The non-denominational prayers delivered in 1993 and 1994 by MLAs were identical in wording and the non-denominational prayer offered in 1995 was extremely similar. The years 2000, 2006, and 2014 each had an Indigenous prayer delivered by a member of a local



Legislative Assembly of British Columbia

Opening of the 40th Parliament, 3rd Session prayer given by Margaret Rose George, elder of Tsleil-Waututh First Nation.

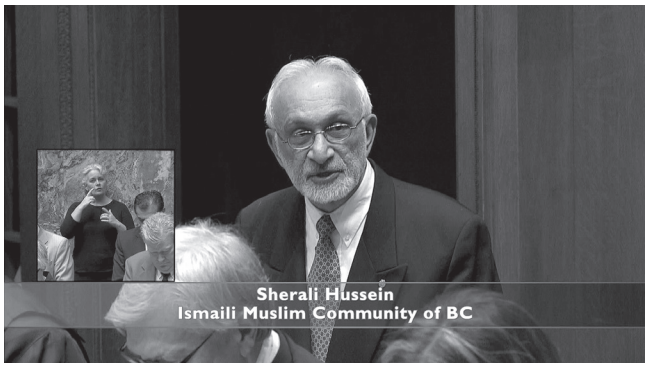
First Nation. Jewish prayers were delivered in 2003 and 2013 by local Rabbis, and the 2015 legislative session was opened with a Muslim prayer by a member of the Ismaili Muslim Community of British Columbia.

Religion in British Columbian Society

British Columbia is home to individuals with a variety of different religious and spiritual beliefs. The most recent census data on religiosity, collected by Statistics Canada in 2001, reported that 54.9 per cent of British Columbians identified as Christian (including Catholic, Protestant, Christian Orthodox), 3.5 per cent as Sikh, 2.2 per cent as Buddhist, 1.5 per cent as Muslim, 0.8 per cent as Hindu, 0.5 per cent as Jewish, 0.3 per cent as part of an Eastern religion, and 0.4 per cent as part of another religion. In this survey, 35.8 per cent of respondents reported no religious affiliation.[20] Although this data is now relatively outdated, 2001 represents a midpoint in the time period examined in this study. It can therefore be used to compare representations of religion in the Legislative Assembly of British Columbia to religiosity in the general population.

The 2011 National Household Survey provides a more current overview of religiosity in British Columbia. Unlike the mandatory census, this was a voluntary survey that was completed by less than three-quarters of British Columbian households. Among those British Columbians who completed the survey, 44.6 per cent identified as Christian, 44.1 per cent as having no religious affiliation, 4.7 per cent as Sikh, 2.1 per cent as Buddhist, 1.8 per cent as Muslim, 1.1 per cent as Hindu, 0.5 per cent as Jewish, and 0.8 per cent as part of another religion.[21] Religious affiliations reported in the census and the Household Survey are similar, with the exception of a significant decrease in the number of self-identifying Christians (54.9 per cent in 2001 versus 44.6 per cent in 2011) and a notable increase in the number of individuals identifying as having no religious affiliation (35.8 per cent in 2001 versus 44.1 per cent in 2011). The 2011 National Household Survey situates British Columbia within the national context: The survey found that British Columbia has the fewest Christians per capita of any province or territory and that the percentage of individuals who claim no religious affiliation is approximately 20 per cent higher per capita in British Columbia when compared to the Canadian average.[22]

Research conducted by private organizations provides greater insight into those British Columbians who do not identify with an organized religion. A 2014 survey conducted by Insights West found that over a quarter of British Columbians who identified



Legislative Assembly of BC

Opening of the 40th Parliament, 4th Session prayer given by Sherali Hussein of the Ismaili Muslim community of British Columbia with interpreter for the hearing impaired.

as having no religious affiliation still identified as being "very or somewhat spiritual."[23] A 2013 study by the British Columbia Humanist Association found that although 64.2 per cent of respondents stated "no" when asked if they practice or participate in a particular religion or faith, the majority of these individuals indicated that they do believe in a higher power. While this study had a limited sample size of only 600 respondents, it nonetheless provides valuable nuance to the discussion of religion, faith, and spirituality in British Columbia .[24]

Conclusions

It appears that in the past 24 years, the faiths that are represented within prayers delivered prior to the Speech from the Throne do not directly correlate to the percentage of British Columbians that identify with each respective faith group. Comparing these prayers to the 2001 census and 2011 Household Survey data, Christianity, Islam, and Judaism have been over-represented, while non-denominational beliefs and spiritualties are underrepresented.

These conclusions about the representation of faith in the Legislative Assembly of British Columbia have a number of important limitations. First, additional prayers are delivered at the opening of each day of a legislative session: These daily prayers, delivered by MLAs, are interdenominational in nature and are another important facet of the practice of faith and spirituality in the Legislative Assembly of British Columbia. Second, the small sample size of 31 prayers limits the conclusions that can be drawn from our research. Third, the census data does not report on traditional Indigenous spiritualties and therefore the conclusions about the representation of these belief systems cannot be drawn. Finally, individuals may hold multiple faiths and belief systems simultaneously or change their beliefs over time: Surveys of religiosity and faith amongst British Columbians do not account for this possibility.

Future research analyzing content of the daily prayers delivered within the Legislative Assembly of British Columbia would be an important supplement to this article. It would also be valuable to analyze how these prayers have changed over time and to compare them to opening prayers. Analysis of prayers delivered in other provincial and territorial legislative assemblies would allow for an interjurisdictional comparison with British Columbia, and content analysis of prayers delivered in municipal assemblies across Canada would also be valuable, especially in light of the *Saguenay* case. This paper has not considered the differing practices in regards to public prayer across faith groups. It is possible that some groups may prefer not to engage in public representation of their faith and future research might consider the impact that different conventions in regards to public representation of faith have on the practice of prayer in legislatures.

This paper has approached the prayer delivered prior to the Speech from the Throne as a public proceeding because the Legislative Assembly is open to spectators in the public galleries while it is delivered, it has been transcribed in the British Columbia Hansard since 2001, and it is broadcasted for public consumption since 1992. Yet prayer within legislatures began as a practice intended to occur privately amongst Members of the Parliament of Britain only. Given that the Legislative Assembly of British Columbia's practices are based upon the British parliamentary system, the prayer delivered prior to the Speech from the Throne may been viewed as a practice solely for the spiritual benefit of MLAs. Using this view of the practice, future research should analyze how accurately prayers represent the faiths of MLAs, rather than the general public.

Although prayers delivered in the Legislative Assembly of British Columbia prior to the Speech from the Throne do not perfectly represent the religiosity of British Columbian society, this has not been a matter of widespread public contention. Nor has the *Saguenay* case initiated a public dialogue about prayer in public assemblies within British Columbia. Perhaps this is because of the genesis of prayers as a private practice intended for elected

officials only. When asked about the practice of prayer in the Legislative Assembly of British Columbia, Premier Christy Clark stated "… the thing in British Columbia is, the prayer is sometimes… a prayer that [is] completely non-religious. Sometimes it does refer to God or Allah or Jehovah, or any of the other names that people use for God."[25] Given British Columbia's apparent insulation from controversy seen elsewhere in Canada and the Premier's stated comfort with the current way prayer is practiced, it seems likely that prayer in the Legislative Assembly of British Columbia will continue in its current iteration for the foreseeable future.

Notes

1 Lanouette, Martin. "Prayer in the Legislature: Tradition Meets Secularization." *Canadian Parliamentary Review* (Winter 2009): 2-7.

2 Fizet, Christiana. "Reopening the Discussion on the Use of 'The Lord's Prayer' in the Ontario Legislature." Paper presented at the 2010 Annual Meeting of the Canadian Political Science Association, Montreal, Québec, June 2, 2010.

3 Jukier, Rosalie, and José Woehrling. "Religion and the Secular State in Canada." *Javier Martinez-Torron, W. Cole Durham, Jr.,(General Reporters), Donlu D. Thayer, ed.,(Madrid: servicio publicaciones facultad derecho Universidad Complutense Madrid, 2015)* 155 (2015).

4 UK Parliament. "Prayers." Accessed June 3, 2016. http://www.parliament.uk/about/how/business/prayers/.

5 Lanouette, Martin. "Prayer in the Legislature: Tradition Meets Secularization." *Canadian Parliamentary Review* 32, (Winter 2009): 2-7.

6 Legislative Assembly of British Columbia. "Members' Guide to Policy and Resources." Accessed June 3, 2016. http://members.leg.bc.ca/work-of-mla/routine-business.htm.

7 UK Parliament. "Prayers." Accessed July 28, 2016. http://www.parliament.uk/about/how/business/prayers/.

8 Legislative Assembly of British Columbia. "Hansard Services." Accessed June 3, 2016. https://www.leg.bc.ca/learn-about-us/hansard-services.

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Recent Seminars on Parliamentary Practise and Procedure

Running out the Clock: The Strategic Use of Parliamentary Time

From the moment that a new parliament is elected and a new government is formed, the clock is ticking until the next election. While governments try to move their agenda forward and pass their legislation as quickly as possible, opposition parties often use parliamentary tools to delay the process to scrutinize, oppose, and/or secure changes to government initiatives. On January 20, 2017, the Canadian Study of Parliament Group (CSPG) held a seminar to explore the strategic use of parliamentary time by the government and the opposition and how it has evolved in recent decades, as well as proposals for reform.

Technical Briefing on Tools and Processes for Time Management in the House of Commons and the Senate

The first panel, moderated by **Michel Bédard**, president of the CSPG, featured veteran clerks from both houses of Parliament. **Jeffrey LeBlanc**, Principal Clerk at the House of Commons, provided an overview of the use of time in the Lower House. Section 28 of the Standing Orders set out the parameters of when the House shall sit, enabling a fixed calendar to help members manage their parliamentary and constituency responsibilities. The House sits for approximately 27 weeks per year, with extended breaks in the summer and at Christmas.

Time in the House of Commons is a precious commodity that can get quickly consumed. The 27 sitting weeks translate into approximately 130-135 sitting days per year. Of this total, 22 days are allotted as opposition days, four days are for the budget debate, six days are for the Throne Speech debate, and some days are for government motions. This leaves approximately 100 sitting days each year for the government to move its legislation through Parliament.

The daily order of business in the House of Commons is also rather structured (see Chapter IV of the Standing Orders). Of the 35.5 hours that the House sits per week, 23.5 hours are allotted to Government orders and routine proceedings, five hours for private members' business, five hours for members' statements and Question Period, and two hours for adjournment proceedings. Government orders are the meat of debate on government legislation. The government decides which item to call first each day and debate continues until it is concluded, interrupted, or adjourned. The government may switch items following an interruption (for example following Question Period).

As noted by Mr. LeBlanc, opposition parties can delay government business (to give time to amend or change opinion on proposed legislation) using various procedural tools. One such tool is the filibuster, which involves putting up a large number of speakers on an item and using the maximum time allotted for speeches, questions, and comment. Another tool is moving amendments, which allows members to speak more than once (on each amendment as well as to the main bill). Also, concurrence motions (for example in committee reports) can be used to delay the start of government orders, while dilatory motions, such as motions to adjourn, tend to force the taking of votes, which delays debate on other matters before the House.

Mr. LeBlanc added, however, that the government also has a number of procedural measures at its disposal to speed the passage of legislation. Time allocation allows for the setting of a specific number of days or hours to consider a stage of a bill (the minimum is one day per stage). Closure is a motion "that debate not be further adjourned," which forces a decision on any debatable matter by the end of the day. Another tool is the motion "that this question be now put," commonly known as the previous question. While this motion is debatable, it prevents any amendment to the main motion under consideration. Finally, Mr. LeBlanc noted that the government could counteract a filibuster by extending the sitting hours so that the opposition effectively talks itself out.

Once a bill is referred to a committee for study, different rules apply. There is no limit on the number or length of speeches. Meetings are called at the discretion of the Chair, and are adjourned by majority decision or consent. Committees may adopt motions to

govern their procedures and set deadlines to complete studies. There is, however, a 60-sitting-day limit for a committee to study a private members' bill, though it can request a one-time 30-day extension.

Finally, Mr. LeBlanc discussed the recent report by the Procedure and House Affairs Committee on a family-friendly Parliament. He noted the report's recommendation to have votes take place after Question Period, rather than later in the day, but observed there was no consensus on the elimination of Friday sittings, changing sitting schedule or the establishment of a second parallel Chamber to facilitate debate.

Till Heyde, Deputy Principal Clerk at the Senate of Canada, remarked that time has a different meaning in the Senate, given that Senators are appointed to serve until age 75 and that the Senate strives to work by consensus. Still, Mr. Heyde noted that time management in the Senate is in flux due to recent changes in the composition of the Senate. Historically, the two main parties in the Senate coordinated business, but now that more Senators have no caucus affiliation, there is less coordination.

While the Senate Rules allow for any day between Monday and Friday to be a sitting day, in practice the Senate tends to sit only on Tuesday, Wednesday and Thursday, for significantly fewer hours than in the House. Time in the Senate becomes more precious before the winter and summer breaks, when the government is most keen to pass legislation through both houses of Parliament.

Mr. Heyde identified three particularities with regard to the management of time in the Senate: First, unlike the House, the Senate has no fixed calendar. Sittings are set on a week-to-week basis. As well, Senate sittings can spill over into non-sitting periods (such as the summer recess). Second, Senate committees cannot sit at the same time as the Senate unless they are granted special permission. Finally, the Senate can sometimes wait for weeks or months to receive bills from the House. When the bills do come, there is pressure to pass them quickly. As a result, interventions by Senators are usually limited to those who have a particular interest in the issue. Unlike in the House, in the Senate there is no limit on time to debate a bill or motion. Because debate continues until it is done and Senators only sit for as long as they need to, dilatory tactics serve little purpose.

Changing approaches to the Use of Time by the Parliament and Opposition

In the second panel, moderated by **Kelly Blidook**, an associate professor of political science from Memorial University and CSPG board member, **Christopher Kam**, an associate professor of political science from the University of British Columbia, presented on the "Political Economy of Parliamentary Time." He posited that while there is a widely shared view that legislatures are passing less legislation due to a combination of archaic rules and opposition attempts to obstruct legislation, different factors might be at play. Indeed, he argued that governments are complicit in maintaining lower levels of legislative efficiency and productivity.

Mr. Kam demonstrated how over the past 30 years, legislative efficiency, as defined by the annual "pass rate" of government bills, has declined by about 30 per cent. He argued that this declining efficiency is not due to "vexatious and obstructive opposition." Rather, the fact that legislative sessions are shorter as well suggests that governments have not tried to offset any declining pass rate by adding sitting days. He added that while governments pass more bills in legislatures where one political party has won all or most of the seats, they do not do so to such an extent that significantly increases legislative efficiency.

Indeed, Mr. Kam argued, governments have failed to increase legislative efficiency via measures such as omnibus bills and time allocation (which increase efficiency by speeding up passage), and have been unwilling to effect "radical" measures such as letting bills survive a legislative session (as is done in some other jurisdictions), or enabling electronic voting in the legislature (as a means to increase productivity). This may be by preference; governments may not wish to boost the legislative pass rate, for a variety of reasons.

Next, **Paul Wilson**, an associate professor of political management of Carleton University presented on "Political Tactics, Time Allocation, and Omnibus Bills." He first observed that between 1994 and 2015, the average days of House of Commons debate per government bill has remained fairly constant – between three and four days (even though there are often arguments made suggesting that less time is being allotted to debate).

Mr. Wilson suggested that the term "parliamentary debate" is a misnomer as it implies the thoughtful exchange of ideas. Rather, he said, "in real life debate

in Parliament is about the clock." Since the 1950s, every government has charged the opposition with obstruction, while the opposition has charged the government with pushing legislation through without sufficient debate.

Indeed, from the government's perspective, the objective of debate is to move bills to the next stage of consideration as smoothly as possible, whereas for the opposition the time allocated for debate is one of their best tools for challenging the government's legislative initiatives. Debate, then, is often synonymous with delay, and from the opposition's perspective delay can serve the following objectives: raise media awareness of an issue; force the government to make strategic choices on how to manage its time; and possibly lead to compromise and amendment on a legislative initiative.

As discussed by Mr. LeBlanc, delay can also provoke the government to restrict debate by invoking time allocation and/or closure. According to Mr. Wilson this, in turn, can give the opposition a small victory as they can then paint the government as heavy handed and even undemocratic for stifling debate.

Turning to the 41st Parliament, Mr. Wilson emphasized the importance of understanding what is happening behind the scenes in Parliament to make sense of how time is used by the government and oppositions parties. He noted that while time allocation was resorted to often in the last Parliament, the average length of debate on a bill stayed roughly the same. This suggests that time allocation was used as a time management tool in place of negotiation between House leaders rather than just a way to cut off debate. Finally, Professor Wilson touched on the use of omnibus bills over the past 20 years. He observed that, over the past few Parliaments, the length of budget implementation acts and the range of legislation amended by the acts increased. He observed that this tendency could perhaps be defensible in a minority parliament context (to force passage with the threat of a confidence vote), but appeared to become abusive in a majority context.

The final panelist, veteran Parliament Hill reporter **Kady O'Malley**, observed that while there is value in looking at the statistics related to the passage of legislation, it is important to look at Parliament as more than just a "bill producing machine." She noted that not all legislation is created equal. Sometimes more debate is required and productivity should not be measured based on how many bills are passed in a given session. She added that she is not convinced that efficiency is a parliamentary value. Indeed, sometimes it is more important to prevent a bill from passing "if it is a really bad idea."

With regard to the opposition's approach to time allocation, Ms. O'Malley noted that a lot can be worked out in advance by the House leaders to manage the parliamentary schedule and thus preclude any need to resort to delay tactics and time allocation.

Overall, Ms. O'Malley observed that Parliament tends to have a natural schedule and lifespan, which is perhaps why governments tend not to impose major changes to the calendar. As well, governments tend not to take away any significant amount of time from the opposition because they do not wish to be perceived as overly authoritarian.

In a lively question and answer period that followed, Ms. O'Malley said that while a number of good ideas had been raised in the Procedure and House Affairs Committee's study on a family-friendly Parliament – such as the creation of a parallel chamber to enable additional debate on legislation – much of the study's focus was on whether Friday sittings should be eliminated. Mr. Wilson added that, contrary to popular perception that MPs are only productive when they are in Parliament, MPs spend constituency weeks (when Parliament is not sitting) working and engaging with their constituents. With regard to measuring the productivity of Parliament, he said that it might be worthwhile examining when bills are introduced in a parliamentary session. Indeed, bills introduced by the government towards the end of a session may do not make it past First Reading. These bills may be intended to be a signal about why the governing party ought to be re-elected. Finally, Mr. Kam reiterated that there are a number of tools used in other jurisdictions that could be adopted to increase the efficiency of the legislative process, including introducing electronic voting, enabling whips to hold all proxy votes, and tasking committees to write legislation.

Practitioners Panel: Joe Comartin and Senator James Cowan

The third panel, moderated by **Paul Thomas**, postdoctoral fellow at Carleton University, featured two highly respected veteran politicians from the House of Commons and the Senate: **Joe Comartin**, former MP for Windsor-Tecumseh, and Senator **James Cowan**, whose presentation to the seminar was one of his final public appearances before his retirement from the Upper Chamber.

