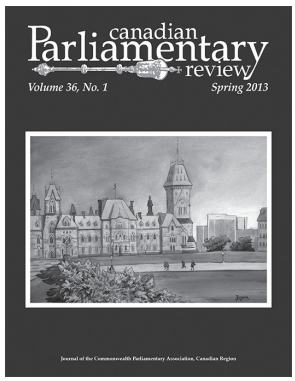
canadian Parliamentary review

About the cover
The East Block built in 1866 was initially where the entire public service of Canada was located. Today, the East Block contains many senators' offices, as well as some rooms re-created in the style of the early years of Confederation. Michael Lukyniuk is a retired Principal Clerk of the House of Commons. His paintings can be found at http://michaelspaintbrush.blogspot.ca



East Block Lilacs

Watercolour 15.5 x 11.5 inches
(39 x 29 cm)

Michael Lukyniuk

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.

The Review is published for the Canadian Region, CPA by the Parliament of Canada. Any opinions expressed are those of individual contributors and should not be attributed to any Branch of the Canadian Region.

Subscription
$25.00 (4 issues) or
$40.00 (French and English editions)

Cheques should be made payable to:
Canadian Parliamentary Review

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Ottawa, Ontario K1A 0A6
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Internet: http://www.RevParl.ca

Legal Deposit:
National Library of Canada
ISSN 0229-2548

Cette revue est aussi disponible en français

Unveiling the Green Carpet in the Saskatchewan Legislature

Hon. Dan D'Autremont, MLA

On October 10, 2012 the Speaker officially unveiled a new carpet in the Saskatchewan Legislative Chamber. The worn-out red carpet was replaced with a new green carpet in keeping with the original intent of the building's design. A formal ceremony was held with invitations to former Speakers, Premiers, Clerks, MLAs and sitting Members, schools and members of the public.

The Saskatchewan Legislature celebrated its 100th Anniversary on October 11, 2012. In conjunction with the Centennial, a decision, by the Board of Internal Economy, was made to replace the worn red carpet with green carpet. The green carpet would be in keeping with the architects' intended original design plans of 1908 and the recommendation of the 1978 All Party Committee.

The Building was constructed between 1908 and 1912 in the Beaux Arts style to a design by Edward and William Sutherland Maxwell of Montreal. The Maxwells supervised construction of the building by the Montreal company, P. Lyall & Sons. Lieutenant Governor Vaughn Scofield's grandfather built the dome.

Piles were drilled for the foundations during the autumn of 1908 and in 1909, the Governor General of Canada, Earl Grey, laid the cornerstone. In 1912, Prince Arthur, Duke of Connaught, by then the serving Governor General, inaugurated the building.

It was anticipated that the Chamber carpet would be green to match the green marble pillars in the rotunda and the green marble trim that are in the Chamber today.

Parliamentary tradition dictates that a red carpet is used only in the upper house of unelected members such as the Canadian Senate or British House of Lords. Blue or green carpet was assigned to the lower house of elected members.

Walter Scott, Saskatchewan's first Premier, preferred red and the red carpet was installed. The Saskatchewan Legislative Building was one of only two in Canada that featured a red carpet in the elected Members' Chamber.

The change to a green carpet was a historic event and appropriate as we celebrated the 100th Anniversary of the Legislative Building.

This decision to change the carpet colour was arrived at after a number of years of informal discussions by the Members of the Board of Internal Economy and individual legislators. All the usual political considerations were discussed. However, Members agreed that after 100 years it was appropriate to complete the Assembly's original design.

In December 2011, the Members of the Board of Internal Economy unanimously approved the purchase of new carpet and the colour would be green. To avoid any partisan considerations, the shade of green was put into the hands of our very able architect, Robert Wells. Mr. Wells and his staff did an excellent job in their selection of the colour for the new carpet.

Earlier this year, we had a group of 100 school children and chaperones in the Chamber for a presentation and questions. One young gentleman asked why the carpet was red. In the presence of both Premier Brad Wall and Opposition Leader, John Nilson, I explained why the Saskatchewan Legislative Chamber was red, and that since the red carpet was worn out, we were going to replace it with a green carpet.

Dan D'Autremont has represented Cannington in the Legislative Assembly of Saskatchewan since 1991. He was elected as Speaker of the Assembly in December 2011.

Speaker Dan D'Autremont (l) and the Clerk of the Legislative Assembly of Saskatchewan, Greg Putz, at the Formal Ceremony marking the installation of the new green carpet in Saskatchewan

The question and answer were overheard by a member of the media. This generated a news story which was then carried by other media outlets, including interviews and TV video clips. It turned into a bigger story than anyone expected.

As Speaker, I was pleased that the public was interested in the carpet and, by extension, the Centennial of our Legislature. The Chamber is both the physical centre of the building and the central reason for the building. The creation of legislation by legislators is the driving force and purpose of our Legislative Building. It is in this Chamber that the laws of our province become reality and where budgets are approved and taxes levied. Other provincial buildings hold the people and processes which administer these laws and financial procedures, but it all gets debated and approved in the Assembly by legislators on both sides of the Chamber.

As we enter the next 100 years, we pause and reflect upon the rich history and tradition that encompasses this majestic building and, most notably, the Legislative Chamber, and what it represents for the people of Saskatchewan.

Saskatchewan is experiencing historic growth, both in population and in our economy. The grand opportunities that were envisioned by Walter Scott and the builders of our Legislative Building in 1912 continue today and remain the vision for the future of Saskatchewan people and our province.

Two Private Member's Bills that made Canadian History

Joy Smith MP

Bill C-268, An Act to Amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years), was only the fifteenth Private Member's Bill to change the Criminal Code since 1867 and the sponsor of the Bill made history with Bill C-310, becoming the first MP in history to change the Criminal Code twice. This article looks at the background and content of these two Bills.

I was first drawn to the issue of human trafficking in Canada through the work of my son, who was a member of the RCMP and served in the Integrated Child Exploitation Unit (ICE). Overnight, I noticed a huge change in him; his hair turned grey and I could tell things weighed heavily on him. I was appalled to find out that children in Canada were being bought and sold in exchange for sex and money and even more horrified that this issue was completely off the public's radar screen. As I became more aware of the magnitude of the problem, I realized this exploitation was happening in communities all across our nation. Gradually I began working with victims of human trafficking and not only saw, but felt their pain and humiliation. Perpetrators used coercion and manipulation to gain control of these innocent victims. The victims were and are subjected to every imaginable sexual, physical and mental abuse, involuntary drug use and even threats against their victim's families.

First Steps – Getting the Word Out

When I came to Parliament in 2004, I wanted to stop the business of human trafficking. Unfortunately, I faced an uphill battle in trying to change the channel and focus Canadians' attention on this heinous crime happening in their own backyards. Few Parliamentarians were aware of the depth of this issue in Canada and struggled to believe that this was a reality in our nation … let alone one we had to confront. I began my work as a Member of Parliament to bring greater awareness about human trafficking in Canada and greater attention to what we must all do to stop it.

The first step in fighting this crime was calling on the Standing Committee on the Status of Women to initiate a study of human trafficking in Canada. On September 28, 2005, I first raised the need to address the sexual slavery occurring in North America. I presented this issue to the Committee to give voice to the thousands of women, both Canadian born and others arriving on Canadian soil from other countries, who suffered at the hands of human traffickers.

Turning Outrage into Action

My motion to study human trafficking in Canada was passed by the Committee on September 26, 2006 and the study then began on October 3, 2006. The Standing Committee on the Status of Women's February 2007 Report, *Turning Outrage into Action to Address Trafficking for the Purpose of Sexual Exploitation in Canada*, was tabled in Parliament on February 27, 2007. The key priorities of the report focused on the prevention of trafficking, protection of victims, and prosecution of offenders. This report prompted all parliamentarians, and all Canadians, to stand up for victims who are trafficked for the purpose of sexual exploitation, support the proposed recommendations and take whatever steps necessary to implement them. In March 2007, my motion M-153, which I introduced to the House of Commons in 2006, was unanimously passed. It stated:

Joy Smith represents Kildonan-St.Paul in the House of Commons.

> The trafficking of women and children across international borders for the purposes of sexual exploitation should be condemned, and that the House call on the government to immediately adopt a comprehensive strategy to combat the trafficking of persons worldwide.

Bill C-268

The passing of this motion led to my work on Bill C-268, *An Act to Amend the Criminal Code (minimum sentence for offences involving trafficking of persons under the age of eighteen years),* which I introduced in 2009. Canada's *Criminal Code* currently provides for a mandatory minimum sentence of five years for the aggravated offence of living off the avails of prostitution of a person under the age of eighteen years. The trafficking of children is similar to this offence but often has much more severe consequences for the victim. Bill C-268 contained amendments to Canada's *Criminal Code* to provide a five year minimum sentence for the trafficking of minors in Canada and a six year minimum sentence for cases involving aggravated offences like assault or death. In June 2010, the bill was passed and successfully amended Section 279.01 of Canada's *Criminal Code* to create a new offence for child trafficking with a five-year mandatory penalty. This was only the 15th time in Canadian history that a Private Member's Bill amended the *Criminal Code*.

National Action Plan

Despite the success of Bill C-268, I felt there was a gap and a need for a National Action Plan in Canada. So in 2010, I drafted a proposal titled, *Connecting the Dots.* This piece provided key recommendations that should be included in a National Action Plan, some of which included providing adequate funding for NGOs to deliver care, counselling, shelter and assistance to victims; developing policies and regulations to combat forced labour and child labour abroad; and creating regional human trafficking taskforces.

Following the release of *Connecting the Dots*, Canada's first National Action Plan to Combat Human Trafficking was drafted. It is a comprehensive blueprint to guide the fight against the serious crime of human trafficking in our nation. On June 6, 2012, Canada's National Action Plan to combat the trafficking of persons was launched and it emphasized the need for awareness in vulnerable populations, support for victims, dedicated law enforcement efforts, and the need for all Canadians to prevent the trafficking of individuals. These new measures, totalling over $25 million over four years, builds on and strengthens Canada's significant work to date to prevent, detect and prosecute human trafficking, such as targeted training for law enforcement officials and front-line service providers, and enhanced public awareness measures. Canada's approach is guided by its international commitments contained in the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and is organized around four pillars, namely: prevention, protection, prosecution and partnerships.

Bill C-310

With the National Action Plan now in place, my second Bill, C-310, *An Act to Amend the Criminal Code (trafficking in Persons),* was introduced on October 3, 2011. This bill adds the current trafficking in persons offences [s.279.01, s.279.011, s.279.02 & s.279.03] to the current list of offences which, if committed outside Canada by a Canadian or permanent resident, could be prosecuted in Canada. The current list of extraterritorial offences includes serious crimes such as child sexual exploitation, hostage taking and terrorism. Extraterritorial laws refer to laws that a country will enact which regard an offence committed abroad as an offence committed within its borders.

Canada has designated a number of serious *Criminal Code* offences as extraterritorial offences, especially those related to the sexual abuse of children by Canadian sex tourists. These can be found in Section 7.4 of the *Criminal Code*. Extraterritorial laws are guided by a number of principles under international law.

Bill C-310 falls under the nationality principle which is defined as: 'States may assert jurisdiction over acts of their nationals, wherever the act might take place.' There are three purposes of designating Sections 279.01 - 279.03 as extraterritorial offences. The first is that an extraterritorial human trafficking offence will allow Canada to arrest Canadians who have left the country where they engaged in human trafficking in an attempt to avoid punishment. The second is that an extraterritorial human trafficking offence will ensure justice in cases where the offence was committed in a country without strong anti-human trafficking laws or judicial systems. Finally, an extraterritorial human trafficking offence will clearly indicate that Canada will not tolerate its own citizens engaging in human trafficking anywhere.

The second amendment of Bill C-310 enhances the current definition of exploitation in the trafficking in persons offence [s.279.04 of the *Criminal Code*]. Currently the definition does not provide specific examples of exploitive conduct. This amendment added an evidentiary aid for the Court to provide clear examples of exploitation such as the use of threats,

deception or abuse of power or authority. Examples of similar interpretive aids can be found in s.153 (1.2) and s.467.11 (3) of the *Criminal Code*. Overall, this Bill allows the long arm of the Canadian law into other countries by allowing Canadian police to go abroad, handcuff a Canadian citizen or permanent resident suspected of trafficking people, and bring the suspect back to Canada for trial. Bill C-310 received Royal Assent and became law on June 28, 2012.

There was overwhelming support for Bill C-310 from law enforcement, victims' services, First Nations representatives, and religious and secular non-governmental organizations. Professor Benjamin Perrin, of the University of British Columbia, Faculty of Law, and author of *Invisible Chains: Canada's Underground World of Human Trafficking* stated:

> Human traffickers have evaded prosecution for their heinous crimes, in part, because Canada's criminal laws are not explicit enough to clearly encompass the range of tactics employed by these serial exploiters. Member of Parliament Joy Smith is again responding to concerns by police and victims' groups in seeking to amend our human trafficking laws to hold traffickers accountable and protect victims. I call on all Parliamentarians to support this initiative.

Jamie McIntosh, Executive Director of the International Justice Mission Canada also lent his support for the Bill:

> The crime of human trafficking often transgresses international boundaries, with vulnerable men, women, and children subject to its devastating reach. Human traffickers, including those of Canadian nationality, will persist in their illicit trade if they believe their crimes will go unpunished. Extending authority to prosecute Canadians for human trafficking crimes committed abroad is an important step in the global fight against human trafficking. As a nation, we must commit to prosecuting Canadian nationals who commit these crimes, regardless of geographical location at the time of offence.

National Human Trafficking Awareness Day

But the fight is not over. On February 14, 2012, I introduced Motion M-317, which calls on the Government of Canada to establish February 22 as Canada's National Human Trafficking Awareness Day:

> That, in the opinion of the House, the government should encourage Canadians to raise awareness of the magnitude of modern day slavery in Canada and abroad and to take steps to combat human trafficking, and should do so by designating the 22nd day of February each year as National Human Trafficking Awareness Day, to coincide with the anniversary of the unanimous declaration of the House to condemn all forms of human trafficking and slavery on February 22, 2007.

A National Human Trafficking Awareness Day will help rally Canadians together to effectively eliminate today's many forms of slavery and raise awareness across Canada. Government action alone will not end modern day slavery. Each Canadian must take steps to prevent human trafficking and end this brutal injustice. Until slavery has been eradicated, there is much to be done.

Next Steps for 2013

To further this cause, in 2013, I am working to develop a 'Target the Market' approach in Canada which will centre on bringing the perpetrators to justice and eliminating the demand for sex. The men and women who prey on innocent victims create a market that buys and sells our youth today in Canada. Men who pay to use the bodies of these young people fuel the profit and demand for this modern day slavery that is happening right here in our own communities. Countries such as Norway and Sweden have made substantive progress toward eliminating human trafficking by targeting the market, eliminating the demand, supporting victims, and placing the ownership for these crimes on the perpetrators. Canada needs a 'Target the Market' model so that our youth are no longer bought and sold.

To conclude, human trafficking is the second largest organized crime in the world today, a fact which focused my work as a Member of Parliament. Bills C-268 and C-310 are making a big difference for police officers across Canada. Just in Calgary, on February 6, 2013, *CTV Calgary* reported that Calgary Police Service laid their first charge of trafficking of a minor (new since 2010), carrying a minimum mandatory of five years imprisonment. Since the Conservative Government shone the spotlight on the heinous crime of human trafficking in our country, perpetrators are being apprehended and charges are being laid. Dedicated Parliamentarians can make a difference and change the course of a country's history. History has proven that.

Government Involvement in Sport for Youth

Ron R. Schuler MLA

With youth obesity rates at an all-time high in Canada and daily youth physical exercise at an all-time low, government involvement in youth sport has become desperately needed for Canadian families. Without a strong set of core changes made by government to youth sport, Canadian families will continue to struggle with pressures such as; good nutrition, consistent meals, increasing cost barriers for sport registration fees, aged facilities, the decline of volunteerism, a lack of early age athletic development, a lack of programming for inner city youth, and the continuation of poor showings during international competitions. These growing problems require a change in culture and with obesity costing the country over $7 billion a year, the issue is a significant concern. This article looks at some possible solutions including successful models implemented in Europe.

The cost of government funded health care is spiraling out of control and room must be made for the health of youth. Top heavy and unwieldy with issues that affect the whole country, the Canadian health care system is based on the concept that after a citizen contracts an illness or becomes injured, the system is accessed to attempt to deal with and mitigate the consequences as best as possible. For some larger issues such as the rampant child obesity problem throughout the country, the health care system has a tendency of normalizing the issue.[1] With more than 50% of the parents of obese children overweight themselves, this combination of busy lifestyle, reliance on convenience foods that are high in fat and calories, and too little physical activity all contribute to an issue that stems from the household.[2]

In contrast to this would be a pre-emptive health care system, or what is often referred to as a "holistic approach" to health. Shifting the focus from weight to activity instead of telling people about the importance of losing weight could be much more effective and make it easier for people to get out and be physically active in their communities. The promotion and development of exercise and sport at a young age allows an active approach to maintain a healthy lifestyle, for not only children, but for the parents who are responsible for setting an example. Government can make noticeable contributions to prevention, by simply making neighborhoods more walkable or using public money to create safety in public parks.

Another pre-emptive solution is the development of a strong youth sport public policy. Physical activity not only reflects traditional sports, but should also include the wide variety of exercise available such as; badminton, golf, bowling, dance classes, and hip hop and jazz classes. Thirty minutes of activity in adults and one hour of activity in children are suggested by the Centers for Disease Control and Prevention, as it can help to reduce weight gain, stress, and is important for those who are at risk of or who already deal with diabetes. If Canadians could ensure that children grew up with a love of physical activity, they would improve their health and save health care dollars down the road, as well as increase the ranks of fit and athletic young Canadians.

The two largest youth problems facing the Canadian health care system are youth obesity rates and the increase in youth susceptibility to Type 2 diabetes. About 1 in 11 or 8.6% of children in Canada are

Ron Schuler represents St. Paul in the Manitoba Legislative Assembly. This is a revised version of his presentation to the 34th Canadian Regional Seminar of the Commonwealth Parliamentary Association held in Edmonton on October 13, 2012.

considered obese, and in youth, the prevalence of obesity has tripled between 1979 and 2008.[3] The Public Health Agency of Canada found that physical inactivity (a person active less than 15 minutes a day) is the greatest predictor of obesity. Alongside rising obesity rates is the problem with increasing rates of Type 2 diabetes within Canadian youth. A study by the Institute for Clinical Evaluative Sciences (ICES) has found a 3% increase per year in the rate of diabetes in children from 1994 to 2004. Childhood diabetes is a chronic disease that can cause major health problems. "It is concerning that we are seeing more children… diagnosed with this serious chronic disease, we need to better understand why this happening and ensure that adequate healthcare resources are available…" says principal investigator and ICES Scientist, Dr. Astrid Guttmann.[4] Dr. Guttmann found that overall rates of diabetes are higher than those reported in the United States of America, with the highest incidence rate among 10 – 14 year old, which may be due to genetic susceptibility, but also environmental changes such as the rise in obesity amongst children.[5]

Although there is currently an increased amount of government focus on youth obesity rates and youth susceptibility to Type 2 diabetes, the attention is often on older youth. It is unfortunate that these types of health issues are only looked at in earnest during the teen years, when children enter junior or senior high school, rather than at an earlier age. These later teen years are often when most children come into their own and know when to ask for help in terms of their health, or begin to embrace their healthy lifestyle fully. This age is when political/policy statements on the need for more physical activity for teens begin by society and the government and not at the younger ages. Physical activity at any age should be encouraged, but a far more important goal is the necessity of targeting the healthy life style of physical activity at children when they are young and at a more impressionable age. Most physical activity models that are looking at targeting a younger demographic tend to focus on the 8 to 10 year olds and more discussion needs to be taking place on moving the target age to 4 and 5 year olds. This would take a substantial cultural change at the policy developmental stage, which is far behind the reality of "mini-soccer" and "Timbits Hockey" that is already taking place.

Another area that has taken on a life of its own in political circles is that of the rise of youth crime when sport and positive physical activities are not present. The largest group of at risk youth historically has been those who have grown up in urban centers, where the proliferation of gangs has taken hold. Statistics show that the city of Winnipeg has not only has the largest amount of youths between the ages of 10 – 24 in Canada, but the highest rates of youth crime as well.[6] In order to prevent youth from falling into this lifestyle, government should be providing these kids with something to do after school in order to stay off the streets. Funded programs that get more children involved in organized sport so that they do not become involved in crime, give them something positive to belong to. The ability for government to provide community benefits and allow groups to apply for coach's funding, would provide an avenue for experienced mentors who aim at keeping kids in school and steering them into job training and careers, as well as staying active. A little goes a long way in these situations and in order for government to be successful, there needs to be a sense of pride given to the youth, that they belong to something safe and have fun doing it. From here, confidence, leadership, and most importantly a sense of belonging can be instilled through the values of organized sport.

Compounding these challenges is often the large amount of immigrants and refugees who find themselves in these urban settings. They are often brought into this setting due to the lack of affordable housing and the majority of what Immigration Settlement Services can provide, is located in these city centers. These youth find that outside of school they do not have the same access to extracurricular activities that might otherwise be provided in suburban communities. Further to this, the focus of Canadian sports is not congruent with the sports that immigrant youth are accustomed to. Many of these new Canadians have never seen ice, let alone a hockey game, and will likely never put on a pair of skates. The match of youth to sport must be a natural fit or the attempt to encourage inner city youth to try sports as a gang alternative will fail.

The single greatest barrier for Canadian families and new Canadians is the cost for children to be registered for sports. On top of this, many of Canada's most popular sports require a large amount of equipment, which can often place enough of a financial burden on a family that the sport no longer becomes an option. Recently at the Southdale Community Centre, little warning was given to community members that fees would be going up from $85 per family to $110 per hockey and ringette player.[7] With most families registering multiple children, the price quickly added up. With no public debate on the matter, the fees were being raised to pay off a $9 million expansion for the facility.[8] For many parents, the cost was no longer even an option. Financial support for families does

exist in very limited forms, but it is often deemed too restrictive and cumbersome to actually aid parents in need. In many cases, families have no knowledge of the programs and how they work, not to mention the language barriers new Canadians face. In recent years, the newest and latest sports equipment has driven costs to unprecedented levels. Not only is there a fashion component, but also a safety factor that keeps adding on to the ever escalating cost of sports. Though some sports by nature are less prohibitive to suit up for and play (such as basketball and volleyball) but even their cost has escalated substantially in the past 10 years. Hockey remains Canada's most expensive youth sport and has reached the point where even middle to upper middle class families find themselves making substantial sacrifices for their children to participate in the sport. Due to this, registration for hockey has declined consistently over the last two years.[9]

It would seem that the era of outdoor sports during the winter months has become a thing of the past. The push to develop more indoor facilities has taken on a new sense of urgency and is a major accelerator of youth sport costs. This cost is not just something that affects one sport, rather impacts all youth sport costs. Another accelerator of youth sport costs seems to be the increased travel that families of young athletes face. Travel within city and provincial limits for most families is fairly expensive to begin with, however when dealing with out of city and out of province costs, not only has the cost of travel increased substantially with gas prices continually on the rise, but even more so with airfare. There seems to be no end to sport fundraisers, with more parents and athletes vying for an ever scarce donation dollar.

One of the issues currently facing all sports organizations and community clubs is the serious decline in volunteerism. Years ago a position on a community club board was viewed as a coveted position and was often settled by an election between competing individuals. This is now something of the past, as most organizations have positions that remain vacant. The demand in many communities far outstripped the ability of the clubs to provide services. With hundreds of children enrolling in outdoor sports and seemingly no parents willing to coach, club president have begun to run out of options. Ultimatums such as "…you either coach or lose the program." are not uncommon in organizations and unfortunately are often the only way to recruit volunteers. With most family's parents working full time, there are many reasons why volunteerism is in decline. Volunteering when parents can barely make ends meet is seemingly not there, and often they are overwhelmed with all the duties of parenting making coaching not an option.

This lack of development at an early age has a direct effect on Canada's ability to perform at elite international levels amongst its peers. After the final smoke had cleared from the fireworks of the past summer Olympics, questions began to surface about Canada's poor medal standings. Canada has always ranked low in international competitive sports, save that of winter games. The main weaknesses of Canada's Olympic teams have mainly been accepted as its relatively shallow pool of young elite athletes. With no deep rooted traditions of government support, the only role models for young athletes to aspire to are those who go against all odds, such as the bronze medalist women's soccer team. The same holds true for the FIFA World cup, where Canada places far below where a country of its stature should rank. In October 2012 Canada's men's team ranked just slightly ahead of Armenia, Nigeria and Guinea, but behind soccer power houses like Haiti and Iran. With the lack of development and competition at an early age, there seems to be a tendency for most Canadian sports to be more interested in picking winners. Although much attention is given to national organizations on how hard they work to develop their sport, in reality this is more of a theoretical effort than any real practical help. Most children see their first development in sport at a community club and developmental club school program level. In most cases, level entry is often at the community club where parents register and begin their child's sport experience. As the child advances, they often try out and are tiered in various sport development clubs. It is usually only the more skilled children who move up to the higher levels, although there still is a degree of developmental philosophy earlier on.

In 1996 the German Soccer Federation came to the realization that their soccer sports program was in need of a serious reorganization. With very little domestic talent coming up through the ranks, the national team was in dire need of players who could compete internationally, and more importantly, were German citizens who could play for the national team. By 1999, a new three point system was put into place where one hundred and twenty one national centers were built, their focus to be concentrated on the 10 – 17 year olds in Germany. The second step saw two full time paid coaches added to each center, who would work with the youths and get them involved in the soccer program. The last step was a mandate that all professional clubs were to add a youth component or academe to their respective program.[10] The end result has been one of the youngest and most dynamic soccer programs in

existence today. The German National Soccer Team has the youngest team of players in the world and always place near to or at the top of all rankings. The interest in youth sport has grown tremendously, as home grown talent is a far bigger draw than unknown outsider athletes. More importantly, youth are once again being given new facilities to play in and are not relying on a diminished volunteer base, but rather on paid full time coaches. Young German soccer players feel there is now a real prospect of making it on to a strong professional team, or even the National team. With youth once again engaged in sport, health and justice issues can be addressed by youth given the opportunity to spend time at a new sports facility, with professional staff, as compared to youth looking for activities and potentially finding their way into negative situations.

This model, though not entirely applicable to Canada's situation, supports the notion that when a strong central body makes a radical change and puts real dollars behind it, the outcome is very positive. Simply put, Canada must look at developing a child centered strategy, where children as young as 4 and 5 are encouraged to become active. These programs should not be treated as a curiosity or mere low level activity, but the national sports organizations should have to spend a large percentage of their budget ensuring that families are aware of the benefits of early childhood physical activity. Just like in Germany, Canadians need access to proper coaching for their children, and not the current system that allows anyone to coach, so long as they volunteer. Focusing tax dollars on child centered sports must become a reality, as the era of relying on volunteers no longer exists today. Canadian sports organizations wait for a star to rise and then claim them as their own, lavishing time and money on them. This attitude of "picking the winner" has proven to fail, as not enough talent is being developed at the younger ages, causing so few stars to rise. The pool of young athletes must be enlarged to include all children in Canada, for every child has a gift or talent in some sport or activity. If an ounce of prevention equals a pound of cure, then it is about time Canadians take child centered sport activities seriously. Healthy living, proper eating, a clean lifestyle, and athletic development at an early age are all factors in reducing high obesity rates, diabetes rates, and youth crime rates in Canadians, as well as developing elite competitors. In order for this to be made possible, there must be a change in culture and youth sport programs by the Canadian and provincial government.

