



Parliamentary Book Shelf

Odgers' Australian Senate Practice, 13th Edition, edited by Harry Evens and Rosemary Laing, Canberra: Department of the Senate, 2012, 942 pages

The publication of *Odgers' Australian Senate Practice, 13th edition* is a wonderful tribute to James Rowland Odgers, Clerk of the Australian Senate from 1965 to 1979, and to Harry Evens, also Clerk of the Senate from 1988 to 2009. Odgers, who began compiling this parliamentary authority in 1953, edited five versions of the book with the sixth being produced in 1991 following his death but based on material he had prepared. Evens, the longest serving Senate Clerk, wrote all subsequent editions, co-editing the thirteenth with the current Senate Clerk, Dr. Rosemary Laing who has had twenty-two years' experience working in the Senate. The book will undoubtedly prove invaluable to their President and committee chairs, assisting them to resolve questions on how their legislature should proceed on the business before them as well as to students of constitutionalism who monitor the Senate as to how well it fulfills its constitutional functions vis-à-vis the executive, the House of Representatives and the judiciary.

But the book is primarily addressed to Australian senators and its most valuable contribution lies in its unsaid encouragement to them to develop loyalty to the institution, its purposes, and bicameralism. As Dr. Laing states in the Preface,

it not only provides an account of the practices and procedures of the Senate, but also describes "its place in the framework of the Australian Constitution." Australia, which was the first Westminster style Parliament to have a popularly elected upper house, is only one of five contemporary regimes that the eminent political scientist Arend Lijphart has categorized as "strong bicameralism", the others being Columbia, Germany, Switzerland, and the United States (*Patterns of Democracy*, 1999). Although the dedication found in the twelfth edition has been dropped, this new edition continues the tradition established by Odgers of explaining the rationale of bicameralism, the functions of the Senate and keeps current the chronology of how the Senate has exercised its powers from 1901 to 2012.

On the surface one would assume that *Odgers'* would have little relevance for the Canadian Senate as the two chambers are so different. Australian senators are elected for six year terms based on a system of proportional representation with preferential voting, while Canadian senators are appointed until the age of seventy-five. About one-quarter to one-third of the ministry sits in the Australian Senate while in Canada, with the exception of 2006-2008 when Michel Fortier also sat in cabinet, the Leader of the Government has served as the sole minister since 1984.

For reasons that merit further study, the Australian Senate amends many more bills than its Canadian counterpart. For example in 2010, Australian senators made 416 amendments to 40 bills while Canadian senators only made 17 amendments to 10 bills. Unlike in Canada, the Australian Senate has used its legislative powers to delay approval of supply. In 1975 this precipitated a serious constitutional crisis and led to the dismissal of the government of Prime Minister Gough Whitlam. As well, minor political parties are invariably represented in the Australian Senate while the Canadian Senate has a two-party system, although at times with a number of independents.

Notwithstanding these important differences, the similarities between the two institutions are quite striking. As Meg Russell notes in *Reforming the House of Lords* (2000), the Australian and Canadian Senates are bound up with the history and traditions of their countries in that they represent the development of their federal systems. In both countries, the founding fathers spent most of their time in constitutional discussions on the composition and powers of the upper house, and without an agreement on their Senates there would have been no Commonwealth of Australia or Dominion of Canada. They are smaller houses than their bicameral partners and about the same size: the

Australian Senate has 76 seats, compared to 150 seats in the House of Representatives, while the Canadian Senate has 105 seats compared to the Commons' 308. In both Houses, the President/Speaker has a deliberative, not a casting, vote and if a vote is tied the decision is deemed to be in the negative. The functions listed in various editions of *Odgers'* can in many ways also apply to the Canadian Senate: "the guardian of the interests of the States; the House of review; the checks and balances Chamber; the second opinion of the nation; the monitor of Government performance; insurance against Government incompetence and maladministration; the defender of the rights and liberties of the citizen; and, in general, the safety valve of the federal system." (*Australian Senate Practice*, 6th edition, p. xxxvii)

As an elected legislature, Australian senators take their representative role very seriously. Although not elected, Canadian senators have always seen themselves as a representative chamber, particularly of linguistic, aboriginal and other minority groups. The two houses have vibrant committee systems which produce valuable and well respected policy studies and gather evidence on bills. Most importantly, both chambers are constitutionally unable to unseat a government since in accordance with the theory of responsible government, to stay in office a ministry only has to have the confidence of the lower house and not the upper. Both chambers are restricted by the constitutional provision that bills appropriating revenue or monies, or imposing taxation, are to originate in the lower house. As well, as David Smith has recognized in *The Canadian*

Senate in Bicameral Perspective (2003, p. 12), what is "central to second chamber existence in both countries is partisanship." Even Harry Evens in a publication separate from *Odgers'* has lamented that since the time of David Hamer who retired from the Australian Senate in 1990 "government control over its backbenchers is much tighter in the Senate as well as in the House of Representatives." Many authors point to the Australian Senate as an example of "divided party government" in that very rarely does the government command a majority in the upper house. Such a description is not entirely inappropriate for the Canadian Senate. Since 1945 the government has been in a minority in the Senate for 22.5 years, which corresponds roughly to 33% of the time. In neither parliament did this necessarily mean complete legislative and policy gridlock, although there have been occasions, for example in Australia in 1975 over appropriation and in Canada in 1988 over the Free Trade Agreement with the United States, when elections were triggered by proceedings in the Senate on government legislation.

Odgers' ranks as a classic parliamentary authority and a useful source of procedural knowledge, particularly for the Canadian Senate. The 13th edition lists the important procedural changes which have occurred since 2008. For example, a protocol was developed for witnesses seeking to be excused from answering particular questions on grounds of public interest immunity and was reflected in a 2009 Senate resolution. This resolution forms an integral part of the chairs' opening statements at estimates hearings. In 2010, the Senate

adopted a resolution affirming its "undisputed power" under section 49 of the Constitution "to order the production of documents necessary for its information, a power which encompasses documents already in existence and documents required to be created for the purpose of complying with the order." Also in 2010, a motion was adopted that "the Senate is of the view that the declaration of the opening of Parliament should be preceded by an Indigenous 'Welcome to Country' ceremony." This ceremony symbolizes the traditional owners giving blessing to an event taking place on the land and is meant to show respect to the traditional custodians of the land. The 'welcome to country' ceremony was formalized as part of the proceedings for an opening of Parliament and an acknowledgement of country was incorporated into each day's proceedings after prayers.

Odgers' has a reputation for its "forthright language and uncompromising declarations of opinion". But such a writing style may be necessary given that the mere existence of second chambers in democratic systems is often criticized and their role in the legislative process questioned. Dr. Laing suggests in the Preface that there may come a time for a wholesale revision of the book. It is sincerely hoped that whatever changes are made, *Odgers'* continues to be a great proponent of bicameralism, the rights of the Senate and its independence from the House of Representatives.

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