Mr. Comartin emphasized how MPs perceived their roles as speaking on behalf of their constituents in Parliament. As such, any attempts to limit the amount of time for MPs to express themselves in the House of Commons cuts to the essence of what it means to be an MP. He argued that managing time in the House has changed dramatically, with control over the parliamentary calendar being increasingly dictated from the Prime Minister's Office rather than through agreement between House leaders.

Mr. Comartin then addressed the use of closure and time allocation in the House. The increased use of both closure and time allocation, particularly in the last Parliament, he argued, is symptomatic of a clash between the right of the parliamentarian to give voice to their constituents with the government's desire for efficiency and productivity. While the federal New Democratic Party had taken the position that it will always vote against closure and time allocation motions, Mr. Comartin recognized that there are circumstances in which time allocation may be necessary, for example to meet a court-imposed deadline. Overall, he argued that time allocation and closure do not make Parliament more efficient, as parliamentary productivity is roughly equal in both majority and minority government situations (where closure and time allocations can be defeated in the House). This may be because minority parliaments force parties to achieve some level of consensus on how to move legislation through the House.

Mr. Comartin offered a number of suggestions on how to improve time management the House of Commons. First, additional authority could be given to the Speaker to determine whether time allocation is appropriate and how much time should be allocated to consideration of a bill. Second, he observed that while rules exist in the Standing Order enabling the Speaker to cut off repetitive or frivolous debate, such rules are rarely enforced. Given that debate is often used as a delay tactic, it would be worthwhile to give the Speaker more authority to intervene. Third, he said bills could be referred to committee right after First Reading, and the committee could decide how much debate time to allocate to the bill. Finally, in minority parliaments, government bills could be carried over from one session to the next, rather than dying on the Order Paper.

Senator Cowan observed how politics turns time into a "strategic tool and sometimes into a weapon" and how there is always some tension between a government and parliamentarians who scrutinize government legislation. Scrutiny of proposed legislation, if done right, takes time. While parliamentarians' use of parliamentary rules to control time can really look like "inside baseball" gamesmanship, the public does not want important matters to be pushed through Parliament without proper study. The real issue is how and when to use parliamentary rules to control debate.

During his 12 years in the Senate Senator Cowan saw "repeated abuses of traditions and rules of parliament" that inhibited the ability of parliamentarians to scrutinize legislation. He cited the Senate's review of Bill C-2, the *Accountability Act*, in 2006 as an example where the Senate review improved the bill by correcting drafting mistakes and identifying other gaps, despite pressure to pass it quickly. However, in other cases the ability to review was been impeded by the increased use of multifaceted omnibus legislation, the resort to time allocation once the governing party had a majority of seats in the Senate, and, in one case, procedural manoeuvrings around a private member's bill that involved the Senate overturning a Speaker's decision regarding the rule that time allocation and closure apply only to government, and not private member, bills.

Senator Cowan emphasized the importance of taking time to carefully review legislation. He added that time is not an enemy but a friend and ensures that Parliament is able to do its job. He concluded by noting that while time allocation can be important in select circumstances, it should be the exception rather than the rule.

The question and answer period that followed focused on the role of the Speakers to help with time management issues. One individual suggested that the primary sponsor and opposition critics for government bills could propose lengths of time to debate a bill, which could be arbitrated by the Speaker. Mr. Comartin supported the idea, adding that the house leaders of other parties could weigh in. A related suggestion was for the Speaker to be able to rule on the length of sitting days, for example by adding evening sittings where necessary to move legislation forward.

In terms of the ability of the Senate to overrule the Speaker (there is no equivalent power in the House), Senator Cowan explained that unlike in the House (which elects the Speaker), the Speaker of the Senate is appointed by the Government. Thus, he suggested that giving more power to the Speaker should be matched with enabling senators to elect the Speaker.

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CSPG Seminar: Bill C-14 – A Case Study of the Relationship Between the two Houses of Parliament and the Supreme Court

On November 18, 2016, members of the Canadian Study of Parliament Group met to discuss the unique circumstances surrounding the passage of Bill C-14 (*An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*) and what it can tell us about the relationship between the two Houses of Parliament and the Supreme Court.

Case Study of Bill C-14: Technical Briefing

The first session offered a technical briefing of the circumstances that led to the creation of the legislation. **Maxime Charron-Tousignant,** an analyst for the legal affairs and national security section of the Parliamentary Information and Research Service, began by noting the pre-existence of Quebec's *An Act respecting end-of-life care*. Following years of study, it was tabled as Bill No. 52 on June 12, 2013, given Royal Assent on June 5, 2014, and came into force on December 10, 2015. As of September 1, 2016, 262 people received medical aid in dying.

One year before Quebec's legislation was tabled, Gloria Taylor and the British Columbia Civil Liberties Association (Carter v. Canada) challenged the laws prohibiting assisted dying in the courts. On June 15, 2012, a trial judge ruled that restrictions on medically assisted dying violated sections 7 and 15 of the *Charter of Rights and Freedoms*. When the Court of Appeal overturned the trial decision on October 10, 2013, the case made its way to the Supreme Court of Canada.

On February 6, 2015, the Supreme Court concluded that sections 14 and 241(b) of the Criminal Code violated section 7 of the Charter, and declared that those sections were void. It also suspended this declaration of invalidity for a period while federal parliament and provincial legislatures could decide guidelines for medically assisting dying subject to court guidelines.

The federal government established an External Panel on Options for a Legislative Response to Carter v. Canada on July 17, 2015 with a mandate to hold discussions with the interveners in Carter and with "relevant medical authorities," and to conduct an online consultation "open to all Canadians and other stakeholders." The provinces and territories established an Advisory Group on Physician-Assisted Dying in August 2015 with a mandate to "provide non-binding advice to participating Provincial-Territorial Ministers of Health and Justice on issues related to physician-assisted dying." The advisory group and external panel issued their final reports on November 30 and December 15, 2015, respectively.

On December 11, 2015 the House of Commons and the Senate passed motions to establish a Special Joint Committee on Physician-Assisted Dying consisting of 10 MPs and five senators. The committee had a mandate "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 make recommendations on the framework of a federal response on physician-assisted dying that respects the *Constitution*, the *Charter of Rights and Freedoms*, and the priorities of Canadians." It marked the first time in 20 years that a special joint committee of parliament had been created. The previous special joint committee explored the religious and charter schools question in Quebec and Newfoundland at the end of the 1990s. It issued its final report on February 25, 2016. On April 14, 2016, Bill C-14 received first reading.

Jeremy LeBlanc, Principal Clerk (Acting) of Chamber Business and Parliamentary Publications at the House of Commons, noted some unique and interesting aspects of the resulting debate, including the very divergent points of view of the matter and the very tight deadlines (narrow in parliamentary terms) for drafting, debating and enacting legislation.

Opinions varied widely among MPs, even within party caucuses; as the legislation was deemed to be a matter of conscience, they were permitted a free vote.

Within the committee, there were numerous questions about dementia, palliative care, indigenous patients and discussion about whether to add language in the bill that mirrored the Supreme Court's own wording. Mr. LeBlanc also noted there were some substantial amendments at committee which was unusual. Moreover, the Speaker brought back some amendments defeated in the committee at the Report stage (eligibility criteria, reasonably foreseeable death, idea that a person should physically administer the substance if they were so able, etc.).

The government attempted to prolong sitting hours, but failed to receive unanimous consent, and instead used time allocation for the legislation a second time (the first time was to move the legislation to the committee stage). The bill passed in the House on May 31. With a deadline of June 6 set by the court for a new

law, there was not much time for the Senate to debate the legislation, but Mr. Leblanc said senators "did so with alacrity."

Till Heyde, Deputy Principal Clerk of the Senate's Chamber Operations and Procedure Office, remarked that at the start of this parliament there was no government present in the Senate, and therefore no established lines of communications with the House.

On April 20, the Senate allowed its legal committee to examine the content of the bill while it was still before the House, a process set up 40 years earlier to allows for early study or input into legislation expected from the House of Commons. The committee held six meetings over 20 hours, and Mr. Heyde said there was very intense participation by senators. The day after first reading of the bill, the Senate received the Justice Minister and then the Health Minister for two hours each.

In the Senate, amendments are often moved even during third reading as there are less restrictive procedures than in the House. This results in an open process that allows senators to be active right up to final passage. Mr. Heyde suggested the third reading process was quite extraordinary for this legislation. First, debate was organized by theme; and second, senators were not limited in the number of times they could speak on third reading. As a consequence, the number of amendments were not limited and therefore the amendments could be more cohesive and coherent. Normally amendments proposed must take into account the entire legislation. For this bill, the process was very innovative. It allowed wide-ranging debate and ways to proceed even though there was very wide ranging views.

Mr. LeBlanc explained that while it's not unusual for the Senate to amend bills, it had become less common recently. Once the bill came back to the house, there was an exceptionally rare use of procedural practise to wave usual orders. The government argued the Court deadline had passed and it needed to move quickly to get a framework in place, though the provinces were looking into creating guidelines based on the legislation as it stood.

In a question period following the technical briefing and background, the clerks were asked if the special processes used in the Senate might be used for other bills in the future. Mr. LeBlanc speculated that as a matter of conscience that was not along party lines in the House of Commons, it was a rather special, once-in-a-generation bill. While he doesn't see these processes becoming more common, he said when these rare issues do arise there is an openness to them.

Mr. Heyde suggested there was a lot of support for the process after the fact, and the Senate's modernization committee has looked at some of the ideas of speaking time and how amendments are considered, so this case may inform some of the processes in the future.

Case Study of Bill C-14: Parliamentary Panel

A second panel, which included a senator, an MP, and the parliamentary assistant to an MP, offered another vantage point of the legislation's debate. Senator Serge Joyal began by characterizing this issue as quite exceptional as there are major components of the legislation that touch upon still-pending societal values, the institution of parliament and the law.

In terms of societal impact, with the Carter decision and in reviewing legislation concerning sex workers, the Court has outlined what it sees as a competent individual's autonomy over bodily integrity and the fundamental principle that legislation cannot compel a person to suffer or put at risk his/her bodily integrity, according to section 7 of the Charter. Senator Joyal said these decisions have an impact on Section 2b of the Charter dealing with religious freedom, as some religions believe that prostitution is a sin, that suffering is part of redemption and salvation, and that life and death is a matter for "God" to decide. He noted that there is currently a challenge by some physicians against The Ontario College of Physicians directives compelling a physician to refer to another doctor patients seeking end of life care. A Bill that would permit religious hospitals to refuse to assist in medically assisted death is also being debated in Ontario.

In terms of institutional impact, Mr. Joyal suggested that Bill C-14 brought up a number of questions about the relationship between the Senate and the House of Commons. The Senate doesn't often propose amendments, and it insists on those amendments even less often. During the debate on Bill C-14, Mr. Joyal proposed an amendment that was adopted by the Senate but refused by the House.

There was debate about whether the Senate should insist on the amendment – something he strongly supports. John A. Macdonald said the Senate should not stand in the way of legislation that has a mandate through the election platform of members of the

Commons. But when it doesn't, the Senate should insist on protecting minority interests, in the present instance those having a right not to suffer indefinitely, as recognized by the Supreme Court in the Carter decision.

When the bill came back from the Commons, some senators said the Court should ultimately decide the issue, while others argued the Senate should defer to the elected House of Commons. Mr. Joyal noted the Senate is still in the process of debating its constitutional power and duty about insisting on amendments that challenge the position of the House of Commons in reference to discrimination against minority rights.

The debate is still pending since the constitutionality of Bill C-14 is currently being challenged in BC by Julia Lamb, a person suffering from a debilitating disease, precisely on that argument of the protection of a right recognized to suffering patients by the Supreme Court in the Carter decision.

Conservative MP **Michael Cooper** was one of two Members of Parliament who were involved in the Bill's process all the way from the striking of the Special Joint Committee to the legislation's passage. He said responding to the Carter decision has been the most complex issue this parliament has had to consider, but all members of the committee worked in a collegial and generally non-partisan matter.

Mr. Cooper noted that time was a significant factor for this parliament as it had a very narrow window to act. Prior to being appointed to the Special Joint Committee, members were aware of the Carter decision, but he, and he suspects probably others on the committee, had not likely studied the issue and considered it substantively. With a short timeline, the discussions were intense; some critics contended there wasn't adequate time to properly consider the issue. But after three weeks of a very intense schedule, Mr. Cooper said he doesn't believe the final report would have changed much with more time.

The questions arising out of the court's ruling were extremely complex: What is a competent adult? What is a "grievous and irremediable"condition? Who should decide? What kind of effective referral means should we have? What conscience protections should we have and who should have them? The committee's work was distilled in a main report and dissenting report which helped clarify the issues and framed some aspects of public debate.

Cooper concluded by noting his agreement with Senator Joyal, C-14 is just a starting point in a debate that is uncharted territory for Canada.

Andrew Johnson, parliamentary assistant to NDP MP Murray Rankin, began his talk on an optimistic note. "Let me say, as a young cynic, that the conduct of our parliament gave me a great deal of optimism about our institution," he stated. Mr. Johnson said the discussion and debate surrounding the Bill showed there was genuine respect for different views.

Remarking that most committee sittings were after regular sitting hours, Mr. Johnson said clerks had to do in less than 24 hours what they would usually do in a week. Johnson said that in addition to what the court ruling specifically required, many topics, such as advanced directives and psychiatric conditions, were also considered as the committee knew these issues are on the horizon. In his view, the government receded from the highwater mark of restrictions, but also below the floor set by Carter, pointing out that the same legal team behind the Carter case raised a challenge 11 days after the Bill was passed (the Lamb case).

In the question period following the panel, one audience member asked if it was possible for parliament to continue the co-operation it showed during this process in the future. Mr. Cooper suggested the issue and time constraints were so unique in this situation that it may never be replicated again, but added that he found the interaction between the chambers through the special joint committee to be quite useful and said relationships between parliamentarians had been built over the course of the process. Mr. Johnson said that since the Special Joint Committee, he has felt more at ease about calling counterparts in other parties without fear of spilling of partisan secrets. He cited Bill C-22, dealing with security oversight, as another issue which should be non-partisan and predicted the muscles developed under C-14 would be working again.

Carter v. Canada and Bill C-14: A Case Study of the Relationship Between the Supreme Court and Parliament

A final panel session explored the role of the courts with respect to creating Bill C-14.

Dennis Baker, an associate professor of political history at the University of Guelph, explained that among scholars there are a variety of opinions on how parliament and the courts should ideally interact (dialogue theory). He falls on the side of co-ordinated dialogue (parliament can debate boundaries and not cede solely to the court) as opposed to court-centric

dialogue (court sets the parameters, parliament can pick options, but not boundaries). Mr. Joyal's speech was cited as an example of the court-centric view. Although Mr. Baker argued this may be viewed as a surrender of content, defenders of the court-centric approach note that it avoids further legislative challenges and preserves judicial resources.

Mr. Baker concluded by noting that what parliament says does have a great degree sway over judicial considerations. As the Justice Minister has stated, legislation is never a matter of simply cutting and pasting decisions from the court; legislators must listen to diverse opinions.

Charles Feldman, a legislative counsel in the Office of the Law Clerk and Parliamentary Counsel at the House of Commons, examined the various options available in terms of referring legislation to the courts (see a forthcoming issue of the *Canadian Parliamentary Review* for a revised version of this presentation). Mr. Feldman stressed that limited options are available to Parliamentarians and raised the question of the *sub judice* convention (limitations on Parliament discussing matters before the courts).

Finally, **James Kelly**, a professor of political science at Concordia University, examines the time constraints surrounding this legislation. Kelly focussed on the extension requested by Parliament and suggested it created the idea of severe judicial deference. Rather than asking parliament how much time it needed to provide an appropriate debate on legislation, Kelly says the government asked the court to provide decide on the length without knowing much about the parliamentary calendar. "A year is not a year in the life of parliament," he said, explaining that parliament didn't have many sitting days.

Mr. Kelly suggested there is a dominant narrative of the notwithstanding clause as a denial of minority rights; he cited the Quebec's decision to use it and the debate about using it with respect to same-sex unions as examples of how this narrative developed. But Mr. Kelly said that using Section 33 to provide room for more debate over this issue would challenge the narrative of the notwithstanding clause being used to trample minority rights. If an issue such as this one cuts across party lines, it would likely have the support to satisfy the Manfretti two-thirds majority rule proposed to help ensure the clause is not being misused.

During a question and discussion period, Mr. Baker told Mr. Kelly that if ever there were an instance where the notwithstanding clause could have been justifiably used without further the denial of minority rights narrative, this would have been the time. He asked if the battle to ever use it outside of that narrative has now been lost? Mr. Kelly responded that the clause was essential to generating consensus during constitutional talks in 1981, and this should be the narrative put forward when it is being discussed.

Another question posed to panellists concerned whether the dialogue between the courts and parliament is working. Mr. Baker suggested 'dialogue' is not the best term to use and called it more of an inter-institutional interaction. He noted these are sometimes messy interactions, but they are necessary. Mr. Feldman explained the structure for references hasn't been debated in some time and that it would be worthwhile to investigate them and discuss them.

Will Stos

Editor, *Canadian Parliamentary Review*

The Canadian Scene

New Yukon Speaker

On January 12, 2017, the 34th Yukon Legislative Assembly convened for the first time since the November 7, 2016 general election. The first order of business on the one-day Special Sitting was the election of a Speaker. On motion of Premier **Sandy Silver**, seconded by Leader of the Official Opposition **Stacey Hassard** and Third Party House Leader **Kate White**, the Assembly elected **Nils Clarke**, the Member for Riverdale North, as its Speaker. Mr. Clarke was the sole nominee for the role.

The Premier had announced his intention to nominate Mr. Clarke on December 3, 2016 at the swearing-in ceremony for Cabinet.

In a December 6, 2016 news release, the Premier stated, "I am certain that [Nils Clarke's] vast experiences have prepared him to maintain the civility and order of the assembly. I am confident Nils will carry out this critical role with the diplomacy and good will needed in the assembly…. good ideas can come from all sides and I am counting on Mr. Clarke to create a positive and dynamic environment in the assembly to support all MLAs to the job Yukoners sent us to do." Mr. Clarke noted that he was honoured by the nomination and "look[ed] forward to helping to ensure that the work of the entire legislative assembly can proceed with civility and efficiency for the benefit of all Yukon citizens."

In his address to the Assembly upon his election as Speaker, Mr. Clarke spoke of "the importance of the Speaker's role in ensuring the business of the Legislature is conducted in an independent, fair and respectful manner." He added, "To that end, it is the Speaker's duty to be impartial and to treat all members equally and without favour. This high standard must be met in order to maintain the confidence and respect of the Legislature, and I commit today to make my best efforts to do so."

Mr. Clarke succeeds former Speaker **Patti McLeod**, who was re-elected as the MLA for Watson Lake in November, and now sits in the Assembly as a member of the Official Opposition.