Notes

1 Carley Weeks, "How fat has become the new normal," *The Globe and Mail*, September 30, 2012.

2 Centers for Disease Control and Prevention, "Overweight and obesity data and statistics," August 28, 2012.

3 *Ibid*.

4 News Medical, "Increase in diabetes among Canadian children," June 9, 2009.

5 *Ibid*.

6 Aldo Santin, "Stats story a mixed tale," *Winnipeg Free Press*, July 24, 2012.

7 Dan Lett, "Southdale centre hits families with hike," *Winnipeg Free Press*, August 21, 2012.

8 *Ibid.*

9 James Mirtle, "Bauer takes on sagging minor hockey enrolment," *The Globe and Mail*, October 3, 2012.

10 Raphael Honigstein, "How Germany reinvented itself," *Sports Illustrated*, July 1, 2010.

Is there such a thing as a Women's Agenda in Parliament?

Myrna Driedger, MLA

At most CPA conferences at least one topic on the agenda deals with women in politics. This article considers some strategies needed to get more women elected but says women must go beyond the idea of a separate women's agenda.

The subject of women in politics is a critical area of importance which has evolved since the day women were granted the right to vote. In Canada my province of Manitoba was the first in our country to grant women the right to vote in 1916. It was a hard fought battle. At the forefront was a woman by the name of Nellie McClung. She was a feisty woman who challenged the Premier of the day who felt that a woman's role was to stay at home and fetch their man his slippers when he came home after a hard day's work.

I do not personally believe that a women's agenda in parliaments or legislatures is helpful for reasons which I will explain but we need a number of strategies that encourage and help get more women into politics. All we have to do is look at the number of elected women serving in our legislatures and parliaments. They tell the story.

In our Canadian Parliament, only 24% of the elected parliamentarians are women. In 2007 in Manitoba we hit the magical number of over 30% of elected parliamentarians being women. In the 2011 election, however, it fell to 27%. We lost ground!

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The under representation of women in the Canadian political system is no different than many other countries. There are different ways to look at why there are not more women in politics. It is easy to blame the system for holding women back – and that is part of the problem – but we also need to ask: Why are not more women running in the first place?

When I was a little girl, I wanted to be a nurse or a teacher. I ended up being a nurse. Those were pretty much the only careers I saw to be available to me growing up in a small village in rural Canada. Today, little girls can dream of many different things they want to be. And, politics is not even remotely on their radar! One of the strategies we need to address is how to reach out to young girls and encourage them to dream that politics is a place where they have much to offer.

What are some of the barriers women face that keep them from running? The public, I find, in Canada anyway, is becoming more and more disengaged from politics. Many do not pay attention to it, do not think it affects them, are cynical towards politics and politicians, and do not hold politicians in high regard. Many do not know the issues at election time and cast their vote based on a number of reasons. One woman voted for me because she liked my hair. A family voted for me because I answer my own phone.

Media portrayal of women in politics often does not help. Why should it matter if a woman's purse and shoes match? Politics is seen as a blood sport – and frankly, at times, it can be. Let us not sugarcoat it. The hours can be demanding. The fish bowl life can be unappealing. One day, on a weekend, I went grocery shopping with no makeup and no lipstick. A woman, who I did not know, came up to me and said, "Myrna – you look dreadful! What's the matter with you?" Now – no matter what – I always wear lipstick.

The struggles to juggle family and work can be overwhelming. Some women see all of this and many say, "No thanks." Many women never consider running unless they are asked. Then when they are asked, they worry that they may not be smart enough or capable enough for the job.

These barriers, and there are many others, are very real and not easily addressed. So why does it matter if there are not many women in politics? Does it make any difference? According to the United Nations, a threshold of at least 30% of female legislators is required to ensure that public policy reflects the needs of women. So, at the very heart of this issue is the question of democracy. If the world is made up of 50% women, are they well represented if only 8% or 28% of their elected representatives are women? The answer would be "NO" – that there is a democratic deficit.

Why does this matter? It matters because women bring a unique experience to the political arena. Their life experiences are different from men's and their perspectives on issues can be different from men's. This serves to enhance the quality of debate and broaden and balance policy perspectives on a wide range of issues of importance.

It does not mean that women have a better perspective than men – just a different perspective. Let me give you an example: During the war in Kosovo, Nancy Pelosi, an American legislator, was a member on the Foreign Affairs Committee. The Committee was appropriating billions of dollars for the reconstruction of Kosovo. Nancy went a step further. She inquired about the women who had been abused and raped during the conflict. She wanted to know what happened to these women. She understood that if you do not fix the plight of woman – you do not have a family unit, you will never develop a vibrant society. If Nancy had not been there and understood that, the Committee would have just found the money they needed to reconstruct Kosovo. She went further to reconstruct the family.

We need strategies to encourage more women to run. We need strategies to support women when they run and after they win. But – I personally do not believe that a women's agenda in parliaments and legislatures is a healthy one for women. I think it does us a disservice. It continues to marginalize us. If women want to be treated as equals, I think we have to compete the same way men do. Men will respect a woman colleague more if she fought the battle and got there the same way he did. If we are given a free pass, we will be forced to prove ourselves over and over again around the caucus table.

Politics is still largely a man's world. We decided we wanted to be in that world. I think we need to learn to play the game better. Being a woman has not hurt me in politics. I decided I wanted to run. I beat out 2 women and 1 man for the nomination. I have won 5 elections – mostly against men. I am the first female to represent my constituency. I served as Interim Leader of our political party and most of my colleagues are men!

In saying all of this today, I am speaking from my personal perspective and one that evolved for me in Canada. I fully respect the choice of other countries that choose to use quotas or forms of proportional representation. If it works for them, that is great. Some countries in Africa, particularly, have made great strides using quotas.

We have increased the awareness of women's under-representation in politics. More men are now becoming champions of helping us to change that. They, too, have recognized that under-representation of women creates a deficit leaving half of the population without an adequate voice in political decision making processes. We need to engage them as partners to improve this!

In the end, the debate around the participation of women in politics, while having merit as a "numbers game", must go beyond that. Today – I would challenge us to move beyond the question of: whether there is such a thing as a women's agenda in Parliament?" Our agenda needs to be the development of workable, sustainable, dynamic strategies to increase women's participation in the political process.

And a final tantalizing thought: Maybe it should not be about breaking the glass ceiling anymore – but about building a new house. Maybe it is time to redefine the game itself – and to make it ours!

Omnibus Bills in Theory and Practice

Louis Massicotte

There is no concise definition of what is an Omnibus Bill. O'Brien and Bosc (2009) state that an omnibus bill seeks to amend, repeal or enact several Acts, and is characterized by the fact that it has a number of related but separate "initiatives". The latter word is an improvement over the previous edition, by Marleau and Montpetit, that spoke of separate "parts" – plenty of bills are divided into Parts, without being omnibus bills at all. This article looks at the use of omnibus bills in Canadian provinces, the United States and in the House of Commons, particularly Bill C-38 the Budget Implementation Bill. It argues that the extensive use of omnibus bills is detrimental to the health of our parliamentary institutions.

Anybody looking for a detailed statistical compendium showing how many omnibus bills were introduced and passed in the Canadian Parliament and in provincial legislatures would search in vain. Comparable figures are easily available if you are searching for the number of public bills, private bills, appropriation bills, taxation bills, private members' public bills and the like. They can be found, for example, in the marvellous work of former Senator Stewart, who met the challenge of making parliamentary procedure intelligible for those I would call the "middle-informed", those whose knowledge on the topic is higher than among the public at large without exceeding that of the practitioners of Parliament.

It is time-consuming, but not too difficult, to go through the *Journals* and the statute books in order to "code" each piece of legislation under the appropriate heading. Private bills, though formally sponsored by an MP or a Senator, are introduced by way of a petition submitted by a physical or moral person outside of Parliament. Appropriation bills are passed under a distinct set of rules that provide for lengthy consideration of estimates by special committees followed by an extremely quick process whereby the three readings are done within a few minutes. Taxation bills necessitate the preliminary passage of ways and means motions, and in the past they had to be studied in Committee of the Whole. Government bills are sponsored by cabinet ministers and bear the Royal Recommendation. Private Members' Public Bills can be sorted through by looking at the party affiliation of their sponsor, etc. No specific procedure is applicable to omnibus bills that would facilitate research on the issue.

The underlying "basic principle or purpose" of an omnibus bill can be anything, ranging from the most innocuous to the most controversial. As an example of hardly objectionable purpose, I can cite the British practice of passing at times, from the 1860s onwards, a *Statute Law Revision Act*, that repealed legislative enactments that had become spent. Some Commonwealth countries, like Canada and Australia, have emulated this practice. Constitutional scholars are aware that some of those bills repealed provisions of Canadian constitutional documents, without Canada either requesting or objecting to the measure, because such bills really amounted to cleaning jobs. Hundreds of different statutes could be altered at one stroke by such pieces of legislation, the basic purpose of which was to expunge from the statute book provisions that were either obsolete or spent. Five years ago, Ireland passed a statute of that nature that repealed no less than 3,225 statutes, arguably a world record.

Such bills normally do not raise controversy. But they might. In British Columbia, they are called *Miscellaneous Statutes Amendment Acts*, and are a regular occurrence. In the 2009 edition of this Bill (No. 13), the BC Civil Liberties Associations singled out a provision (s. 77) that amended the province's *Municipalities Enabling and Validating Act*, by allowing municipal officials in the Vancouver area to remove unauthorized signs during the period of the Olympic Games in 2010.

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The Council of Canadians, which intended to post such signs, launched a campaign against the bill.[1] The controversial measure was nevertheless passed.

Americans have their own definition of "Omnibus bills". The *Duhaime Legal Dictionary* offers the following: "A draft law before a legislature which contains more than one substantive matter, or several minor matters which have been combined into one bill, ostensibly for the sake of convenience".[2] As we shall see later, most US State Constitutions prohibit the introduction of bills that deal with more than one subject at a time.

Omnibus bills are not new. When did this practice begin? *O'Brien and Bosc* suggest that this is an ancient practice, quoting an 1888 private bill that confirmed two separate railway agreements.[3] More recent examples are cited from the 1950s onwards by the same source.[4] My earliest personal recollection of hearing the expression "omnibus bill" dates back to December 1967, when Pierre Trudeau, then Minister of Justice, introduced his landmark Criminal Law Amendment Bill, which dealt with issues as varied as homosexuality, abortion, contraception, lotteries, gun ownership, drinking-and-driving penalties, harassing phone calls, regulated misleading advertising and even cruelty to animals.[5] The underlying purpose was to make criminal law more in tune with modern times, but the argument could be made that these were really different issues and that few members of Parliament were likely to agree with each and everyone of the proposed solutions.

Another very controversial omnibus bill was Prime Minister Trudeau's Bill C-94, *The Energy Security Act 1982*, that raised the ire of the Progressive Conservative opposition. Upon the refusal of Speaker Sauvé to divide the bill, the Conservatives refused to allow their whip to join the Liberal whip after bells started ringing for a division, with the result that the sitting of March 2, 1982 lasted two full weeks during which the bells rang continuously. Gallant parliamentary constables on duty were provided with ear plugs in order to carry their duties without risking lifetime deafness. In the end, the government agreed to divide the bill into eight separate pieces of legislation. In 1988, Bill C-130, implementing the Canada-US Free Trade Agreement, raised concerns as well. During the 1990s, governments started to present Budget Implementation bills, which leads us to Bill C-38.

Omnibus Bills in Canadian provinces

One may ask: "Are Canadian omnibus bills confined to Ottawa"? The answer is no. To my knowledge, there is no exhaustive treatment of the matter but I was able to find mentions of omnibus bills in at least seven provinces throughout the country: Ontario and Quebec, of course, but also Manitoba, Alberta and British Columbia, Nova Scotia and even Prince Edward Island, with a Speaker having to issue a ruling in Alberta (26 May 1997) and Ontario (5 December 1995).

In Québec, the Parti Québécois started in the early 1980s to present omnibus bills that purported to combine into a single piece of legislation numerous short single-issue bills, in order to expedite their passage. The Liberal opposition objected, stating that this practice violated parliamentary tradition that required a vote on the principle of a bill at second reading. They claimed that such omnibus bills actually included more than one principle. Upon their return to office in 1985, the Liberals discontinued this practice, with the result that the total number of bills increased markedly. I remember hearing a superficial observer poking fun at this apparent "legislative inflation" coming from a government that had promised to "legislate less", not realizing that the total number of bills had suddenly increased merely because of the abandonment of omnibus bills.

The *Standing Orders* of the Québec National Assembly now include specific provisions (S.O. 258 to 262) on how omnibus bills are to be dealt with. Such bills are known as "*Projets de loi modifiant plusieurs lois", and are defined as "un projet de loi ayant pour seul objet d'apporter plusieurs modifications de nature mineure, technique, corrective ou de concordance à des lois* ». The wording of the standing orders clearly acknowledges that such measures have more than one principle, and may cover topics on which many standing committees have jurisdiction. In this case, the Government House Leader may move after second reading that the bill be referred to a special committee, to the committee of the whole or to a specific standing committee. Clearly, omnibus bills like C-38 are much more ambitious than that.

Omnibus Bills in the United States

Another question, related to the previous one, is whether omnibus bills are a universally accepted practice that only those who indulge in nostalgia for older days can deplore. This does not appear to be the case, as some jurisdictions have outlawed this legislative technique. For example, the Constitution of California provides (Art. 4, Sec. 9) that "a statute shall embrace but one subject, which shall be expressed by its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void". This is no isolated case. A list of US States constitutional

provisions that require bills to deal with one subject at a time has been compiled.[6] We learn that no less than 42 States have provisions of this nature, though appropriation bills are often exempted from this requirement.

Why did so many jurisdictions come to prohibit omnibus bills? In 1901, the Commonwealth Court of Pennsylvania offered a comment on legislative proceedings that can rarely be found in judicial decisions. In *Commonwealth vs. Barnett (199 Pa. 161)*, the Court said the following about the situation that prevailed before the adoption in 1864 of an amendment to the State Constitution that prohibited the passage of bills containing more than one subject:

> "Bills, popularly called *omnibus bills*, became a crying evil, not only from the confusion and distraction of the legislative mind by the jumbling together of incongruous subjects, but still more by the facility they afforded to corrupt combinations of minorities with different interests to force the passage of bills with provisions which could never succeed if they stood on their separate merits.
>
> So common was this practice that it got a popular name, universally understood, as *logrolling*.
>
> A still more objectionable practice grew up, of putting what is known as a *rider* (that is, a new and unrelated enactment or provision) on the appropriation bills, and thus coercing the executive to approve obnoxious legislation, or bring the wheels of the government to a stop for want of funds.
>
> These were some of the evils which the later changes in the constitution were intended to remedy."[7]

Considering that so many former politicians were sitting on the bench in those days, one may wonder if the learned judges did not have first-hand knowledge of the subject!

The US Congress does not appear to have embraced this rule. There is an organization called "Downsize DC", that is campaigning for the adoption of a "One Subject at a Time Act" (OSTA), in order to:

> "Stop Congressional leaders from passing unwanted laws by attaching them to popular, but unrelated, bills; Require each bill to be about ONLY one subject, and to stand or fall entirely on its own merits; Make it easier for your elected officials to represent you by allowing them to vote on specific proposals, instead of on groups of bills containing divergent measures; Create a *de facto* "line item veto" by putting only one measure under the President's pen at any one time; and Give [the public] expanded influence by making bad legislation more vulnerable to public opposition."[8]

On January 23, 2012, Representative Tom Marino, a Republican from Pennsylvania, introduced in the US House of Representatives Bill HR 3806, The One Subject at a Time Act, that purports "to end the practice of including more than one subject in a single bill by requiring that each bill enacted by Congress be limited to only one subject, and for other purposes".[9] The Bill has not been passed.

The Case for Omnibus Bills

What are the motives behind omnibus bills? What led legislators (in our case, successive governments) to turn to this legislative technique?

Omnibus bills, when presented in legislatures where members are free to vote as they wish, may include the outcome of complex negotiations between self-interested legislators. One wishes a bridge over a river, another one cries for a new building for the school, a third one pushes for a subsidy for a local orchestra and so on. Probably none of these measures, presented in isolation, would muster enough votes to pass, so what if legislators engaged in deals following which a single package will include all of the above? There is an old saying that "I'll scratch your back, you scratch my back", sometimes followed by "and if you don't scratch my back, I will scratch your nose". This practice was common in US state legislatures in the past, and it still survives during appropriation debates. Mind you, this is the way we have conducted constitutional negotiations from the 1970s to the 1990s. Documents like the *Victoria Charter*, the final patriation deal, the Meech Lake and Charlottetown Accords were all based on the assumption that nobody would be satisfied by each facet of the deal if considered in isolation, but that we should try to include in the package a little something for everybody, so as to generate a minimal consensus, if not genuine enthusiasm for the whole package.

In the US Congress, the possibility that the President may veto a bill, but in this case has to veto the entire bill, not just the provisions he objects to, has led Congress to devise legislative measures that mix items the President agrees with (or could object to only at great political cost) with items that he finds definitively unacceptable, thus placing the President in a difficult quandary. Most US states prevent this by empowering their respective Governors with a line item veto.

In legislatures dominated by a single party, like ours, omnibus bills do not aim at generating a wider consensus. They can be defended on the ground, for example, that measures 1 to 67 being supported by all parties, why wasting precious legislative time by

considering them distinctively? This is the ostensible purpose of the statute law revision acts quoted above. Or there may be a very obvious common thread among myriads of small measures, like adapting the statute law to the *Charter of Rights*.

From the point of view of the government, omnibus bills have plenty of advantages, which may explain why governments of all stripes have adopted this technique at times. First, they save time and shorten legislative proceedings by avoiding the preparation of dozens of distinct bills necessitating as many second reading debates. The House of Commons used to sit about 175 days a year on average prior to the 1991 procedural reforms. In 2010, there were only 136. This had the side effect of sparing the government quite a few question periods. This reasoning of course assumes that the opposition does not retaliate by engaging in dilatory manoeuvres that have the effect of lengthening the legislative process. The bells crisis of 1982, or the multiplication of amendments to C-38 recently, stand as a warning on that account.

Second, omnibus bills generate embarrassment within opposition parties by diluting highly controversial moves within a complex package, some parts of which are quite popular with the public or even with opposition parties themselves. Omnibus bills tend to be bulky. You must first analyze them thoroughly, and reach a decision as to whether those items you disagree with are abhorrent enough to warrant rejecting the whole package. The government could then turn to the public and lament the fact that opposition parties wanted to prevent the adoption of measure so and so, which everybody likes. The French have an expression for this in their parliamentary procedures: "*la carte forcée*". This is a dilemma we are all facing at times as consumers when selecting for example a cable TV package, an organised trip, a life insurance policy or a subscription to the year's concerts. Obviously, this is not a justification for including all of the above in a single package!

The fact that Canadians had minority administrations from 2004 to 2011 may have something to do with the development of omnibus bills dealing with budget implementation. The 2005 bill introduced by Paul Martin was bigger than earlier legislations of this type, and the bills later introduced under Stephen Harper continued and amplified the trend. Omnibus bills may be seen as a weapon used by minority governments to ensure their survival, as they may diminish the likelihood that all opposition parties agree to defeat the government on one specific issue. Whether the continuation of this practice is warranted in a majority context remains matter for debate.

The Dangers of Omnibus Bills

Bill C-38 has been widely condemned, and criticisms came from unexpected sources.[10] Why are so many people concerned about omnibus bills? The reasons are in many ways the exact reverse of the previous ones. From the point of view of the opposition, omnibus bills are as attractive as the closure, time allocation, supply guillotines and so on. They create quandaries for opposition parties and oblige them to object to some popular measures delicately hidden in a less attractive package.

The real question, however, beyond the convenience of the government or of the opposition parties, may well be: is the public interest well served by omnibus bills? Take for example the clause-by-clause study in committee. When a bill deals with topics as varied as fisheries, unemployment insurance and environment, it is unlikely to be examined properly if the whole bill goes to the Standing Committee on Finance. The opposition parties complain legitimately that their critics on many topics covered by an omnibus bill have already been assigned to other committees. The public has every interest in a legislation being examined by the appropriate bodies.

We know that Speakers have consistently refused to act as referees on such issues, while at times hinting that the House might provide for some special procedures. One of them, Lucien Lamoureux, came up with what is probably the best question: is there any end? Could a government wrap up half of its legislative programme into a single measure dealing with the improvement of the life of Canadians or ensuring prosperity for all?

We often hear that omnibus bills are like closure and time allocation: "all governments do it", which of course is true. This is why some of the most eloquent pleas against the practice of omnibus bills have been made in the past by the present Prime Minister, and were no less eloquently refuted by then Cabinet ministers now sitting in opposition. But in recent years, the logic behind omnibus bills has been pushed to extremes never seen before. It has been computed that between 1994 and 2005, budget implementation bills averaged 73.6 pages, while since 2006 they averaged 308.9 – four times longer.[11] But the increase is even more huge than it looks. While during the first period a single budget implementation bill was presented each year (there were none in 2002 and two in 2004), bills of that nature have since then been presented twice a year except in 2008, when there was a single one. The yearly average of budget implementation legislation in recent years is therefore closer to 550 pages – this is seven times longer! Another contrast is that during

the first period, budget implementation bills tended to be slimmed down markedly between first reading and Royal Assent, while in recent years they kept their initial size throughout.

The debate on Bill C-38 reminds us that omnibus bills have become a slippery slope now generating high controversy. In my view, they do little to improve the already low esteem in which legislators are held by the Canadian public. My colleague Ned Franks wrote three years ago that omnibus budget implementation bills "subvert and evade the normal principles of parliamentary review of legislation".[12] I fully concur with his assessment.

Notes

1 "ACTION ALERT : Oppose BC's Miscellaneous Statutes Amendment Act", 14 October 2009, website http://www.canadians.org/campaignblog/?p=1976, accessed September 23, 2012.

2 Duhaime Legal Dictionary, "Omnibus Bill definition", website http://www.duhaime.org/LegalDictionary/O/OmnibusBill.aspx, accessed on September 22, 2012.

3 Audrey O'Brien and Robert Bosc, *House of Commons Procedure and Practice*, 2nd. Editions Yvon Blais, 2009 pp 724-725.

4 *Idem*, fn. 81.

5 Lorne Gunther, "Omnibus bills in Hill History", *The Toronto Sun*, 18 June 2012, website http://www.torontosun.com/2012/06/18/omnibus-bills-in-hill-history, accessed September 23, 2012.

6 "'One Subject at a Time' Excerpts from State Constitutions", website http://www.downsizedc.org/files/1subject-excerpt-state-constitutions.pdf, accessed on September 23, 2012.

7 Quoted in "Omnibus Bill Definition", see note 2 above.

8 https://secure.downsizedc.org/etp/one-subject/, accessed on September 23, 2012.

9 http://www.govtrack.us/congress/bills/112/hr3806, accessed on September 23, 2012.

10 "Editorial: Omnibus bills fundamentally undemocratic", *The Gazette*, Montreal, September 22, 2012; Michael Den Tandt, "Op Ed: Omnibus bill fuels fire that eventually will burn Tories", *Edmonton Journal*, June 13, 2012; John Ibbitson, "Tread carefully, Tories: Governments can live to regret omnibus bills", *The Globe and Mail*, May 8, 2012; Andrew Coyne, "Bill C-38 shows us how far Parliament has fallen", *The National Post*, April 30, 2012; Manon Cornellier, "Dernier vote sur le C-38: Au mépris de la confiance", *L'Actualité*, June 18, 2012; Carole Beaulieu, "L'autre loi qui change tout", *L'Actualité*, May 25, 2012; Kelly McParland, "Elizabeth May leads commendable effort to halt Tory omnibus juggernaut", *The National Post*, June 11, 2012.

11 Aaron Wherry, "A rough guide to Bill C-38", *Maclean's* Magazine, June 6, 2012, website http://www2.macleans.ca/2012/06/06/a-rough-guide-to-bill-c-38/, accessed on October 7, 2012.

12 C.E.S. Franks, "Omnibus bills subvert our legislative process", *The Globe and Mail*, July 14, 2010, http://www.theglobeandmail.com/commentary/omnibus-bills-subvert-our-legislative-process/article1387088/ accessed on October 7, 2012.

"Harper's New Rules" for Government Formation: Fact or Fiction?

Rainer Knopff and Dave Snow

When the minority government of Stephen Harper faced a non-confidence motion and likely defeat by an opposition coalition shortly after the 2008 election the Prime Minister argued that a coalition could not legitimately take power without an election. The impending defeat was staved off by prorogation and subsequent events but the so called "New Rules" of the Prime Minister were criticized by constitutional experts who saw them as infringing the established principles of responsible government which allow the Governor General to appoint a new government following an early vote of non-confidence. The Prime Minister's later claim that the 2011 election was a choice between a Conservative majority or coalition – seemed to reject his own "New Rules" and was seen as evidence of his political expediency. This paper considers the constitutional politics concerning coalition governments that arose, first in 2008 and then again in 2011. It focuses on the question whether, and if so under what circumstances, a coalition can displace a minority government without holding new elections. It surveys the work of both critics and supporters of the "New Rules" and argues that Mr. Harper's 2008 and 2011 positions are not inconsistent or contradictory.

Prime Minister Stephen Harper is said to have taken a new and constitutionally suspect approach to government formation in 2008, insisting that only new elections could change parliamentary governments. "Harper's New Rules,"[1] generated an outpouring of criticism from constitutional scholars.

We challenge the critique of "Harper's New Rules" primarily as it appears in two of its leading exemplars: the work of Peter Russell, a constitutional scholar of high repute whose writings always merit careful consideration, and of the late Peter Aucoin, Mark D. Jarvis and Lori Turnbull (cited hereafter as Aucoin) co-authors of *Democratizing the Constitution* a fine, prize-winning book on responsible government.[2] Even the best authors and books are open to question and debate, as we think both Russell and Aucoin are with respect to "Harper's New Rules."

Background and Context

When facing possible defeat in the Commons just six weeks after being re-elected with a strengthened minority government in 2008, Stephen Harper asserted that a proposed coalition of the Liberals and NDP (with the promised stable support of the Bloc Québécois) could not legitimately be appointed as an alternative government by the governor general, even at this very early stage of the Parliament's life. While "the opposition has every right to defeat the government," Mr. Harper maintained, "Liberal leader Stéphane Dion does not have the right to take power without an election. Canada's government should be decided by Canadians, not backroom deals. It should be your choice — not theirs."[3] Days later, in a heated parliamentary debate with Mr. Dion, he claimed "the highest principle of Canadian democracy is that if one wants to be prime minister one gets one's mandate from the Canadian people and not from Quebec separatists."[4] The Prime Minister's statements have been widely understood as meaning that defeat of a plurality minority government must always trigger new elections, because only elections can legitimate a new government. For Harper, says Peter Russell, "the *only* way to get rid of a government that does not have the confidence of the House of Commons is to elect another House of Commons."[5] Aucoin agrees, "If Harper's view were to be accepted," he maintains, "the only option would be … dissolution and an election to choose a new

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House after *every* loss on a confidence vote."[6] Of course, requiring an election after *every* loss of confidence or as the *only* way of replacing a defeated government raises the spectre of a "diet of successive elections in a short period of time." Especially in circumstances of the kind of "fragmented electorate" that generates minority governments, says Russell, Harper's approach could mean being "bombarded by an unending series of elections until one party secures a majority."[7]

Such an "elections-only" theory of governmental change, its critics rightly insist, is inconsistent with well-established practices of our system of parliamentary government, namely, that the governor general may appoint an alternative government following a vote of non-confidence, at least early in the life of a parliament. "Until recently," writes Aucoin, "most experts would probably have agreed that the governor general could properly refuse the prime minister's advice for a dissolution following the government's defeat on a confidence vote in the House of Commons if the loss of confidence came shortly after an election."[8] But this established consensus is now eroding in the face of contrary opinions, led by Prime Minister Harper. In other words, a previously dominant viewpoint is under challenge from the novel and disturbing theory known as "Harper's New Rules."

Because Harper's own statements concerning these "new rules" are brief and made in the heat of political battle, Russell indicates that it would be better to call them the "Harper/Flanagan rules, because political scientist Tom Flanagan, a long-time adviser of Harper," provided a more "extensive elaboration" of them than Harper himself. Aucoin similarly associates Flanagan with the view that "elections should be the only way to change a government from one party to another" and attribute to him the "scholarly rhetoric" in support of Harper's constitutionally suspect elections-only theory of governmental change. Other authors have also seen Flanagan as best reflecting and explaining Harper's views on this issue.[9] While Flanagan is universally considered the chief theoretician of "Harper's New Rules," Aucoin considers Michael Bliss and Andrew Potter as providing additional support for this position.

Misreading Flanagan, Bliss, and Potter

Those who attribute to Flanagan the view that loss of confidence must always trigger new elections rely exclusively on a single *Globe and Mail* op-ed, published on January 9, 2009. Aucoin clearly sees this article as justifying the elections-only position on governmental change[10] and reproduces much of the article on pages 175-76 of *Democratizing the Constitution*. A key notion in Flanagan's piece is that "the most important decision in modern politics is choosing the executive of the national government, and democracy in the 21st century means the voters must have a meaningful voice in that decision."[11] This view, says Aucoin, "empowers parties, rather than individual MPs or Parliament as a whole, by seeing government as the entitlement of the party that has won the most seats," and it "follows logically … that if the party loses confidence, then the people must elect a new 'party',"[12] or, as Russell puts it, "that the prime minister cannot be changed without another election being called."[13]

But that position — which the critics clearly ascribe to Flanagan — is difficult to square with another *Globe and Mail* piece that Flanagan had published just one month earlier, a contribution that none of the critics we are considering (so far as we can tell) ever acknowledge.[14] The December 2008 article, entitled "This coalition changes everything," provides the following answer to the question whether the governor general should grant the likely request for a new election upon defeat by the coalition:

> Normally, the question would be easy to answer. Since the last election was so recent, a defeated prime minister *should not* expect a new election, and the opposition *should* get the chance to govern if it can offer a plausible plan for stability, which the opposition has done with its proposal for a Liberal-NDP cabinet supported by the Bloc.[15]

This is very far from saying that if the governing "party loses confidence then the people must elect a new 'party'." Indeed, it explicitly acknowledges that "normally" this *should not* occur early in a parliament's life, that "normally" the governor general *should* in such circumstances refuse a dissolution request and appoint an alternative government. We have emphasized the use of the word "should" in Flanagan's piece in order to underline how thoroughly it fits into the older consensus represented in the upper right cell of the table on the following page, perhaps as far to the right as Eugene Forsey, who the table describes as thinking not only that refusing dissolution is constitutionally permissible but also that it *should* occur under specified conditions.

Flanagan's December 2008 piece explicitly invokes Forsey in support of his view that dissolution should not "normally" be granted early in a parliament's life. However, he then goes on to rely on the same Forsey to conclude that the 2008-09 situation is not "normal."

> But this is not a normal situation. Constitutional expert Eugene Forsey famously supported Lord Byng's refusal of Mackenzie King's request for an election in 1926, but even Mr. Forsey had to admit that an election would have been necessary if "some great new issue of public

Opinions Concerning Governmental Change in Minority Circumstances			
Constitutional Legitimacy	**Democratic Legitimacy**		
	Should Not	*Could under unclear conditions*	*Should under specified conditions*
Can	Flanagan 2009 Bliss 2008 Potter 2009	Hogg 2009 Coyne 2008, 2011 Fox 2011	Forsey 1953 Heard 2009 Franks 2011
Cannot	Bruni 2008 McWhinney 2009 Tremblay 2008		

Table reproduced from Peter Aucoin, Mark D. Jarvis, and Lori Turnbull, *Democratizing the Constitution: Reforming Responsible Government*, (Toronto: Emond Montgomery Press, 2011), pp.179-180.[16]

Aucoin arrays the variety of Canadian options concerning governmental change in minority circumstances along two dimensions: constitutional legitimacy (can the Governor General refuse a Prime minister's request for dissolution?) and democratic legitimacy (should the Governor General refuse such a request?)

According to Aucoin, "nearly all" Canadian commentators, including Flanagan/Harper, agree that a governor general can, constitutionally speaking, refuse a dissolution request. In other words, Harper's new election-only rules for governmental change are based solely on considerations of *democratic* legitimacy. The governor general may have the formal constitutional discretion to refuse dissolution but it would be democratically illegitimate for him or her to do so.

On the issue of democratic legitimacy, "Harper's New Rules" (as represented by Flanagan, Bliss, and Potter) occupy one end of the continuum displayed in the top half of the table. At the other end are those who insist that a governor general "*should* refuse a prime minister's request for dissolution and allow for a change in government between elections" when the prime minister "has lost confidence shortly after the most recent election" – i.e., in precisely the circumstances of the planned defeat of the Harper government in 2008. As examples of this position, he invokes the estimable Eugene Forsey, along with Andrew Heard and Ned Franks.

Between the two poles of the continuum are "most Canadian academics, pundits, and politicians" – exemplified in the table by Peter Hogg, Andrew Coyne, and Graham Fox – who believe a governor general "*democratically could* refuse dissolution only under certain circumstances" (with those circumstances varying among authorities and generally being unclearly defined). For this group, a governor general deciding whether or not to grant dissolution should consider such factors as the likely stability of and public support for an alternative government.

The middle and right-hand positions in the table are contained in the same cell to represent their common opposition to the elections-only approach to changing government. This cell represents the older consensus about the legitimacy of appointing an alternative government in at least some circumstances, especially early in a parliament's life. It is this previously dominant consensus that is said to be under attack from the new elections-only perspective of the upper left-hand cell, with its threat of a steady "diet" of elections. We argue that, in fact, none of the authors included in the upper left-hand cell actually hold the elections-only position ascribed to them.

> policy had arisen, or there had been a major change in the political situation."[17]

For Flanagan, "the emergence of the opposition coalition has satisfied both of Forsey's conditions for going back to the voters."[18] It did so for two reasons: first, because the coalition relied on the promised stable, ongoing support of a separatist party; second, because key participants in the coalition had explicitly rejected the very idea of a coalition during the just completed election campaign.[19] Flanagan's 2008 op-ed clearly did *not* take the general position in favour of new elections every time a minority government was defeated on a confidence vote that critics ascribe to the piece he wrote just one month later. Moreover, the clear implication of his 2008 piece is that if a new election – this time fought with the possibility of coalition obviously in mind – returned another Conservative plurality, the opposition parties should expect the governor general to appoint the coalition if it defeated the Conservative government on a confidence vote soon after the election.

It is possible, of course, that Flanagan changed his mind over the course of that month, and that he had moved to the "elections only" position by January 2009. But there is evidence that he had *not* fundamentally changed his mind. Part of that evidence is found in the 2009 article itself, in passages that Flanagan's critics never quote (just as they systematically ignore

his 2008 piece). Even Aucoin, who reproduces almost everything else in the January 2009 article, leaves out the part in which Flanagan elaborates his statement that "gross violations of democratic principles would be involved in handing government over to the coalition without getting approval from voters":

> Together, the Liberals and the NDP won just 114 seats, 29 fewer than the Conservatives. They can be kept in power only with the support of the Bloc, whose raison d'être is the dismemberment of Canada. The Liberals and NDP have published the text of their accord but not of their agreement with the Bloc.
>
> The coalition partners, moreover, did not run on a platform of forming a coalition; indeed, the Liberals' Stéphane Dion denied that he would make a coalition with the NDP. In countries where coalition governments are common, parties reveal their alliances so that citizens can know how their votes will affect the composition of the executive after the election. In stark contrast, those who voted for the Liberals, NDP or Bloc in the last election could not possibly have known they were choosing a Liberal-NDP government supported by a secret protocol with the Bloc.
>
> Put it all together, and you have a head-spinning violation of democratic norms of open discussion and majority rule.[20]

Here, as in the 2008 piece, Flanagan is emphasizing the particularities – the abnormalities – of *this* attempt to replace a government without an election, not arguing the illegitimacy of *any* attempt to replace a government without an election.

The same can be said of Michael Bliss, the second resident of the upper-left, elections only cell in Aucoin's table. Bliss wrote three *National Post* op-eds criticizing the proposed 2008 coalition.[21] Appearing in quick succession – December 2, 4, and 6 – these op-eds should obviously be read together as a connected series. To show that Bliss, like Flanagan, believes "that we must have elections to select governments," Aucoin quotes only Bliss's statement in the first op-ed that "some kind of electoral mandate from the Canadian people" was required to legitimate the coalition.[22] In fact, like Flanagan, Bliss favoured an election with respect to *this coalition* because "the situation goes far beyond what some might see as a 'normal' test of wills in a minority Parliament."[23] It goes beyond the normal, moreover, for the same reason identified by Flanagan – that the coalition depends on the stable support of a "party explicitly and historically dedicated to the destruction of Canada."[24]

For Bliss, "there is a huge difference between playing footsie" with the Bloc, as Canadian parties regularly do on an *ad hoc* basis, and "jumping into bed … with someone whose fondest desire is to become pregnant with a new country." Just as it would be "irresponsible for the people dedicated to protect the future of a corporation, a university or any other institution, to enter into a managerial agreement with the people who believe the institution should be broken up," it would be equally "irresponsible for the Governor-General to allow the creation of a similar new status in Ottawa without testing the will of the people."[25] For Bliss, the legitimacy of the 2008 coalition needed voter confirmation just as much as the mega-constitutional the Charlottetown accord had,[26] a comparison that underlines just how much he thought the coalition went beyond the "'normal' test of wills in a minority Parliament." Bliss's series of op-eds is overwhelmingly focused on the illegitimacy of this particular coalition. He does not take an elections only view of government transition in which no coalition of any kind could ever legitimately replace a plurality minority government without an election.

Neither does Andrew Potter, the third exemplar of the elections-only view in Aucoin's table. Potter is concerned that not enough academic attention has been paid to the "honestly held concerns about the democratic legitimacy of the coalition." Note: *the* coalition, not *any* coalition. Potter summarizes the views of three people expressing "honestly held concerns": Norman Spector, Richard Van Loon, and Michael Bliss. In Spector's case, Potter notes only his "interesting argument suggesting that Kyng-Byng was a historical anomaly, a one-off that should not be used as a precedent in favour of the coalition." More significantly, Potter considers Van Loon's most "important argument" to be that the prospect of coalition "should never come as a surprise to the electorate – the people should know going into the election that a coalition is a possible outcome," which is "not what we had during the last election, when Stéphane Dion and the Liberals repeatedly rejected the possibility of forming a coalition with the NDP."[27] This clearly implies that the same minority coalition *could* legitimately take power after an election in which the prospect of coalition was not a surprise, which is not an elections-only view.

Potter then presents Bliss as arguing "that the legacy of Meech and Charlottetown was that Canadians would never again allow the fate of the country to be decided by political elites, cooking up deals in the backrooms without consulting the people in either an election or a plebiscite."[28] But the 2008 coalition can be considered this kind of cooked up deal only because, as Spector notes, it was sprung on the electorate immediately after an election in which it had been explicitly rejected. Had

the coalition been an open electoral option – as Harper made sure it was in 2011 – it could not be considered a backroom deal without electoral consultation. Indeed, Bliss's view that the coalition needs an electoral mandate clearly implies that it could legitimately take power after an election, even as the kind of minority coalition, with BQ support, that was proposed in 2008. Potter's brief account of Bliss's views is quite consistent with this interpretation.

Returning to Flanagan, his insistence that "voters get a chance to say whether they want the coalition as a government" – i.e., in an election where that possibility is on the table – also indicates that after that election the coalition can legitimately oust even a plurality of Conservatives without yet another election. Moreover, he makes this point quite clear in the context of the 2011 election campaign, during which various "parliamentary experts" were asked what would happen if the Conservatives won another minority government and were quickly defeated by the opposition. Flanagan is quoted as follows:

> Right now, it looks like a Conservative majority and all this is going to be moot anyway, but things happen. So let's say the Liberals catch fire and you get this quite close result; in a situation like that, Harper would still be prime minister, but if he chose to stay on and meet Parliament he would be vulnerable to being defeated at an early date, and the Governor General might well give Ignatieff the chance, not to form a coalition, he said he wouldn't do that, but just to run a minority government on the same basis that Harper has been running a government.[29]

This bears out the interpretation we have given to the December 2008 and January 2009 articles by Flanagan. The issue of either an opposition "coalition" or an opposition "minority government" (led by the second place party and supported by others) had been well aired in 2011 election campaign, meaning that there had not been the kind of "head-spinning violation of democratic norms of open discussion and majority rule" that Flanagan saw in 2008-09. In these circumstances, the "normal" expectation of a governor general making an early appointment of an alternative government would prevail. To be fair, of course, such critics of Flanagan as Russell and Aucoin did not have this 2011 statement at their disposal when they cast him as a the leading academic proponent of the elections only perspective.

The critics might, however, have consulted an op-ed Flanagan wrote in 2007, in which (as in 2011) he described circumstances in which it would be legitimate for a Liberal-NDP-Bloc alliance to displace Harper's minority government. In this piece, Flanagan criticized as irresponsible "back-seat driving" the opposition's tactic of passing private members' bills legislating policies the government disagreed with – e.g, "Pablo Rodriguez's bill to require the government to implement the Kyoto treaty [and] Paul Martin's bill to force the government to implement the Kelowna accord."[30] The constitutionally appropriate way for the opposition to pass such legislation, he argued, was for the opposition to assume "the responsibility to govern." This they could have done soon after the 2006 election by announcing

> their readiness to govern as a coalition or as a Liberal minority government with stable support from the NDP and Bloc. If the Governor-General had invited Stephen Harper, as the leader of the largest party in the House, to form a government, they could have quickly defeated him in a vote of no-confidence, and the Governor-General could have offered the leader of the Liberals a chance to form a government.[31]

In the 2006 election campaign, as in 2011, there had been no 2008-style explicit rejection of a coalition. Neither, however, had the prospect of a coalition or a "minority government with stable support from the NDP and Bloc" been openly aired as it was in 2011. One might thus plausibly conclude that Flanagan was more sanguine about the hypothetical Bloc-supported coalition he described in 2007 than the actual (but substantively similar) coalition he denounced in 2008 and 2009. But even if Flanagan changed his mind about the circumstances in which such an alliance could claim a sufficient electoral mandate to take the reins of power without a new election, he never changed his view that an appropriate electoral mandate was quite possible. In other words, he has consistently rejected an elections-only view of government transition.

But perhaps the logic of Flanagan's overall position implies an elections-only view even if he does not realize it. Consider his 2009 statement that "the most important decision in modern politics is choosing the executive of the national government, and democracy in the 21st century means the voters must have a meaningful voice in that decision." Aren't the critics right in thinking that it "follows logically from this line of thought that if the party loses confidence, then the people must elect a new 'party'"? The critics might have been right had Flanagan said that "democracy in the 21st century means the voters must *determine* that decision" – and that appears to be how they read him – but in fact he called only for a "meaningful voice" in the decision, specifying both why they had not yet had a meaningful voice in this decision and what would be necessary to have a meaningful voice.

Flanagan's insistence on a meaningful voice for voters in the choice of the executive also informs his statement that our "antiquated machinery of responsible government from the pre-democratic age of the early 19th century" needs to evolve (in the form of adjusted conventions) to accommodate new democratic realities. Bliss makes a similar claim when he argues that "Canada has evolved a long way since the era when Sir John A. Macdonald opposed universal suffrage and condemned democracy as an American disease," and that we cannot ignore "the democratic conventions that … have been moving constantly in the direction of shifting sovereignty from Parliament to the people."[32] Flanagan's rhetoric of "antiquated machinery" is, in our view, mistaken and unfortunate, as is Bliss's insinuation that our constitution was originally anti-democratic.[33]

Such rhetoric detracts from a legitimate underlying point, namely, that the conventions of responsible government must evolve sensibly to accommodate evident realities, in this case the reality that most voters do not now (if, indeed, they ever did) enter the polling booth looking only to elect the best possible local member, and leaving the selection of the executive entirely in the hands of the collectivity of local members thus chosen. In practice, voters tend to use their local votes as proxies for their leadership choices,[34] so much so that they often mark their X beside the name of someone they know little or nothing about other than his or her party affiliation. This reality is no reason to reject or dismiss the fact and importance of indirect election; the central convention of responsible government – that government depends on the confidence of a majority in the Commons – is itself a reality of considerable and enduring significance.[35] Certainly, the common expectation of voters that they are electing a government as well as a parliament is no reason to insist on an elections-only view of governmental change. At the same time, it is neither outside the bounds of legitimate constitutional discourse nor insufficiently "respectful of … voters"[36] to underline the democratic need for voters to have a "meaningful voice" in the choice of the executive in circumstances when even Eugene Forsey might think an early election is called for.

Whether the particular circumstances of the 2008 coalition actually meet Forsey's conditions for early elections is, of course, contentious and debatable. Does the fact that the 2008 coalition emerged in surprising contradiction to what its participants had maintained during the just completed election make it either "some great new issue of public policy" or " a major change in the political situation"? We doubt that any sensible observer would argue that parties must be so strictly bound by every position they take during election campaigns that new elections are appropriate every time they change their minds. Circumstances change, and flexibility is required. The issue thus turns on whether the 2008 change of mind concerning a coalition falls within the normal range of flexibility, or whether it is the kind of regime-threatening change claimed by the coalition's opponents. On this, there is a significant difference of opinion.[37] We make no attempt to settle that important debate here. Our point is simply that those who saw the coalition as sufficiently regime-threatening to require a new election also conceded that in other, more "normal" circumstances – i.e., in most circumstances – a governor general's refusal of early dissolution remains entirely legitimate.

Flanagan, Bliss, and Potter did not, in short, hold the elections-only view of governmental transition that has been attributed to them. To the contrary, they each acknowledge the normal legitimacy of appointing alternative governments without new elections close on the heels of the last one – as is, in fact, the only sensible conclusion to reach in a parliamentary democracy. An elections-only approach to governmental change does indeed raise the unacceptable spectre of "a ton of elections."[38] In setting Flanagan, Bliss, and Potter up as exponents of an elections-only view, however, the critics have set up straw men.

Flanagan, Bliss, and Potter actually fit best, along with "most Canadian academics, pundits, and politicians," into the middle category of Aucoin's table in which a governor general "could" – indeed, often "should" – refuse early dissolution, but should grant it under certain limited conditions. Even Forsey, with his acknowledgement that a very early election should be called in certain circumstances, might most appropriately be placed in the middle category. In other words, insofar as the right end of the table's continuum is meant to capture the view that appointing a viable alternative government is always preferable to a very early dissolution, with the only uncertainty being what counts as sufficiently "early",[39] Forsey does not belong in that category. In terms of Aucoin's examples, Flanagan, Bliss, and Potter come closest to Andrew Coyne, who considered the appointment of a coalition legitimate in general, but the appointment of this one "dubious" for a variety of reasons, including "most of all, the involvement of the Bloc."[40]

Harper's 2011 Return to the Old Rules

Depriving the critics of Flanagan, Bliss, and Potter as scholarly apologists for the elections-only view does not mean that the Prime Minister himself did not take

that view in 2008. Did he seriously intend an elections-only view in 2008? Perhaps. But if he did, he was clearly departing from previous support for the older constitutional consensus, as his critics consistently emphasize. Moreover, if he was in 2008 contradicting his earlier views, he did not maintain his "new rules" position very long, as his critics are less apt to observe.

As to Stephen Harper's pre-2008 views, critics regularly note that in 2004, as opposition leader he had, together with Gilles Duceppe and Jack Layton, written a letter to the governor general, asking her to consult the letter's three signatories and to "consider her options" in the event that the Martin government was defeated and the Prime Minister asked for a dissolution.[41] Clearly, the letter was asking the governor general to consider appointing an alternative government rather than granting the Prime Minister's likely dissolution request. Although Jack Layton subsequently suggested that a 2008-style coalition agreement "was one of the options discussed around the table" and Gilles Duceppe concurred,[42] it is difficult to imagine a Harper-led cabinet that included Layton and other NDP members, to say nothing of Duceppe and other BQ members. In other words, if one defines "coalition" to mean that "leading MPs" from more than one of the coalition members "also become ministers in the cabinet,"[43] the Conservatives are ideologically "so far apart" from the NDP and the Bloc "that maintaining a coalition would be extraordinarily costly."[44] Using this definition of coalition, it seems more likely, as Andrew Coyne has argued, that the 2004 letter was proposing at most a non-plurality minority government, and not the kind of coalition proposed in 2008.[45] However that may be, there can be little doubt, as Aucoin rightly notes, that the legitimacy of at least some kind of "change of government between elections is clear" in this letter.[46] Harper certainly did not hold an elections-only view of governmental change in 2004.

Nor did he maintain his elections-only "new rules" very long after allegedly proclaiming them in 2008. In an interview with *Maclean's* in January 2009 – less than two months after the coalition scare – Harper maintained that if his government were defeated by the opposition, "the only constitutional, political and moral option is to ask the people to choose who should govern," thus repeating his insistence that this particular coalition could not take power without an election. However, he followed up by saying that in the ensuing election "the electorate will know that if you're not electing the Conservative government you're going to be electing a coalition." In other words, "if we had an election today somebody will have a majority because it will be either Canada's Conservative government or the coalition."[47] This statement clearly indicates that a plurality Conservative minority government could be replaced by an opposition coalition without yet another new election. If Harper's earlier 2008 statements required an election after every loss of confidence, as has been alleged, that view appears to have been short-lived indeed. No endless "diet of elections" can be discerned in this early 2009 remark.

In fact Harper's January 2009 remarks anticipated the electoral strategy he would use when his government was eventually defeated in 2011, by an opposition that this time intended to trigger the election. During the 2011 campaign, Harper regularly insisted that the practical choice for voters was between a Conservative majority and a coalition majority:

> Canadians need to understand clearly, without any ambiguity: Unless Canadians elect a stable, national majority, Liberal Leader Michael Ignatieff will form a coalition with the NDP and Bloc Québécois. They tried it before. It is clear they will try it again. And, next time, if given the chance, *they will do it in a way that no one will be able to stop*.[48]

His point was that yet another Conservative minority government would quickly lose confidence and be displaced by a coalition of other parties, along the lines of the proposed 2008 coalition. But such a coalition government – or, more likely, an alternative (non-plurality) minority government – could be one of Harper's predicted outcomes *for the 2011 election* only if the Governor General can legitimately appoint an alternative government early in a Parliament's life government without new elections. This is made especially clear by the emphasized phrase in the above quotation: "they will do it in a way that no one will be able to stop." Again, this is clearly not an elections-only view of governmental change.

It is true that at one point in the campaign Harper did say that that if the Conservatives won a plurality of seats, the other parties had "already decided they'll vote against our next budget," and there would be "another attempt at a coalition *and another election*."[49] Although this remark *does* fit with an "elections-only" view, it is squarely at odds with his other proclamations before and during the 2011 election, which indicated that he fully anticipated an alternative non-plurality minority government could take power, without new elections, even if the Conservatives won the most seats.

Overall, the evidence that Harper has been promulgating a new elections-only approach that threatens "an unending series of elections until one party secures a majority" seems less clear and obvious than has been suggested. His more prominent statements,

beginning as early as January 2009 and repeated extensively during the 2011 election campaign, seem more consistent with the view that the governor general should not appoint the 2008 coalition (for the reasons given by Flanagan, Bliss, and Potter), but that he or she could make essentially the same appointment after a subsequent election in which the coalition possibility was made explicit. Indeed, Harper's own 2011 election strategy of raising a coalition scare could not work unless a coalition could actually supplant a plurality minority government without new elections. In terms of the table provided by Aucoin, in other words, there is a case to be made that Harper himself best fits into the sizable middle category. Again, to be fair, Aucoin and his co-authors were writing before the 2011 election campaign.

Conclusion

Although the era of mega-constitutional politics is behind us, constitutional politics continues to loom large on the public agenda. Indeed, the constitutional politics of the Harper era is pervasive. Constitutional questions have arisen, both in and out of court, about wide swaths of the government's policy agenda, including its attempts at "piecemeal" Senate reform, abolition of the Wheat Board's marketing monopoly, drug policy, and the tough-on-crime sentencing policies, to name only a few. Even more prominent have been the frequent controversies about the propriety of the government's approach to the norms of responsible parliamentary government especially with respect to the issues of prorogation and dissolution during the minority-government years (2006-2011).

Overall, such allegations of unconstitutionality are so widespread and regular that they collectively portray Stephen Harper as Canada's "unconstitutional prime minister." Where there is so much smoke, there is likely to be at least some fire. But there may also be some exaggeration. Such exaggeration, we argue, is evident in the controversy about "Harper's New Rules."

Our disagreement with Russell and Aucoin on this point in no way undermines their common argument (and the central thesis of *Democratizing the Constitution*) that some of Canada's constitutional conventions need to be clarified and formalized, along the lines of similar clarifying projects in New Zealand and Great Britain. For Aucoin even the middle and right-hand positions in their table – both of which support the traditional view that loss of confidence should not always lead to new elections – leave too much to prime ministerial discretion and risk forcing the governor general to "wade into partisan politics." Indeed, the difference between these two positions exemplifies the lack of clarity that concerns them. Even the view represented by their right-hand position, that the governor general should *always* appoint a viable alternative government early in a parliament's life (i.e., within the first 6-9 months), is inadequate because it draws the governor general into the political quagmire of determining just what counts as sufficiently "early" within the generally acknowledged 6-9 months. Given the controversy that erupted late in 2008, Aucoin seeks to overcome future political confusion by making explicit the rules for dissolution, prorogation, and confidence.