Nils Clarke

In the 24 years preceding Mr. Clarke's election as an MLA in November, he practiced law in Yukon and since 2000 he has served as the Executive Director of the Yukon Legal Services Society. Mr. Clarke has represented clients from all Yukon communities, and at all levels of Yukon Courts, including the Supreme Court of Canada.

Linda Kolody

Deputy Clerk, Yukon Legislative Assembly

38th Canadian Regional Seminar of the Commonwealth Parliamentary Association

The 38th Canadian Regional Seminar of the Commonwealth Parliamentary Association was held in Quebec City from November 10 to 12, 2016. Some 30 delegates from across Canada's provinces and territories came together for fruitful discussion on various topics, including electoral reform, fighting climate change, promoting diversity in parliament, and women in politics.

The working sessions began with a presentation on electoral reform by **Jordan Brown**, a Member of the Legislative Assembly of Prince Edward Island. The workshop facilitator was **Jacques Chagnon**, the President of the National Assembly of Quebec. Mr. Brown spoke to the audience about the Committee on Democratic Renewal, of which he is a member. Its mandate is to examine ways to strengthen the electoral system, the representativeness of MLAs, and the role of the legislative assembly. The Committee held public consultations and made recommendations. In the fall of 2016, based on one of these recommendations, Prince Edward Island voters were invited to participate in a referendum on electoral reform. They were asked to rank the five proposed electoral systems in order of preference. After eliminating three of the five options, voters chose mixed member proportional representation. After Mr. Brown's presentation, the seminar participants discussed the features of various electoral systems. A number of delegates emphasized the importance of considering the consequences of electoral reform. Others addressed how difficult it is to choose the right wording for a referendum question. Mr. Chagnon ended the session by praising the initiative by Prince Edward Island's Legislative Assembly.

The second working session was chaired by **Tom Osborne**, Speaker of the House of Assembly of Newfoundland and Labrador. **Gilles LePage**, a Member of the Legislative Assembly of New Brunswick, spoke about the effects of climate change in his province. He mentioned the rising temperature of the Restigouche River, intense heat waves that threaten the forests in his riding, and shoreline erosion along Chaleur Bay, stating that additional measures will be needed for New Brunswick to reach its greenhouse gas reduction targets. As a member of the Select Committee on Climate Change, Mr. LePage took part in consultations at which more than 150 stakeholders expressed their views. He said that each individual and each sector of New Brunswick's economy will be affected in some way by climate change. This means that each person has a responsibility to take action to protect the future of our province. The working session raised a number of questions. Some participants discussed the need to prepare future generations for the changes observed, such as training workers in the renewable energy sector. Others raised questions about how to leverage economic growth while fighting climate change.

The electrification of transportation and Quebec's *Act to increase the number of zero-emission motor vehicles in Québec in order to reduce greenhouse gas and other pollutant emissions* were discussed during the third working session. It was chaired by **George Qulaut**, the Speaker of the Legislative Assembly of Nunavut. **Richard Merlini**, a Member of the National Assembly of Quebec, noted in his presentation that the transportation sector is the largest greenhouse gas emitter in Quebec. He presented Quebec's *2015–2020 Transportation Electrification Action Plan*, which allocates funds for electric school buses, pilot projects for taxi fleets, and various incentive programs such as the *Drive Electric* program. This program provides a rebate for the purchase or lease of a hybrid or electric vehicle. Mr. Merlini pointed out that Quebec is the first province in Canada to pass a law on zero-emission vehicles. The Act requires the automotive industry to sell a minimum number of hybrid or electric vehicles each year through a tradable credit system. Session participants were very interested in how the government negotiated with the automotive sector while the Act was being drafted. They also wanted to know about the process for selecting which measures would be used to encourage drivers to choose electric or hybrid vehicles.

To conclude the first day of the seminar, Manitoba MLA **Sarah Guillemard** shared her experience as a newly elected member. **Chris Collins**, Speaker of the Legislative Assembly of New Brunswick, chaired the session, during which Ms. Guillemard explained why she decided to go into politics and the doubts and questions she had during her campaign and when she took her seat in the legislature. Stating that she felt a bit uncertain about her new duties, Ms. Guillemard stressed the importance of asking colleagues and the people around you for help. She believes that vulnerability can be an asset in politics rather than a weakness. Experiencing feelings of vulnerability may lead a member to look for more support from others. Various participants around the table talked about how difficult it is for elected officials to reveal their uncertainties, for fear of giving their political opponents ammunition or damaging their image. Participants then discussed ways to make the political environment more welcoming and collaborative.

Provided

Delegates of the 38th Canadian Regional Seminar of the Commonwealth Parliamentary Association.

The second day of the seminar focused on promoting diversity in parliament and on women in politics. **Francis Watts**, Speaker of the Legislative Assembly of Prince Edward Island, acted as the moderator for this session. British Columbia MLA **Marvin Hunt** spoke about the demographic changes in his riding, primarily the increase in visible minorities. With regard to the importance of democratic institutions that adequately reflect the people they represent, he asked the following questions: What are the criteria of a representative parliament? If half the population is female, should half the number of elected officials be women? Mr. Hunt said that, beyond theories about what makes a parliament a representative institution, it is essential to create the conditions that make everyone feel they can participate in the political system, regardless of their gender, ethnicity or religion. Representativeness is a major challenge, and all stakeholders—including citizens, political parties and parliaments—must take measures to overcome this challenge.

Caroline Simard, Member of the National Assembly of Quebec, spoke at the seminar's last session. She provided information about the Committee on Citizen Relations' self-initiated order to study women's place in politics. During their study, the members of the Committee considered a wide variety of measures that could be implemented in the National Assembly to encourage women to be involved in politics. They wanted to understand what obstacles prevented women from running for a seat in parliament. They were looking for ways to overcome these obstacles. Following Ms. Simard's presentation, session participants discussed how difficult work-life balance can be for everyone in the politics. A number of stakeholders identified this as the reason that relatively few women are involved in politics.

Overall, the 38th Canadian Regional Seminar of the Commonwealth Parliamentary Association provided an opportunity for candid discussions among delegates. Participants from all over Canada engaged with each other on a variety of topics, finding common ground on many issues.

Sophie J. Barma
Analyst, National Assembly Library, Québec

Regional Executive Committee, CPA*

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***As of March 31, 2017**

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Publications

New and Notable Titles

A selection of recent publications relating to parliamentary studies prepared with the assistance of the Library of Parliament (November 2016 - February 2017)

"Not turning out – Millennials across the rich world are failing to vote." *Economist* 422 (9026): 51-2 February 4, 2017

- Democracies are at risk if young people continue to shun the ballot box.

"Vote early, vote often – Why the voting age should be lowered to 16." *Economist* 422 (9026): 10 February 4, 2017.

- Young voters are becoming disillusioned with elections. Catch them early and teach them the value of democracy.

Chalifour, Nathalie J. "Canadian climate federalism: Parliament's ample constitutional authority to legislate GHG emissions through regulations, a national cap and trade program or a national carbon tax." *National Journal of Constitutional Law / Revue nationale de droit constitutionnel* 36 (2): 331-407, November/novembre 2016.

- Climate change is perhaps the quintessential issue for engaging the tools of cooperative federalism and progressive interpretation of our Constitution.

Dodek, Adam M. "Omnibus bills: Constitutional constraints and legislative liberations." *Ottawa Law Review / Revue de droit d'Ottawa* 48 (1): 1-41, 2017.

- Ultimately, this paper concludes that in the absence of action by Parliament itself, the courts may be forced to find a way to restrict the most abusive uses of omnibus bills.

Edwards, Cecilia. "The Political consequences of *Hansard* editorial policies: the case for greater transparency." *Australasian Parliamentary Review* 31 (2): 145-60, Spring/Summer 2016.

- When discrepancies are spotted between spoken speeches and reported speeches, it is often assumed that a member has altered the record – a practice that can have serious consequences because it raises the question of whether there has been an attempt to deliberately mislead the House.

Everett, Michael. "A public service ombudsman: Removing the MP filter." *UK House of Commons Library - Second Reading Blog* 2p., December 14, 2016.

- One of the draft bill's most notable features is the removal of the 'MP filter' – the requirement that all complaints to the existing Parliamentary Ombudsman (PO) must be made through an MP. This filter is unique to the PO.

Feldman, Charlie. "Legislative vehicles and formalized Charter review." *Constitutional Forum / Forum constitutionnel* Special Issue 25 (3): 79-89, 2016.

- Although parliamentarians consider the constitutionality of proposed legislation through various means, formalized review occurs only with respect to specific classes of legislation and does not mirror how courts review impugned legislation. This article compares and contrasts current parliamentary practices aimed at *Charter* compliance and explains where gaps exist.

Feldman, David. "Legislation which bears no law." *Statute Law Review* 37 (3): 212-24, 2016.

- In the United Kingdom, examples of statutory provisions which do not contain the sort of content which would normally be regarded as legally cognizable norms are multiplying. The phenomenon of *non-law-bearing* statutory provisions challenges the notion of legislation and endangers the psychological influence on which the success of legislation usually depends..

Hunter, Josh. "Renovating Canada's constitutional architecture: an examination of the government's democratic reform initiatives." *Constitutional Forum / Forum constitutionnel* Special Issue 25 (3): 15-32, 2016.

- This paper examines the electoral reform referenda that have been held in other Commonwealth countries and in several Canadian provinces. It will also consider whether a constitutional convention has arisen requiring any major changes to Canada's electoral system to be approved by referendum.

Jennings, Sarah. "Extreme makeover." *Literary Review of Canada* 25 (1): 10-13, January/February 2017.

- Will the multibillion-dollar renovation of Parliament Hill create a vital new capital, or a spectacular members-only club?...to stand in this space is powerful, a tribute to its design architects and the many teams and dozens of subprojects on the site...

Kazmierski, Vincent. "Accessing with dinosaurs: Protecting access to government information in the cretaceous period of Canadian democracy." *Constitutional Forum / Forum constitutionnel* Special Issue 25 (3): 57-66, 2016.

- In many ways, our democratic institutions, processes, and frameworks resemble the dinosaurs of the Cretaceous period...They have ceased to evolve sufficiently and are being left behind in an environment where technological innovations and greater expectations for political consultation, participation, and accountability have combined to present new challenges to the legitimacy, and perhaps the viability, of the *status quo…*

Mikhaiel, Mina Mark. "The dangers of the reference question: SCC v. SCOTUS." *Canada-United States Law Journal* 40: 71-83, 2016.

- This article deals with diverging approaches to the question of a legal reference in Canada and the United States.

Painter, Pauline. "New kids on the block or the usual suspects?: Is public engagement with committees changing or is participation in committee inquires still dominated by a handful of organisations and academics?" *Australasian Parliamentary Review* 31 (2): 67-83 Spring/Summer 2016.

- Committees play an important role in the democratic system of government in providing opportunities for groups and individuals to engage with Parliament…with the changing face of technology, new forms of participatory democracy and the rise of social change movements this article examines if this movement has had an influence on participation in committee inquiries.

Ponsford, Matthew P. "The law, policy, and politics of federal by-elections in Canada." *Journal of parliamentary and political law / Revue de droit parlementaire et politique* 10 (3): 583-627, November / novembre 2016.

- The author aims to elucidate several key aspects of laws governing federal by-elections in Canada, both in contrast and similarity to general election laws and policies…includes an examination of the role of the Chief Electoral Officer of Canada and the Speaker of the House of Commons… several examples are provided to illustrate the convenience of by-elections as pilot projects for improved general elections.

Purser, Pleasance. "Overseas Parliamentary News: October 2016." *New Zealand Parliamentary Library* 9p.

- Australia - Restriction on photography in Senate chambers lifted - Since 2002 the media have been able to take photographs in the chamber of the senator who has the call and is speaking, but not of anyone else. The Senate has now lifted this restriction…

Purser, Pleasance. "Overseas Parliamentary News: November 2016." *New Zealand Parliamentary Library*, 11p.

- Denmark – Increased penalties for attacks on people providing public service - A bill to increase respect for public life, public authorities and people in public service, including politicians, would amend the Penal Code to make it an aggravating circumstance for the purpose of sentencing if the offence had been committed in the context of the performance by the victim, or a close family member, of their official duties…

Purser, Pleasance. "Overseas Parliamentary News – December 2016." *New Zealand Parliamentary Library*, 12p.

- United Kingdom - Blogger given prison sentence for harassing MP - A blogger who published a series of abusive anti-Semitic postings against a Jewish MP was convicted of racially aggravated harassment and sentenced to two years imprisonment. The MP gave evidence in court

that she had feared for her personal safety as she knew that what happened online did not always stay online…

Walters, Mark D. "Judicial review of ministerial advice to the Crown." *Constitutional Forum / Forum constitutionnel* Special Issue 25 (3): 33-42, 2016.

- How is ministerial advice to the sovereign concerning how a power ought to be exercised different from the exercise of the power itself? Does ministerial advice exist within a domain of political action beyond the reach of law? These are persistent questions in Canada.

Whyte, John D. "Political accountability in appointments to the Supreme Court of Canada." *Constitutional Forum / Forum constitutionnel* Special Issue 25 (3): 109-18, 2016.

- There are many issues related to the method and formal structure of a hearing process. There are also legitimate concerns about the damage that might be done to the Supreme Court or the judicial branch generally by hearings, chiefly the risk of political partisanship in the review process, which might be perpetuated through politically partisan conflict among the members of the Court…

Zwibel, Cara Faith. "The committee process: Platform for participation or political theatre?" *Constitutional Forum / Forum constitutionnel* Special Issue 25 (3): 43-55, 2016.

- This article focuses on the role that committees of the House of Commons play in the legislative process. It also examines how committees work in practice in order to assess whether the theory of citizen engagement reflects the practical reality of how committees perform their functions...

Jacques-Barma, Sophie. « Un directeur parlementaire du budget pour le Québec ou comment crédibiliser le débat. » *Fondation Jean-Charles-Bonenfant,* National Assembly of Quebec, 40p. juin 2016.

- The purpose of this paper is twofold: First, the paper informs the reader about the PBO's mandate. The federal example serves as the basis for the discussion. The reasons for its creation, the tasks it performs and the challenges faced by the first PBO are examined. Second, the paper outlines the debate on establishing a PBO in Quebec and takes a position on this issue.

McDonald-Guimont, Julien. "La face cachée du travail de député : étude des implications de faire le saut en politique." *Fondation Jean-Charles-Bonenfant*, National Assembly of Quebec, 59p. June 2016.

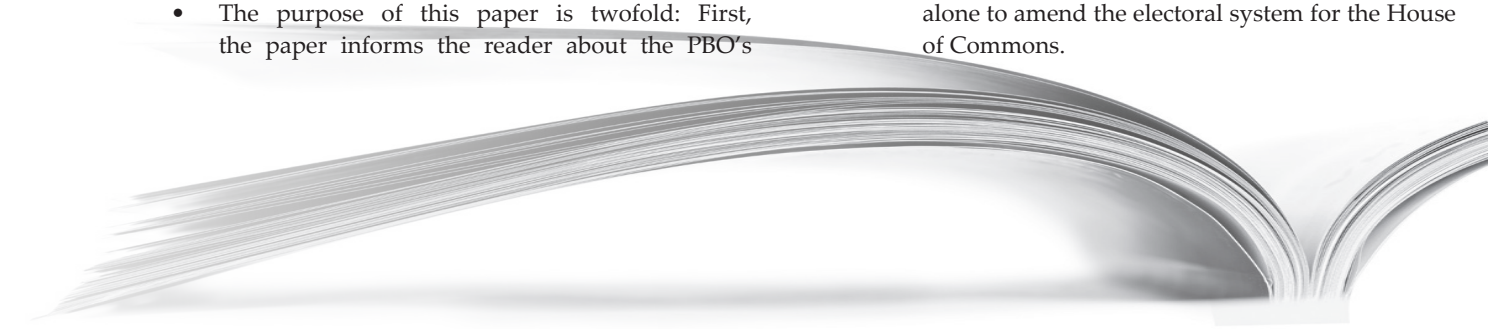
- Even today, despite the unprecedented volume of information that is available and consumed, the work of a Member of the National Assembly remains deeply mysterious. Few people can claim to have spoken with their MNA, and MNAs themselves generally prefer not to expose their private lives. To fill this information gap, this paper aims to shed light on the real implications of an MNA's work.

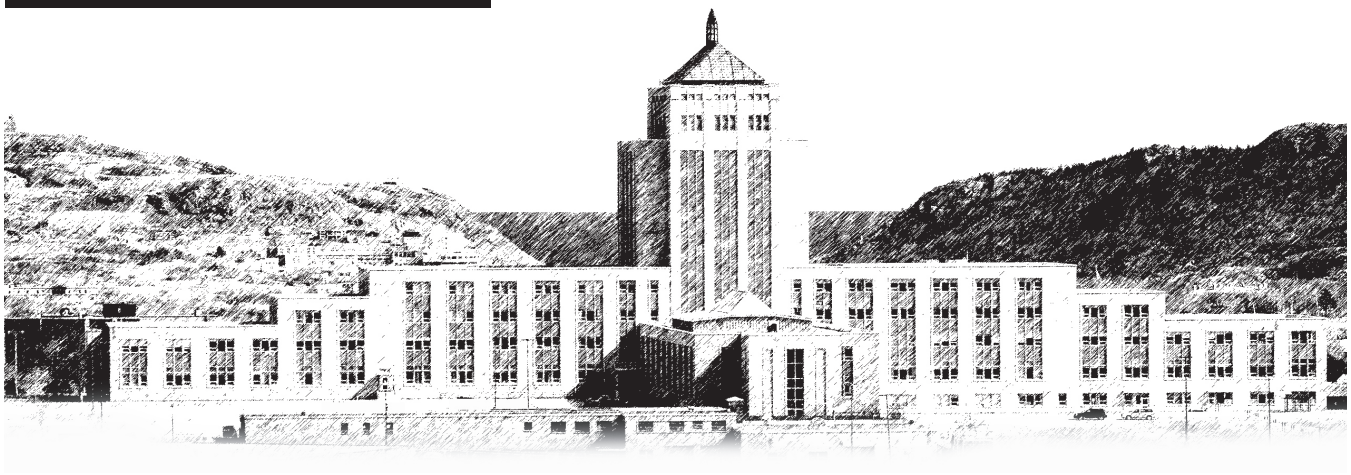
Monière, Denis. "Pour une réforme du mode de scrutin." *L'Action nationale* 106 (8): 74-85, October 2016.

- The function of the electoral system is to transform votes into seats according to formulas of varying complexity. The choice of a voting system reflects a choice of a theory of politics. Some put the principle of equal representation of political forces first, while others give priority to more stable governments.

St-Hilaire, Maxime. "De la compétence sur la révision du système électoral fédéral." *Journal of Parliamentary and Political Law / Revue de droit parlementaire et politique* 10 (3): 641-48, November / novembre 2016.

- The Constitution, even when it is interpreted, as it should be, in a non-literal manner such that the constitutional amendment procedure it sets out applies not only to the amendment of provisions already in force, but also to the adoption of new provisions as changes to an "architecture," and even taking into account the "unwritten principles" that fall under it, authorizes Parliament alone to amend the electoral system for the House of Commons.