Even if "Harper's New Rules" turn out to be rather mythical, the question of whether, how, and to what extent to clarify and formalize our constitutional conventions remains important (though beyond the scope of this paper). We suggest only that this formalizing project not waste its time knocking down straw men.

Notes

1 Peter H. Russell, "Learning to Live with Minority Parliaments," in *Parliamentary Democracy in Crisis*, eds. Peter H. Russell and Lorne Sossin (Toronto: University of Toronto Press, 2009), p. 141.

2 Peter Aucoin, Mark D. Jarvis, and Lori Turnbull, *Democratizing the Constitution: Reforming Responsible Government*, (Toronto: Emond Montgomery Press, 2011).

3 Quoted in Melissa Bonga, "The Coalition Crisis and Competing Visions of Canadian Democracy," *Canadian Parliamentary Review* (2011), Vol. 33, No. 2, p. 11.

4 House of Commons *Debates,* December 2, 2008.

5 Russell, "Learning to Live," p. 142, emphasis added.

6 Aucoin, Jarvis, and Turnbull, pp. 90, 22, emphasis added.

7 Russell, "Learning to Live," p. 147.

8 Aucoin, Jarvis, and Turnbull, p. 53.

9 Bonga, "Coalition Crisis," p. 11; Jennifer Smith, "Parliamentary Democracy versus Faux Populist Democracy," in *Parliamentary Democracy in Crisis*, p. 185; Graham White, "The Coalition That Wasn't: A Lost Reform Opportunity," in *Parliamentary Democracy in Crisis*, p. 153.

10 Aucoin, Jarvis, and Turnbull, p. 179.

11 Tom Flanagan, "Only Voters Have the Right to Decide on the Coalition," *The Globe and Mail*, January 9, 2009, p. A13.

12 Aucoin, Jarvis, and Turnbull, *Democratizing the Constitution*, p. 180.

13 Russell, "Learning to Live," p. 141.

14 This list of critics includes Aucoin, Jarvis, and Turnbull, p. 22; Bonga, "Coalition Crisis"; Lawrence Leduc, "Coalition Government: When it Happens, How it Works," In *Parliamentary Democracy in Crisis*, pp. 123-

135; Russell, "Learning to Live"; Smith, "Parliamentary Democracy versus Faux Populist Democracy"; White, "The Coalition That Wasn't." All criticized Flanagan's 2009 piece, but none mentioned the December 2008 article.

15 Tom Flanagan, "This Coalition Changes Everything," *The Globe and Mail*, December 8, 2008, p. A15, emphasis added.

16 Works from this table not discussed and cited elsewhere in this article include: Henri Bruni, "La monarchie réelle est morte depuis longtemps au Canada," *Le Soleil*, December 4, 2008, http://www.lapresse.ca/le-soleil/opinions/points-de-vue/200812/04/01-807282-la-monarchie-reelle-est-morte-depuis-longtemps-au-canada.php; Andrew Coyne, "Iggy's Coalition Problem," *Macleans*.ca, March 25, 2011, http://www2.macleans.ca/2011/03/25/iggys-coalition-problem/; Eugene A. Forsey, "Professor Angus on the British Columbia Election: A Comment," *Canadian Journal of Economics and Political Science* (1953), Vol. 19, pp. 226-230; Peter W. Hogg, "Prorogation and the Power of the Governor General," *National Journal of Constitutional Law* (2009), Vol. 27, pp. 193-203; Edward McWhinney, "The Constitutional and Political Aspects of the Office of the Governor General," *Canadian Parliamentary Review* (2009), Vol. 32, No. 2, pp. 2-8; Guy Tremblay, "Libre-opinion – La gouverneure générale doit acceder à une demande de prorogation ou de dissolution," *Le Devoir*, December 4, 2008, http://www.ledevoir.com/non-classe/220782/libre-opinion-la-gouverneure-generale-doit-acceder-a-une-demande-de-prorogation-ou-de-dissolution. Franks (2011) and Fox (2011) are quoted in Heather Scoffield, "Harper's Vision of How to Form a Government Undermined by Constitutional Facts," Canadian Press, April 12, 2011, http://www.realclearpolitics.com/news/ap/politics/2011/Apr/14/hl_harper_s_vision_of_how_to_form_a_government_undermined_by.html.

17 Tom Flanagan, "This Coalition Changes Everything," quoting Eugene A. Forsey, *The Royal Power of Dissolution of Parliament in the British Commonwealth* (Toronto: Oxford University Press, 1943), p. 262. To these two instances in which a government might be entitled to an early dissolution, Forsey adds situations in which "no alternative government was possible" or "the Opposition had explicitly invited or agreed to a dissolution" (p. 262), neither of which apply to Canada's 2008 scenario. Forsey subsequently notes that "a major change in the political situation" makes a dissolution request "very strong," while stressing that it is "not absolute" (p. 268). Ever an advocate of the governor general's discretion, Forsey further stresses, "to say that… the Crown is entitled to refuse, does not mean that the Crown must refuse" (p. 270).

18 Flanagan, "This Coalition Changes Everything," p. A15.

19 During the 2008 election, Dion categorically ruled out a coalition with the NDP, saying "We cannot have a coalition with a party that has a platform that would be damaging for the economy. Period." Stephen Chase, "Dion Rules Out Coalition," *The Globe and Mail*, September 23, 2008, http://www.theglobeandmail.com/news/politics/article710856.ece.

20 Flanagan, "Only Voters Have the Right to Decide on the Coalition," p A13.

21 Michael Bliss, "Alliance Wouldn't Survive a Week," *National Post*, December 2, 2008, p. A1; Michael Bliss, "Playing Footsie with the Enemy," *National Post*, December 4, 2008, p. A23; Michael Bliss, "Ignoring Our Constitutional Tradition," *National Post*, December 6, 2008, p. A27.

22 Aucoin, Jarvis, and Turnbull, p. 180.

23 Bliss, "Alliance Wouldn't Survive a Week," p. A1.

24 Bliss, "Playing Footsie with the Enemy," p. A23.

25 *Ibid*., p. A23.

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An Historical Perspective

The Curtailment of Debate in the House of Commons

François Plante

Time is certainly one of Parliament's most precious resources. Since a happy medium must be found between the right to debate as long as is desirable and the right of Parliament to make a decision, House of Commons procedure has evolved to enable the government, when it sees fit, to limit the time available for debate. This article presents a historical analysis of the creation and use of the time management tools provided in the Standing Orders. These tools are closure, time allocation, the previous question, the motion to suspend certain Standing Orders for matters of an urgent nature and the routine motion by a Minister. Although debate in the 41st Parliament (2011–) has been curtailed more often than in previous parliaments, the use of time management tools has been on the rise since the mid1970s. Various factors such as the larger number of tools available to the government, the adoption of a fixed schedule and calendar and the systematic increase in opposition obstructionism likely explain this trend.

The Parliament of Canada, like all modern parliaments, has three major functions: it represents, it monitors government actions and it legislates. The legislative function—the introduction and examination of laws in a three-reading process—necessitates debate between the government and the opposition. The former explains its proposals to the public, and the latter, when it opposes a bill, attempts to change it or impede its passage while rallying public support.

> A government intent on seeing its legislative agenda pass must ensure it has at least some cooperation from opposition parliamentarians. [...] Parliamentary procedure provides opposition MPs with various ways to be heard, including when they wish to prevent a government bill from being passed quickly. Proposing countless motions and amendments and using all the speaking time available in the House and in committee are so many ways to slow down a bill's passage. When these tools are used in an orchestrated and systematic way, the word "filibuster" is applicable. This parliamentary strategy is based on using dilatory measures and can postpone the House's decision. However, the government majority possesses certain tools to speed up the proceedings.[1]

The tools at the government's disposal appear to have evolved over time, and it seems clear that their use has also changed significantly. Given that debate in the House of Commons was curtailed substantially more often during the first year of Stephen Harper's majority government, it is appropriate to take a look at the creation and use of the various time management tools.

This article will discuss the "rules and practices of the House of Commons that…, on the one hand, facilitate the daily management of its time and, on the other, limit debate and expedite the normal course of events in cases deemed of an important or urgent nature."[2] More specifically, the article will focus on the five measures identified in Chapter 14 of the parliamentary procedure reference work by O'Brien and Bosc (2009). These measures are closure, time allocation, the previous question, the motion to suspend certain Standing Orders for matters of an urgent nature and the routine motion by a Minister. After briefly describing how these tools came to be and how they work, the article will provide a historical analysis of their use. Note that the data analyzed for

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the current Parliament covers only the period between the start of the session and the summer adjournment in 2012 (June 2, 2011, to June 21, 2012).

But first, it is certainly worth noting that the vast majority of bills are debated and passed without the governing party having to curtail debate. Indeed, only 2.8% of the 5,278 government bills introduced in the House since the start of the 12th Parliament (in 1911) have been targets of "hostile" time management methods.[3] Moreover, many bills are passed rapidly, sometimes in a single day, with the unanimous consent of the House, which allows it to set aside its own rules.

The previous question

The first time management tool is also the oldest: the previous question (Standing Order 61) existed in the first Parliament of Canada in 1867. Any MP (even an opposition MP) who has the floor during debate on a motion can move "that this question now be put." Some might hesitate to call this a time management tool, and in fact, the previous question does nothing to impede debate. "Because of the many restrictions that regulate its use, as well as its sometimes unexpected outcome, the previous question has been described as the 'most ineffective' method of limiting debate."[4] Yet the curtailment of debate becomes more apparent if one considers that the previous question has the effect of preventing the introduction of amendments to the main motion. In addition to blocking any amendment or potential obstruction tactics, adopting the previous question puts the main motion to a vote on the spot, without further debate. Rejecting it has the effect of striking the main motion from the Order Paper.

Analysis of the previous question's history shows that, overall, it was used modestly until the mid1980s. The previous question was not used in 16 of the first 32 Parliaments. Moreover, the average number of previous questions moved per 100 sittings never exceeded two until the 33rd Parliament (1984–1988). This has changed substantially since 1984, as MPs have used the rule much more frequently. Based on the partial data from the 41st and current Parliament, use of the previous question is at an all-time high, averaging eight previous questions per 100 sitting days. In all, the previous question has been moved 135 times since 1867, and nearly 80% of these have come in the past three decades. While most of these recent cases involved the tactic being applied to debate on government bills, they also include instances where government motions, motions made during routine proceedings and private member's bills were targeted. In addition, some previous questions were moved by opposition MPs.

The reasons the previous question was little used in the first Parliaments are intriguing. O'Brien and Bosc suggest the following:

> For the first 45 years following Confederation, the only tool at the government's disposal was the previous question…. Not only was there no other way of putting an end to a specific debate within a reasonable time, but there were no formal time limits of any kind on debates. The length of speeches was unlimited. The conduct and duration of proceedings in the House were based largely upon a spirit of mutual fair play where informal arrangements, or "closure by consent," governed the debate.[5]

In short, the early Parliament of Canada was likely characterized by a greater spirit of cooperation among the parties.

Suspension of the Standing Orders for matters of an urgent nature

Another time management tool has been available since 1968 under Standing Order 53. This rule was created subsequent to an imbroglio involving a motion moved by Prime Minister Pearson to send Canadian peacekeepers to Cyprus in 1964. Standing Order 53 provides a mechanism to suspend certain rules, particularly those requiring advance notice and setting the timetable of sittings, to deal with a matter of an urgent nature. The suspension of the Standing Orders for matters of an urgent nature has been rarely used since its adoption, and only three of seven government attempts to use it have succeeded.

This method was only once used to modify debate in a way that could be considered time allocation. When it invoked Standing Order 53 on September 16, 1991, the government stated that a maximum of one day of debate would be allocated to each of second reading, Committee of the Whole and third reading for back-to-work legislation for the public sector.[6] However, as has most often been the case, 10 MPs rose to oppose the motion, automatically defeating it. This constraint makes Standing Order 53 of very little use and likely explains why the government does not use it more often. In short, using this Standing Order is more about enabling the government to waive notice requirements for the introduction of its bills than to curtail the time available for debating them.

Closure

Closure, or Standing Order 57, is a procedural rule that enables ending a debate even if all MPs who wish to participate have not had the chance. Created in 1913 in response to the opposition's obstruction of a naval aid bill, closure "provides the government with

a procedure to prevent the further adjournment of debate on any matter and to require that the question be put at the end of the sitting in which a motion of closure is adopted."[7] Without a doubt, closure is the first genuine, effective mechanism for curtailing debate.

The larger context of changes in the work of the House of Commons shows in part the reason the closure rule was established. During the early 1900s, the state's role in the economy grew, and as a result, Government Orders took up more of the House of Commons agenda. Time became a precious resource, and the opposition began to obstruct passage of government bills. The government in turn developed the tools necessary to properly manage debate.

Since its introduction, closure has been invoked 56 times. It has been applied 23 times to various motions and used 33 times to limit debate on 24 different bills.[8] A close analysis of closure as applied to bills shows that it was used differently beginning in 1999. Closure motions until then were always applied to the stage of debate underway and only to that stage. For example, the government could decide to shorten debate on a bill at second reading by forcing a vote at the appointed time. In 1956, four different closure motions were adopted to limit four stages of debate (resolution, second reading, Committee of the Whole, third reading) on the controversial Northern Ontario pipeline bill. Incidentally, this episode led to the creation of time allocation as a more flexible and less draconian time management tool a few years later. On March 22, 1999, the Government House Leader used the nuances of the Standing Orders to limit debate in an entirely new fashion. A government motion was presented to the House setting out the terms and conditions of debate for all stages of a piece of back-to-work legislation:

- That, notwithstanding any Standing Order or usual practice of this House, a bill in the name of the President of the Treasury Board, entitled an act to provide for the resumption and continuation of government services, shall be disposed of as follows:
- Commencing when the said bill is read a first time and concluding when the said bill is read a third time, the House shall not adjourn except pursuant to a motion proposed by a Minister of the Crown, and no Private Members' Business shall be taken up;
- The said bill may be read twice or thrice in one sitting;
- After being read a second time, the said bill shall be referred to a Committee of the Whole; and
- During consideration of the said bill, no division shall be deferred.[9]

A notice of closure for this motion was given later in the day, and then, the next day, it was adopted. This forced debate and votes on all stages of the bill in the House, which sat from 11 p.m. to 8:32 a.m. the next day. Since this precedent, the strategy of using closure on a motion setting the terms and conditions of all stages of debate on a bill has been used seven times. Four of these involved back-to-work legislation.

Time allocation

As noted earlier, the time allocation rule (Standing Order 78) was created in large part because of the opposition's negative reaction to the government's use of closure. After a trial period between 1965 and 1968, time allocation in its current form was added to the Standing Orders in 1969. It is a more flexible mechanism than closure and encourages negotiation among the parties.

> The time allocation rule allows for specific lengths of time to be set aside for the consideration of one or more stages of a public bill. The term "time allocation" suggests primarily the idea of time management, but the government may use a motion to allocate time as a guillotine. In fact, although the rule permits the government to negotiate with opposition parties on the adoption of a timetable for the consideration of a bill at one or more stages (including the consideration of Senate amendments), it also allows the government to impose strict limits on the time for debate.[10]

The time allocation rule provides three different options depending on the level of agreement among party representatives. "Section (1) of Standing Order 78 envisages a circumstance where there is agreement by representatives of all parties on an allocation of time for the proceedings at any or all stages of a public bill."[11] The end result, then, is not much different from unanimous consent, except that one or several stubborn independent MPs can easily be outflanked under Standing Order 78(1). Since it requires the formal agreement of the opposition parties, this first form of time allocation cannot be considered a hostile time management tool. The second option, Standing Order 78(2), "envisages a circumstance where a majority of the representatives of the parties have agreed on an allocation of time for the proceeding at any one stage of a public bill."[12] Here again, this is not an example of the government forcing the curtailment of debate. Finally, "section (3) of Standing Order 78 envisages a circumstance where agreement could not be reached under either Standing Order 78(1) or 78(2) on time allocation for the particular stage of a public bill currently being considered."[13] Note that it is possible to use a single motion to allocate time for

the report and third reading stages. Moreover, the government must give notice of its intent to use time allocation under Standing Order 78(3) in a sitting prior to adoption of the measure. Standing Order 78(3) is by far the most commonly used form of time allocation and, like closure, can certainly be called a hostile time management method.[14] Consequently, this analysis will look only at this last form of time allocation.

A review of the use of Standing Order 78(3) shows that as of June 23, 2012—that is, after the summer 2012 adjournment—time allocation has been imposed 168 times on 118 different bills and 241 stages of debate. An analysis of the historical evolution of the use of time allocation will follow. But first, there is one final mechanism in the Standing Orders that provides for curtailing debate.

Routine motion by a Minister

This is a more recent rule, adopted in 1991, that has been used several times to curtail debate. The routine motion by a Minister is set out in Standing Order 56.1. It provides that, if

> at any time during a sitting, unanimous consent is denied for the presentation of a routine motion for which written notice had not been given, a Minister may request under the heading "Motions" during Routine Proceedings that the Speaker put the motion forthwith, without debate or amendment. If 25 Members or more oppose the motion, it is deemed withdrawn, otherwise it is adopted.[15]

Table 1 shows that the government has used this Standing Order 24 times. Two trends in particular are apparent. First, the government used this measure frequently in the first 10 years after it was created and at a more moderate rate thereafter. Second, its purpose has changed over time. Since December 1, 1997, government attempts to use Standing Order 56.1 to restrict debate on certain bills have both succeeded and failed. On 10 occasions, the government wanted to allocate the amount of time for debate at various legislative stages. While four such attempts were rejected by at least 25 MPs, Standing Order 56.1 was used six times to restrict debate on eight different bills in the same way as Standing Orders 57 and 78. However, in response to a point of order in 2001, the Speaker of the House of Commons rules that Standing Order 56.1 was never intended to be so used:

> The government is provided with a range of options under Standing Orders 57 and 78 for the purpose of limiting debate. Standing Order 56.1 should be used for motions of a routine nature, such as arranging the business of the House. It was not intended to be used for the disposition of a bill at various stages, certainly not for bills that fall outside the range of those already contemplated in the Standing Order when "urgent or extraordinary occasions" arise.[16]

Nevertheless, the use of Standing Order 56.1 on June 12, 2001, remained valid because too much time had elapsed between adoption of the measure and the point of order. Likewise, a number of bills have since been affected by Standing Order 56.1. Several factors seem to explain this fact: the absence of points of order, the interpretation that adjourning the sitting and not the debate was the intent, and the parliamentary procedure committee's failure to specify how this measure is to work, as requested by the Speaker. In the end, using Standing Order 56.1 to curtail debate in the House of Commons seems to remain possible.

Analysis of the use of time management tools

Now that the five time management tools have been briefly described, it is worth looking more closely at how the government has used them in the various Parliaments. First, note that this analysis is limited to the final three tools—closure, time allocation using Standing Order 78(3) and the routine motion by a Minister. After describing the changing use of these tools as regards debate at the various legislative stages, the paper will seek to explain why they seem to be in increasing use since the mid1970s.

One early conclusion is that time allocation is unquestionably the most popular form of time management. Standing Order 78(3) was used in about 80% of the cases where debate on the passage of a bill was curtailed. In total, the government has ended debate on 150 bills at the expense of opposition parties. Time allocation has cut short debate on 118 of these 150 bills while closure has affected 24 and routine motions by a Minister, the remaining 8. The 150 bills involved make up only a very small fraction of the 5,278 government bills introduced in the House of Commons since 1912.

Analyzing each Parliament—the period between the summoning of Parliament after a general election and the dissolution of that Parliament—reveals a shift in the proportion of bills affected by time allocation. For many years, the use of closure, which was the only tool available between 1913 and 1969, to curtail debate was rare. Only six bills were targeted (by 12 closure motions) during this period. As shown in Table 2, the introduction of the time allocation rule to House of Commons procedure began to have an impact in the 30th Parliament (1974–1979), when eight bills were affected by 11 different time allocation motions. From then on, the proportion of government bills affected by time management tools has only increased overall.

Table 1 – Use of Standing Order 56.1 (Routine motions by a Minister)			
Parliament	Date	Purpose	Result
34th or 35th	between 1991 and 1995	Committee travel	Adopted
34th or 35th	between 1991 and 1995	Committee travel	Adopted
34th or 35th	between 1991 and 1995	Committee travel	Adopted
34th or 35th	between 1991 and 1995	Committee travel	Adopted
34th or 35th	between 1991 and 1995	Committee travel	Adopted
34th or 35th	between 1991 and 1995	Committee travel	Adopted
35th / 1994-1997	March 1995	Suspend sitting for Royal Assent	Adopted
35th / 1994-1997	March 1995	Allow weekend sitting for Bill C-77	Adopted
35th / 1994-1997	June 1995	Extend sitting	Adopted
35th / 1994-1997	April 1997	Suspend sitting for Royal Assent	Adopted
36th / 1997-2000	December 1, 1997	Adoption of Bill C-24 at all stages	Adopted
36th / 1997-2000	February 1998	Take-note debate on Gulf crisis	Adopted
36th / 1997-2000	June 1998	Reverse decision on Standing Orders 57 and 78	Withdrawn
36th / 1997-2000	March 1999	Adoption of Bill C-76 at all stages (1)	Withdrawn
36th / 1997-2000	March 1999	Adoption of Bill C-76 at all stages (2)	Withdrawn
36th / 1997-2000	April 1999	Take-note debate on Kosovo	Adopted
37th / 2001-2004	June 4, 2001	Adoption of Bill C-28 at all stages	Adopted
37th / 2001-2004	June 12, 2001	Third reading of bills C-11 and C-24 / Estimates votes / Summer adjournment	Adopted
37th / 2001-2004	October 22, 2002	Concurence in committee report	Withdrawn
38th / 2004-2005	May 13, 2005	Second reading of bills C-43 and C-48	Withdrawn
39th / 2006-2008	October 3, 2006	Second reading of Bill C-24 (amendment and adjournment)	Adopted
39th / 2006-2008	May 31, 2007	Committee stage of Bill C-44 (adjournment and report to the House within two days)	Adopted then ruled out of order
39th / 2006-2008	December 13, 2007	Third reading of bills C-18 and S-2 / Length of sitting / Winter adjournment	Adopted
39th / 2006-2008	January 31, 2008	Second reading of Bill C-3 (adjournment)	Adopted

In the 36th Parliament (1997–2000), a record was set in absolute terms when 20 bills were subject to 30 time allocation motions. In all, the various time management tools affected 17% of bills in that Parliament. Table 2 also shows that, unsurprisingly, debate is curtailed less often in a minority government situation (38th, 39th and 40th Parliaments). However, it seems obvious that a minority government context does not necessarily prevent the adoption of measures to curtail debate. Support from at least one opposition party enabled the government to curtail debate on 10 different bills during the past two minority governments. Finally, while circumstances in the current Parliament will continue to change, it seems that time management measures are affecting an abnormally high proportion of bills in this Parliament. As of the summer 2012 adjournment, 14 different bills have been targeted. This represents 33% of the total of 42 government bills introduced in the House.

One fairly simple comparison technique is to calculate how many closure, time allocation and routine motions have been adopted in each Parliament per 100 government bills introduced in the Commons or per 100 sittings completed. The resulting statistics show that time allocation has been by far the most common of the three methods of ending debate. Relative to the number of bills or the number of sittings, the conclusion is essentially the same. Also apparent is the general trend of increasing use of time allocation since the mid1970s. While measures to curtail debate were used less often during the 37th Parliament (2001–2004) and the series of minority governments between 2004 and 2011, the current government is introducing more than 14 time allocation motions per 100 sittings, an unprecedented rate.

Given that the use of time allocation under Standing Order 78(3) has been on the rise for some time, it is

Table 2 – History of the Use of Closure, Time Allocation and Routine Motions by a Minister										
	Closure for Bills (Standing Order 57)			Time Allocation (Standing Order 78 (3))			Routine Motion (Standing Order 56.1)			
Parliament	Number*	Average per 100 Sittings	Average per 100 Bills	Number*	Average per 100 Sittings	Average per 100 Bills	Number*	Average per 100 Sittings	Average per 100 Bills	% of Bills Affected
12	6 (3)	1.1	2.0	-	-	-	-	-	-	1.0
13	1 (1)	0.3	0.3	-	-	-	-	-	-	0.3
14	0	0	0	-	-	-	-	-	-	0
15	0	0	0	-	-	-	-	-	-	0
16	0	0	0	-	-	-	-	-	-	0
17	1 (1)	0.2	0.3	-	-	-	-	-	-	0.3
18	0	0	0	-	-	-	-	-	-	0
19	0	0	0	-	-	-	-	-	-	0
20	0	0	0	-	-	-	-	-	-	0
21	0	0	0	-	-	-	-	-	-	0
22	4 (1)	0.8	2.2	-	-	-	-	-	-	0.5
23	0	0	0	-	-	-	-	-	-	0
24	0	0	0	-	-	-	-	-	-	0
25	0	0	0	-	-	-	-	-	-	0
26	0	0	0	-	-	-	-	-	-	0
27	0	0	0	-	-	-	-	-	-	0
28	0	0	0	2 (1)	0.3	1.0	-	-	-	0.5
29	0	0	0	0	0	0	-	-	-	0
30	0	0	0	11 (8)	1.4	4.0	-	-	-	2.9
31	0	0	0	1(1)	2.0	3.6	-	-	-	3.6
32	0	0	0	21 (16)	3.0	9.2	-	-	-	7.0
33	0	0	0	17 (14)	2.4	6.0	-	-	-	4.9
34	12 (9)	2.0	5.1	29 (20)	4.9	12.4	0	0	0	12.4
35	1 (1)	0.2	0.5	20 (14)	4.5	9.3	0	0	0	6.9
36	2 (2)	0.5	1.5	30 (20)	8.0	22.7	1 (1)	0.3	0.8	17.4
37	0	0	0	12 (10)	2.9	7.7	2 (3)	0.7	1.9	8.3
38	0	0	0	0	0	0	0	0	0	0
39	1 (1)	0.3	0.8	1 (1)	0.3	0.8	3 (4)	1.4	3.2	4.8
40	2 (2)	0.7	1.6	3 (2)	1.0	2.3	0	0	0	3.1
41**	3 (3)	2.1	7.1	21 (11)	14.5	50	0	0	0	33.3

* Number of motions (Number of bills affected)
** As of June 23, 2012
Minority Governments = shaded area

of particular interest to explore another aspect of this measure—the shifts in when it is applied during debate and how much time is allotted to finish debate. Table 3 shows that in the first Parliaments following the creation of Standing Order 78(3) the House tended to let debate go on for several days before bringing it to an end. In the 28th Parliament, the government allowed an average of over 15 days of debate at a given legislative stage before imposing time allocation. Moreover, more than three additional days were then allocated to conclude these debates. It appears that over the years the patience of the House has gradually evaporated. By the 34th Parliament, the government generally intervened to end debate prematurely after one or two days. Minority governments were seemingly only slightly more patient in the 39th and 40th Parliaments. Finally, a certain change in the use of time allocation seems to be underway in the current

Table 3 – Use of Time Allocation (Standing Order 78(3))							
					Average Number of Days of Debate Completed or Underway at the Time		
Parliament	Years	Number of Standing Order 78(3) Motions Adopted	Number of Bills Affected	Number of Debate Stages Affected	Notice	Vote 78(3)	Average Number of Days of Debate Allocated
28th	1968-1972	2	1	2	14.5	15.5	3.5
29th	1973-1974	0	0	0	-	-	-
30th	1974-1979	11	8	12	5.5	6.2	2.1
31th	1979	1	1	1	9.0	10.0	1.0
32th	1980-1984	21	16	31	4.1	4.7	1.6
33th	1984-1988	17	14	22	3.8	4.1	1.5
34th	1988-1993	29	20	46	1.3	1.4	1.7
35th	1994-1997	20	14	29	2.1	2.2	1.5
36th	1997-2000	30	20	46	1.4	1.4	1.6
37th	2001-2004	12	10	17	2.5	2.5	1.5
38th	2004-2005	0	0	0	-	-	-
39th	2006-2008	1	1	1	3.0	3.0	1.0
40th	2008-2011	3	2	5	2.0	2.7	1.7
41th*	2011-	21	11	29	1.6	1.6	2.4
Total		**168**	**118**	**241**	**2.6**	**2.9**	**1.7**

Minority Government = shaded area
* As of June 23, 2012

Parliament. Although the decision to curtail debate remains rapid, there has been a small increase in the time allotted. On average, 2.4 days of supplementary debate are granted, a level not seen since the end of the 28th Parliament. During certain second reading debates—for example, on the budget implementation bill, C-38, and the immigration reform bill, C-31—the government allowed the opposition to continue debate for particularly long periods: six and five days, respectively. One could argue that using time allocation in this fashion is more consistent with the concept of a time management tool than an abusive way of gagging the opposition.

Now, it is natural to ask why the government is increasingly using debate curtailment measures. What factors might explain the growing number of bills targeted for time allocation, closure and other such procedures? Instinctively, one might think that a growing legislative workload during this period could put pressure on the government, causing it to use time management tools more often. However, this hypothesis does not seem correct given the history of Parliament's workload. Standardizing the length of the various Parliaments reveals that the number of bills introduced in the House per year (or per 100 sittings) has been relatively unchanged since the end of World War II. There has even been a slight decrease in the number of Royal Assents granted annually. These facts invalidate the idea that the House of Commons workload has increased over time.

On the other hand, an institutional factor offers one plausible explanation. In his 1977 book on the House of Commons, John B. Stewart argued that, by adding predefined sitting adjournment times to the Standing Orders, the minor procedural reform of 1927 helped make the House an ideal place for filibusters, even more so than the American Senate.[17] Because they now knew in advance when proceedings would conclude for the day, opposition MPs hoping to defer Parliament's decision had a tangible goal: push debate beyond the preset sitting adjournment time. While it is impossible to confirm whether the opposition changed its behaviour, one must admit that the government did not seem to use closure—the only time management method available at the time—more often. A similar reform establishing a fixed legislative calendar for the House in 1982 made adjournments in parliamentary sessions more predictable. In this case, the overall trend of increased use of debate curtailment measures began around that time.

To confirm this hypothesis, one would have to study the behaviour of opposition MPs during debates and, more specifically, their use of delaying tactics like motions to adjourn, the reasoned amendment or the hoist amendment. Unfortunately, this research is very demanding given the lack of already compiled data and could not be completed for this article. However, it would certainly be one way of shedding more light on the issue. In view of certain events in the current Parliament, the opposition's use of dilatory measures can be shown to lead the government to use time allocation, or at least provide justification for doing so. As of the summer 2012 adjournment, the opposition had introduced reasoned amendments at second reading for seven bills.[18] This type of amendment proposes "that the House decline to give second reading to this bill" for the reasons specified. Of the seven bills affected, the government responded by applying the time allocation rule to end debate on six. The case of Bill C-18 (Canadian Wheat Board reorganization) is of particular interest. After the first 40 minutes of debate, the NDP introduced a reasoned amendment, and 35 minutes later, the Liberal Party sought to adjourn debate. This seemed to give the government a legitimate reason to immediately make use of time allocation.

In closing, there are some specific explanations for the frequent use of measures to curtail debate in the 41st Parliament. First, Tom Lukiwski, Parliamentary Secretary to the Leader of the Government in the House of Commons, seemed to confirm that reacting to the opposition's behaviour was a factor. In an interview with *The Hill Times*, he stated:

> We have brought forward time allocation on certain pieces of legislation because we felt it was necessary to do so primarily because of the opposition, including obviously the NDP, have demonstrated without question that on certain bills, they just want to debate the bill, they want to defeat the bill and not allow the bill to come to a vote.[19]

Other arguments put forward by the government relate to the importance of acting quickly or by a certain time and the fact that the bills introduced had already been sufficiently debated in previous Parliaments.

The first argument is perhaps linked to the election promise to achieve certain goals—such as the criminal law reforms—in the first 100 days. It was also necessary to proceed rapidly with Bill C-20, which concerned the addition and redistribution of seats in the House of Commons, so the reforms could be in place by the next general election. As for the second argument, it deviates somewhat from the parliamentary principle that gives all MPs of all Parliaments the right to be heard on all matters under consideration. Given that more than 35% of MPs (108) in the 41st Parliament are newcomers to the House, it seems essential that debate begin anew. In any case, one can easily allow that the series of minority governments preceding the 41st Parliament put pressure on the government and intensified its desire to finally pass its most controversial proposals and the ones which had no opposition support. If that is true, one could reasonably expect a decrease in the use of time management tools by the next general election in 2015.

Conclusion

This article has described how the Standing Orders of the House of Commons have changed over time to give the governing party all the tools it needs to effectively manage debate. These tools, which work in different ways and with varying degrees of effectiveness, were often created in response to deliberate opposition obstructionism. This was the case for the closure rule, for example. In the late 1960s, under pressure and accused of governing undemocratically, the government instituted the time allocation rule. The goal was to provide a way of managing debate more acceptable to the opposition. Yet three trends in the government's use of time management tools have again today given the opposition good reason to criticize. First, since the mid1970s, the number of time allocation motions adopted and the proportion of bills affected by the curtailment of debate have exploded. Second, the government's patience has rapidly diminished; it now decides to impose time allocation on its bills with little delay. Third, the 1999 revolution in the use of the closure rule (through a motion dictating how a bill will pass through every stage) has made its use even more debatable.

Of course, the government is not solely to blame. A study of the opposition's behaviour, more specifically its use of dilatory motions, could show that the government is to a certain extent only reacting to efforts to hold up debate. David Docherty is quite right to point out that debate curtailment measures are after all very legitimate tools that can prevent legislative impasses.[20] However, Docherty also argues that suspicion of the government is healthy. It cannot be allowed to simply duck the opposition's questions.

> In some jurisdictions the use of time allocation or closure has less to do with the strength of the opposition and more to do with the government's desire to avoid the legislature. [...] The importance of debate in the legislative process may be threatened by an increased reliance on time allocation.[21]

Seen this way, further reform of the Standing Orders seems to become an option, perhaps even a desirable one. One could imagine granting discretionary authority to the Speaker of the House to refuse the adoption of time allocation and force the government to justify its request for closure, as the NDP has proposed. A minimum number of days of debate during which the government would not be allowed to use time allocation or closure could be guaranteed. To encourage serious debate on the substance of the issues under consideration, the House could even forbid the government to use time management tools unless the opposition has proposed dilatory measures first. In short, while the Standing Orders regarding time management in the House have indeed changed, they might yet change again. The issue is striking a certain balance, finding the happy medium between the right to debate as long as is desirable and the right of Parliament to make a decision.

Notes

1 Réjean Pelletier and Manon Tremblay (Eds.), *Le parlementarisme canadien,* Third Edition, St-Nicolas, Les Presses de l'Université Laval, 2005, pp. 304–5.

2 Audrey O'Brien and Marc Bosc (Eds.), *House of Commons Procedure and Practice,* Second Edition, Cowansville, Éditions Yvon Blais, 2009, p. 649.

3 There are two reasons for choosing the 12th Parliament: no statistics on the number of bills introduced in the House exist before then, and it was during the 12th Parliament that the first genuine rule for curtailing debate—closure—was made. The "hostile" tools are closure, time allocation using Standing Order 78(3) and the routine motion.

4 Audrey O'Brien and Marc Bosc (Eds.), *op. cit*., pp. 537; 652.

5 *Ibid*., p. 648.

6 *Annotated Standing Orders of the House of Commons*, Second Edition, Ottawa, 2005, p. 200.

7 Audrey O'Brien and Marc Bosc (Eds.), o*p. cit*., p. 653.

8 Adoption of the Canadian flag in 1964, changes to the Standing Orders in 1969, reinstating bills from a previous session, etc.

9 *Debates*, Sitting of March 22, 1999.

10 Audrey O'Brien and Marc Bosc (Eds.), *op. cit*., p. 660.

11 *Annotated Standing Orders of the House of Commons*, Second Edition, Ottawa, 2005, p. 281.

12 *Loc. cit*.

13 *Ibid*., p. 283.

14 189 uses of Standing Order 78: 78(1) adopted 8 times (4.2%), 78(2) adopted 13 times (6.9%), 78(3) adopted 168 times (88.9%).

15 Audrey O'Brien and Marc Bosc (Eds.), *op. cit*., p. 670.

16 House of Commons, *Debates*, September 18, 2001.

17 John B. Stewart, *The Canadian House of Commons: Procedure and Reform*, Montreal and London, McGill-Queen's University Press, 1977, p. 245.

18 Namely bills C-4, C-10, C-11, C-18, C-20, C-31 and C-38.

19 Bea Vongdouangchanh, "House can change Standing Orders to make it more democratic, now," *The Hill Times*, February 6, 2012, p. 4.

20 David C. Docherty, *Legislatures,* Vancouver, UBC Press, 2005, p. 157.

21 *Ibid*., p. 156.

Balancing Family and Work: Challenges Facing Canadian MPs

Royce Koop, James Farney and Alison Loat

Many Canadians struggle to balance their families and careers. A 2011 Harris/Decima poll, reports that 47% of Canadians struggle to achieve a work-life balance, and family is often an important aspect of that balance. Certain professions, including that of MP, make achieving such a balance more difficult than others. This article looks at the overall nature of the strain on MPs the two strategies that MPs employ to adapt the challenges of the job, and potential reforms that might work to assuage some of the strain placed on MPs and their families. The data for this paper comes from a series of semi-structured interviews conducted by Samara, an independent charitable organization that improves political and democratic participation in Canada, as part of its MP Exit Interview Project. This paper used transcripts from the interviews of 65 former MPs who left public life during or after the 38th and 39th Parliaments. These men and women served, on average, 10.5 years, and together represented all political parties and regions of the country. The group included 21 cabinet ministers and one prime minister.

In his penetrating exploration of "the dark side" of political life in Canada, Steve Paikin saves the family for his book's penultimate chapter. Paikin's narrative stands as a stark warning to those entering politics and hoping to maintain a healthy family life. He tells the story of Christine Stewart, a Liberal MP elected in 1993, who attended an orientation session for rookies. "Look around this room," warned the session's guide. "Because by the end of your political careers, 70 percent of you will either be divorced or have done serious damage to your marriages." Paikin reports that Stewart felt she would be the exception to the rule; instead, her seventeen-year marriage came to an end during her time as MP.

How important is the strain on families to MPs? They illustrated the importance of this strain in three ways. First, when asked to discuss the negative aspects of their political careers, many MPs immediately and without cues pointed to the pressure it applied to their family lives. One MP from Saskatchewan, immediately pointed to such strain and the burden placed on his spouse:

> It is tough on family. I knew that going in because I was a politician before that and I was away a lot. But it was a little worse than I thought… My wife was just amazing. She handled a lot of that. Plus working in Ottawa two weeks out of every month. But for me, she was supportive and wanted me to stay, but I felt bad about the family. So that was the toughest part.

Second, MPs betrayed the importance of family difficulties by celebrating the success of their own family lives. MPs are aware of the strain of political life on them, and often expressed gratitude (if not surprise) that their own family lives have not been affected too strongly. One MP made this point clearly in discussing his greatest accomplishment during his political career:

> I am still living with the girl I first married 39 years ago. I have got two wonderful kids who are successful. What more can you ask? At the end of the day I did not lose a wife.

The fact that this MP highlighted the maintenance of his marriage as his greatest accomplishment illustrates his perception of the severity of the position's strain on MPs' families.

Finally, MPs revealed the importance of family strain

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when they were asked about whether they would recommend a political career for others, and what advice they would provide to aspiring politicians. Most MPs who were asked this question endorsed the idea of a political career, but cautioned that the toll on family life was both severe and unanticipated.

> Make sure that you balance your family life, your personal life, and your political life. I have seen too many marriages go through too many problems and it is hard.

Those former MPs interviewed by Samara indicated four factors that either increase or decrease the strain: whether or not they have children and how old their children are; the orientation of the spouse to a political career; distance of MPs' constituencies from Ottawa; and advancements in communications technology and ease of travel.

MPs with young children, often felt that the job limited the time that they could spend with their children. "It is not the big events you miss at home, being away," notes one MP.

> I look at some of these people who just got elected and have young families, and you do not realize what you are missing. We should give them even more support because that is what they are giving up to represent us.

In contrast, MPs who were at a later life stage were hit less hard by the family costs of their political careers. This was particularly true of MPs with grown children, as the everyday worries of raising children had by this point subsided.

> I would not have thought about running for office unless my kids were all grown up. I do not know how people with young children do it. When I was down there, I was worried about my kids so much.

The second factor that affects the family stress created by MPs' careers relates to the orientation of their spouses to the job. Some political spouses are very supportive of MPs' careers and the tensions they introduce; others are much less so, and so MPs face significant stresses from time away from the family.

The crucial question appears to be whether MPs' spouses have meaningful careers that are important to them. Many MPs point out that having a career of their own means that political spouses are less likely to be affected by MPs' absences and heavy work schedules since they themselves are also busy. But political spouses with heavy work schedules of their own can complicate life still further for MPs and must face the unspoken expectation that politicians' spouses must serve as second representatives in the ridings. Political spouses that are established in their own careers are less able to move to or visit MPs while conducting parliamentary work in Ottawa

Other MPs have partners who are not as strongly rooted in their own careers. Such partners create both opportunities and challenges for the family lives of MPs. On one hand, partners without demanding careers of their own have more time to attend to the details of home and family life, and this is particularly true of MPs with young children. In addition, such partners may take on the traditional role of MPs' partners, travelling extensively with the MPs and even participating in some aspects of the job such as representational duties in the constituencies. MPs with partners who took on such roles were invariable grateful and drew attention to this role.

> And without my wife, I would not have gotten through it anyway. She made the Ottawa scene bearable.
>
> She spent so much time with me. We were hardly ever apart, even the riding stuff. It was that kind of endeavour for us. If she were not like that, I would not have lasted in Ottawa. I would have been out within two terms. Ottawa can be a very lonely scene.
>
> My wife was my eyes and ears in the riding when I was in Ottawa for 150-300 days of the year, so if I got an invitation to a function and I was not able to come home from Ottawa, she would go in my stead; she would lay a wreath when I could not go or speak on my behalf.

In addition, partners who are not strongly rooted in their own careers are more portable, and therefore able to move or spend time in Ottawa with MPs. But a meaningful career gives partners an identity of their own and a way to spend their time while their partners are away in Ottawa. Some MPs were grateful for their partner's careers, and speculated that partners without such occupations would be lonely while MPs were away in Ottawa.

The third factor that aggravates the stress placed on MPs' family lives is related to the distance of MPs' ridings from Ottawa. Simply put, proximity to Ottawa results in less travel time and thus less time spend away from family. In contrast, lengthy travel times can impose severe burdens on MPs as they struggle to balance both the riding and Ottawa aspects of their jobs with their family lives.

Many MPs mention distance from Ottawa as a factor in shaping the degree of difficulty they face in balancing work and family. MPs from proximate ridings recognize how lucky they are and contrast their experiences to MPs from the more far-flung regions of the country.

Participating Former MPs

Hon. Peter Adams
Hon. Reginald Alcock
Omar Alghabra
Hon. David Anderson
Hon. Jean Augustine
Hon. Eleni Bakopanos
Hon. Susan Barnes
Colleen Beaumier
Catherine Bell
Stéphane Bergeron
Hon. Reverend William Blaikie
Alain Boire
Ken Boshcoff
Hon. Don Boudria
Hon. Claudette Bradshaw
Hon. Edward Broadbent
Bonnie Brown
Hon. Sarmite Bulte
Marlene Catterall
Roger Clavet
Hon. Joseph Comuzzi
Guy Côté
Hon. Roy Cullen
Odina Desrochers
Hon. Paul DeVillers
Hon. Claude Drouin
Hon. John Efford
Ken Epp
Brian Fitzpatrick
Paul Forseth
Sébastien Gagnon
Hon. Roger Gallaway
Hon. John Godfrey
James Gouk
Hon. Bill Graham
Raymond Gravel
Art Hanger
Jeremy Harrison
Luc Harvey
Hon. Loyola Hearn
Hon. Charles Hubbard
Dale Johnston
Hon. Walt Lastewka
Marcel Lussier
Hon. Paul Macklin
The Rt. Hon. Paul Martin
Bill Matthews
Alexa McDonough
Hon. Anne McLellan
Gary Merasty
Hon. Andrew Mitchell
Pat O'Brien
Hon. Denis Paradis
Hon. Pierre Pettigrew
Russ Powers
Penny Priddy
Werner Schmidt
Hon. Andy Scott
Hon. Carol Skelton
Hon. Monte Solberg
Hon. Andrew Telegdi
Myron Thompson
Hon. Paddy Torsney
Randy White
Blair Wilson

> I always considered myself fortunate though, in the sense that. I can be home from Ottawa in 45 minutes. And then my house was close to the airport, so I could be on a 6:00 flight out of Ottawa and I would actually be in my home at quarter to eight. Some of these people have to travel. I do not know how they do it. If you have a young family and your wife is not working and you are living in B.C., frankly I do not know how they cope.

MPs from distant constituencies struggle to deal with the necessary travel time. While many are reluctant to complain given their commitment to public service, the strain is evident. This is especially true for MPs from distant regions who are also representatives of rural ridings, as travel therefore entails a long plane trip from Ottawa and, subsequently, either a connecting flight or driving to reach the constituency. For MPs from far-away rural ridings or those from the northern territories, the commute is crushing.

Fourth, technology, particularly with respect to communication and travel, has altered how MPs can do their jobs and, as a result, the amount of time that is available to spend with family. Some MPs note that communication technology allows them to more easily keep in contact with their riding staff and to deal with casework requests remotely while in Ottawa.

> If you have good staff in the riding, with the technology, constituency business can be conducted remotely with BlackBerries, computers, emails, etc.

While technology may assist MPs in managing the work-life balance, it may also aggravate the problem. We were surprised to note that several MPs pointed to improvements in both communication and travel technology as a burden rather than an asset, which in turn robbed them of further time from their families.

> Modern communication and transportation has made it, in some respects, more difficult.
>
> I used to be able to send correspondence and people in the constituency expected me not to be around. I think we were, in some respects, better off in 1968 and 1972. People did not expect as much travel from the MP. They were still thinking about an earlier era of train travel. They did not expect the same level of communication information on their doorstep. And they probably were just as well served.

Technology had increased expectations and thereby increased the amount of time required to do the job.

While MPs did not specifically identify them, we suspect that three additional factors affect the strain of political careers on MPs' family lives.

We believe that the presence of minority governments in Ottawa between 2004 and 2011 had an adverse effect on the family lives of MPs for two reasons. The instability of minority parliaments meant that parties must keep a close eye on the number of MPs in Parliament at any one time to avoid lost votes, so MPs' presence was more tightly monitored and their presence was more often required in Ottawa. In addition, the relatively

short tenure of these minority parliaments may have created even greater disincentives for MPs' families to uproot and move to Ottawa, particularly if MPs were not in safe constituencies.

The atmosphere of collegiality that characterized life in the House of Commons suffered under the intense partisanship and brinksmanship that characterized this period in Canadian history. Many long-term MPs in Samara's exit interviews spoke fondly of the relationships they built with other MPs early in their careers, and many of these careers crossed party lines. We suspect that the intense partisanship of this period's "constant campaigning" minority parliament strained already-tenuous relationships across party lines and deprived MPs of an important resources for mentorship and support while away from their families.

In addition, even those who feel pressure to spend time in their ridings may be doing so at the expense of family time. We suspect, that electoral vulnerability plays a role in shaping the stress brought to bear by a political career on MPs' family lives. MPs that feel vulnerable in their ridings are more likely to feel pressure to spend time in their constituencies conducting casework and attending local events in order to construct a personal vote upon which they can rely for support in re-election campaigns. In so doing, MPs who feel vulnerable increase their workload, further decreasing the amount of time that they are able to spend with their families. In addition, anecdotal evidence suggests that MPs from rural ridings face greater pressure than their counterparts from urban ridings to attend a range of weekend community and personal events.

Leaving or Relocating Families

In trying to find an optimal work-life balance while performing their dual roles as both parliamentarians and constituency representatives, MPs may pursue one of two strategies. They may either maintain a separate residence in Ottawa while their families remain in the ridings or move their families to Ottawa with them. Samara's exit interviews included interviews with MPs who had pursued both options, and the interviews reveal the positive and negative aspects of both choices.

There are two primary advantages to maintaining a separate residence in Ottawa while families remain in the riding. Most importantly, doing so avoids uprooting MPs' families and moving them to a new city. This is a particularly attractive option if MPs' partners are well established in their careers and communities or if MPs have young children. The question of children is crucial, as MPs are keen to avoid moving their children away from communities and friends, and enrolling them in new schools. As one MP simply and memorably explained why his family stayed behind in his constituency: "Our home was here."

The disadvantages of this option are readily apparent. This decision entails MPs leaving their families behind in their ridings most work weeks. The result is often loneliness during the work week in Ottawa.

> I was very lonely, being away from my friends. They are at home with a life and I was away. So all the things I used to do with them, I did not do because I was never in the riding during the week. On the weekends I was exhausted or always had something to do. I basically lost eight years with them. I know my husband was very lonesome when he was in the riding. And I was lonesome down there in Ottawa. If you are a young family, if you are a young man, I think your wife should be with you in Ottawa. I really think that if a young woman has children, they have got to be there with her too.

In addition, many MPs detailed excruciating travel schedules, including late night flights on Fridays to spend more time with their families and once again on Sundays to return to work in Parliament. MPs are often robbed of even this small amount of family time on weekends by the need to attend to constituency work and attend local community events and functions in the hope of building up a reputation for local symbolic responsiveness. The result is that when they return to Ottawa, MPs may have spent surprisingly little time with their families.

A second option for MPs is to move their families to Ottawa. Some MPs enthusiastically embrace this idea. This approach allows them to spend their evenings with their families. However, there are other, substantial disadvantages of this approach that help to explain why many MPs do not embrace it. MPs are never certain about their re-election prospects. The idea of moving one's family to Ottawa with all of the difficulties associated with doing so and then losing their re-election campaigns is difficult to embrace. The job, notes one MP, "doesn't have tenure."

MPs also sometimes find that the time they intend to spend with their families in Ottawa is cut short by long workdays. While the original intention was for MPs to eat dinner with their families every weekday, many MPs find themselves occupied in Parliament into the evening.

> I had an apartment in Ottawa and our home was in the riding. My wife would come down occasionally. Friends asked, "Do you go down there very often?" And she said, "No, why

> would I? He goes to work at quarter to seven in the morning; he gets home at 8 o'clock at night. What is the point?"

In addition to a heavy workload, MPs are then expected to return to their constituencies on Fridays and over the weekends to tend to local relationships and casework. Some MPs who move to Ottawa find that they must therefore scrupulously limit the time spent in their constituencies.

But other MPs maintain strong connections to their constituencies and so must return when the House of Commons is not sitting to maintain relationships in the riding. Further, since Parliament sits only about five months a year, MPs may decide to leave their families in the constituencies, which is optimal for periods when the House is not sitting but which causes family stress when Parliament is sitting.

The result is that MPs confront two imperfect choices. Both entail significant costs in terms of the time that can be spent with their families. We do not believe that this is a price that should necessarily be paid by those wishing to participate in public service, and so the next section focuses on easing the problem of family stress for MPs.

Proposals for Reform

Canada's geography, the inherently competitive nature of politics, the justifiable demands for representation that their constituents place on MPs, and the commendable desire of MPs to learn and investigate in fulfilment of their oversight roles all make it unlikely that being an MP will become a highly family friendly job anytime soon. Nevertheless, a number of changes – some suggested by MPs in the Samara interviews, others carried out in other jurisdictions – suggest themselves as possible improvements. In the interviews, these changes were identified as particularly important for encouraging women to enter politics but, as gender roles around care-giving change and elder-care becomes a more and more significant social need, we would suggest that the beneficiaries of such reforms go beyond the image of young women with family that many of our interviewees identify.

Four possible reforms suggest themselves. First, a move to shorter, more intense parliamentary sessions would lessen the travel demands.

> One of the practical suggestions I would have had is to shorten the Parliamentary week. Now this was hot politically and was discussed. The House sits Monday to Friday, but make it Monday to Thursday and make it the same hours of work. I would have rather worked more hours when I was there, but been there one day less. That is one day more where I have a chance to go home, be in my riding, and be with my family.

In a similar vein, some legislatures – notably the Welsh house after devolution – have moved their regular sittings and committee meetings to between 9 am and 5 pm rather than the afternoon and evening sittings traditional at Westminster and Ottawa. While not as much of a help as a shorter week for those MPs from further away, it would still make much Parliamentary business more compatible with family life, spouses' careers, and children's care and school.

For those MPs whose spouses have a career, childcare emerged as a difficult issue, especially if they chose to move to Ottawa but generally because of the unpredictable hours of the job.

> Let us say I decided to bring my kids to Ottawa. I would have had to be on a waiting list, for the daycare that was on the Hill. You can not take maternity leave when you are a Member of Parliament. In fact the MP who took over in Parliament for me, had a baby. She did not take any maternity leave. How could you?
>
> My mother and father helped out a lot. In fact we moved into their home when I got elected and we stayed there for quite awhile, which was good for my daughters. They have a very good relationship with their grandparents and with their father, who was there when I was not there.

Moving into the parental home hardly seems a possibility for most MPs. Improving access to quality and flexible childcare in Ottawa either through increasing the number of childcare spaces available on Parliament Hill or providing subsidies for MPs to hire nannies or other individual caregivers would be an improvement. Maternity leave, while a legal possibility, seems a difficult one to square with the demands of the role.

Following the example of Yahoo CEO Marissa Meyer, it might be possible to imagine ways to build more flexibility into the job, but this would require a real culture of sensitivity on both the part of constituents and other parliamentarians to particular individual circumstances. Given Canada's changing demographics, eldercare should also be a consideration.