Newfoundland and Labrador

The First Session of the 48th General Assembly resumed on November 14th.

Former Clerk Passes Away

Friends and former colleagues were saddened to learn of the death of **Elizabeth Duff** who passed peacefully away on August 28, her 90th birthday, having spent the day celebrating with her family.

Ms. Duff, known to most as Bettie, had a long career with the civil service. She was private secretary to Premier **Joseph Smallwood** for 23 years, and later served as an executive assistant in government.

In 1977, Ms. Duff was appointed Clerk of the House during the tenure of Speaker **Gerald Ottenheimer** a position which she held until her retirement in 1991. Ms. Duff was well respected by all parties.

Ms. Duff was the first female Clerk of a legislature in Canada. During her tenure as Clerk she became well known in Commonwealth parliamentary circles and is fondly remembered for her graciousness and mentorship at all times.

Standing Orders Amendments

During this sitting the House adopted some changes to the Standing Orders.

The most significant were:

- the reduction of the number required for a quorum to 10 including the Speaker from 14 excluding Speaker;
- the introduction on a provisional basis for 2017 of a fixed calendar which includes constituency weeks;
- the addition on a provisional basis for 2017 of 2.5 hours sitting time on Wednesday mornings for the consideration of Government business;
- the introduction on a provisional basis for 2017 of a change to the adjournment provision such that the Speaker will adjourn the House at the end of the day and where a motion has passed to extend the day, except when closure has been invoked, the Speaker will adjourn at midnight.

Leader of the Official Opposition **Paul Davis** announced on October 11, 2016 that he would resign as Leader as soon as a leadership convention could be arranged. Mr. Davis will stay on as Member for Topsail-Paradise but did not say whether he would run in the next election.

During the Fall Sitting the House passed 26 bills including a new *Public Procurement Act* and a *Seniors' Advocate Act* which will create a new statutory office within the Legislature.

Statutory Officers Appointed

The Lieutenant Governor in Council on Resolution of the House appointed **Bruce Chaulk** as Chief Electoral Officer and Commissioner for Legislative Standards and **Jackie Lake-Kavanagh** as Child and Youth Advocate. Recruitment of both these statutory officers followed the process established under the *Independent Appointments Commission Act* passed last Spring.

Donovan Molloy was appointed Information and Privacy Commissioner pursuant to Section 85 of the governing act which provides that the candidate be selected from a roster of qualified candidates submitted to the Speaker by a selection committee comprising

of the Clerk of the House, the Clerk of the Executive Council, the Chief Judge of the Provincial Court and the President of Memorial University.

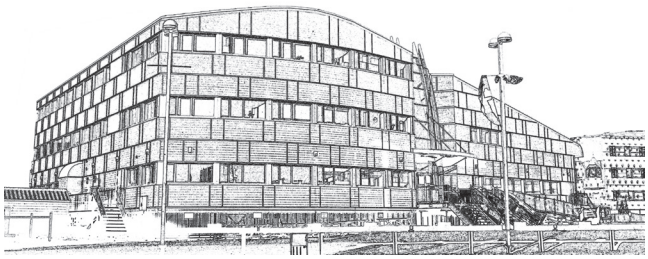
The recruitment of the new Seniors' Advocate will follow the process established by the *Independent Appointments Commission Act*.

On November 1, 2016 the Members' Compensation Review Committee (MCRC) appointed on March 10 pursuant to subsection 16(1) of the *House of Assembly Accountability, Integrity and Administration Act* released its report. The House must appoint an MCRC at least once in each General Assembly to conduct an inquiry and compile a report respecting the salaries, allowances, severance to be paid to Members of the House of Assembly of Newfoundland and Labrador.

The House of Assembly Management Commission is in the process of considering the 59 recommendations of the Committee which they must accept or modify provided that modified entitlements may not exceed the maximum recommended by the Committee.

The House adjourned *sine die* on December 13 and was expected to meet to prorogue the current session and open the Second Session of the 48th General Assembly in late February or early March.

Elizabeth Murphy
Clerk Assistant



Nunavut

House Proceedings

The fall 2016 sitting of the 3rd Session of the 4th Legislative Assembly convened on October 18, 2016. The last sitting of the calendar year was held on November 8, 2016.

The proceedings of the Committee of the Whole during the fall 2016 sitting were dominated by the consideration of the Government of Nunavut's proposed 2017-2018 capital estimates. Seven bills received Assent during the fall 2016 sitting:

- Bill 14, *Public Health Act*;
- Bill 16, *An Act to Amend the Travel and Tourism Act*;
- Bill 20, *Supplementary Appropriation (Operations and Maintenance) Act, No. 3, 2015-2016*;
- Bill 21, *Write-Off of Assets Act, 2015-2016*;
- Bill 22, *Supplementary Appropriation (Capital) Act, No. 3, 2016-2017*;
- Bill 23, *Supplementary Appropriation (Operations and Maintenance) Act, No. 2, 2016-2017*; and
- Bill 24, *Appropriation (Capital) Act, 2017-2018*.

On October 18, 2016, the Legislative Assembly unanimously adopted a motion to recommend the appointment of **Dustin Fredlund** of Rankin Inlet as the territory's new Chief Electoral Officer. The motion was moved by Iqaluit-Niaqunnguu MLA **Pat Angnakak** and seconded by Cambridge Bay MLA **Keith Peterson**. The position of Chief Electoral Officer is one of five independent officers who are appointed by the Commissioner of Nunavut on the recommendation of the Legislative Assembly. The appointment of Mr. Fredlund followed the retirement of **Sandy Kusugak**, who had served in the position since 2001. The Legislative Assembly's Winter 2017 sitting was set to convene on February 21, 2017.

Committee Activities

From September 13-15, 2016, the Legislative Assembly's Standing Committee on Public Accounts, Independent Officers and Other Entities held televised hearings on the most recent annual reports of the Information and Privacy Commissioner and the Representative for Children and Youth, both of whom are independent officers of the Legislative Assembly. The committee's reports on its hearings were presented to the House during its fall 2016 sitting.

Order of Nunavut

On November 8, 2016, the Order of Nunavut Advisory Council, which is chaired by Speaker **George Qulaut**, announced that the 2016 appointments to the Order would be **Louie Kamookak** of Gjoa Haven, **Ellen Hamilton** of Iqaluit and **Red Pedersen** of Kugluktuk. The investiture ceremony for the recipients will be held during the Legislative Assembly's winter 2017 sitting.

Speaker's 6th Biennial Youth Parliament

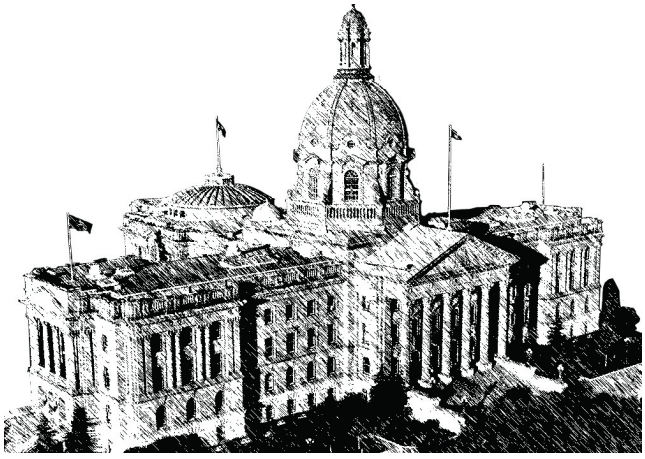
The Speaker's Sixth Biennial Youth Parliament was held during the week of November 21-25, 2016. Twenty-two senior high school students from across the territory travelled to Iqaluit for a week of learning activities that culminated in the live televised sitting of the Youth Parliament. The Commissioner of Nunavut delivered an Opening Address to the Youth Parliament and the Representative for Children and Youth appeared before the group to respond to students' questions concerning her office's responsibilities and activities. The Speaker and a number of cabinet ministers and regular MLAs switched roles during the televised sitting, serving as Pages and performing other necessary functions.

Passing of Former Members

James Arvaluk and **John Ningark** passed away during 2016. Both Mr. Arvaluk and Mr. Ningark shared the distinction of having served together as Members of both the Legislative Assembly of the Northwest Territories and the Legislative Assembly of Nunavut. Flags at the Legislative Assembly Precinct were half-masted in their honour.

Alex Baldwin

Office of the Legislative Assembly of Nunavut



Alberta

Second Session of the 29th Legislature

The Second Session of the 29th Legislature reconvened on October 31, 2016, and did not adjourn for the holiday season until December 13, 2016. During this period the Assembly passed 16 Government Bills including three Bills that added to the environmental protection initiatives that began with the passage of the *Climate Leadership Implementation Act*, during the 2016 spring sitting. Bill 25, *Oil Sands Emissions Limit Act*, sets a limit on the volume of greenhouse emissions permitted from the oil sands at 100 megatons per year. Bill 27, *Renewable Electricity Act* aims to facilitate the switch from coal-fired power generation towards more environmentally sustainable options by moving Alberta away from an energy only market and towards a capacity market in which private generators compete to secure contracts for produced energy and generation capacity. This legislation will be administered by the Alberta Electric System Operator, and approved projects will need to be operational by 2019 in order to coincide with the closure of the province's oldest coal-fired power plants. Finally, Bill 34, *Electric Utilities Amendment Act, 2016*, will give the "balancing pool," the entity that brokers the electricity system, the ability to borrow money from the provincial government to manage its funding obligations and help mitigate against price volatility for consumers.

Composition of the Assembly

On November 17, 2016, **Sandra Jansen** (Calgary-North West) announced she was leaving the Progressive Conservative caucus to join the governing New Democrats. The composition of the Assembly is now 55 New Democrats, 22 Wildrose Members, eight Progressive Conservatives, one Alberta Liberal and one Alberta Party Member.

Standing Order 30 – Emergency Debate

On November 21, 2016, **Nathan Cooper** (Olds-Didsbury-Three Hills), Official Opposition House Leader, requested that an emergency debate take place regarding the death of children in the care of the province. Government House Leader **Brian Mason** (Edmonton-Highlands-Norwood) spoke in favour of the debate and, after the request was ruled in order by the Speaker **Robert Wanner** (Medicine Hat), the House gave unanimous consent to proceed with the matter. The emergency debate lasted almost two-and-a-half hours and centred primarily on the death of a four-year old girl named Serenity who died in 2014 from physical injuries while in a kinship care placement with relatives. The Office of the Chief Medical Examiner has not released a cause of death in this case and a police investigation is ongoing. During the debate concerns were raised regarding the level of secrecy in the child intervention system, delays in investigating and releasing information regarding the child's death, the systemic problems and safety concerns with kinship

care identified by the Office of the Child and Youth Advocate and whether or not the recommendations made by the Advocate would be fully implemented.

Privilege – Government Advertising

On June 6, 2016, a purported question of privilege was raised by Mr. Cooper regarding Government advertisements which presupposed the passage of Bill 20, *Climate Leadership Implementation Act*. During debate on the matter it was noted that the Speaker had previously cautioned the current Government about advertising policies and programs when the necessary legislation was still under consideration by the Assembly.

Following a period of adjournment, on November 1, 2016, Speaker Wanner gave his ruling on whether the Government had committed a contempt of the Assembly. Speaker Wanner advised the Assembly that he had reviewed the contents of the Government advertisements in question and agreed that the government had the right to communicate its policies and programs to the public. However, he noted that there are ways such information can be communicated without presuming a decision of the Assembly. He further stated that while the Government, doubtless, had good intentions in advising Albertans of the provisions and future impact of Bill 20, at the same time that the radio ads aired, Bill 20 had not passed through the necessary stages in the Assembly. Additionally, the Speaker noted that the Government website outlined details about the carbon levy and the rebates but contained no qualification that the levy was subject to the approval of the Legislature.

Ultimately, Speaker Wanner found that the advertisements in question presented statements regarding the carbon levy and associated rebates as if they were facts when, in reality, the necessary legislation had not yet been passed by the Assembly. As the contents of the advertisements prejudged a decision of the Assembly the Speaker ruled that the matter constituted a *prima facie* case of privilege. Following the ruling, Deputy Government House Leader **Deron Bilous** (Edmonton-Beverly-Clareview) apologized to the Assembly on behalf of the Government and, as is the practice in Alberta, the matter was closed.

Jody Rempel
Committee Clerk

British Columbia

The Legislative Assembly was expected to resume February 14, 2017, opening the 6th Session of the 40th Parliament. This spring session will be the last session of the 40th Parliament before the provincial general election to be held on May 9, 2017.

8th Annual Commonwealth Youth Parliament

The Legislative Assembly hosted the 8th Annual Commonwealth Youth Parliament from November 6 to 10, 2016. Youth parliamentarians aged 18 to 29 from across the Commonwealth learned about the work of parliamentarians, the legislative process, parliamentary procedure, and media relations in a parliamentary environment. Youth parliamentarians appreciated the participation of mentor parliamentarians from Australia, Scotland, Sri Lanka, BC and Alberta. Through "mentor panel" sessions, mentors shared their experiences on topics such as the role of a member of parliament, running for office and the role of the media in parliamentary democracy. After several days of lively debate in the House and a mock press conference, the Youth Parliament concluded with the role of host for the 9th Annual Youth Parliament being officially passed on to the British Virgin Islands.

Canada was represented by 12 youth delegates from various provinces. The Legislative Assembly of British Columbia strongly encourages Canada's parliaments to support Canadian youth participation in future Commonwealth Youth Parliaments. Hansard transcripts, video, photos and other documents from the Commonwealth Youth Parliament are available online at: https://www.leg.bc.ca/cyp8/pages/welcome.aspx

Parliamentary Committees

The Legislative Assembly Management Committee released its annual *Accountability Report* on December 7, 2016. The report presents financial results from 2015/16, including independently audited financial statements for which the Auditor General gave an unmodified opinion, certifying the results as accurate and fair. The report emphasizes transparency and accountability in carrying out Assembly priorities such as stronger financial administration, modernized digital services and enhanced security and accessibility.

The Select Standing Committee on Finance and Government Services completed its annual budget consultation process, as required by the *Budget Transparency and Accountability Act* and released its report on November 15, 2016. The report made 102 recommendations on a variety of themes, including the environment, transit and transportation, natural resources and social services.

Additionally, on December 8, 2016 the Committee issued a report on its annual review of the budgets of BC's statutory offices. In 2014 the Committee had unanimously agreed to strengthen oversight of statutory office budgets in order to ensure the Committee's review process is effective in promoting accountability for expenditures of public funds. The 2016 report reflects the Committee's ongoing commitment in that regard, with members agreeing that the schedule of Spring and Fall meetings is supporting the goal of improved oversight while also providing statutory officers more opportunity to provide updates and raise new issues with the Committee as they arise.

The Select Standing Committee on Children and Youth continued its statutory review of the *Representative for Children and Youth Act*, as required by section 30 of that *Act*. Following a preliminary outline of possible priorities for change from the then-Representative on October 24, 2016, the Committee opened an online consultation portal to accept written, video and audio submissions until mid-February 2017. The Committee will meet in January with **E.N. (Ted) Hughes**. His 2006 review of BC's child welfare system recommended establishing the Office of the Representative for Children and Youth. Briefings from senior ministry staff will follow in February, with further work on the statutory review to continue into the next Parliament.

The Select Standing Committee on Parliamentary Reform, Ethical Conduct, Standing Orders and Private Bills issued its report on two important matters regarding the conduct of Legislative Assembly business. The Committee considered in detail the current process for the review of Estimates by the Committee of Supply, ultimately recommending some refinements to the process: establishing limits on the number of hours of debate for each ministry, requesting government provide improved financial and program information to support the Estimates process, and allow some additional flexibility regarding senior public servants' role in supporting ministers in debate. To facilitate parliamentary committee business, the Committee recommended changes to the Standing Orders and the *Constitution Act* as necessary to allow parliamentary committees to be established for the duration of a Parliament, rather than the current practice of committees being established on a sessional basis.

On November 15, 2016 the Special Committee to Appoint a Representative for Children and Youth released its report, unanimously recommending the appointment of **Bernard Richard** as BC's new Representative for Children and Youth. The previous Representative's second and final five-year term expired in November and the House was not sitting this past Fall; as such, Mr. Richard is Acting Representative until the Legislative Assembly has an opportunity to consider the Committee's recommendation and make a formal appointment by motion as required by the *Act*. Mr. Richard is the second person to hold the office in BC.

The Special Committee to Appoint an Information and Privacy Commissioner extended its search with a new deadline for applications of January 13, 2017. **Drew McArthur** was appointed Acting Information and Privacy Commissioner in June 2016, after the former Commissioner completed her term and subsequently accepted the position of Information Commissioner for the United Kingdom.

Parliamentary Visits

In January, the Legislative Assembly hosted members and officials of the Senate of the Parliament of Kenya's Procedure and Rules Committee. The study tour included orientations on a variety of facets of business in BC's Assembly, such as financial management and protective services, and meetings with representatives of several statutory offices.

New Information Available Online

In recognition of 2017 marking 100 years of women having the right to vote in BC, material from Speaker **Linda Reid**'s October 2016 celebration, and from the public exhibit on "Women and the Vote," is now available online at https://www.leg.bc.ca/wotv.

Disclosure reports and travel and constituency office expense receipts for members in the second quarter were posted in December 2016, and are available at https://www.leg.bc.ca/learn-about-us/accountability/members-disclosure-reports-and-receipts.

Alayna van Leeuwen
Committee Research Analyst

Manitoba

The Second Session of the 41st Legislature began on November 21, 2016 with the Speech from the Throne delivered by Lieutenant Governor **Janice C. Filmon**. This was the second Speech from the Throne of the new government, with three main focuses: finances, services, and economic growth.

The address highlighted a range of commitments and proposals in these areas, including:

- extensive province-wide pre-budget consultations;
- reforming the governance of major Crown corporations;
- establishing a Red Tape Reduction Task Force;
- reintroducing the referendum on increases to major taxes;
- developing a plan for the child welfare system;
- reforming Manitoba's Employment and Income Assistance program;
- completing a comprehensive assessment of the health system;
- creating pooled retirement pension plans;
- continue working on northern economic development strategies to create jobs;
- hosting partnership with the Government of Canada and the City of Winnipeg for the Canada Summer Games;
- developing a long-term literacy and numeracy strategy on education and investing in professional development for educators and supports for school divisions;
- eliminating the backlog of Provincial Nominee Program applications;
- implementing a return-on-investment test to prioritize government investments in infrastructure; and
- introducing a carbon pricing and climate change plan.

Interim Official Opposition Leader **Flor Marcelino** moved a non-confidence amendment to the Address in Reply motion, which stated that the provincial government:

- announced an agenda of cuts and austerity, breaking its pledge to protect front-line workers and the services they provide;
- opened the door to the privatization and deregulation of essential and important front-line services;
- manufactured partisan political crises and has refused to produce transparent, long-term financial documents;
- failed to take steps to keep the cost of living affordable for Manitobans; and
- had not presented any meaningful plan to address a wide range of needs concerning several important areas for Manitoba.

Later in the debate, Independent Member **Judy Klassen** moved a sub-amendment condemning the government's failure:

- to commit to lowering ambulance fees;
- to implement recommendations from the *2016 Liberal Caucus Brain Health Report*;
- to increase the amounts for special needs student funding;
- to commit to diversifying industries and tourism in addition to extricating natural resources in the northern economy;
- to commit to releasing the "duty to consult" framework for Indigenous communities and

to supporting Urban Aboriginal Economic Development Zones;
- to commit to improving the outdated technology systems utilized in government departments;
- to commit to improving issues relating to supportive housing and personal care homes;
- to commit to reducing the cost of prescription drugs;
- to commit to the development and implementation of a provincial suicide strategy;
- to implement a mental health support task force to review the criminalization of mental illness in the justice system;
- to commit to reducing the farmland school tax's impact on Manitoba farmers;
- to commit to the immediate construction of a dedicated stroke unit in Manitoba; and
- to commit to not increasing the cost of the Provincial Nominee Program applications.

Following the defeat of Ms. Klassen's sub-amendment on a voice vote, the Official Opposition's amendment was defeated on a recorded vote of yeas 13, nays 41. Finally, the same day the main motion was carried on a vote of yeas 39, nays 16.

Prior to the scheduled adjournment of December 2, 2016, the government introduced a number of bills, addressing various governance areas including:

- *Bill 3 – Pooled Registered Pension Plans (Manitoba) Act,* which provides the legal framework for pooled pension plans open to employees and self-employed persons in Manitoba who are engaged in work that falls within the legislative authority of the Legislative Assembly of Manitoba.
- *Bill 6 – The Manitoba East Side Road Authority Repeal Act,* which transfers the Authority's property, rights and liabilities to the government.
- *Bill 7 – The New West Partnership Trade Agreement Implementation Act (Various Acts Amended),* which amends three *Acts* so that Manitoba can join the agreement, as well as participate in other future domestic trade agreements.

During the same period, several Private Member's Bills were introduced, including:

- *Bill 207 – The Public Health Amendment Act,* which prohibits anyone other than a person regulated under *The Pharmaceutical Act* from owning, operating or possessing a pill or tablet press or other similar designated equipment.
- *Bill 209 – The Mental Health Amendment and Personal Health Information Amendment Act,* which broadens the circumstances in which personal health information may be disclosed without an individual's consent. An amendment to *The Personal Health Information Act* clarifies that the illness, injury or incapacity may be physical or mental.

The House was scheduled to resume sitting on March 1, 2017.

Standing Committees

Since the last submission, the Standing Committee on Public Accounts met to consider the Public Accounts for the years 2014, 2015, and 2016. It also met on another occasion to consider the *Auditor General's Report – Operations of the Office* for the years 2015 and 2016 and it completed consideration of various sections of the 2014 Follow-Up Recommendations.

The Standing Committee on Legislative Affairs met in late November to consider *Annual Reports* from Elections Manitoba, while the Standing Committee on Social and Economic Development met in the beginning of December to consider the last two *Annual Reports* of the Manitoba Poverty Reduction and Social Inclusion Strategy (All Aboard).

Finally, the Rules of the House Committee met before the end of the year to set guidelines for future discussions on rule changes.

New Government House Leader

In the fall, **Andrew Micklefield**, the newly elected Member for Rossmere, was appointed as the new Government House Leader. His appointment is a bit of an anomaly in the Manitoba Legislature as Mr. Micklefield was appointed to cabinet in order to have all the necessary ministerial authorities to conduct the duties of Government House Leader, but was not assigned a cabinet portfolio and will not attend cabinet meetings. Traditionally in Manitoba, Members who hold this position are also assigned a ministerial portfolio.

Manitoba Liberals' New Interim Leader

Judy Klassen, the newly elected Member for Kewatinook, was appointed in the fall as the new Interim Leader of the Manitoba Liberal Party. She is the first female First Nations leader in the party's history in Manitoba. Ms. Klassen won a seat in the Legislature

in the April provincial election.

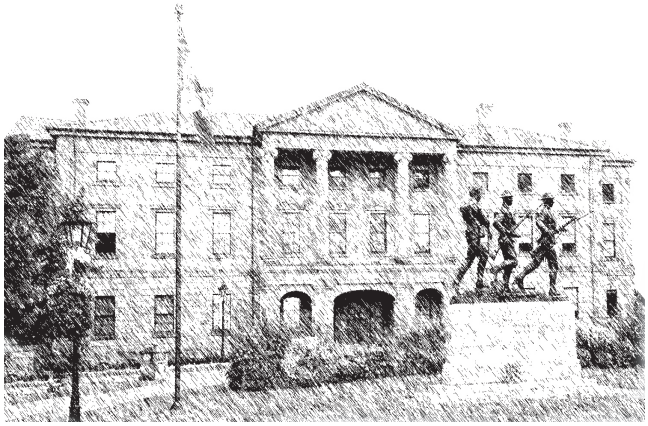
Former minister resigning

New Democrat MLA and former minister **Kevin Chief** officially resigned his sit in the Legislature on January 9, 2017. Mr. Chief was first elected as the Member for Point Douglas during the general election of October 2011. He served as a minister in several portfolios: from 2012 until 2014 he was the Minister of Children and Youth Opportunities and from the end of 2014 until last spring he was the Minister of Jobs and the Economy. In the meantime, he also served as Minister responsible for the City of Winnipeg. Under legislation adopted during the First Session, the by-election must now be held within six months of the vacancy. The previous deadline had been 12 months.

Current Party Standings

The current party standings in the Manitoba Legislature are: Progressive Conservatives 40, New Democratic Party 13, three Independent Members, and one vacancy.

Andrea Signorelli
Clerk Assistant/Clerk of Committees



Prince Edward Island

Second Session, 65th General Assembly

The Second Session of the 65th General Assembly resumed on November 15, 2016, and after 19 sitting days, adjourned to the call of the Speaker on December 15, 2016.

Significant Legislation

Twenty-five bills received Royal Assent during the fall sitting. Perhaps most notable among these was the *Municipal Government Act*, a wide-ranging bill that repeals several municipally-focused statutes and establishes a new legislative framework for existing and new cities, towns and rural municipalities on the Island. No Private Member's Bills were tabled during the Fall sitting.

Capital Budget

On November 24, 2016, Government presented its capital budget for 2017-18, with a total of $96.6 million in spending. The largest areas of investment are in highway projects, healthcare facilities and school renovations.

Provincial Plebiscite on Electoral Reform

From October 29 to November 7, 2016, a provincial plebiscite was held to gauge Islanders' preferences among five voting systems. Voting was done over the internet, by telephone and in-person, and Islanders as young as 16 as of November 7 were eligible to vote. The plebiscite was carried out as a preferential vote in which voters could rank each of the five options. Majority support was required for a system to win. Votes were counted in rounds until a majority was received, with the last place system eliminated each round and the next preferences of those votes distributed among the remaining systems.

In the end, Mixed Member Proportional (MMP) won with 52.42 per cent (19,418 votes) after four rounds of counting. First-Past-The-Post, PEI's current system, came in second with 42.84 per cent (15,869 votes). A total of 37,040 Islanders cast votes, among 102,464 who were eligible to do so, for a voter turnout of 36.46 per cent.

Debate on Plebiscite Results

In the fall sitting two motions on the plebiscite results were debated. Motion 54, "Plebiscite on electoral reform," tabled by Leader of the Third Party **Peter Bevan-Baker**, called upon Government to introduce legislation to implement Mixed Member Proportional Representation for the next provincial election. Motion 80, "Democratic Renewal: A Clear Question

and a Binding Vote," tabled by Premier **H. Wade MacLauchlan**, noted the plebiscite's low voter turnout and called for consideration of legislation to bring about a binding referendum on PEI's voting system to be held in conjunction with the next provincial election; for Mixed Member Proportional Representation to be one of two choices on the ballot in the referendum; and for the Assembly to debate and determine the other voting system to appear as a choice on the referendum ballot.

Motion 54 was debated on November 15 and 22, and was ultimately defeated by a vote of 20 to 6. Motion 80 was debated on November 18 and 22, but did not come to a vote before the sitting adjourned on December 15.

When Motion 80 was called on November 18, Mr. Bevan-Baker rose on a point of order to assert that though two motions on the same subject can exist on the order paper, once one motion is moved, discussion of the other motion is precluded. He therefore called on Speaker **Francis (Buck) Watts** to rule whether it was in order to debate Motion 80 given that debate on Motion 54 had already begun. Speaker Watts consulted parliamentary authorities and ruled that since the House had begun debating but had not yet come to decision on Motion 54, moving and debating Motion 80 was in order. He also noted that there was no violation of the rule of anticipation because the matter being anticipated was contained in an equal form of proceeding (another motion), not a more effective form of proceeding (such as a bill).

On November 24, Mr. Bevan-Baker again rose on a point of order to assert that Motion 80 was not in order due to infringement on the rules of the House, and that its use of the word "binding" constitutes an objectionable word as it calls on the Legislature to do something not within its power to do, as it relates to parliamentary sovereignty. On November 25, Speaker Watts ruled that Mr. Bevan-Baker's objection was rooted in constitutionality and law rather than procedure, and that it is not for the Speaker to rule upon the admissibility of a motion based on such principles. He found Motion 80 to be admissible as presented; however, Motion 80 was not again called for debate. To date there has been no further action in regard to the plebiscite on electoral reform.

Speaker's Rulings

In addition to the rulings discussed above, during the fall sitting Speaker Watts issued rulings on several other matters raised as points of order or privilege. Several of these concerned Oral Question Period proceedings and the Speaker's rulings invoked various rules and parliamentary precedents, including: that questions on matters of public affairs may be directed to any Minister regardless of portfolio; that questions and answers ought be delivered within the specified time limit; and that disagreements on facts, failures to answer a question, the quality of an answer, and statements made outside the proceedings of the House all do not constitute matters of privilege. The Speaker again reminded Members that major Government announcements during sittings of the House ought to be made within the House, as he had indicated in an April, 2016, ruling.

Deputy Speaker

Sonny Gallant resigned the position of Deputy Speaker effective November 15, 2016. **Kathleen Casey** was subsequently elected Deputy Speaker.

Electoral Boundaries Commission

On December 23, 2016, Speaker Watts announced the appointment of a five-person Electoral Boundaries Commission. Pursuant to the *Electoral Boundaries Act*, a Commission is to be established following every third general election; the general elections of 2007, 2011 and 2015 having taken place, a Commission was again due to be created and charged with the responsibility of reviewing the provincial electoral districts and making report, complete with recommendations, to the Legislative Assembly. The Commission will consider the areas comprising the existing 27 electoral districts, including the present electoral boundaries and district names.

The Commission will hold public hearings and, in preparing recommendations, will also take into consideration the Canadian *Charter of Rights and Freedoms*, enumeration data from the 2015 General Election, existing polling divisions, geographical features, population patterns, communities of interest, municipal boundaries and such other factors as the Commission may deem relevant. At present, the *Act* states that a proposed district shall not be more than 25 per cent above nor 25 per cent below the average number of electors of all the proposed districts. The Commission will submit its report to the Speaker in Spring 2017.

Gerard Mitchell has been appointed to serve as Chairperson of the Commission, and **Lynn Murray**, Charlottetown; **Elizabeth (Libby) Shaw**, Alberton; **Elmer MacDonald**, Augustine Cove; and **Kerri Carpenter**, Stratford will serve as Commissioners.

Ryan Reddin

Clerk Assistant – Research, Committees & Visitor Services

Ontario

The Clerk of the Legislative Assembly

After 37 years of public service, outgoing Clerk of the Legislative Assembly **Deb Deller** announced her retirement effective October 31, 2016. The event was recognized in the Chamber on October 27, with the Speaker and representatives from all three political parties paying tribute to her years of service to the Ontario Legislature and her serving, since 2007, as the Assembly's first female Clerk. A congratulatory petition was then presented to her as a gift, having been signed by every Member of the Legislature.

Todd Decker, the successful candidate to become the new Clerk of the Legislative Assembly, began his tenure on November 1, 2016. He brings 32 years of experience at the Assembly to the role, most recently having served as Deputy Clerk since 2007.

Opposition Days

Standing Order 43 designates five afternoons in each legislative sitting as Opposition Days. These afternoons are reserved for the debate of motions put forward by opposition parties, subject to certain criteria.

On November 3, the Government House Leader rose on a point of order regarding a proposed Opposition Day motion submitted by the Official Opposition. The Government House Leader claimed that the motion should be ruled out of order on the grounds that it specifically cited, by name and job description, several individuals involved in an ongoing court proceeding. Following comments made to the point of order by the Official Opposition House Leader and the Third Party Whip, the Speaker chose to reserve his ruling until a later date.

On November 14, the Speaker delivered his ruling, stating that the Opposition Day motion did indeed contravene the rules and conventions surrounding *sub judice*. As part of his ruling the Speaker cited that: "…there is no getting around the procedural reality that Standing Order 43(d) requires a decision on an opposition day motion on the same day that the motion is moved. Whether the motion is carried or lost, a decision will have been made. The House will have taken a position—pronounced its opinion—on elements of a specific proceeding that is before the courts." The motion was ruled out of order and not allowed to be called for debate.

Membership Changes

Following two by-elections held on November 17, the Legislative Assembly of Ontario welcomed two new MPPs to its ranks. **Nathalie Des Rosiers**, the successful Liberal candidate for the riding of Ottawa-Vanier, and **Sam Oosterhoff**, the successful PC candidate for Niagara West-Glanbrook, took their places in the Chamber on November 28 and November 30, respectively. Of particular interest is the fact that Mr. Oosterhoff, at 19 years old, now holds the place of youngest-ever Member of Provincial Parliament in Ontario's history.

In December, Cabinet Minister **David Orazietti** announced his plans to resign as a Member of Provincial Parliament, effective December 31, 2016. He was first elected in the riding of Sault Ste. Marie on October 2, 2003 and served as Minister of several different portfolios since 2013.

Royal Assent

On the afternoon of December 8, the Lieutenant Governor entered the Chamber of the Legislative Assembly and took her seat upon the throne. She then assented to 15 bills, before retiring from the Chamber.

Over the course of the fall sitting, there were a total of 27 bills which received Royal Assent: eight Government Bills, 11 Private Member's Bills and eight Private Bills.

Committee Activities

The Standing Committee on Estimates met to review the 2016-17 Expenditure Estimates of Ministries and Offices selected for consideration. The Committee completed the review of 6 Ministries over the course of 27 meetings and presented its report on November 17, 2016.

The Standing Committee on Finance and Economic Affairs began its 2017 pre-Budget hearings in December in the cities of Toronto, Dryden, Sudbury, Ottawa and Windsor, with additional hearings scheduled for January in Toronto, Peel Region and London. The Committee also held public hearings and clause-by-clause consideration on Bill 37, *An Act to amend the Early Childhood Educators Act, 2007 and the Ontario College of Teachers Act, 1996*; and on Bill 70, *An Act to implement Budget measures and to enact and amend various statutes*. Both Bills were reported back to the House with certain amendments.

During this period, the Standing Committee on Public Accounts held hearings on the following sections of the 2015 Annual Report of the Office of the Auditor General of Ontario: Electricity Power System Planning (Section 3.05); and University Intellectual Property (Section 3.14). The Committee also tabled the following three reports on the 2015 Annual Report: CCACs—Community Care Access Centres—Home Care Program (Section 3.01); Toward Better Accountability (Chapter 5); and Hydro One—Management of Electricity Transmission and Distribution Assets (Section 3.06).

On November 30, Auditor General **Bonnie Lysyk** tabled the *2016 Annual Report of the Office of the Auditor General of Ontario*.

The Standing Committee on Social Policy held two days of public hearings on the parentage legislation, Bill 28, *An Act to amend the Children's Law Reform Act, the Vital Statistics Act and various other Acts respecting parentage and related registrations*. A total of 17 witnesses appeared before the Committee and shared some very emotional testimonies. Although the Committee had already agreed to the method of proceeding with the consideration of Bill 28, the Chair was approached unanimously by the Members of the Sub-Committee following the public hearings to delay clause-by-clause consideration of the Bill, as additional time was required for the drafting of amendments. At the request and the suggestion of the Sub-Committee, the Chair pushed back the dates of clause-by-clause consideration by two weeks and established a new deadline for the filing of amendments. During the clause-by-clause stage, the Committee debated and adopted the majority of the 20 proposed amendments before reporting the Bill back to House for 3rd Reading.

Next on the Committee's agenda was the consideration of Bill 7, *An Act to amend or repeal various Acts with respect to housing and planning*. Discussions occurred in full committee on how to proceed, as the three political parties tried to work out logistics for the public hearings by way of motions. After two days of debates, the Committee settled on a schedule for the Bill's consideration and directed the Chair to write the House Leaders requesting additional meeting times outside of the Committee's normally scheduled meeting times. During the public hearings, the Committee heard from 16 witnesses and considered some 41 amendments during clause-by-clause consideration before reporting the Bill, as amended, back to the House.

The Standing Committee on Justice Policy met in October to consider Bill 13, *An Act in respect of the cost of electricity*. Following one day of public hearings and one day of clause-by-clause consideration, the Committee reported the Bill back to the House on November 18 without amendment.

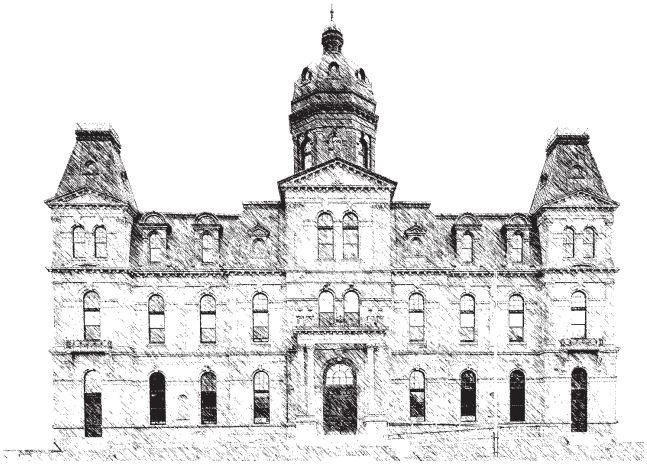
During the period from November 2016 - January 2017, the Standing Committee on General Government considered two bills relating to elections matters in Ontario.

The first of these, Bill 2, *An Act to amend various statutes with respect to election matters*, was originally introduced in the 1st Session of the 40th Parliament as Bill 201, *An Act to amend the Election Finances Act and the Taxation Act, 2007*, and referred to Committee after First Reading. The Committee held public hearings on the Bill over the summer and made amendments to it, but was precluded from reporting the Bill to the House by the prorogation which ended the First Session. Bill 2, introduced in the Second Session, reflected the amendments made by the Committee at First Reading. The Bill sought, *inter alia,* to ban corporations and trade unions from making political donations; to bring nomination contestants under the *Election Finances Act*; and to restrict spending on political advertising by registered political parties and third parties in the six-month period preceding a general election period. The Committee held two days of public hearings and, at the clause-by-clause stage, further amended the Bill, including a provision to ban MPPs, candidates, and other categories of participants from attending political fundraising events. The Bill was reported back to the House on November 24, 2016, and received Royal Assent on December 5, 2016.