Many MPs identified how important their spouses and partners were in making the decision to run for office. All who spoke to the importance of family life identified this spousal support as crucial and that their partners were vital to both keeping the home fires burning and to constituent service. Some praised their

party's work at including, educating, and supporting their spouses in their new role. Others suggested that a non-partisan effort on the part of the legislature, one that introduced their spouses better to the demands of being the partner of an MP, rather than a candidate, might be helpful.

Finally, many MPs identified that the need to be open with their constituents meant that, when they were in their ridings, their schedules were often as busy as when they were in Ottawa. Some went so far as to have 'open house' at their family home every weekend so that constituents with a concern could have consistent access to them without the need for the MP to go into the office on a Saturday. Placed on top of an already demanding schedule of community events, this openness to constituents imposed real strain. Obviously, the MP must continue to be the representative of last resort for their constituents, but it is not hard to see how more staff support and more smoothly functioning ombudsperson structure in other parts of government (perhaps especially immigration) would let MPs spend more time focused on substantive representation, rather than acting as a guide through a confusing and often remote bureaucracy.

Conclusion

MPs are often derided for the perks and benefits of their jobs, and assailed by columnists and editorial cartoonists for their "gold-plated pensions." Whatever merit there is to those criticisms, those who regularly loose their outrage over the benefits of MPs' jobs rarely if ever bother to note the disadvantages of the career, and the fact that the demands of the job and its travel make achieving a work-family balance very difficult; indeed, we suspect that few Canadians would tolerate these demands in their own jobs. In addition, we note that governments, including the present Conservative government, place great emphasis on providing support for families. It is ironic then that the elected members that make up this government are themselves subject to such costly strain on their own family lives.

At first blush, the problem examined here may seem unavoidable. MPs play a dual role. They are at once constituency representatives and members of the House of Commons—one foot in their ridings and the other in Parliament. MPs must spend time in their constituency offices listening to constituents and conducting casework on their behalf, not to mention attending the community events and making local public appearances that are essential to the cultivation of an MPs' reputation as responsive.

MPs must spend time in Ottawa serving in the House, attending caucus and perhaps cabinet meetings, sitting on parliamentary committees, and engaging in all the tasks of a parliamentarian. Time in Parliament is required, and most MPs feel intense pressure to spend time in their constituencies as well. The two demanding aspects of their job, often at significant geographical remove from each other, place very significant strains on MPs' personal lives. While all of the participants in these interviews served as MPs, it is not difficult to imagine that the conditions we have described here dissuaded many capable people from serving in Parliament. That is a shame.

The Office of Premier of Ontario 1945-2010: Who Really Advises?

Patrice Dutil and Peter P. Constantinou

This article focuses on the composition of the Ontario Premier's office and uses an institutionalist approach to put the influence of advisors in context. It looks at expenditures attributed in the Public Accounts to the Premier's Office and staffing. It assumes that the number of advisors and their placement in the decision-making hierarchy should have a material impact on the quantity and quality of the advice being received by the Premier. Among other things the articles shows that the classic policy/administration divide was not clearly defined in Ontario. Instead it exhibits a back-and-forth habit of experimentation that depended on the personality of the prime minister, the capacities of political and bureaucratic advisors, and the stages of the governmental cycle. There have been discernible cycles in the hiring of political staff and in the growth of expenditures that would indicate the Premier's Office was more concerned with campaign preparations and externalities than it was in rivaling bureaucratic influence. Compared to Ottawa, where the structures of the Prime Minister's Office and the Privy Council Office have been far more distinct in this similar time frame, the Ontario experience reveals itself as one of constant experimentation.

For almost two generations, observers of all sorts have almost unanimously lamented the growth in influence of prime ministerial advisors. Members of parliament and public servants have complained that brash young advisors have been presumptive in claiming to speak on behalf of "the power" and in holding that their "spoken truths" had more relevance and importance than any other advice. Scholars have chimed in with the conclusion that the strength of the PM's advisors are indicative of a will to "steer from the centre." In Canada, the most distinguished advocate of this model has been Donald Savoie who diagnosed a growing tendency to "govern from the centre" and the emergence of a new form of "court government" that required an important cadre of advisors.[1]

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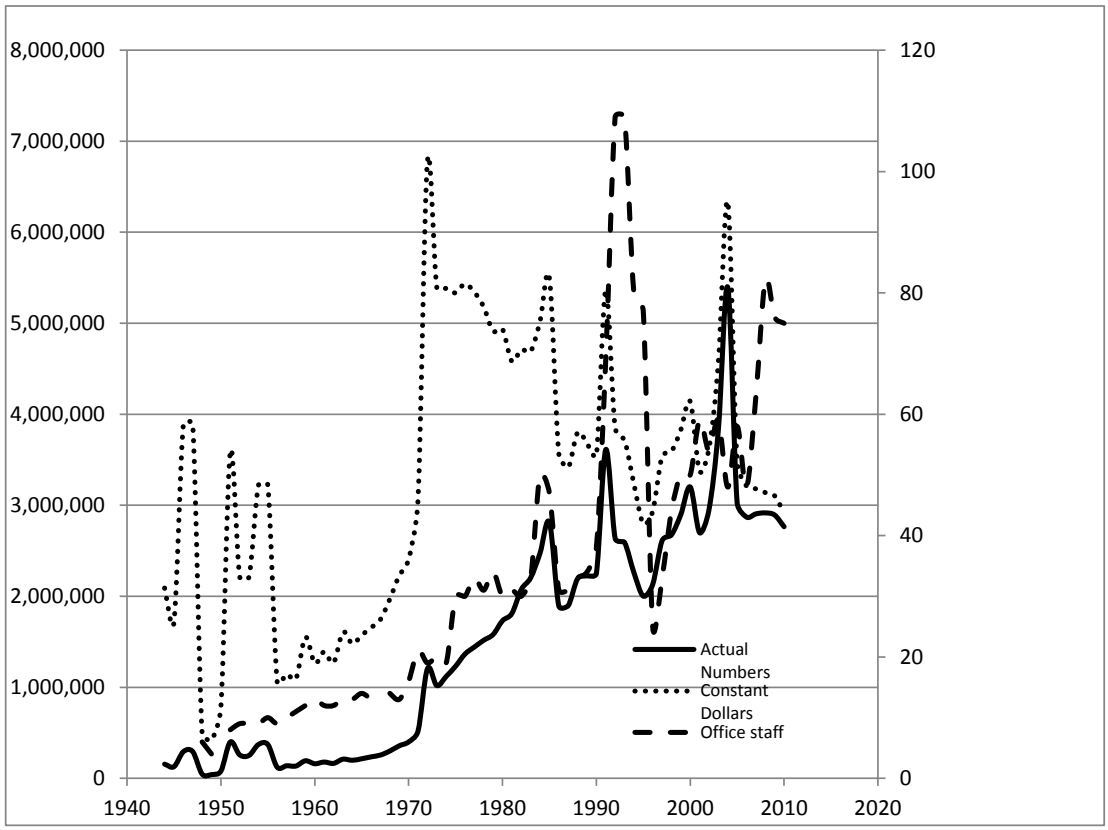
In her study for the Gomery Commission, Liane Benoit noted that political staff (or "exempt staff") played a valuable role in advising Prime Ministers. Paul Thomas was far more critical of political aides, arguing that they needed regulation and accountability.[2] More recently, Ian Brodie defended the work of political staffers, but conceded that training for their roles might be advantageous.[3] In the case of Ontario, Graham White chronicled the evolution of the informal function of advising the premier, but did not examine closely the nature of political aides.[4]

On the heels of the findings presented by Savoie and then of the Gomery Commission on the sponsorship scandal which pointed to unwarranted political intervention in a government program,[5] Peter Aucoin presented a new construct: the New Political Government, which featured "the concentration of power under the Prime Minister and his or her court of a few select ministers, political aides and public servants."[6] Aucoin observed that these pressures, which stemmed from increasing demands for accountability, consistency, transparency and openness, put an unprecedented strain on the Prime Minister.[7] The Aucoin model captured what many journalists have been observing for decades, but was not supported by empirical evidence. How is the "concentration of

Chart 1: Budget and Staffing Levels, Premiers Office, 1945-2010



power" to be measured? Can the "enhanced presence and power of political staff" be proven? Can it be shown that Premiers today spend more time examining the qualification of the mandarins that ultimately report to him or her? Is there proof that public servants are more pressured today than in the past to toe the government line, or show enthusiasm for the government's plans and priorities?

Public Sector Leadership in the Premier's Office

In the immediate post-war period, the "Office of the Prime Minister" was easily ensconced in the east wing of Queen's Park. George Drew, Premier of Ontario from August 1943 to October 1948, had a small clerical staff. The top-ranked public servants reported formally to the Provincial Secretary, a cabinet position, not to the Premier.

Thomas Kennedy's short stay in power marked a clear change in the structure: a formal "Cabinet Office" was created within the Provincial Secretary's Department, and Lorne R. McDonald was named Deputy Minister and Secretary of the Cabinet. Technically, McDonald (he was heretofore known as the Assistant to the Provincial Secretary) reported to Dana Porter, the Provincial Secretary. An important point must be made here in that titles, while important, have always been subject to manipulation and can be misleading. What clearly mattered was the individual giving advice, not the title being occupied.[8] McDonald, in marked contrast to his predecessors, was increasingly advising the Premier directly.

Leslie Frost assumed the Premiership in 1951 and significantly expanded his office, both in terms of employees and budget, so as to receive better advice systematically. McDonald was formally recognized as "Deputy Minister to the Prime Minister and Secretary of Cabinet"; it was now clear that he reported to the Premier. The earlier post of "Clerk of the Executive Council" (H. A. Stewart), which was part of the Provincial Secretary's Office, was also integrated into the office of the Prime Minister. In effect, the Premier's Office had become the cabinet secretariat, signaling a desire to centre cabinet decision-making in Queen's Park's east wing (Frost even added the Ontario Racing Commission to his office in 1952-54, in order to deal with the issues himself).[9]

In 1954, W.M. McIntyre replaced McDonald as Secretary to Cabinet, but did not inherit the title of Deputy Minister to the Prime Minister. Instead, Frost added a new "Executive Officer" to his office, D.J.

Collins, in 1955. In 1958 Frost himself formally took the title of "President of the Council." The Premier, according to Allan Grossman, a minister without portfolio in the last year of the Frost government, "ran a one-man show."[10] In 1960 an Assistant Secretary of the Cabinet was added and in 1961 an adjustment was made to the title of the most senior civil servant – W. M. McIntyre became Secretary of the Cabinet and Director, Executive Council Office.

John Robarts became Premier in 1961 and initially adopted the Frost tradition. In 1963, McIntyre now was formally recognized as wearing three hats: Secretary to the Cabinet, Deputy Minister, and Director of the Executive Council Office. A year later, a new Department of the Prime Minister was established, which would formally divide the Cabinet Office and the Prime Minister's Office. McIntyre, as senior deputy minister, would be its administrative head, but would focus his work on his duties as secretary of the cabinet.

In 1965, a new position was created: Chief Executive Officer (CEO) and Keith Reynolds, another public servant, was hired. He would in effect lead the prime minister's personal and advisory staff. In particular, he would co-ordinate the flow of demands on the prime minister, "in such a way to ensure a minimum demand on the Prime Minister with a maximum result."[11] Like Frost, however, Robarts liked to seek advice widely. As noted by one of his biographers, Robarts's "policy network extended beyond the cabinet to include his political group as well as his personal office staff.

Whereas Frost had had a few advisers and many acquaintances, Robarts tended to cast his net more widely, having a larger circle of advisers over whom he exercised much less control."[12] As a result, the PO was kept at consistent levels in terms of full time employees, with the office's budget showing increases that did not go much beyond inflation. The creation of the CEO position created some tension as Reynolds became the "go to" person to handle political issues, and he acquired a great deal of influence with the Premier, even if he technically reported to McIntyre. When the latter retired in 1969, Robarts promoted Reynolds to the job of Secretary to cabinet and abolished the CEO position thus ending the experiment of two key advisors in his office. Keith Reynolds was listed as "principal assistant" and veered in political decision-making. In the spring of 1970, Reynolds was discussing cabinet postings directly with cabinet ministers.[13]

That year, the report of the Committee on Government Productivity (COGP) noted that the Premier's Office's purpose was to serve the Premier in his three roles: as "first minister of cabinet", as "leader of the government and its chief legislative spokesman," and as "the elected representative of his constituents." The report emphasized that the Premier's Office was mainly concerned with the latter two functions, i.e. *not* as first minister of cabinet. The key advisor to the Premier was the Deputy Minister of the Office of the Premier, while the role of serving the "first minister of cabinet" belonged to Cabinet Office, which was headed by the same individual who acted as Deputy Minister of the Office of the Premier. "This merging of responsibilities into a single position facilitates the functional relationship between the Cabinet Office and the Premier's Office."[14] The functions of the Premier's Office were clearly laid out to provide "advisory support on policy matters and administrative support service to the Premier."

When Robarts retired in 1971, his office's structure was very similar to the one he had acquired in 1961 (the real exception was the creation of the communications function). In reality, the Premier's Office was nothing more than an extension of the Cabinet Office, a trend that would continue for another fifteen years. The structure convinced many that because cabinet office was mostly staffed by public servants, even the political appointees to that body were providing dispassionate, politically neutral advice. Still, Robarts grew weary of the bureaucracy's counsel. In 1970 when a new, more rigorous treasury board was planned, so that it looked more like the federal government's (with a strong staff) Robarts hesitated. Even though the legislation had been drafted and office spaces even allocated, he instructed that the bill had to be sidelined because the project was "being pushed by empire builders, meaning obviously [Carl] Brannan [secretary to cabinet], even perhaps JKR [Reynolds]."[15] For Robarts, the bureaucratization of the Premier's Office had gone too far.

Davis signaled a dramatic new approach to the Office. Upon his election in 1971, he added three "Special Assistants"; there were now five "Executive Officers". Keith Reynolds was retained as Deputy Minister to ensure the transition, but the job of Secretary to Cabinet was given a separate function and occupied by C.E. [Carl] Brannan. Indeed, a formal "Cabinet Office" was recognized for the first time, but was still formally a part of the Office of the Premier. James Fleck, a York University professor and the key architect of the COGP, was brought into the Premier's Office in 1972 as CEO (the title of Deputy Minister to the Prime Minister being abolished) and ordered that his office should vet all speeches by Cabinet ministers before they were delivered (and largely ignored).[16]

The Office of the Prime Minister, now twenty-people strong, including eight executive officers, was

renamed the "Premier's Office" in 1972. Clare Westcott was named Executive Director and Executive Assistant to the premier, and "special assistants" changed their titles to "special assignments", suggesting a deliberate application of resources to what could be deemed partisan activities. To further harmonize horizontal collaboration between ministries, Edward E. Stewart, a former deputy of education who knew Davis intimately, would assume the position of Deputy Minister to the Premier in the summer of 1974 while Fleck was named Secretary to Cabinet. By 1975, thirty people worked in the Premier's Office as the government readied for an election, but the contest went badly for Davis's Big Blue Machine, losing 27 seats and its majority (it now held only 51 of 125 seats). The prospect of facing a resurgent NDP under Stephen Lewis in the official opposition created an urgent need for more coordination at the centre, much like the 1967 election had shaken the Robarts administration. As Edward Stewart noted, "the Premier began to broaden the consultative process on other fronts […]."[17]

Davis retooled the office. First, he renamed it "The Office of the Premier and Cabinet Office." Fleck, who had little patience for politicians, was removed as a result of numerous complaints from the caucus. Davis turned to his former Deputy Minister of Education, Ed Stewart, and placed him in the position of Deputy Minister and Secretary to Cabinet. Ed Stewart then hired Hugh Segal, Davis's campaign secretary in the recent contest, because he had worked in Robert Stanfield's office and had experience in dealing with parliamentary minority position. Segal was placed in the Cabinet Office, reporting to Stewart, not Clare Westcott. Notwithstanding his posting, Segal was hired as exempt staff (i.e. while he was an employee of the crown, he was not hired as a civil servant.)

Wescott, for his part, reorganized his office, hiring Sally Barnes as Director of Communications and hiring seven "public liaison" and four "special assignment" officers. Stewart was an anomaly. Clearly seen by many as a stalwart, non-partisan public servant,[18] he was entirely devoted to the personal success of Bill Davis and the Progressive Conservative Party.[19] As Hugh Segal put it, "When Ed Stewart replaced Fleck as deputy in the premier's office and, subsequently, as secretary to the cabinet, the stage for real repositioning and pragmatic, hands-on political decision-making was set."[20] Indeed, Segal was also Secretary of the Progressive Conservative Policy Committee. By ensuring that his principal assistants were fixtures in the Cabinet Office, Davis effectively hard-wired the central agency of this government so it would work harmoniously with his personal office.

Davis called an election in June of 1977, and increased the government's number of seats in the legislature, but still fell five seats short of a majority. The Premier made more changes to tighten the coordination of his team. Stewart was named Deputy Minister to the Premier and Secretary to Cabinet and Clerk of the Executive Council in 1978, and, as he himself pointed out, "the two operations were linked once again." He proceeded to build capacity: ironically it was the head of the public service that was building up the structures necessary to provide political advice.[21] As Edward Stewart noted later, the PO's operation "was thought to be another serious problem area, particularly as it related to the Premier's availability to those who wanted or needed to see him."[22] More than a decade later, Stewart could still justify this reuniting of the political and administrative.

The March 1981 election finally gave the PCs the majority it had sought since 1975 and Davis made more a few more changes. He created two jobs on assist the streaming of political advice. Keeping Clare Westcott as Executive Director, he appointed John Tory as Principal Secretary to the Premier (a title borrowed from Ottawa). Davis created a new model that would persist for the next thirty years in appointing two leading political advisors with a variety of titles: executive director, principal secretary, or chief of staff. The division of labour between the two positions depended entirely on the skills and background of the individuals. While some were more focused on party affairs, others favoured policy issues and both emphases would change as electoral mandates grew near their deadlines.

David Peterson brought about significant changes to the Office of the Premier and Cabinet Office after the election of 1985. Structurally, the government abandoned the practice of giving the position of Secretary to Cabinet and Deputy to the Premier to one person. The Cabinet Office would be led by the Secretary to Cabinet, Robert Carman, a career public servant. The Premier's Office would be led by the Principal Secretary to the Premier, Hershell Ezrin, a former federal public servant, who oversaw formal departments of policy, legislation and communications (he was succeeded by Vince Borg, a long-trusted aide to Peterson, in 1988; and then Daniel Gagnier, who took the title of Chief of Staff in 1989). By the time the Liberal Government was defeated in 1990, 38 people worked in the Premier's Office.

The largest growth in the Premier's Office took place under the Premiership of Bob Rae, who was deeply suspicious of the public service, and who had no faith that it could carry out his government's wishes.[23] Within

Ontario Prime Ministerial Advisers, 1945-2010									
Premier	Deputy Minister	Clerk of Executive Council	Secretary to Cabinet	Director, Executive Office	Chief Executive Officer	Principal Assistant	Executive Director	Principal Secretary	Chief of Staff
George Drew	None	H.A. Stewart							
Thomas Kennedy	L.R. McDonald		L.R. McDonald						
Leslie Frost	L.R. McDonald		L.R. McDonald						
			W.M. McIntyre	W.M. McIntyre	D.J. Collins				
John Robarts	W.M. McIntyre		W.M. McIntyre	W.M. McIntyre	Keith Reynolds				
	W.M. McIntyre		Keith Reynolds			Keith Reynolds			
William Davis	Keith Reynolds		C.E. Brannan		James Fleck				
			James Fleck						
	Ed Stewart		Ed Stewart				Clare Westcott	John Tory	
David Peterson			Robert Carman Peter Barnes				Gordon Ashworth	Herschell Ezrin Vince Borg Daniel Gagnier	
Bob Rae			Peter Barnes David Agnew				Richard McLelland	David Agnew Melody Morrison	
Mike Harris			Rita Burak Andromache Karakatsanis					David Lindsay John Weir Steve Pengelly	Guy Giorno Ron McLaughlin Jeff Bangs
Ernie Eves			Andromache Karakatsanis					Steve Pengelly	Jeff Bangs
Dalton McGuinty			Tony Dean Shelley Jamieson					David McNaughton	Don Guy Peter Wilkinson

months of its installation, the Premier's Office almost doubled from 38 to 69 in 1991, 102 in 1992, and 109 in 1993. Rae abandoned the "Chief of Staff" designation for his chief political advisor, and named his long-time aide David Agnew as Principal Secretary while also appointing an executive director. Rae also reluctantly kept Peter Barnes, the cabinet secretary appointed by David Peterson, for two years. In 1992, borrowing from the practice of NDP governments in Saskatchewan and Manitoba, Rae appointed Agnew as Secretary to Cabinet and Clerk of Executive Council, hoping to ensure more compliance from the bureaucracy. Agnew ended his membership in the NDP at that point.

The tide was again reversed three years later. Elected in 1995, the Mike Harris government aimed at reducing the size of government and government spending, and the PO did not escape cutbacks. In the first full year of the first term of the Harris government, the Premier's Office staff complement was cut by two thirds, matching the levels of the early years of the Davis government.[24] In 2003 the Liberals under Dalton McGuinty reduced the staff complement in his office to 48.

The Evolving Budget

Advisors can be hired, but they can also be rented, so it is important to consider how much money was actually spent by Premiers on their offices. In 1945,

the first year of examination in this study, $127,798 was spent on the Office of the Prime Minister ($1.7 million). In the next two years, expenditures more than doubled, growing to $292,900 per year. Drew clearly spent a colossal sum of money (even by 2010 standards) on occasional staff and to meet people and collect their advice. Frost also used his budgets to do more than put people on payroll. As the election year of 1951 approached, expenditures in the Prime Minister's Office grew to $399,142 with a staff of only seven people. Most of that public money went to defray the cost travel for the premier and his key cabinet ministers and staff and for political advice of all kinds. Over the following years the expenditures were reduced until the election in 1955 when they grew again to $371,511. The PO's expenditures dropped dramatically to $121,576 the following year and remained similarly low until the election of 1959 when they were raised to $192,917. After Frost was elected for a last time in 1960, expenditures were again reduced slightly to $160,248, but raised to $178,694 in 1961, his final year in office, as the government prepared for an election with a new leader.

By 1970, after nine years under Robarts, the Premier's office counted ten employees but was spending a great deal more, $500,000 ($2.9 million). Within a year, those numbers were doubled as Bill Davis invested massively in the office. By the time the Tory Dynasty ended in 1985, the budget of the PO amounted to nearly $3 million ($5.8 million). A year after the Peterson government had come to office, there were 31 people employed, growing to a complement of 38 and expenditures of $2,251,132 in 1990. The Rae government invested heavily in the Premier's Office and in 1991, the budget went from $2,251,132 to $3,611,438 as various government liaison offices were integrated into the Premier's Office. (PO operations would not cost this much again until 2004 when the Liberals returned to power and $5,392,121 was spent.) Within a year there were 109 staff – a 63% increase in one year – although the budget did not follow. Indeed, the budget fell as staff numbers increased, indicating again that the government, as in Frost's day, was seconding staffers who were being paid for by other departments. That practice was abandoned by 1995 and a measure of equilibrium was reestablished as the government tried to reduce expenditures, the number of staff was reduced to 80 in 1994 and 77 in 1995, although expenditures were still more than $2m.

In his first year in office, 2003, Premier McGuinty reduced the staff complement in his office to 48, but expenditures went from $3,831,077 to $5,392,121, a dramatic explosion that went far beyond staff salaries. Staff numbers grew to 63 prior to the election of 2006, and grew again in 2007 to 82 – a 30% increase, before settling to a complement of 75 people.

Conclusion

Premiers in Ontario have always required political advice. Over time, depending on circumstance and their own character and needs, they found counsel among a series of concentric circles: Family, old and trusted friends, political allies within their party, ministers, leaders in the public service, members of parliament, business magnates, labour leaders, interest group representatives, local authorities (both political and grass-roots). As Premiers faced more complicated questions brought about by the economic, social and environmental consequences of infrastructure building, the vast expansion of government services, and state regulation of a wider variety of socio-economic activity, they required more and better briefings to face down oppositions that were well prepared, knowledgeable and well connected to civil society, they have had to hire political advisors to work in their office.[25]

The experience of the Ontario government in evolving towards a "new political governance" over the past fifty years shows a number of realities. First, it involved a growth in the office of the Premier's Office, both in terms of full-time employees and in terms of budget. Over the 55 year period under study, the budget changes correlated loosely with staffing growth. There were many years, however, where governments clearly seconded staff to the Premier's Office. This was shown when staff numbers where high relative to budgets. Alternatively, Premiers' Offices spent moneys far greater than what was required for payroll. These moneys were spent on myriad items, typically in election years, to pay for polls, consultations, travel. It is remarkable that in constant dollars, the Premier's Office actually has spent less in the last five years than in the 1940s and 1950s and through most of the 1970s and 80s.

As government operations grew, so did the staffing of the Premier's Office, but not in a direct correlation. The relative growth of the premier's staff resists easy conclusions. When the government of Ontario's budget hit the $1 billion mark in 1960, less than 10 people worked in the Prime Minister's Office. Forty years later, the government of Ontario's budget hovered around $120 billion (a near 12,000% increase). By contrast, the Premier's staff has only grown by 650%. At the height of government hiring in the early 1990s, when the number of Ontario employees reached 90,000, 110 people worked for the Premier directly, a

ratio of .001:1. In 2010, with roughly 60,000 people on the government payroll (not counting the employees in the 635 agencies, board, commissions and foundations of the government of Ontario) and 75 people working in the premier's office that ratio is likely less than the same: .001:1.

The numbers of staffers in the Premier's office have been relatively small, no matter how they are looked at, and with the exception of the dramatic, if short-lived, staff growth of Premier Rae's office or the equally dramatic and spontaneous growth of the budget of the Premier's office in early 2000s, the growth has been steady and undramatic.

Judging from the data of the last 55 years, it is clear that the budgets of the Premier's Office almost always increased in election years (1945, 1948, 1951, 1955, 1959, 1963, 1971, 1975, 1977, 1981, 1985, 1990, 1995, 1999, 2003, 2007), an indication that the priority of the Premier's office was to communicate externally when the electorate was most responsive rather than in exercising influence on the bureaucracy. The cycle of hiring that accented ends-of-term allow us to put forward a tri-partite model for political aides in the Premiers Office that contrast with the accepted observation that these hires were made for administrative purposes. On the contrary: Most were hired as *propagandists*, i.e. to inform various constituencies of the government's accomplishments and intentions. Others were used as *funnels*, i.e. as liaison officers that would make sense of the information on what stakeholders considered positive and negative about the government's priorities and actions. They were specialists in managing a process where the views of a wide range of actors could be amassed and presented of in a package that could be absorbed by busy political executives. The dual role of political staffers made them young ambassadors of sorts for the "court."[26]

The third group was composed of a very small number of advisors who were expected to generate political counsel on policy proposals or policy advice on political or administrative issues. Over time, very few could be relied upon to actually generate policy advice on their own and wield the influence necessary to veto initiatives, but they could be depended upon to provide a political filter to the ideas and advice advanced by others and ensure that there were "no surprises."