The Committee next considered Bill 45, *An Act to amend certain Acts with respect to provincial elections*. The bill set out various changes to Ontario election laws, such as moving the date for scheduled provincial

elections from October to June; requiring the Chief Electoral Officer to create a provisional register of 16- and 17-year-olds, who would be transferred to the permanent register of electors when they reach voting age; and amending the *Representation Act, 2015,* to establish a Far North Electoral Boundaries Commission. The Committee held one day of public hearings on the Bill, and reported it, as amended, to the House on December 6, 2016. The Bill received Third Reading and Royal Assent on December 8, 2016, the last meeting day before the winter adjournment.

Christopher Tyrell
Committee Clerk



New Brunswick

Throne Speech

Lieutenant-Governor **Jocelyne Roy Vienneau** opened the Third Session of the 58th Legislature on November 2, delivering the third Speech from the Throne of Premier **Brian Gallant**'s Liberal government. The major themes of the speech were education, economic growth and health care. Highlighted initiatives included:

- investing in education by increasing the opportunities to learn trades; increasing the amount provided for daycare; providing free tuition to eligible undergraduate students; introducing French immersion in grade 1; and implementing the first year of the 10-year education plan;
- creating jobs, family affordability and economic opportunity by providing approximately $100 million to support low and middle-income families through the provincial HST credit; extending the Home Energy Assistance Plan; promoting the Atlantic Immigration Pilot Project; and developing a climate change strategy;
- investing in health and wellness by maximizing services of health care professionals such as nurse practitioners and midwives; enhancing addictions and other mental health services; focusing on healthy aging through new programs and policies for seniors; and improving palliative care services.

Reply to Throne Speech

On November 4, Official Opposition Leader **Blaine Higgs** gave his reply to the Speech from the Throne. Higgs used the opportunity to provide government with an overview of the challenges faced by the province, where they could expect support from the opposition, and where improvements would be suggested. Higgs called for cooperation to address the education system, which he alluded was broken, and questioned the decision to move French immersion back to grade 1 without evidence to support the decision. Other highlights included references to job creation; best use of time in the Legislature; and the need to strive for a low-carbon, lower-tax economy.

Capital Budget

On December 14, Finance Minister **Cathy Rogers** introduced the 2017-18 Capital Budget. Of the $757.9 million capital budget, $110.3 million was allocated to health infrastructure and $88.1 million to education infrastructure. New investments totaled $98.5 million, while $659.4 million was earmarked for the continuation of previously announced projects.

Other highlights included $447.0 million in other infrastructure, including roads, bridges and buildings; $12.6 million for tourism-related infrastructure; and $20.3 million in energy retrofits and renewable energy.

Legislation

Thirty-eight bills were introduced during the Fall session. Legislation introduced by the government included:

- Bill 6, *An Act to Amend the Gas Distribution Act, 1999,* introduced by Energy and Resource Development Minister **Rick Doucet**, reflects an agreement reached between the Province of New Brunswick and Enbridge Gas to settle a lawsuit by the company against the province. The Bill establishes a rate cap for residential and commercial classes for 2018 and 2019, with future rate increases

subject to Energy and Utilities Board approval. The Bill also allows for the extension of the general franchise agreement for 25 years, plus a further 25 years; permits Enbridge Gas to recover $144.5 million of the regulatory deferral account; and generally prohibits the distribution of compressed and liquefied natural gas;

- Bill 11, *An Act to Amend the Clean Environment Act*, introduced by Environment and Local Government Minister **Serge Rousselle**, ensures that hydraulically fractured wastewater is not disposed of in provincial or municipal wastewater systems;
- Bill 13, *Advance Health Care Directives Act*, introduced by Health Minister **Victor Boudreau**, allows New Brunswickers to document their wishes regarding health care in the event they are unable to do so in the future;
- Bill 24, *Integrity Commissioner Act*, introduced by Mr. Boudreau, creates the Office of the Integrity Commissioner to eventually oversee existing legislation related to Members' conflicts of interest, lobbyist registration, right to information and protection of privacy, and personal health information privacy and access, which are currently the responsibilities of three separate legislative officers;
- Bill 25, *An Act to Amend the Child and Youth Advocate Act*, introduced by Mr. Boudreau, broadens the responsibilities of the Office of the Child and Youth Advocate to include advocacy responsibility for adults under protection and seniors;
- Bill 28, *An Act Respecting The Residential Tenancies Act and the Ombudsman Act*, introduced by Ms. Rogers, changes the terms "rentalsman" and "Ombudsman" to the gender-neutral terms "residential tenancies officer" and "Ombud".

The Official Opposition and third party also introduced several bills, including:

- Bill 26, *An Act to Amend the Lobbyists' Registration Act*, introduced by **Bruce Fitch**, requires the new lobbyists' registry to be available to the public by April 1, 2017, which is earlier than currently anticipated by government;
- Bill 27, *An Act to Amend the Motor Vehicle Act*, introduced by **Jody Carr**, changes the maximum allowable speed of a vehicle to be driven in an urban district school zone from 50 to 30 kilometres per hour;
- Bill 33, *An Act to Amend the Human Rights Act*, introduced by **Ross Wetmore**, amends the definition "mental disability" to include reliance on a service dog;
- Bill 10, *An Act to Amend the Education Act*, introduced by Green Party Leader **David Coon**, mandates that the Minister of Education and Early Childhood Development must approve programs and services which respond to the unique needs of Mi'kmaq and Maliseet children and foster an understanding of aboriginal history and culture among all pupils.

Legislative Officers

On December 7, the appointment of three new Legislative Officers was recommended by the Assembly.

Alexandre Deschênes, a former Justice of the New Brunswick Court of Appeal, was appointed the Conflict of Interest Commissioner and subsequently sworn-in on January 9, 2017. Once the *Integrity Commissioner Act* is proclaimed, he will become New Brunswick's first Integrity Commissioner.

Kimberly Poffenroth, an Assistant Deputy Attorney General in New Brunswick, was appointed Chief Electoral Officer, effective March 13, 2017, when the current Chief Electoral Officer's term ends.

Michèle Pelletier, a New Brunswick lawyer at Arseneault and Pelletier, was appointed the Consumer Advocate for Insurance effective December 11, but will not assume the responsibilities until February 1, 2017, to allow for the conclusion of her law practice.

Resolutions

On December 13, the Assembly adopted a resolution introduced by Premier Gallant and seconded by Mr. Higgs, leader of the Official Opposition, which recommitted the Assembly's support for the construction of the Energy East pipeline to bring western crude oil to Saint John. Similar resolutions were adopted by the Assembly in previous sessions.

Committees

On November 29, the Standing Committees on Crown Corporations and Public Accounts, chaired by **Bertrand LeBlanc** and **Trevor Holder** respectively, met with Auditor General **Kim MacPherson** for the release of the *Report of the Auditor General of New Brunswick 2016* Volumes III and IV. The report reviewed meat safety in the food premises program of the Department of Health; and matters arising from the annual financial

audit which included observations on pension plans, nursing homes, and the financial condition of the province.

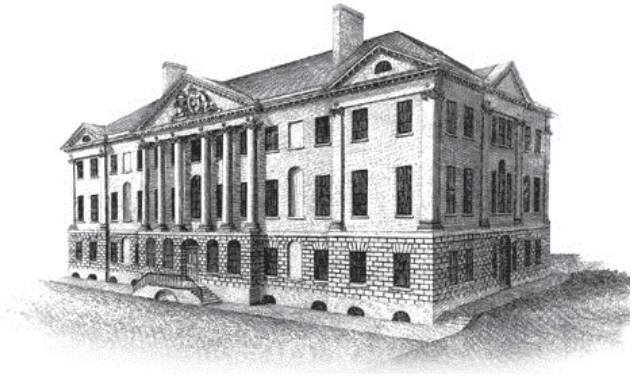
The Standing Committee on Economic Policy, chaired by **Gilles LePage**, remained active during the Fall session, considering various government bills. In addition, the Standing Committee on Crown Corporations met from January 17 to 20, 2017, to review the annual reports of various Crown corporations.

On December 12 and 13, the Standing Committee on Law Amendments, chaired by Mr. Rousselle, held public hearings on Bill 16, *An Act to Amend the Crown Construction Contracts Act*. The bill exempts certain non-routine capital projects of NB Power from application of the Act, and permits Crown entities to negotiate with the low or sole bidder on a contract. The Committee met with representatives of NB Power, government officials, and various stakeholders. In its report to the Assembly on December 14, the Committee did not recommend Bill 16 in its current form.

Resumption of Session and Standings

The Legislature adjourned on December 16, after eighteen sitting days, and was expected to resume sitting on January 31, 2017, at which time Ms. Rogers would introduce the 2017-18 Main Budget. The standings in the House are 26 Liberals, 22 Progressive Conservatives, and one Green.

Shayne Davies
Clerk Assistant and Clerk of Committees



Nova Scotia

Fall 2016 sitting

The Fall sitting lasted 18 days and the House rose on November 10, 2016.

The Government introduced 10 Bills during the sitting. Bill No. 59, *An Act Respecting Accessibility*, introduced by the Minster of Community Services on November 2, 2016 was not reported back from the Law Amendments Committee to the House and remains on the Committee's agenda. The Bill was criticized by many disabled persons and advocates who appeared before the Law Amendments Committee to speak to the Bill. Thus, the Government determined that the Bill would remain at the Law Amendments Committee stage and would not be reported back to the House this sitting nor would it proceed further to permit additional submissions to be made and possible amendments to be considered to the Bill by the Committee. The Nova Scotia Disabled Persons Commission planned to host public sessions to provide an overview of the Bill on four evenings in January 2017 at various locations throughout Nova Scotia. The Law Amendments Committee may meet when the House of Assembly is not sitting and therefore it is possible that the Chair of the Committee may reconvene the Committee to continue its consideration of the Bill prior to the Spring 2017 sitting of the House. The only time the Committee is barred from sitting is while both the Committee of the Whole on Supply and the Subcommittee on Supply are meeting as set out in House Rule 62FC.

Sixty-three Private Member's Bills were introduced and the Government advanced an NDP Private Member's Bill through the legislative process. The Bill was an amendment to the *Public Interest Disclosure of Wrongdoing Act* making the *Act* applicable to all government agencies, boards and commissions and to school boards.

On November 10, 2016, Royal Assent was given to nine Government Bills, one Private Bill and one Private Member's Bill for a total of 11 Bills. The House then adjourned to be recalled on Notice issued by the Speaker in accordance with House Rules.

Recall of House on December 3, 2016

The House Rules require a 30-day notice of the commencement of a sitting, be given by the Speaker, whenever the House stands adjourned for a period of 10 sitting days or more. The only time when notice can be given less than 30 days before the commencement of a sitting is when the Speaker is satisfied, after consultation with the Government, that the public interest requires that the House shall meet at an earlier time.

On Saturday, December 3, 2016 the Speaker issued

a Notice requiring the House meet on Monday, December 5, 2016. That same day, the Minister of Education and Early Childhood Development during a press conference and in a press release announced that the House was being recalled on Monday to pass legislation that would adopt the tentative agreement reached by the Nova Scotia Teachers Union and the Government on September 2, 2016, which contract would extend until July 2019.

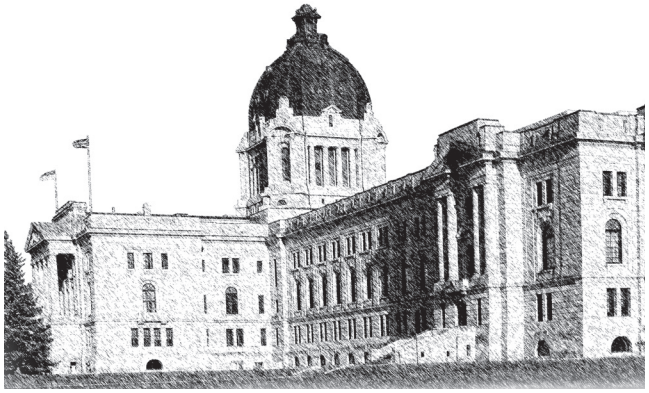
The teachers have been without a contract since July 2015 and negotiations since had not resulted in an accepted contract. In addition, on October 25, 2016, 96 per cent of the Nova Scotia Teachers Union membership of 9,300 public school teachers voted in favor of strike action. This vote followed two union-wide votes rejecting two contract offers made by the Government and recommended to teachers by union leadership. The union also announced that it would begin work-to-rule on December 5 and the Minister of Education and Early Childhood Development in her press conference and press release of December 3 announced that all public schools in the province would be closed to students starting December 5.

At 10:00 am on December 5 the Speaker called the House to order and recognized the Government House Leader who immediately moved a motion that the House recess and be brought back into session on an hour's notice on the basis that discussions were taking place between the Nova Scotia Teachers Union and officials to address student safety concerns relating to the school closures. A recorded vote on the motion was requested, the bells were rung for one hour on the motion and at 11:04 am the recorded vote was taken and the motion was adopted. At 2:34 pm the House reconvened and the Government House Leader made a motion that the House adjourn to meet again at the call of the Speaker. The motion carried and the House rose at 2:35 pm. The Minister issued a statement at 4:59 pm advising that all schools in the province would open the following day, December 6 and stated in part:

> The move to introduce contract legislation and to close schools was based on a clear threat to student safety.

The teachers resumed work-to-rule on December 6 that continues.

Annette M. Boucher
Assistant Clerk



Saskatchewan

First Session of the 28th Legislature

The fall 2016 sitting period concluded on November 30, 2016. The spring 2017 sitting period was scheduled to convene on March 6, 2017.

Passing of a Member

Roger Parent, Saskatchewan Party MLA for Saskatoon Meewasin, passed away on November 29, 2016 after a brief battle with cancer. He was first elected to the Legislative Assembly in 2011. On November 30, the last day of the fall sitting period, flags flew at half-mast at the Legislative Building. Mr. Parent's desk was draped with the Saskatchewan flag, and a memorial tribute, consisting of flowers and a picture of Mr. Parent with his wife were placed on the desktop. Premier **Brad Wall** and Leader of the Opposition **Trent Wotherspoon** offered statements of condolence, and the Assembly recognized a moment of silence. Members agreed to adjourn the Assembly early and forego the last question period of the Fall sitting.

Expedited Passage of Traffic Safety Law

On October 31, 2016, *The Traffic Safety (Miscellaneous Enforcement Measures) Amendment Act, 2016* passed through all stages in one day. Members universally supported measures to impound, on first offence, vehicles of experienced drivers with a blood alcohol content between .04 and .08; increase the zero-tolerance threshold for drugs and alcohol from 18 to 21 years of age; and strengthen ignition interlock measures.

This was the second Bill to pass through all stages in one day during the fall sitting. As noted in Vol. 39, No. 3 of the *Canadian Parliamentary Review*, Bill No. 39,

The Workers' Compensation Amendment Act, 2016 passed through all stages on October 25, 2016.

Standing Committee on Human Services

The Standing Committee on Human Services concluded its inquiry respecting improving the rate of organ and tissue donation in Saskatchewan and presented 10 recommendations in its final report to the Assembly on November 28, 2016. The recommendations include creating an intent-to-donate registry; expanding donation criteria to include donations after cardiocirculatory death; setting performance targets; establishing a donor liaison position; and providing awareness campaigns and education to the general public, school children, and health care professionals. They recommended a review of organ donation rates be conducted within two years to see if additional measures should be undertaken.

Commonwealth Women Parliamentarians Outreach

Laura Ross, MLA for Regina Rochdale and Canadian Women Parliamentarians (CWP) Canadian Region Vice-Chair, on behalf of the Legislative Assembly, hosted the 9th CWP Outreach Program in Regina from October 1-4, 2016. Delegates to the conference were from Saskatchewan, Alberta, Manitoba, Northwest Territories, Ontario, Québec, the Senate, and the CWP Canadian Region. The purpose of the CWP outreach is to increase women's representation in all levels of government. The program included opportunities to provide mentorship to young women, as well as to encourage young women in building self-esteem and confidence.

Saskatchewan Teachers' Institute on Parliamentary Democracy

From November 19 to 23, 2016, Speaker **Corey Tochor**, on behalf of the Legislative Assembly, hosted 26 teachers for the 18th Saskatchewan Teachers' Institute on Parliamentary Democracy. Since the program's launch in 1999, over 300 teachers from across Saskatchewan have participated. This year's enrolment was higher than it has been in previous years.

The Saskatchewan Teachers' Institute on Parliamentary Democracy gives Saskatchewan teachers the opportunity to gain a better understanding of our system of parliamentary democracy by observing, first-hand, our political system in operation. They meet with the Lieutenant Governor, Speaker, Ministers, Caucus Leaders, Whips, and Chairs, as well as with Private Members, media, the Clerk and Legislative Assembly Service staff, and the judiciary. On the final day of the program, the teachers participate in a mock parliament in the Legislative Chamber. They also have the opportunity to explore the Ministry of Education's websites and suggested curriculum links.

Anne Drake
Committee Coordinator

The Senate

This was an eventful quarter in the Senate, with the swearing-in of new senators, intense debate on legislation and significant adjustments to the structure of committees, all contributing to the institution's ongoing transformation.

Senators

The Red Chamber welcomed 20 new senators during this period, all of whom were selected using the new Senate appointment process. Senators **Yuen Pau Woo** (BC), **Patricia Bovey** (MB), **René Cormier** (NB), **Nancy Hartling** (NB), **Gwen Boniface** (ON) and **Kim Pate** (ON) were the first to take their seats, on November 15. Senators **Marilou McPhedran** (MB), **Wanda Thomas Bernard** (NS), **Tony Dean** (ON), **Sarabjit S. Marwah** (ON), **Lucie Moncion** (ON), **Howard Wetston** (ON), **Diane Griffin** (PEI) and **Renée Dupuis** (QC) were sworn in the following day. Next to take to the oath, on November 23 and December 1, were Senators **Éric Forest** (QC), **Marc Gold** (QC), **Marie-Françoise Mégie** (QC) and **Raymonde Saint-Germain** (QC). Finally, Senators **Daniel Christmas** (NS) and **Rosa Galvez** (QC) were introduced on December 14. As a result, when the Senate adjourned on December 15, the standings were 42 non-affiliated senators, 41 Conservative senators and 21 Liberal senators.

There were then three retirements during January 2017. **Nancy Ruth**, appointed under Prime Minister **Paul Martin**, retired on January 5. Serving since March 24, 2005, she is well known for her work in the fields of human rights and on feminist issues. **Wilfred P. Moore** also bid farewell to the Senate on January 14. Appointed on the recommendation of Prime Minister **Jean Chrétien** on September 26, 1996, he has been a tireless advocate for the interests of Nova Scotia and the Atlantic region. **James S. Cowan**, who served as Leader of the Opposition from 2008 to 2015, and then as Leader of the Senate Liberals until mid-2016, was the third senator to retire, on January 22. Also appointed on the advice of Prime Minister Paul Martin, on March 24, 2005, Senator Cowan has been a strong supporter of Senate modernization and a leader in the area of genetic discrimination prevention.