We argue that while some advisors (either inside the Premier's Office or outside) are individually more influential than others, there is no evidence of a trend indicating that they are more influential today than they have been in the past. Numbers, in this case, tell an important story. Since the 1940s, the Premier's Office in Ontario has hired a number of advisors that roughly corresponded with the growth of government. But not all advice is hired–some of it is also purchased. The evidence demonstrates that Premiers have in the past outspent their successors considerably to get political advice. We see no evidence that advisors today are any more influential than they were in the past. Certainly, there are more of them than before, but then again government is involved in more files than in the past and is larger than it was in the past.

Our third argument is that Ontario followed international trends in terms of building up the office of the chief political executive and that in many ways it paralleled and sometimes anticipated the centralization of power in Ottawa that has been identified by others in the 1970s and 1980s.[27] The Premier's office slowly started to change in the 1960s as it increasingly hired professional political aides in response to the accelerating news cycle. As the years progressed, and as the bureaucracy grew dramatically, Premiers maintained the need for a counterbalance by seeking out the outside views. For the public service in Ontario, serving the premier (or ministers) with briefings about political consequences of government policy was seen as legitimate. Indeed, the very structure of a combined Deputy Minister (Premier's Office) and Secretary to Cabinet facilitated the combination of advice. Political advice also came in the form of "kitchen cabinets", interviews with individual MPPs, caucus meetings and field trips. In sum, there has been a great deal more consistency since the Second World War than disruption in the office of the Premier of Ontario. Naturally, the numbers of staff have grown as government has taken on more responsibility. But the numbers show that Premiers also have devoted high levels of funding to their offices over the past half-century. Together, these factors add some complexity to the discussion of the rise of a "new political governance" by pointing to the reality that a native "Ontario style" may be just as important as international trends of governance.

Notes

1 See Donald Savoie, *Governing from the Centre* (Toronto: University of Toronto Press, 1999) and *Court Government and the Collapse of Accountability in Canada and the United Kingdom* (Toronto: University of Toronto Press, 2008).

2 Paul Thomas "Who is Getting the Message? Communications at the Centre of Government," by Paul G. Thomas. In Public Policy Issues and the Oliphant Commission: Independent Research Studies. Ottawa: Public Works and Government Services Canada, Ottawa, 2010.

3 Ian Brodie, "In Defence of Political Staff", *Canadian Parliamentary Review*, Vol 35, No. 3, 2012, pp 33-39.

4 Graham White,"Governing from Queen's Park: The Ontario Premiership," in Leslie A. Pal and David Taras (eds), 1998. *Prime Minister and Premiers: Political Leadership and Public Policy in Canada* (Toronto: Prentice-Hall).

5 Liane Benoit, "Ministerial Staff: The Life and Times of Parliament's Statutory Orphans," In *Restoring Accountability: Research Studies Volume 1: Parliament, Ministers and Deputy Ministers*. Ottawa: Public Works and Government Services Canada, Ottawa, 2005.

6 Peter Aucoin, "Improving Government Accountability," *Canadian Parliamentary Review* Vol. 29, No. 3, 2006 p. 23.

7 *Ibid.* pp 23-24. See also his posthumous article "New Political Governance in Westminster Systems: Impartial Public Administration and Management Performance at Risk" in *Governance*, Vol. 25, No. 2, pp 177–199, April 2012. Jonathan Boston and J.R. Nethercote are very critical of Aucoin's perspective in the same journal. See their "Reflections on 'New Political Governance in Westminster Systems', pp 201-207.

8 F.F. Schindeler, *Responsible Government in Ontario* (Toronto: University of Toronto Press, 1969) p. 45.

9 See Roger Graham, *Old Man Ontario: Leslie Frost* (Toronto: University of Toronto Press, 19), pp 259-62.

10 *Ibid*., p. 173.

11 *Ibid*., pp 133-34.

12 *Ibid*. p. 88.

13 Allan Grossman Diary, cited in Peter Oliver, *Unlikely Tory: The Life and Politics of Alan Grossman* (Toronto: Lester & Orpen Dennys, 1985) p. 236.

14 Committee on Government Productivity.

15 *Ibid*., pp 239-240.

16 Peter Oliver, p. 295. Eddie Goodman, *Life of the Party: The Memoirs of Eddie Goodman* (Toronto: Key Porter, 1988), p. 222. Goodman indicates that Fleck was promoted by John Cronyn, a London-based senior executive at Labatt's Brewers.

17 Edward E. Stewart, *Cabinet Government in Ontario: A View from Inside*, (Halifax: Institute for Research on Public Policy), 1989, p.55.

18 Goodman, p. 261: Goodman literally advised Premier Davis not to consider moving to the federal stage in part because "Stewart is not going to be with you in Ottawa".

19 See for instance, Ian Scott (with Neil McCormick), *To Make a Difference: A Memoir* (Toronto: Stoddart, 2001), p. 119. Scott describes Stewart as nothing else than "Davis's right-hand man".

20 See Hugh Segal, *No Surrender: Reflections of a Happy Warrior in the Tory Crusade* (Toronto: HarperCollins, 1996), p. 57; Goodman, pp 224, 237.

21 Stewart, p. 41.

22 Stewart, p. 20.

23 Bob Rae, *From Protest to Power: Personal Reflections on a Life in Politics* (Toronto: Viking, 1996), p. 130.

24 David Cameron and Graham White, *Cycling into Saigon: The Conservative Transition in Ontario* (UBC Press Location: Vancouver, 2000), p. 112.

25 John Halligan, "Policy Advice and the Public Service," in B.G. Peters and Donald Savoie, *Governance in a Changing Environment* (Montreal: McGill-Queens University Press, 1995).

26 Donald Savoie, *Court Government and the Collapse of Accountability in Canada and the United Kingdom* (Toronto: University of Toronto Press, 2008). Michael Prince parses differences between advisors who "speak truth to power" and those who "share truths with multiple actors of influence" in "Soft craft, hard choices, altered context: Reflections on Twenty-five years of policy Advice in Canada" in L. Dobuzinskis, M. Howlett and D. Laycock, *Policy Analysis: The State of the Art* (Toronto: University of Toronto Press, 2007).

27 Marc Lalonde, "The Changing Role of the Prime Minister's Office" *Canadian Public Administration*, Vol. 14, No. 4, December 1971, pp 509-537.

Parliamentary Bookshelf

Challenges of Minority Governments in Canada by Marc Gervais, Invenire Books, Ottawa, 2012.

Canadian academic literature on minority government is sparse considering there have been nine such instances at the federal level since 1957 and many more in the provinces. Peter Russell (*Two Cheers for Minority Government, 2008*) painted a rosy picture of possible benefits while others have taken a more critical view in light of recent experience.

This book, based in large part on a 2011 doctoral dissertation, takes a different approach. After reviewing the literature and discussing the theory of minority government it compares in detail four specific minority parliaments; Diefenbaker (1957-58), Pearson (1963-65), Clark (1979-80) and the first Harper minority (2006-2008) with a view to how successful they have been at maintaining power and controlling the legislative agenda. He measures such things as the duration of Parliaments (Pearson's first sat for 418 days; Clark's for only 49) and legislative output (Diefenbaker managed to get 90% of his bills passed in 1957-58; Clark only 21%).

The examples represent four different types of minority government: short duration/high output (Diefenbaker); long duration/high output (Pearson); short duration/low output (Clark) and long duration/low output (Harper).

Individual chapters on each case provide a concise summary of politics during that time with particular emphasis on the role of parliamentary procedural and political strategy. For example the very productive Diefenbaker minority benefitted from a weak opposition with a decimated Liberal Party and a soon to be defunct CCF. Evident public support which eventually manifested itself in the overwhelming majority of 1958, ensured the minority government was able to implement its agenda.

The first Pearson minority also faced a weak opposition under a discredited Mr. Diefenbaker and a Social Credit Party divided into two separate groups one of which, the Creditistes, were inclined to keep the Liberals in power. Mr. Pearson's willingness to compromise and the NDP's support for some major social changes gave the Liberals enough votes to survive gruelling Throne Speech debates, budget bills, and a heavy legislative program.

The Clark minority appeared to have some advantages (a leaderless opposition) but an unwillingness to compromise on major policy initiatives and failure to work with smaller parties led to its early demise.

The first Harper minority began with its chief rival weakened by the sponsorship scandal. The seat distribution was favourable to the Conservatives as support from a single opposition party was all the government needed and no combination of two opposition parties had enough votes bring down the Conservatives. Using a variety of parliamentary manoeuvers the Conservatives managed to prevail through three Throne Speech Debates and three Budgets. But when their legislative projects became bogged down in committee the Prime Minister dissolved Parliament despite having just enacted legislation fixing the date for elections.

It is unfortunate that for reasons of time and space not every minority parliament was examined. A survey of the Martin minority, for example, would have shown that many troubling aspects of the Harper approach really began under Mr. Martin.

One question left unanswered by the book is whether recent minority governments are significantly different than earlier ones in the way they deal with important parliamentary conventions. Is it now *de rigeure* for minority governments to play fast and loose with the rules, to hang onto power by any means be it enticing members to cross the floor in exchange for cabinet posts, ignoring votes of non confidence, prorogating to avoid defeat, or defining accountability so that it never seems to include resignation?

The author is careful not to pronounce directly on whether previous minority governments were more respectful of the unwritten rules of Westminster style government but attentive readers will draw their own conclusions.

Gary Levy

Editor

Legislative Reports

Saskatchewan

The fall sitting concluded on Thursday, December 6, 2012. During the fall period of session, 42 government bills and 1 private members' public bill were introduced.

The Lieutenant Governor, **Vaughn Solomon Schofield** gave Royal Assent to 2 bills including an Appropriation Bill to defray the expenses of the Public Service. The other bill to receive Royal Assent was Bill No. 66 – *The Saskatchewan Advantage Grant for Education Savings (SAGES) Act.*

100th Anniversary of the Legislative Building

In December 2011, a time capsule was removed from the cornerstone of the Legislative Building. The new 2012 time capsule was filled and placed back into the cornerstone on December 6. Contents included a letter and photo from the Speaker to future MLAs with samples of the Chamber carpet before and after 2012, letters from the Governor General, Grade 4 students, a handwritten letter from the Premier, a selection of seeds from several popular crops grown in Saskatchewan, a sample of copper from the Dome and many other artifacts.

Speaker's Educational Outreach Program

Speaker **Dan D'Autremont** has reinstituted the Speaker's Outreach Program. It aims to promote awareness and understanding of the Legislative Assembly and the democratic process through a non-partisan approach. The Speaker's Outreach Program also provides a means of bringing the Legislative Assembly to students who are unable to visit. The Speaker has presented to 17 classes since November.

Stacey Ursulescu
Committee Clerk

Prince Edward Island

The Second Session of the Sixty-fourth General Assembly was prorogued on November 9, 2012. The Third Session of the Sixty-fourth General Assembly opened on November 13, 2012, with the Speech from the Throne delivered by the Lieutenant Governor **H. Frank Lewis**. Highlights of the Speech included new testing for Grade 9 literacy and Grade 11 math skills; an exploration of collaborative emergency centres, and the introduction of pension legislation. Government also announced its goal of 75,000 jobs by 2016 and a number of priorities in health care.

Significant Legislation

During the fall sitting of the Legislative Assembly, several pieces of significant legislation received Royal Assent:

Bill No. 15, *Highway Traffic (Combating Impaired Driving) Amendment Act*, strengthens existing legislation by expanding the ignition interlock program to include mandatory participation for first-time offenders; outlining minimum time frames for participation in the program including: one year for the first offence, two years for the second offence, and five years for the third offence; increasing the mandatory time in the ignition interlock program by one year if a passenger under the age of 16 is in the vehicle at the time of the offence; and adds new measures to impound vehicles of drivers convicted of offences.

Bill No. 6, *Public Health Act*, will prohibit the marketing, sale or access to tanning equipment to a person under the age of 18 years. It also requires a person who appears to be younger than 18 years of age to produce identification as proof of age in order to obtain access to tanning equipment. The bill provides an exemption for ultraviolet light treatments as prescribed by a medical practitioner or nurse practitioner.

The Retail Sales Tax Act, Bill No. 24, ratifies the Comprehensive Integrated Tax Coordination Agreement between Prince Edward Island and the federal government which

provides for the implementation of the Harmonized Sales Tax as of April 1, 2013.

Harmonized Sales Tax

In November, the province signed the Comprehensive Integrated Tax Coordination Agreement with the Government of Canada which provides the framework necessary for the implementation of the Harmonized Sales Tax (HST) in Prince Edward Island. It confirms the province's policy to eliminate the Provincial Sales Tax, currently at 10 per cent, and replace it a value-added tax of 9 per cent. Combined with the Goods and Services Tax, this will create a 14 per cent HST, which will come into effect on April 1, 2013. The agreement indicates that the province will provide specific point-of-sale rebates of the provincial portion of the HST for books, heating oil, children's footwear and children's clothing, as well as a 35 per cent rebate for charities and qualifying non-profit organizations. A new Prince Edward Island Sales Tax Credit will allow a rebate of up to $200 to low and modest income individuals and families in the province to assist with the transition to the new taxation system.

Appointment of Lands Protection Act Commissioner.

On November 8, 2012, **Wes Sheridan**, Minister of Finance, Energy and Municipal Affairs, announced the appointment of **Horace Carver** to the position of Lands Protection Act Commissioner. Mr. Carver served three terms in the Prince Edward Island Legislature with roles as Attorney General and as Minister of Community and Cultural Affairs as well as that of Government House Leader. He was active in the drafting and passage of the *Lands Protection Act* in 1982 which regulated the amount of property that can be held by any one person or corporation in the province.

Mr. Carver will start a review of the *Lands Protection Act* in January 2013, studying the existing legislation, holding consultations and determining what changes, if any, might be needed.

Judicial Review – Provincial Nominee Program

In early November, in compliance with the decision of a judicial review, the province released the names of the corporations that received investments through the Provincial Nominee Program, a federal-provincial partnership designed to expedite immigration for individuals and their families who met provincial criteria in support of business and economic development. The program had a significant impact on the Island economy with businesses having access to millions of dollars of investment capital. In June of 2010, then-Acting Information and Privacy Commissioner, **Judith Haldemann**, upheld the decision of the administrator of the program, Island Investment Development Incorporated, to withhold the names of the businesses which participated in the program. Hearings on the matter were held at the Supreme Court in March 2012 and the decision was issued on November 2, 2012.

Fiscal Update

The Minister of Finance, Energy and Municipal Affairs issued a fiscal update for the province on November 29, 2012. Mr. Sheridan indicated that the 2013 deficit is expected to come in at $79.6 million, an increase over the budgeted deficit of $74.9 million. The primary reason for the increase is expected crop insurance losses following the dry summer of 2012. In addition, tobacco tax revenues are $2.5 million lower than forecast.

Capital Budget

In late November, the province issued its capital budget for 2013-14, with $83.9 million in infrastructure investments planned for the year. The Minister of Finance announced that spending would be more closely aligned to traditional levels, signaling an end to the stimulus spending of recent years.

Gilbert R. Clements

Gilbert R. Clements died on November 27, 2012, at the age of 84. "Mr. Clements made an outstanding contribution to the public life of this province during his long and distinguished career as a member of the legislative assembly, cabinet minister and lieutenant governor," said Premier **Robert Ghiz**. "He will be especially remembered for his commitment to the protection and enhancement of the environment and his loyalty to the people he represented." Mr. Clements was first elected to the Prince Edward Island Legislative Assembly in the district of Fourth Kings in 1970. He was subsequently reelected in 1974, 1979, 1982, 1986, 1989 and 1993. In 1981, he served as interim leader of the Liberal Party and leader of the Official Opposition. In 1995, he was appointed as the province's Lieutenant Governor. He held a number of cabinet positions in the government of Premier **Alex B. Campbell** and was Minister of Finance in the government of Premier **Joe Ghiz**.

Marian Johnston
Clerk Assistant and Clerk of Committees

Yukon

On December 13th, the 2012 Fall Sitting of the 1st Session of the 33rd Legislative Assembly adjourned. The 28-day sitting had convened on October 25th.

Assent

During the course of the Fall Sitting, the following bills (all Government bills) received Assent:

- Bill No. 7, *Second Appropriation Act, 2012-13*
- Bill No. 42, *Donation of Food Act*
- Bill No. 43, *Act to Amend the Securities Act*
- Bill No. 44, *Miscellaneous Statute Law Amendment Act, 2012*
- Bill No. 45, *Act to Amend the Municipal Finance and Community Grants Act*
- Bill No. 46, *Act to Amend the Income Tax Act*
- Bill No. 47, *Act to Amend the Retirement Plan Beneficiaries Act*
- Bill No. 48, *Act to Amend the Access to Information and Protection of Privacy Act*
- Bill No. 49, *Act to Amend the Oil and Gas Act, 2012*
- Bill No. 50, *Statute Law Amendment (Nurse Practitioners) Act*
- Bill No. 51, *Residential Landlord and Tenant Act*

Whistle-blower Committee Report

On December 4, **Patti McLeod**, Chair of the Select Committee on Whistle-blower Protection, tabled the Committee's Final Report. The other members of the Committee were **Doug Graham, Stacey Hassard, Sandy Silver** and **Jan Stick.** Established during the 2012 Spring Sitting, the Select Committee had been given access to the records of its namesake (which had not tabled a final report) from the preceding Legislature. The Committee was not tasked with drafting a bill, but with reporting to the House "its findings and recommendations respecting the central issues that should be addressed in whistle-blower protection legislation." The Committee's final report is online at: http://www.legassembly.gov.yk.ca/pdf/whistle_blower_committee_final_report__4dec2012.pdf

Protesters in the Gallery

The presence of protesters in the public gallery was a recurring feature during the Sitting. Whereas the protesters on opening day were orderly and left without incident, this was not always the case. On several occasions, Speaker **David Laxton** cautioned people in the gallery against participating in the proceedings, and to desist from distracting behaviour (e.g. applause, standing rather than remaining seated, holding conversations in the gallery). On two occasions, the Speaker directed visitors who persisted in distracting behaviour to leave the Chamber. This included a group of high school students who, having stood en masse and been directed by the Speaker to resume their seats, proceeded shortly thereafter to run up and down the gallery staircase. The students, who were protesting the absence of an on-site gymnasium during the reconstruction of their high school, reportedly adopted the staircase tactic to "exercise" absent a dedicated gym.

The physical layout of the Chamber makes the public gallery a prime location for a protest, from the perspective of those seeking attention for a given issue. The public gallery (due to its placement above the main entrance to the Chamber) is in clear view of all MLAs and of the media gallery. The attempt of protesters to demonstrate in the gallery (as opposed to outside the legislative Chamber) has increasingly brought the Speaker – charged with maintaining order and decorum in the House – into the sights of those seeking to stage a protest in the gallery. The latter perceive themselves as having a "right" to protest in the Chamber though this is contrary to parliamentary rules and practice.

Other protesters during the Fall Sitting were motivated by oil and gas development issues – such as concerns regarding the environment (such as hydraulic fracturing), and First Nations rights. These issues were the subject of questions, motions, petitions, etc. Bill No. 49, *Act to Amend the Oil and Gas Act, 2012* served as a focal point for these concerns, particularly a section of the bill that removed an existing "veto" which First Nations without land claims and self-government agreements had over oil and gas development on their traditional territories.

Bill No. 51

Bill No. 51, *Residential Landlord and Tenant Act*, formed part of the government's response to the Report of the Select Committee on the *Landlord and Tenant Act* (tabled in November 2010) of the 32nd Legislative Assembly. The new Act replaces the decades-old *Landlord and Tenant Act*, with (according to the explanatory

notes that accompanied the bill) "a modern comprehensive stand-alone Act for the regulation of residential tenancies including provisions setting out the rights and responsibilities of landlords and tenants." It is anticipated that the government will at a future point introduce a bill to deal with commercial tenancies.

Committee Membership Changes

Motions were carried amending committee memberships to remove former Interim Liberal Party Leader **Darius Elias** – now an Independent member – from committees, and to appoint **Sandy Silver**, the new Interim Liberal Leader (currently the sole member of the Liberal Party caucus) to the committees. Mr. Silver is now a member of all five of the Assembly's standing committees. Mr. Elias is no longer on any of the committees.

As well, a motion was carried removing former NDP House Leader **Jim Tredger** from the Standing Committee on Rules, Elections, and Privileges, and appointing Ms. Stick, the current NDP House Leader, to the Committee.

Linda Kolody
Deputy Clerk
Yukon Legislative Assembly

ASSEMBLÉE NATIONALE
QUÉBEC

The general election of September 4, 2012 produced a minority government with two parliamentary groups forming the opposition. Temporary amendments made to the Standing Orders and the Rules for the Conduct of Proceedings were adopted for the duration of the 40th Legislature. These amendments primarily concern the membership of committees, the allocation of chairmanships and vice-chairmanships, as well as quorum requirements.

Budget and Estimates

On November 20, the Minister of Finance and the Economy, **Nicolas Marceau**, delivered the 2013-2014 budget speech. On November 30, at the conclusion of the 25-hour debate held in the House and in the Committee on Public Finance, the budgetary policy of the Government of Québec was adopted by the following vote: 49 yeas, 48 nays and 0 abstentions.

Cabinet and parliamentary offices

On December 4, Premier **Pauline Marois** made a few changes to the composition of her Cabinet and to her team of parliamentary office holders. **Yves-François Blanchet** was appointed Minister of Sustainable Development, Environment, Wildlife and Parks, in place of **Daniel Breton. Véronique Hivon**, was restored to her previous post as Minister for Social Services and Youth Protection. **Marjolain Dufour** was appointed Chief Government Whip and **Sylvain Pagé** was named caucus chair.

Legislation

Eleven bills were passed during the sessional period of the 40th Legislature: 9 public bills on behalf of the Government and 2 private bills. Of these bills, 10 were passed with the unanimous consent of the Members of the Assembly. Among the more noteworthy bills passed are Bill 1, *Integrity in Public Contracts Act*, and Bill 2, *An Act to amend the Election Act in order to reduce the elector contribution limit, lower the ceiling on election expenses and increase public financing of Québec political parties*.

Directives from the Chair

President **Jacques Chagnon** gave a directive on November 21, in reply to the Chief Government Whip, who requested a decision from the Chair on the following question: "Should the Canadian flag be removed from the Legislative Council Chamber at all times during parliamentary proceedings?" The President ruled that the decision should not only be his but that of all the Members and thus, in accordance with Standing Order 41, submitted the matter to the Assembly for its decision. It should be noted that no President had referred to this standing order since the adoption of the current Standing Orders, in 1984. On December 4, the Assembly voted in favour of keeping the Canadian flag in the Legislative Council Chamber of the Parliament Building.

The President was also asked to give a directive on a motion moved by a Member of the Official Opposition, **Yolande James**, under business standing in the name of Members in opposition. This motion sought to instruct the Committee on Transportation and the Environment to shed light on the events of October 24, 2012 concerning the action taken by the Minister of Sustainable Development, Environment, Wildlife and Parks and Member for Sainte-Marie-Saint-Jacques, Mr. Breton, with regard to the

Bureau d'audiences publiques sur l'environnement (BAPE), an independent public agency. To this end, the motion provided in particular for the summoning of the Minister and of any person the Committee deemed necessary to hear.

On November 21, Government House Leader, **Stéphane Bédard**, raised a point of order questioning the admissibility of this motion. In so doing, he alleged that the motion aimed to cast reflections upon the conduct of the Minister and that this was contrary to the principle whereby no Member shall refuse to take another Member at his word, the Minister having already given statements and answered questions on the matter, thus preventing the Committee from being instructed to examine the matter.

The Chair then ruled that the motion was consistent with the authority vested in both the Assembly and parliamentary committees to hear ministers on matters falling within their jurisdiction in accordance with the principle of ministerial responsibility whereby ministers are responsible for their actions before the Assembly, which has the power to demand accountability. After debate thereon, this motion was carried by the Assembly the following day.

Committees

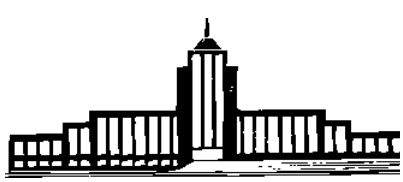
One particularly significant impact resulting from the recognition of two parliamentary groups forming the opposition and the adoption of temporary rules for the 40th Legislature was a change in the membership of committees so as to represent the proportion of Members in the House.

The adoption of the Government's budgetary policy during the 2012 fall sessional period and the tabling of the estimates of expenditure at the same time resulted in the latter being exceptionally examined by the standing committees in February, which is unusual since the last time the estimates were examined during a period other than the spring dates back to June 2007.

On November 22, the Committee on Transportation and the Environment was instructed to examine the events of October 24, 2012, as mentioned in the section on the directives from the Chair. On the same day, the Committee held a first deliberative meeting to organize its proceedings regarding this order of reference.

On November 29, the Member for Sainte-Marie–Saint-Jacques resigned from his ministerial post. Subsequently, during another meeting held on December 4, the Committee agreed to postpone this order until January 2013.

Christina Turcot and **Dany Hallé**
Parliamentary Proceedings Directorate



Newfoundland and Labrador

The House of Assembly convened for the Fall sitting on November 19th, 2012 following a cabinet shuffle in October. Included in the shuffle were:

- **Thomas W. Marshall** appointed Attorney General, retaining his responsibilities as Minister of Finance, President of Treasury Board, Minister Responsible for the Human Resource Secretariat, Minister Responsible for the Public Service Commission, and Minister Responsible for the Newfoundland and Labrador Liquor Corporation;
- **Tom Hedderson**, formerly Minister of Transportation and Works, appointed Minister of Environment and Conservation, Minister Responsible for the Multi-Materials Stewardship Board and Minister Responsible for the Office of Climate Change, Energy Efficiency and Emissions Trading;
- **Darin King**, formerly Minister of Fisheries and Aquaculture, appointed Minister of Justice, Government House Leader, and Minister Responsible for the Labour Relations Agency;
- **Felix Collins**, formerly Minister of Justice and Attorney General, appointed Minister for Intergovernmental and Aboriginal Affairs;
- **Terry French**, formerly Minister of Environment and Conservation, appointed Minister of Tourism, Culture and Recreation;
- **Derrick Dalley**, formerly Minister of Tourism, Culture and Recreation appointed Minister of Fisheries and Aquaculture;
- **Keith Hutchings**, appointed Minister Responsible for the Office of Public Engagement and Deputy House Leader retaining his existing duties as Minister of Innovation, Business and Rural Development and Minister Responsible for the Research & Development Corporation;
- **Paul Davis**, formerly Minister of Service NL, appointed Minister of Transportation and Works and Minister Responsible for the Newfoundland and Labrador Housing Corporation. and
- **Nick McGrath**, appointed

Minister of Service NL, Minister Responsible for the Workplace Health, Safety and Compensation Commission, Minister Responsible for the Office of the Chief Information Officer and Minister Responsible for the Government Purchasing Agency retaining his responsibilities as Minister Responsible for Labrador Affairs.