Speaker's Rulings

On November 15, during debate on a report of the Special Committee on Senate Modernization, a point of order was raised relating to the use of unparliamentary language. The Speaker reminded Senators that such behavior is contrary to the *Rules of the Senate* and requested that all members be mindful of the language they use and decorum.

Another point of order was raised on November 24, with respect to the receivability of the amendment contained in the eighth report of the National Finance Committee, on Bill C-2. Senator **Peter Harder**, the Government Representative, argued that the amendment was out of order since it would increase taxes on certain individuals, and the Constitution does not allow tax measures to originate in the Senate. Senator **Larry Smith**, who chairs the committee, maintained that the amendment was admissible since it would not increase anyone's tax rate when compared to existing rates.

When he ruled, on November 29, the Speaker clarified the authority of the Senate regarding appropriation and taxation bills. Using the conclusions of the Ross Report of 1918 as a basis for his decision, the Speaker determined that, although tax legislation must originate in the Commons, the Senate does indeed have the power to amend such bills, so long as the proposed changes do not increase any amounts.

Since the amendment proposed in the report on C-2 would have increased the tax rates for some individuals compared to those contained in the bill, it was ruled out of order. Consequently, the report was "evacuated" of content, becoming a report without amendment. As such, it was deemed adopted, and the bill proceeded to third reading without amendment.

Hoist Amendment

On November 22, Senator Moore attempted to exercise his right of final reply on the second reading of Bill S-203. A motion to adjourn debate was defeated on a standing vote, and a hoist amendment then moved. A motion to adjourn debate on the hoist was also defeated on a standing vote. When the question on the amendment was put, the vote was deferred to the next day, at which time the vote was, with leave, cancelled and the hoist withdrawn. Senator Moore was then able to exercise his right of final reply, after which the Bill was read a second time and referred to the Fisheries and Oceans Committee.

Other Legislation

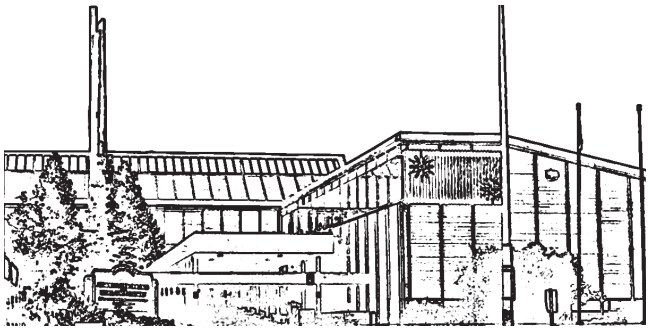
The subject matter of Bill C-29, a *Budget Implementation Act*, was referred to the National Finance Committee for pre-study in November, with other committees being authorized to review parts of the Bill. Subsequently, on December 13, the Senate amended the actual Bill by deleting provisions affecting consumer protection. The House of Commons agreed to the Senate amendment the next day. Bill C-29 then received Royal Assent on December 15. Five other bills, including a supply bill, were also granted Royal Assent during the traditional ceremonies held on December 12 and 15.

Committees

The composition of the Senate has changed significantly since committee members were named in December 2015. A motion was therefore adopted on December 7, 2016, to adjust committee memberships. The motion was moved by Senator **Claude Carignan** and, with leave of the Senate, seconded by three other senators. The sessional order renewed the membership of the Committee of Selection, which makes recommendations for the membership of other committees, and defined how the membership of committees should be divided between the recognized parties and senators who are not members of a party. Among other features, the size of committees was also increased, and a mechanism was established for senators who do not belong to a party to make substitutions.

On December 14, the Selection Committee recommended renewed memberships for committees, with the report being adopted the following day. As a consequence, by the end of this sitting period the memberships of committees were broadly proportionate to the Chamber's current membership.

Chantal Lalonde
Procedural Clerk



Yukon

Following the general election of November 7, 2016, the Liberal Party, Yukon Party, and New Democratic Party (NDP) caucuses respectively made arrangements with the Clerk's Office to have their members take the Oath of Office and the Oath of Allegiance to become MLAs. The first caucus to take the oaths was the NDP, whose two members comprise the Third Party in the House. NDP Leader **Liz Hanson** and **Kate White** took the oaths on November 25. Acting Yukon Party Leader **Stacey Hassard** and the rest of the six-member Yukon Party caucus, comprising the Official Opposition, took the oaths on November 29. On December 1, Liberal Leader **Sandy Silver**, the Premier-designate, swore the Oath of Allegiance and the Oath of Office on a Hän bible, in the Old Territorial Administration Building in Dawson City. This was the first time the oath to become an MLA was taken outside of Whitehorse since the capital moved from Dawson City to Whitehorse in 1953. On the morning of December 3, the other members of the 11-member Liberal Party caucus took the oaths. With the exception of Mr. Silver – the Member for Klondike (in which riding Dawson City is situated), the oaths were administered in the Legislative Assembly Chamber in Whitehorse. All oaths were administered by Yukon Commissioner **Doug Phillips**.

Cabinet

On the afternoon of December 3, the Cabinet swearing-in ceremony took place in the foyer of the Yukon Government's Main Administration Building in Whitehorse. The ceremony included the performance of "O Canada" in Southern Tutchone and in English, a performance by the Dakhká Khwáan Dancers, and a performance by the Midnight Sun Pipe Band. Seven Liberal MLAs were sworn into the Executive Council by Commissioner Phillips. In addition to the Premier, there are three men and three women in the Cabinet, which includes the Liberal caucus's two First Nations members – **Pauline Frost** and **Jeanie Dendys**. The cabinet ministers, and their responsibilities, are:

- **Sandy Silver** – Premier; Minister of the Executive Council Office; Minister of Finance;
- **Ranj Pillai** –- Deputy Premier; Minister of Energy, Mines and Resources; Minister of Economic Development; Minister responsible for the Yukon Development Corporation and the Yukon Energy Corporation;
- **Tracy-Anne McPhee** – Minister of Education; Minister of Justice; Government House Leader;
- **John Streicker** – Minister of Community Services; Minister responsible for the French Language Services Directorate; Minister responsible for the Yukon Liquor Corporation and the Yukon Lottery Commission;
- **Pauline Frost** – Minister of Health and Social Services; Minister of Environment; Minister responsible for the Yukon Housing Corporation;
- **Richard Mostyn** – Minister of Highways and Public Works; Minister of the Public Service Commission;
- **Jeanie Dendys** – Minister of Tourism and Culture; Minister responsible for the Workers' Compensation Health and Safety Board; Minister responsible for the Women's Directorate.

Opening Day

On January 12, the House convened for a one-day Special Sitting. As its first order of business, on motion of the Premier, seconded by Mr. Hassard and Ms. White, the Third Party House Leader, the Assembly elected **Nils Clarke** as its new Speaker. In the 24 years preceding Mr. Clarke's election in November as the Member for Riverdale North, he practiced law in Yukon, representing clients throughout the territory and at all levels of Yukon Courts, including the Supreme Court of Canada, and supporting restorative justice initiatives such as circle sentencing and land-based healing.

Following the election of the Speaker, Commissioner

Phillips delivered the Speech from the Throne. The Speech noted that over the following two months, the Government would review spending priorities and that in Spring, the House would return with a budget bill and a Throne Speech setting out in greater detail the government's priorities. The Speech went on to state that "the agenda for this [present] Session is to put the machinery of the Legislative Assembly in place" - i.e., the election of the Speaker and other Presiding Officers, and the appointment of the Assembly's Standing Committees.

After the Throne Speech was delivered, the Assembly's *pro forma* bill, Bill No. 1, *Act to Perpetuate a Certain Ancient Right*, was introduced by **Paolo Gallina**, a government Private Member.

The Premier then sought and received unanimous consent to move a Motion for an Address in Reply to the Speech from the Throne at that time (rather than on a day following). After the Premier, Mr. Hassard, and Ms. White had spoken to the Motion for an Address in Reply to the Speech from the Throne, the motion carried on division (16 yea, 0 nay).

Ms. McPhee, in her role as Government House Leader, moved motions proposing that two government private members (as is the practice in Yukon's Assembly) be elected as Presiding Officers. **Don Hutton** was elected Deputy Speaker and Chair of Committee of the Whole, and **Ted Adel** was elected Deputy Chair of Committee of the Whole. Ms. McPhee then sought and received unanimous consent to move motions without notice to appoint the Members' Services Board, the Standing Committee on Public Accounts, the Standing Committee on Rules, Elections and Privileges, the Standing Committee on Statutory Instruments, and the Standing Committee on Appointments to Major Government Boards and Committees.

The Special Sitting also featured the tabling of documents and the introduction of visitors. At the conclusion of the Special Sitting, on motion, the House adjourned to an unspecified date.

Each of the motions regarding the election of the Speaker and other Presiding Officers, the appointment of Committees, and the special adjournment carried *nemine contradicente*.

New Sergeant-at-Arms

January 12, 2017 marked **Doris McLean**'s first day in the Chamber as Assembly's Sergeant-at-Arms. Prior to the Special Sitting, Ms. McLean, a former Chief of the Carcross/Tagish First Nation, had been serving as Yukon's Deputy Sergeant-at-Arms, duties she had first taken up in the Chamber in November, 2003. Ms. McLean is the first Yukon Sergeant-at-Arms of First Nations' ancestry. Former Sergeant-at-Arms **Rudy Couture** retired in July, 2016.

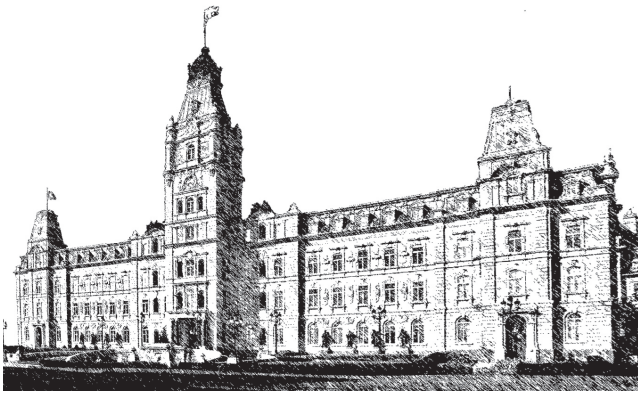
New Website

Also on January 12, the Yukon Legislative Assembly launched the first phase of its website redesign. The goal of the redesign project is to modernize the appearance and functionality of the Assembly's website. In addition to an improved aesthetic and easier-to-navigate layout, the first phase of the redesign includes new features such as the ability to subscribe to updates of the projected House business and unedited transcripts, and an exportable Members' spreadsheet. Additional improved functionality is planned for the next phase of the project.

Yukon Forum

On January 13, the day following the Special Sitting of the Legislative Assembly, the Premier held a Yukon Forum with Yukon First Nations.

Linda Kolody
Deputy Clerk



Québec

National Assembly Proceedings

Extraordinary sitting

On Friday, December 9, 2016, at the end of the period set aside for extended hours of meeting, the Assembly held an extraordinary sitting to complete the examination of Bill 106, *An Act to implement the*

2030 Energy Policy and to amend various legislative provisions. The Bill was passed the next morning on the following division: Yeas 62, nays 38, abstentions 0.

Composition of the National Assembly

On October 14, 2016, **Jean-François Lisée**, Leader of the Official Opposition, made the following appointments: **Pascal Bérubé**, Member for Matane-Matapédia, as Official Opposition House Leader, **Carole Poirier**, Member for Hochelaga-Maisonneuve, as Chief Official Opposition Whip, **Sylvain Rochon**, Member for Richelieu, as Deputy Opposition House Leader, and since October 16, 2016, **Maka Kotto**, Member for Bourget, as Chair of the Official Opposition Caucus.

On October 25, 2016, **Marc Tanguay**, Member for LaFontaine, was named Deputy Government House Leader, to replace **Gerry Sklavounos**, Member for Laurier-Dorion, who, since October 20, 2016, has been sitting as an Independent Member.

The following persons were elected in the four by-elections held on December 5, 2016: **Marc Bourcier**, Parti Québécois candidate in the electoral division of Saint-Jérôme, Éric **Lefebvre**, Coalition Avenir Québec candidate in the electoral division of Arthabaska, **Isabelle Melançon**, Québec Liberal Party candidate in the electoral division of Verdun, and **Catherine Fournier**, Parti Québécois candidate in the electoral division of Marie-Victorin. Ms. Fournier, at 24 years of age, became the youngest woman in Québec's history to be elected to the National Assembly.

The composition of the Assembly now stands as follows: Québec Liberal Party, 70 Members; Parti Québécois, 30 Members; Coalition Avenir Québec, 21 Members; and four Independent Members, three of whom sit under the Québec Solidaire banner.

Bills passed

From October to December 2016, the Assembly passed 12 Government bills, two private bills and one private Member's public bill. Of particular note are the following:

- Bill 70 - *An Act to allow a better match between training and jobs and to facilitate labour market entry.*
- Bill 87 - *An Act to facilitate the disclosure of wrongdoings relating to public bodies (modified title).*
- Bill 106 - *An Act to implement the 2030 Energy Policy and to amend various legislative provisions.*
- Bill 109 - *An Act to grant Ville de Québec national capital status and increase its autonomy and powers.*
- Bill 125 - *An Act to amend the Courts of Justice Act.*
- Bill 693 - *An Act to amend the Act respecting the governance of state-owned enterprises to promote the presence of young people on the boards of directors of such enterprises.*

Tribute to François Gendron, Member for Abitibi-Ouest

On November 15, 2016, within the framework of a motion moved by the Leader of the Official Opposition, the Assembly underlined the 40 years of parliamentary life of **François Gendron**, Member for Abitibi-Ouest (Parti Québécois). The last of the Members elected in the general election of November 15,1976, Mr. Gendron held various ministerial positions during his political career and also held the offices of Deputy Premier, interim Leader of his political party and President of the National Assembly. To this day, he holds the record for the longest continuous term as Member at the National Assembly. Since May 20, 2014, Mr. Gendron has held the office of Third Vice-President.

Special Events

Seminar on the diversity of cultural expressions in the digital age

On November 1, 2016, the National Assembly hosted a seminar on the Diversity of Cultural Expressions in the Digital Age. This exchange between elected representatives of La Francophonie and experts of the cultural community provided an opportunity to take stock of progress on the implementation of the Convention on the Protection and Promotion of the Diversity of Cultural adopted in 2005 by UNESCO.

Creation of the Massachusetts-Québec Collaborative Research Council

The creation of a collaborative research council aimed at promoting cooperation between Québec and Massachusetts was announced on December 5, 2016 by **Jacques Chagnon**, President of the National Assembly, together with **Stanley Rosenberg**, President of the Massachusetts Senate. This new organization, which reflects a strong consensus between the representatives of the legislative, entrepreneurial and research sectors, will showcase Québec universities, particularly in the clean energy,

electric transport, environment and biotechnology sectors.

Statement and Ruling from the Chair

The statement from the Chair made on November 15, 2016 followed up on the behaviour of two Members who, after having voted against the passage of a bill during a recorded division, turned their backs to the Assembly. The President indicated that a recorded division is a solemn event of a sacred nature that must not be distorted. The President further stated that what occurred during this recorded division goes against the principles that are the cornerstones of our democracy and constitutes an unjustified violation of decorum, an insult to parliamentarians and to the institution. Lastly, the Chair indicated that it will never condone such behaviour.

On December 8, 2016, the Chair handed down one of its most complex rulings, the contents of which may be summarized as follows:

Background

In May 2016, an article on various problems within the Ministry of Transport, Sustainable Mobility and Transport Electrification was published. In reply to a question asked during Oral Question Period regarding this issue, the Premier tabled a bundle of documents that included a report he had received that very morning from the office of this ministry's Deputy Minister. At first glance, inconsistencies in the page numbering suggested that this report had been altered.

Later the same day, the deputy minister in question appeared before the Committee on Public Administration within the framework of a long-planned hearing on the administrative management and financial commitments of Québec's Transport Ministry as a follow-up to one of the Auditor General's reports. While she was being questioned by the Committee Members with regard to the integrity of the report tabled by the Premier and which, at first glance, seemed to be missing pages, the deputy minister tabled a second report while mentioning that it was the same report, but properly paginated. The day after this hearing, the Deputy Minister was removed from office and transferred to another ministry.

The Ministry's then Director of Inquiries and Internal Audits subsequently produced a departmental memo explaining the problems that had arisen in relation to the tabling of the said reports. He has since ceased to hold that office.

Approximately two weeks later, still within the framework of the same mandate, the Committee heard the Ministry's former Director of Inquiries and Internal Audits. During her testimony, she specifically indicated that the reports tabled by the Premier and the former deputy minister represented, in her view, two false documents and that the departmental memo drafted by her successor was a false memo used to validate two false documents. She herself tabled a third report which she identified as being the "official report."

Following the June tabling of the Committee's report, which included a recommendation concerning her specifically, the former Deputy Minister sent the Committee additional information, in September, in relation to her testimony and the various versions of the report.

Questions of privilege

On October 26 and 27, 2016, respectively, the Deputy Second Opposition Group House Leader and the Official Opposition House Leader raised questions of privilege regarding these facts.

In their notices, they alleged that the former Deputy Minister of Transport had acted in contempt of Parliament by producing false documents and by giving false or incomplete testimony when she appeared before the Committee on Public Administration on May 18, 2016. In support of their claims, they invoked provisions of the *Act respecting the National Assembly* that constitute cases of contempt. The Official Opposition House Leader also argued that the Ministry's former Director of Inquiries and Internal Audits acted in contempt of Parliament by deliberately misleading the Committee by validating the departmental memo concerning the validity of both copies of the report tabled on May 18, 2016 in the National Assembly and in that very Committee.

After having recalled that it is not the Chair's role to determine whether contempt of Parliament occurred but whether the facts submitted could constitute *prima facie* contempt of Parliament, the President also underlined that the evidence submitted to support

such matters must be complete and take into account all elements available, since the compelling nature must be evident from the facts *prima facie*.

The former Director of Inquiries

Parliamentary jurisprudence has clearly established that knowingly misleading the House or its committees may constitute contempt of Parliament. This same jurisprudence has also determined that the deliberate nature of the act in question must be clear in order to conclude that an individual knowingly misled the House. Further, the assumption that a Member must always be taken at his or her word does not apply to third parties testifying before a committee. In such cases, it is necessary to assess the criterion of knowingly wishing to mislead the Assembly or its committees in greater detail.

In the case at hand, the Committee did not hear the former Director of Inquiries and Internal Audits and the departmental memo he signed was not intended for the Committee Members. Furthermore, the facts submitted to the Chair did not allow it to conclude that he drafted the memo to deliberately mislead the Committee. Consequently, the question raised with respect to the former Director of Inquiries was not *prima facie* receivable.

The former Deputy Minister

Section 55(3) *Act respecting the National Assembly*

Section 55(3) of the *Act respecting the National Assembly* provides that "presenting a false document to the Assembly, a committee or a subcommittee with intent to deceive" constitutes a breach of the Assembly's privileges. Parliamentary jurisprudence has specified that this provision may not be raised simply because a document is incomplete and that only a false document filed with intent to deceive is subject to sanctions under this section.

In addition, section 55(3) includes the expression "with intent to deceive," which, in jurisprudence, is understood to mean "knowingly mislead." Including this expression clearly means that fraudulent intent must be shown to prove breach of the Assembly's privileges. In other words, a false document must have been introduced in the Assembly or one of its committees, and done so with intent to deceive.

In light of the elements submitted to the Chair, if one of the documents was indeed false—which the Chair was not in a position to affirm—it would have been difficult to determine which was the false document.

Since the Chair had no compelling evidence showing that any of the reports were false documents, the point of privilege from this angle was not *prima facie* receivable. Moreover, nothing led the Chair to conclude that there was, in this case, intent to deceive the Assembly or the Committee.

Section 55(2) *Act respecting the National Assembly*

Section 55(2) of the *Act respecting the National Assembly* provides that "giving false or incomplete testimony before the Assembly, a committee or a subcommittee" constitutes a breach of the Assembly's privileges. For a question raised under this provision to be *prima facie* receivable, two elements are necessary. First, compelling evidence must show that the witness did, in fact, give false or incomplete testimony and second, there must be intent to deceive or hinder parliamentary proceedings.

It is important to differentiate between an error made in good faith and inaccurate testimony resulting from deliberately failing to provide information before a committee or the House. For the Chair to declare a point of privilege receivable on the basis of section 55(2), the Chair must, at the very least, be able to clearly deduce the witness's fraudulent intent from the facts submitted. In other words, more is needed than an unprepared or poorly prepared testimony, since false or incomplete testimony involves an underlying intent that must be shown. Filing false documents or giving false or incomplete testimony before the Assembly or a committee are acts which, under Québec parliamentary law, are tantamount to the notion of "deliberately misleading," recognized in other British-style parliaments.

A precedent from the New Zealand Parliament is a good example of the requirement to detect fraudulent intent in order to ascertain a *prima facie* breach of rights or privileges in such a situation. These same criteria apply in Québec.

In the case of the former Deputy Minister, it is held that she gave false testimony before the Committee both in terms of her comments about contract-splitting at the Transport Ministry and in her affirmation before the Committee that the first and second reports were identical.

With regard to the allegations of contract-splitting, the former deputy minister's statements contradicted those of the former Director of Inquiries and Internal Audits who came before the Committee. Ultimately, this was a case of one person's word against another's. Without other compelling elements proving that the former deputy minister lied in her testimony about contract-splitting, it was impossible to establish prima facie that her testimony was false. The point of privilege on this subject thus was not *prima facie* receivable.

Regarding the difference in the reports' contents, both testimonies show a difference of opinion as to what might constitute the "real report" and as to the nature of the differences among the versions.

Nonetheless, the Chair ruled that the former deputy minister's testimony could not be qualified as false, as, more than anything, her statements illustrated a certain laxity in her answers. The Chair had no compelling evidence showing that she gave false testimony with intent to deceive the Members about the differences noted in the contents of the reports. The point of privilege was therefore not *prima facie* receivable on that basis.

As to giving incomplete testimony, the Chair stated that it was clear that the former deputy minister's testimony could have been more precise with respect to the differences in the reports. In addition, her explanations, which helped better quantify the differences in the versions of the report, were only forwarded to the Committee several months after she appeared before it. However, for a point of privilege to be *prima facie* receivable under section 55(2) of the *Act respecting the National Assembly*, two elements are essential: there must be compelling evidence that incomplete testimony was indeed given, and the intent to mislead or hinder parliamentary proceedings by deliberately concealing information from parliamentarians must be shown.

Despite the former deputy minister's poorly prepared, inept testimony before the Committee, the Chair could not, in light of these criteria, conclude that she *prima facie* deliberately gave incomplete testimony within the meaning of section 55(2) of the *Act respecting the National Assembly*.

Conclusion

The Chair recalled that the fact that the issue could not be put before the Committee on the National Assembly on a point of privilege did not mean that another committee could not look into the matter from the viewpoint of parliamentary oversight.

Furthermore, the Chair stated that it was clear that, in the case at hand, there was administrative bungling when the documents were forwarded and considered there to be something deplorable in the manner this affair was handled by the parties involved and by the Transport Ministry. It also stressed that someone who holds a position in the public service, particularly the position of deputy minister, must ensure that information transmitted to the National Assembly and its Members is absolutely accurate. Filing a document with the National Assembly or its committees is not a matter to be taken lightly, and neither is testimony given before them.

Orders and mandates specifically targeting government department accountability are essential for the Québec State to run smoothly. Therefore, public servants asked to speak within the framework of this type of order must be perfectly prepared for their testimony and be aware of the importance of the information they communicate to the Assembly and its committees on such occasions. When someone is testifying before a committee and is unable to provide accurate information, it is better to clearly tell the Committee Members and pledge to provide the information requested in the shortest possible time.

As the guardian of the rights and privileges of the Assembly and its Members, the Chair wanted to send a clear message. The duty of Québec's elected officials is first and foremost to protect the public interest. To exercise that role, public servants' cooperation is clearly essential. The Chair also took the opportunity to reiterate the profound respect that the Chair and all of the parliamentarians have for government employees.

Committee Proceedings

From October 1 to December 10, 2016, the date on which proceedings were suspended for the holiday period, the Standing Committees sat for a total of 432 hours. Among these, just over 107 hours were set aside for public hearings and close to 287 hours were spent giving clause-by-clause consideration to bills.

Sectorial committees

Of the nine sectorial committees, seven held special consultations within the framework of the

consideration of eight bills. One of these bills is Bill 113, *An Act to amend the Civil Code and other legislative provisions as regards adoption and the disclosure of information*, for which the Committee on Institutions (CI) heard 15 witnesses during four sittings. This bill proposes amendments to the *Civil Code* and to the *Youth Protection Act*, including changes to the adoption regime and to the adoption file confidentiality regime. The Committee on Planning and the Public Domain (CPP), for its part, held special consultations during the consideration of Bill 109, *An Act to grant Ville de Québec national capital status and increase its autonomy and powers*. The purpose of this bill in particular is to confirm the city's status as Québec's national capital, to grant it a general power of taxation and to grant it certain powers, particularly with regard to urban planning, heritage protection and governance matters. In addition to Ville de Québec, these consultations allowed the CPP to hear 11 witnesses, including Ville de L'Ancienne-Lorette, Québec's neighbour, and the Huron-Wendat Nation.

The CI also continued its public hearings within the framework of an order in accordance with section 114 of the *Code of Ethics and Conduct of the Members of the National Assembly*, which aims to examine the report on the carrying out of this Code. These hearings took place over five sittings during which nine witnesses were heard.

Most of the fall sittings were spent giving clause-by-clause consideration to bills. From October to December 2016, seven committees examined 15 bills, which included two private bills and 13 public bills. One of these public bills, Bill 693, *An Act to amend the Act respecting the governance of state-owned enterprises to promote the presence of young people on the boards of directors of such enterprises*, was introduced by a young Government Member, **Jean Habel** (Sainte-Rose). The Committee on Public Finance (CPF) required only one sitting to examine this bill, which provides that the Government must appoint at least one member aged 35 years or under at the time of appointment to the board of directors of each state-owned enterprise. It should be noted that the passage of bills introduced by Members who are not ministers is quite rare at the National Assembly.

The clause-by-clause consideration of twelve other bills, including Bill 109 concerning the national capital status, also concluded before the holiday break. The consideration of two of these bills, Bill 87, *An Act to facilitate the disclosure of wrongdoings relating to public bodies (modified title)*, and Bill 70, *An Act to allow a better match between training and jobs and to facilitate labour market entry*, had begun last spring. The CPF examined Bill 87 for close to 61 hours while the Committee on Labour and the Economy (CLE) examined Bill 70 for just under 130 hours.

Another clause-by-clause consideration that should be mentioned is that of Bill 106, *An Act to implement the 2030 Energy Policy and to amend various legislative provisions*, which was referred to the Committee on Agriculture, Fisheries, Energy and Natural Resources (CAFENR). Though consideration went smoothly for the first three chapters of the Bill, this was not the case for the fourth chapter concerning the *Petroleum Resources Act,* the legislation enacted by this bill. After spending over 108 hours giving clause-by-clause consideration to this bill, over a period of 26 sittings, on December 9, 2016, the Government made a motion introducing an exceptional legislative procedure to allow the passage of this bill.

Committee on Public Administration

On December 9, 2016, the Committee on Public Administration (CPA), in keeping with its parliamentary oversight mandate, tabled its 35th report detailing the hearings held with deputy ministers and chief executive officers of public bodies on their administrative management. This report includes five public hearings, the examination of the annual management reports of four organizations, which examination was carried out in pursuance of the *Public Administration Act*, and a 7th assessment of the application of the CPA's recommendations, which assessment was carried out in collaboration with the Auditor General of Québec, who ensures the follow-up to these recommendations.

Composition of Committees

Several changes took place in the committees during the fall. First of all, three elections were held in the month of October**. Pierre Reid** (Orford) having resigned as chair of the Committee on Transportation and the Environment (CTE), the Committee members elected **Alexandre Iracà** (Papineau) to fill this position. Since Mr. Iracà was vice-chair of the CAFENR, a new member was chosen to sit on this committee, Mr. Habel (Sainte-Rose), who was then elected as its vice-chair. **Richard Merlini** (La Prairie) was elected chair of the Committee on Health and Social Services (CHSS) to replace **Marc Tanguay** (LaFontaine), who was appointed Deputy Government House Leader.

Changes were also made to the composition of

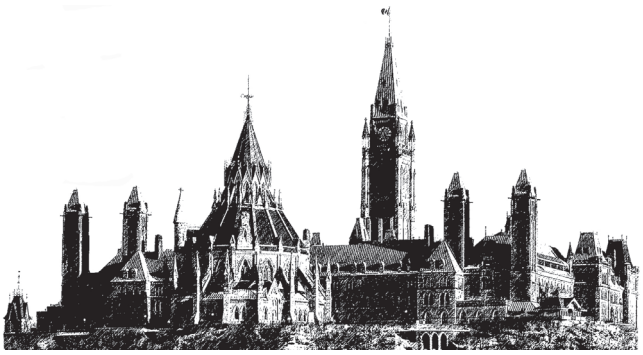
committees following the election of the new Leader of the Parti Québécois, Mr. Lisée (Rosemont). Within this context, six committees elected a new chair or vice-chair. The newly-elected vice-chairs are **Agnès Maltais** (Taschereau) to the Committee on Culture and Education (CCE), **Stéphane Bergeron** (Verchères) to the CI, **Nicolas Marceau** (Rousseau) to the CPF and **Alexandre Cloutier** (Lac-Saint-Jean) to the CTE. **Lorraine Richard** (Duplessis) was elected chair of the CLE while the CPA elected **Sylvain Gaudreault** (Jonquière) as its chair. Mr. Gaudreault returns to this position after having left last May to act as interim Leader of the Parti Québécois.

Government Lawyers and Notaries Strike

Since October 24, the Department of Justice lawyers and notaries working in Québec Government departments and agencies have been on a general unlimited strike. The strike involving these legal experts who represent the Government in civil, administrative and criminal courts, in addition to acting as legal counsel and legislative drafters for ministers and agency presidents, affects the drafting of bills and regulations, among other things. However, certain law clerks are required to provide their services by agreement between their union and the Government, which agreement was ratified by the Administrative Labour Tribunal. This agreement stipulates that the law clerks whose cases require immediate attention in committee will be required to attend committee proceedings upon notice sent to their union by the chair or vice-chair of the committee.

Nicole Bolduc
Parliamentary Proceedings Directorate
Sittings Service

Stéphanie Pinault-Reid
Parliamentary Proceedings Directorate
Committees Service



House of Commons

The House of Commons adjourned for the winter break on December 14, 2016 and was set to resume sitting on January 30, 2017. The information below covers the period from November 3, 2016 to January 20, 2017.

Points of Order and Questions of Privilege

On November 15, 2016, **Matthew Dubé** (Beloeil—Chambly) rose on a point of order regarding statements made on social media, alleging that a Member of the Parliamentary Press Gallery was denied entry to a committee meeting. In a statement given the following day, the Speaker explained that a journalist experienced difficulty accessing the meeting following a misunderstanding that the meeting was held *in camera*. Shortly thereafter, when it was confirmed that the meeting was held *in public*, the journalist was granted access. The Speaker stated that efforts would be made to ensure that such an incident would not be repeated in the future.

On November 22, 2016, the Speaker delivered his ruling on the question of privilege raised on November 3, 2016, by **Tracey Ramsey** (Essex) concerning the Minister of International Trade in relation to the Comprehensive Economic and Trade Agreement between Canada and the EU (CETA). Ms. Ramsey alleged that the Minister of International Trade contravened the Government's policy on the tabling of treaties, which indicates that the Government must observe a waiting period of at least 21 sitting days before the introduction of the necessary implementing legislation in Parliament. In his decision, the Speaker explained that the government's policy cannot be regarded as part of the body of rules that govern the House's procedures and practices. The Speaker stated that when members request redress with respect to

rules external to the House, the Speaker does not have the power to interpret nor enforce these rules. The Speaker declined to find that there existed a *prima facie* case of privilege and concluded that there was no clear evidence that the Member had been impeded in the fulfillment of her parliamentary functions.

Committees

On November 28, 2016, the Special Committee on Electoral Reform tabled two reports. The first report outlined the Committee's desire that it be re-constituted if the Government were to table legislation designed to amend the Canadian election system. The second report urged the Minister of Democratic Institutions to include the questions within the Committee's e-consultation survey on the website mydemocracy.ca.

The Special Committee on Electoral Reform delivered its third report to the House of Commons on December 1, 2016. The report entitled "Strengthening Democracy in Canada: Principles, Process and Public Engagement for Electoral Reform" contained 13 recommendations for the Government on federal electoral reform.

Private Members' Business

On November 23, 2016, **Mark Gerretsen** (Kingston and the Islands) rose on a point of order regarding his Private Member's Bill, *Bill C-243, An Act respecting the development of a national maternity assistance program strategy and amending the Employment Insurance Act (maternity benefits)*. In response to the Speaker's statement of April 11, 2016, which highlighted the Speaker's concerns as to the spending provisions contemplated by Bill C-243, Mr. Gerretsen argued that since Bill C-243 would not increase or change the total benefits an individual is entitled to, it would not constitute a new and distinct expenditure and would therefore not require a royal recommendation. In his ruling on December 6, 2016, the Speaker stated that since he was not convinced that the current act allows spending under the circumstances, in the manner, and for the purposes proposed by Mr. Gerretsen, he would decline to put the question on third reading of Bill C-243 in its present form unless a Royal Recommendation was received.

Statements

On November 3, 2016, on the occasion of Veteran's Week, **Amarjeet Sohi** (Minister of Infrastructure and Communities) made a statement in the House. **John Brassard** (Barrie—Innisfil) and **Irene Mathyssen** (London—Fanshawe) also made statements. By unanimous consent, **Michel Boudrias** (Terrebonne) also made a statement.

Other Matters

Members

On November 16, 2016, the Speaker informed the House that the Acting Clerk had received from the Chief Electoral Officer a certificate of the election of **Glen Motz** (Medicine Hat—Cardston—Warner). Mr. Motz, having taken and subscribed the oath, was introduced in the Chamber and took his seat in the House.

Cabinet

On January 10, 2017, the following Cabinet changes were announced: **Chrystia Freeland** (University—Rosedale) was appointed Minister of Foreign Affairs, taking over from **Stéphane Dion** (Saint-Laurent). **François-Philippe Champagne** (Saint-Maurice—Champlain) was named Minister of International Trade, while **John McCallum** (Markham—Thornhill) was replaced as Minister of Immigration, Refugees and Citizenship by **Ahmed Hussen** (York South—Weston).

Patty Hajdu (Thunder Bay—Superior North) replaced **MaryAnn Mihychuck** (Kildonan—St. Paul) as Minister of Employment, Workforce Development and Labour. **Maryam Monsef** (Peterborough—Kawartha) became the Minister the Status of Women, while **Karina Gould** (Burlington) replaced Ms. Monsef as the Minister of Democratic Institutions.

Moment of Silence

On December 6, 2016, the House observed a moment of silence in memory of the victims of the tragic event which took place on December 6, 1989, at École Polytechnique in Montréal.

Marisa Monnin

Table Research Branch

The Unusual Case of the Nunavut Carving

To honour Canada's development and prevent rewriting of history, by tradition stone carvings or sculptures are never removed from the country's Parliament buildings once placed there. There is a single known exception – a Canadian coat of arms was removed to make room for representation of the country's newest territory.

Brenda Labelle

Once something is carved in the stone of our nation's Parliament buildings, there it remains. By tradition, carvings or sculptures are not removed from Parliament buildings. They are "carved in stone," both literally and figuratively. There is only one recorded example of a break in this tradition.

Each architectural element in our Parliament's buildings is emblematic of a moment in Canadian history. For example, provincial coats of arms are found in the Library of Parliament where, notably, some provinces are not represented, and the coats of arms of several provinces are outdated. These carvings will not be altered, however, as they reflect the Canada of 1876, the year in which the library building was completed. Yet in 1999, a carving of Canada's coat of arms was removed so that the newly created territory of Nunavut could be represented in the rotunda of Parliament's Centre Block.

The rotunda, also called Confederation Hall, is the grand entrance of the main building. It is the heart of Parliament linking the Senate and the House of Commons on either side and the library to the north. The space features a central column that leads dramatically up into the vaulted ceiling. Archways and columns encircle the hall, and it is above these archways that we find carvings of the coats of arms of all of the provinces and territories, as well as the Canadian coat of arms. In 1999, the coat of arms of the territory of Nunavut was added above the entrance on the south side of the rotunda where a second Canadian of arms had been located.

At the time, enquiries apropos of the appropriate placement for the new coat of arms were made by Alfonso Gagliano, the Minister of Public Works. Subsequently, the Dominion Sculptor, Maurice Joanisse, made recommendations. We can only assume that the fact that there were two Canadian coats of arms opposite each other in the rotunda influenced the decision to replace one of them with the Nunavut coat of arms. Final approval for the project, which involved bringing the Canadian coat of arms down to a flat surface and pinning new Tyndall stone to the existing stone, was provided by the Speaker of the Senate and the Speaker of the House of Commons in a joint letter. No alterations were made to the foliage surrounding the carving.

The Nunavut coat of arms is easily identifiable when juxtaposed with those of other provinces and territories as it is the only one featuring a round shield. With no military or heraldic tradition tying Nunavut to a specific shield, the circle was chosen. There are many possible interpretations regarding the importance of that symbol for the people of Nunavut; however, no fixed meaning has been ascribed to the shield's shape. There is one other representation of the Nunavut coat of arms in Parliament's Centre Block and it is on the doors of the Senate Chamber.

Brenda Labelle is a research assistant for the Library of Parliament's Research Publications and Data Visualization Group.

Confederation Hall:
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Martin Lipman/Bernard Thibodeau

Senate Chamber Door
(Nunavut coat of arms):
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Roy Grogan

Confederation Hall,
Nunavut coat of arms:
Bernard Thibodeau