On January 16 there was a further cabinet shuffle, an exchange of portfolios, when **Jerome Kennedy**, formerly Minister of Natural Resources was appointed Minister of Finance, President of Treasury Board, Minister Responsible for the Human Resource Secretariat, Minister Responsible for the Public Service Commission, and Minister Responsible for the Newfoundland and Labrador Liquor Corporation while Mr. Marshall was appointed Minister of Natural Resources and Minister Responsible for the Forestry and Agrifoods Agency, retaining his responsibilities as Attorney General.

Other Appointments

When the House reconvened it was with a new Clerk, **Sandra Barnes**. Ms. Barnes was appointed in June and took office in July. Before her appointment Ms. Barnes had been a public servant since 1994. The new Clerk came to the House of Assembly from the Department of Municipal Affairs where she had served as Deputy Minister. Ms. Barnes succeeds **William MacKenzie** who has accepted a position in the Department of Service NL.

Newfoundland and Labrador also has a new Auditor General, **Terry Paddon**, who succeeds Acting Auditor General, **Wayne Loveys**. Mr. Paddon has been a public servant in various capacities since 1990, most recently Deputy Minister of the Department of Finance, a position he had held for eight years.

Fall Sitting

The Fall sitting was dominated by discussion of the Muskrat Falls Hydroelectric Project in Labrador. The sitting ended early in the morning of December 22nd on a parliamentary day which had begun on December 20th. The subject of debate during the extended sitting was a pair Bills relating to the Project.

The House passed 19 Bills during the Fall sitting, a total of 54 during the First Session of the Forty-Seventh General Assembly, which is expected to prorogue in mid-March.

The party standings in the House of Assembly changed in September 2012 when the Member for St. John's South, **Tom Osborne**, left the Progressive Conservative caucus to sit as Independent.

Elizabeth Murphy
Clerk Assistant

Manitoba

The Second Session of the 40th Legislature began on November 19, 2012 with the presentation of the NDP government's 16th Speech from the Throne. Delivered by Administrator, Chief Justice **Richard Scott**, on behalf of Lieutenant-Governor **Phillip Lee**, the address highlighted a range of government commitments and proposals, including:

- New rural economic development and improvements to cities with new road infrastructure, building on already historic road investments;
- Steady economic growth with the addition of 75,000 workers to Manitoba's labour force by 2020;
- Better care for seniors with improvements to home care and 200 new personal-care home beds in Winnipeg;
- Faster, more convenient access to testing and treatment for cancer patients with new CancerCare hubs in rural Manitoba;
- Improved access to family doctors with additional nurse practitioners, physician assistants, nurses and dieticians for medical practices taking new patients;
- Better education and training opportunities with new primary schools and new support for high school students to transition into apprenticeships;
- More support for universities and colleges to increase enrolment by promoting Manitoba as a top destination for international students;
- New measures to protect families dealing with new home construction, vehicle purchases and cable bills; and new tools to help low-income Manitobans purchase a home; and
- Support for new research projects that will restore the health of Lake Winnipeg and protect the province's water.

Official Opposition Leader **Brian Pallister's** first non-confidence amendment to the Address in Reply motion included a number of observations and commentaries on the government's plans, including that despite record tax

increases and record increases in transfers from other jurisdictions:

- Manitoba remains the child poverty capital of Canada;
- Manitoba food bank usage is at record high levels including the highest percentage of children using food banks in Canada;
- Manitoba's infrastructure deficit is not being addressed and roads and bridges are in disrepair;
- Many recent flood victims have still not received adequate compensation for their losses;
- Long wait times in emergency rooms and for surgeries continue to put the health of Manitobans at risk;
- Many seniors face long wait times for long-term care beds;
- Manitoba students continue to score at or near the bottom in core subjects such as math, reading and science;
- Manitoba universities are still ranked near the bottom compared to their Canadian counterparts;
- There continues to be a critical shortage of affordable housing;
- Manitoba remains the violent crime capital of Canada and gangs continue to flourish;
- Many Aboriginal Manitobans still live in poverty and their communities lack basic services; and
- Many farm sectors do not receive adequate support when circumstances beyond their control impact food production;

Following the defeat of Mr. Pallister's amendment on November 28, 2010 by a vote of yeas 20, nays 35; on November 29 the main motion carried on a vote of yeas 34, nays 20.

The fall session saw the introduction of 21 bills and the passage of one government bill, all addressing a variety of governance areas including:

- *Bill 2 – The Highway Traffic Amendment Act (Respect for the Safety of Emergency and Enforcement Personnel)*, which extends the authority to direct traffic in cases of emergency to a firefighter if no police officer is present and also sets maximum speeds that drivers must not exceed in these circumstances.
- *Bill 3 – The Employment Standards Code Amendment Act (Leave Related to the Critical Illness, Death or Disappearance of a Child)*, which allow Manitoba employees to take advantage of new federal benefits outlined in C-44. It gives parents the right to take an unpaid leave from their employment and to be reinstated at the end of the leave. This Bill was assented to on December 6, 2012.
- *Bill 5 – The New Home Warranty Act*, which ensures that all new homes built for sale are covered by a warranty against defects in materials, labour and design and structural defects.
- *Bill 18 – The Public Schools Amendment Act (Safe and Inclusive Schools), which* amends the Act in the areas of bullying and respect for human diversity.
- *Bill 203 – The Participation of Manitoba in the New West Partnership Act*, which requires the government of Manitoba to contact the governments of British Columbia, Alberta and Saskatchewan to begin negotiations to join their economic partnership, known as the New West Partnership, within one year after the Bill receives royal assent.

These bills, except for Bill 3, are all carried over to the spring session in order to proceed through the rest of the legislative process.

Standing Committees

Manitoba Standing Committee activity this quarter included a meeting of the Human Resources Committee – to consider Bill 3 – as well as two meetings of the Legislative Affairs Committee – to consider the re-appointments of the Conflict of Interest Commissioner and the Information and Privacy Adjudicator due to term expirations for both and the Report and Recommendations of the Judicial Compensation Committee dated July 11, 2012.

Condolences

On December 4 and 5, 2012, the House dealt with several condolence motions conveying deepest sympathies to the families of the late **Albert Driedger**, **John A. Christianson**, **George Minaker**, **Thelma Forbes**, **Samuel Uskiw**, **Laurent Desjardins**, and **Parker Burrel**l who all served as Members of the Legislative Assembly of Manitoba during a time period between 1959 to 1999.

Current Party Standings:

The current party standings in the Manitoba Legislature are: NDP 37, Progressive Conservatives 19 and one Independent Liberal.

Currently no specific date is set for the resumption of the legislative session however, in accordance to a House Leaders' agreement, four weeks' notice is required for the resumption of the 2013 Spring legislative session.

Monique Grenier
Clerk Assistant/
Clerk of Committees

New Brunswick

Lieutenant-Governor **Graydon Nicholas** formally opened the Third Session of the 57th Legislature on November 27, when he delivered the third Speech from the Throne of the **David Alward** Progressive Conservative government. The theme of the speech was rebuilding New Brunswick, through economic development, health and senior care, education, community protection and development, and government streamlining. Highlights included:

- Creation of a new ministerial committee on jobs and the economy to monitor economic performance and recommend adjustments to government direction and policy.
- Release of a labour force and skills development strategy.
- Evaluation by NB Power of the options for securing compensation for the cost overruns in refurbishing the Point Lepreau Generating Station.
- Development of a cruise strategy for northern New Brunswick to identify ports and stakeholders to help grow the cruise industry.
- Development of an oil and natural gas blueprint to shape a vision for the province's natural resource sector.
- Support for research and development in the agriculture, fisheries and aquaculture sectors.
- Development of a made-in-New Brunswick drug insurance plan.
- Development of a seniors' charter to ensure seniors are treated with compassion and respect when receiving government services.

Reply to Throne Speech

On November 29, Official Opposition Leader **Victor Boudreau** gave his reply to the Speech from the Throne. Mr. Boudreau spoke on the Liberal Party's renewal process, and on the newly elected Liberal Party leader, **Brian Gallant**.

Mr. Boudreau raised concerns on the current economy, the unemployment rate, and the need for a trained New Brunswick workforce. The Opposition Leader spoke on multiple points pertaining to the provincial government's negotiations with their federal counterparts, notably the elimination of funding to community economic development agencies, and the compensation for cost overruns at the Point Lepreau Generating Station.

Capital Budget

On December 11, Finance Minister **Blaine Higgs** tabled the 2013-2014 capital budget, totalling $466 million. Funding for new projects was down to $3.5 million, from $24 million in 2012-13. Minister Higgs noted that the budget will focus on projects already underway, and on the maintenance of current assets. Highlights included:

- $120.8 million for infrastructure in public schools, $7 million for infrastructure in universities and community colleges.
- $53.2 million for health-care infrastructure, consisting of $22.3 million for capital improvement and construction projects, and $30.9 million for replacements of medical equipment.
- $279.6 million for transportation and infrastructure, to be used for maintenance, repair and strategic investments.

Legislation

Seventeen government Bills received Royal Assent in the winter sitting. Of note were the following three bills related to local governance issues:

- Bill 2, *An Act Respecting Property Tax Reform*, introduced by Environment and Local Government Minister **Bruce Fitch**, implements a property tax equalized payment plan for homeowners, allowing monthly payments for tax bills; exempts libraries from provincial and municipal taxes; adds the cost of policing to the local tax rate in local service districts and rural communities; and reduces taxation on businesses, farm land, vacant land and non-owner occupied housing.
- Bill 3, *An Act Respecting the Regional Service Delivery Act*, introduced by Minister Fitch, modifies the current rural community model, removing barriers which previously limited it to villages and local service districts, and making the new model available to interested towns.
- Bill 19, *Community Funding Act*, introduced by Minister Fitch, creates a community funding and equalization grant to replace the existing unconditional grant to municipalities, rural communities and local service districts. The new model uses two components: a $12 million funding component, which distributes based on the non-residential tax base of a community; and a $54 million equalization component, which distributes based on expenditure needs and fiscal capacity.

The Official Opposition introduced five Bills, including:

- Bill 14, *Tanning Beds Act*, introduced by

Donald Arseneault, would prohibit people under 19 years of age from having access to tanning facilities in New Brunswick.

- Bill 25, *An Act to Amend the Emergency Measures Act*, introduced by **Rick Doucet**, would require owners and operators of critical infrastructure to have emergency measures plans.

Motions

On December 19, Premier Alward, seconded by Opposition Leader Boudreau, introduced a motion in support of the construction of a west-east pipeline to bring western crude oil to the City of Saint John, providing economic growth for the region and province. The motion was adopted unanimously by the House.

Committees

The Standing Committee on Public Accounts, chaired by **Rick Doucet** and the Standing Committee on Crown Corporations, chaired by **Jack Carr**, have been active in January and February reviewing annual reports of various departments and Crown corporations, as well as reports of the Audtior General.

Standings

The Legislature adjourned on December 20 and is expected to resume sitting on March 26. The standings in the House remain 41 Progressive Conservatives, 13 Liberals and 1 Independent Progressive Conservative.

John-Patrick McCleave
Research Assistant

Senate

During the fall/winter session of Parliament, the Senate passed several bills of note, including Bill C-46, *An Act to amend the Members of Parliament Retiring Allowances Act*, which made changes to Senators' and MPs' pensions; and Bill C-36, *An Act to amend the Criminal Code* (elder abuse), which involved harsher sentences for those convicted of crimes against the elderly. In total, six government bills, two Senate public bills and two Commons public bills all received Royal Assent during this period.

In December, the Senate Chamber was seized with Bill C-45, *A second Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures*. Given the large size of the bill, the Senate decided to send the subject matter of the bill to six different committees for study while the bill was still being examined by the House of Commons. The results of these studies, conducted over four weeks, were automatically referred to the Standing Senate Committee on National Finance. This process facilitated the consideration of the bill which passed the Senate and received Royal Assent on December 14, 2012.

Committees

In addition to the second omnibus budget bill being split up for pre-study by several committees, there were a number of substantive reports tabled or presented in November and December. Amongst them was the Standing Senate Committee on Human Rights' report entitled: *Cyberbullying Hurts: Respect for Rights in the Digital Age*, tabled on December 12, 2012. The committee viewed cyberbullying as a violation of the human rights of children under the *UN Convention on the Rights of the Child*. The report had six recommendations for the government focussing primarily on improved Federal/Provincial cooperation and partnership on the matter. The report also contained a *Guide for Youth* and a *Guide for Parents* which aims to help parents and their children understand and deal with cyberbullying. The Senate has requested an official government response to its report.

Other committees tabled reports including one by the Standing Senate Committee on Aboriginal Peoples, entitled: *Additions to Reserve: Expediting the Process*, which looked at ways to enhance the federal Additions to Reserve policy. The Standing Senate Committee on Social Affairs, Science and Technology's interim report on *Canada's Clinical Trial Infrastructure: A Prescription for Improved Access to New Medicines* included four components: the process to approve prescription pharmaceuticals with a particular focus on clinical trials; the post-approval monitoring of prescription pharmaceuticals; the off-label use of prescription pharmaceuticals; and the nature of unintended consequences in the use of prescription pharmaceutical. These reports do not complete the work of either committee, and further study will continue in the coming months.

Senators

There were several departures from the Senate during the last few months. Saskatchewan Senator **Robert Peterson**, a civil engineer and business executive, nominated to the Senate by **Paul Martin** in 2005, retired in October. Senators **Gerry St. Germain** (British Columbia) and **Frank Mahovlich** (Ontario) also retired in November and December, respectively. Appointed to the Senate in 1993, Senator St. Germain was originally elected to the House of Commons in 1983. In 2000, he became the first Senator to sit as a member of the Canadian Alliance party and was a long serving Chair of the Standing Senate Committee on Aboriginal Peoples. A six time Stanley Cup winner and Order of Canada recipient, Senator Mahovlich was recommended to the Senate by **Jean Chrétien** in 1998. On January 18, 2013, Senator **Joyce Fairbairn** (Alberta) resigned from the Senate. A former journalist, Senator Fairbairn was nominated to the Senate in 1984 by **Pierre Trudeau**, for whom she had previously been press secretary. She was the first female Leader of the Government in the Senate, a post she held from 1993 to 1997.

In late January 2013, with numerous vacancies in the Senate, Prime Minister **Stephen Harper** announced his intention to appoint five new Senators. These include **Doug Black** (Alberta), **David M. Wells** (Newfoundland and Labrador), **Lynn Beyak** (Ontario), **Victor Oh** (Ontario) and **Denise Batters** (Saskatchewan).

Other news

There were some changes to the internal Parliamentary Television Network with the arrival of screen enhancements for Senate sittings. In the past, when the chamber was sitting, the floor channel displayed only a red screen which rotated between two pages of text indicating that the Senate was in session and the time that the Senate began its sitting. Since November, the floor channel screen displays real time information about what items are being considered by the Senate (question period, government business, bells ringing for a vote, etc.), including the name of the Senator who is speaking. These enhancements make it easier to follow the sitting of the Senate.

Vanessa Moss-Norbury
Procedural Clerk
Journals Office

British Columbia

The Legislative Assembly reconvened on February 12, 2013 for the Fourth Session of the 39th Parliament which was prorogued that morning and followed in the afternoon by the opening of the Fifth Session. Following the Throne Speech the Budget was presented on February 19, 2013 pursuant to the *Budget Transparency and Accountability Act*, which requires the main estimates to be presented every third Tuesday in February.

A short sitting is expected as a provincial general election is scheduled to take place on May 14, 2013. British Columbia has had fixed election dates since 2001, when the *Constitution Act* was amended to require elections to be held every four years on the second Tuesday in May.

PST Legislation

In an unusual move, the provincial government publicly released a draft proposed consolidation of the *Provincial Sales Tax Act* on January 9, 2013 to help businesses and consumers prepare for the reimplementation of the PST on April 1, 2013. The draft legislation includes a consolidation of the Act passed in May 2012, along with draft proposed amendments. The release of the draft legislation fulfilled a 2012 commitment by the government to release the final PST legislation in advance of the move back to PST. The draft legislation was shared with Members of the Legislative Assembly prior to its release and before the House reconvened.

On February 13, 2013, Bill 2 – *Provincial Sales Tax Transitional Provisions and Amendments Act, 2013* was introduced. Comprising 308 sections, Bill 2 completes the legislation required for the reimplementation of the PST and provides transitional provisions and consequential and related amendments to other statutes.

Committee Activity

On October 31, 2012, the Select Standing Committee on Health released a report covering the first stage of its inquiry into the projected impact of demographic trends on the provincial health care system to 2036. The report includes the results of a public consultation, research on population aging, and a consultant's findings.

On November 14, 2012, the Select Standing Committee on Finance and Government Services reported on the province-wide

consultations relating to Budget 2013. The report summarizes the public input received and makes 29 recommendations for the next provincial budget. The Committee also completed its annual review of the budgets of the eight independent legislative offices and issued a report with recommendations on December 17, 2012.

The Special Committee to Inquire into the Use of Conducted Energy Weapons and to Audit Selected Police Complaints continued to meet during the reporting period. The Committee is likely to conclude its inquiry before the House prorogues.

On January 23, 2013, the Special Committee to Appoint an Auditor General released a report recommending that **John Doyle** be appointed Auditor General of British Columbia for a second term ending on October 31, 2015. The unanimous recommendation was the outcome of a controversial process during which Premier **Christy Clark** announced that the government intends to amend the *Auditor General Act* to change the Auditor General's appointment to a single non-renewable eight-year term. Currently, the Auditor General is appointed for a six-year term that may be renewed once for a period of up to six years.

On February 4, 2013, Mr. Doyle announced that he has accepted an offer to become the Auditor General of the State of Victoria, Australia later this year.

Changes in the Legislature

On January 14, 2013, Boundary-Similkameen MLA **John Slater** announced that he is resigning from the BC Liberal Party caucus to sit as an independent member.

Byron Plant
Committee Research Analyst

Alberta

On January 15, 2013, it was announced that the Spring Sitting would commence on March 5, 2013 with the budget to be tabled two days later, on March 7, 2013. The Spring Sitting is a continuation of the First Session of the 28th Legislature, which began May 23, 2012. The Legislative Assembly of Alberta has not had a session comprising three or more sittings since the Fourth Session of the 22nd Legislature in 1992-1993.

Committee Activity

The three Legislative Policy Committees continued their work in reviewing matters relevant to their mandates. The Standing Committee on Families and Communities has received presentations for the purpose of pursuing a review related to mental health in Alberta. The Standing Committee on Resource Stewardship is currently in the process of preparing a report to the Assembly having now heard oral submissions and conducted site visits as part of its review on the feasibility of developing hydroelectric capacity on Alberta's three major northern rivers. The Standing Committee on Alberta's Economic Future has received written submissions from stakeholders and is continuing its review regarding the operation of a program enabling companies to obtain raw bitumen from the Government to upgrade it into more valuable petroleum products.

The Standing Committee on Legislative Offices reviewed the appointment of a Public Interest Commissioner pursuant to the *Public Interest Protection (Whistleblower Protection) Act*. Expected to come into force on June 1, 2013, this Act provides for the creation of the Public Interest Commissioner, a new Officer of the Legislature. Like the other Officers, the Public Interest Commissioner will be appointed by the Legislative Assembly of Alberta, following a recommendation by the Committee. After discussing the issue at its meeting on February 14, 2013, the Committee recommended that the Alberta Ombudsman, **Peter Hourihan**, be appointed the first Public Interest Commissioner.

The Select Special Conflicts of Interest Act Review Committee, appointed by the Assembly on October 23, 2012, began its review of the Act, and has put out a call for written submissions. At the Committee's direction a discussion guide has been made available to the public online, and the deadline for receipt of written submissions is March 1, 2013. In the meantime the Committee will receive research briefings from support staff and technical briefings on the Act from representatives of Alberta Justice and Solicitor General and the Office of the Ethics Commissioner.

Point of Privilege Raised in Committee

The Special Standing Committee on Members' Services, chaired by Speaker **Gene Zwozdesky**, met on February 7, 2013, to review Members' allowances. However, it was a tweet made prior to the meeting by Premier **Alison Redford** which took

up much of the Committee's discussion. The Premier's tweet praised Members of the Government caucus for leading by example and stated: "PCs will freeze MLA pay and housing allowances today." The comment raised concerns among opposition members on the Committee who argued it infringed on the independence of the all-party committee. The issue was initially raised by Committee member **Danielle Smith**, Leader of the Official Opposition, as a point of order. Initial debate on the issue included the suggestion that the Chair write a letter to the Premier to discourage her from pre-empting the work of a committee of the Assembly. Following further discussion on the matter the issue was then raised as a question of privilege by another Committee member, **Brian Mason,** Leader of the New Democrat Opposition. The Chair indicated he would take the issue under advisement and come back to the Committee at a future meeting with the process to be followed in dealing with a question of privilege at the committee level.

Cabinet Shuffle

On February 4, 2013, Premier Redford announced changes and a small reduction in the size of Cabinet. **Thomas Lukaszuk**, Deputy Premier, was assigned responsibility for the Enterprise and Advanced Education portfolio, taking over the role from **Stephen Khan**, Member of the Legislative Assembly for St. Albert. In addition, Dr. **Richard Starke**, Member of the Legislative Assembly for Vermilion-Lloydminster, replaced **Christine Cusanelli**, Member of the Legislative Assembly for Calgary-Currie, as Minister of Tourism, Parks and Recreation. With these changes the size of Cabinet was reduced to 18 ministers.

Jody Rempel
Committee Clerk

Nova Scotia

The fall sitting of the Fourth Session of the 61st General Assembly commenced on October 25, 2012 and concluded on December 6th, 2012 when thirty-three Bills received Royal Assent. The Speech from the Throne opening the Fourth Session was delivered on March 29, 2012 at the beginning of the spring sitting – it was interesting to observe during the fall sitting on October 25, November 9th and 27th, 2012, two hours and eight minutes were used by three members (two Government and one Official Opposition) to reply to the speech.

During the fall sitting the NDP government introduced twenty-nine Public bills and five Private and Local Bills. The Opposition Parties introduced thirty-three Private Members' bills and one Private and Local bill.

Legislation Proposing New Electoral Districts

As an update to the article which appeared in the Winter 2012 issue, second reading debate on Bill 94 – *An Act to Amend Chapter 1 (1992 Supplement) of the Revised Statutes, 1989, the House of Assembly Act*, took a little over nine hours and a recorded vote on second reading was taken on November 5th, 2012 – second reading passed by twenty-eight members voting in favour and nineteen members voting against the motion for second reading. The Law Amendments Committee considers bills after second reading and receives submissions from the public. It was of note that for the first time in at least thirty-five years the Committee held meetings on a Bill outside Halifax. These hearings on Bill 94 were held over a six day period in Halifax and outside of the city. Third reading debate took three hours and a recorded vote was taken on third reading of the bill on December 6th, 2012 – third reading passed by twenty-six members in favour and twenty-two members against with one cabinet minister voting against third reading.

The Bill implements the changes in the electoral boundaries recommended September 24, 2012 by the Electoral Boundaries Commission appointed pursuant to the *House of Assembly Act*. The major changes include a decrease in the present fifty-two to fifty-one electoral districts and a re-setting either by the removal of or the addition of territory to most of the districts.

Emergency Debate

A second Emergency Debate was held on December 4, 2012 when the Leader of the Progressive Conservative Party requested and was granted leave to debate the new increased estimated costs of the Maritime Link portion of the Muskrat Falls project. The topic was debated for two hours from 2:49 to 4:49 p.m. that day.

Annette M. Boucher, Q.C.
Assistant Clerk

House of Commons

The House adjourned for the winter break on December 12, 2012, and resumed sitting on January 28, 2013. The following information covers the period from November 1, 2012, to January 27, 2013.

Bill C-45, Jobs and Growth Act, 2012

During the fall period, the proceedings on Bill C-45 drew much attention and were the subject of many interventions in the House and in committee.

On October 30, 2012, Bill C-45 was read a second time and referred to the Standing Committee on Finance, which held several meetings on the Bill. Pursuant to a motion adopted by the Committee on October 31, 2012, the clause-by-clause consideration of the Bill ended on November 21, 2012, when all question necessary to dispose of the Bill were put without further debate. Between November 21 and 23, the Committee took over 3,600 decisions, voting consecutively for 46 hours, with few suspensions. On November 26, the Bill was reported back to the House without amendment.

The same day Opposition House Leader **Nathan Cullen** and **Scott Brison** raised points of order regarding the Standing Committee on Finance proceedings on the Bill. Mr. Cullen argued that the Finance Committee, through the adoption of its motion regarding the conduct of its proceedings on the Bill, went beyond its mandate and usurped the authority of the House. In turn, Mr. Brison argued that the October 31 motion, which specified a time limit for the clause-by-clause consideration, had resulted in a decision of the Chair being overturned by the Committee, and consequently, in the Committee being forced to vote on all amendments submitted, even those which had yet to be moved. On November 29, 2012, Speaker **Andrew Scheer**, ruled that without a report to the House from the Finance Committee detailing specific grievance or describing a particular set of events, he could not find sufficient evidence that the Standing Committee exceeded the limits of its mandate and powers in its consideration of the Bill. He therefore considered the 13th Report of the Standing Committee on Finance to be properly before the House and ruled that the Bill could proceed to the next steps in the legislative process.

On November 29, 2012, before delivering a ruling on the selection and grouping of motions in amendment at report stage of Bill C-45, the Speaker responded to a point of order raised by Mr. Cullen the previous day regarding the grouping of report stage motions. Mr. Cullen had expressed concern that, as a result of the grouping for voting of motions at report stage, Members may have to cast a single vote that would apply to several motions, some of which they may support and others which they may oppose. **Peter Van Loan**, Leader of the Government in the House of Commons, also intervened in the matter. Referring to his ruling of June 11, 2012, in relation to Bill C-38, the Speaker explained that to vote separately on every motion would diverge from the practice of the House. Accordingly, he ruled that he would be guided by past rulings and, in particular, by the ruling on Bill C-38, when ruling on the report stage motions for Bill C-45.

Debate at report stage of the Bill began on November 29, when the Speaker selected and grouped for debate and voting 667 motions in amendment. On December 3, 2012, a time allocation motion allotting five further hours of debate at report stage and one sitting day at third reading stage of the Bill was adopted. On December 4, 2012, 46 recorded divisions were taken by the House to dispose of report stage.

On December 5, 2012, the Speaker ruled on a point of order raised earlier that day by Mr. Cullen with regard to the way the motion for concurrence at report stage of Bill C-45 had been moved the previous evening. Mr. Cullen noted that the motion put to the House by the Chair named Minister of Finance, **Jim Flaherty**, as the mover. However, as the Minister was not present in the House at the time the motion was moved, the Member argued that the motion was out of order and that the vote that took place was not legitimate. In his ruling, the Speaker reported that there had, in fact, been a clerical oversight in the moving of the motion, but that the practices of the House provided for this kind of event. He explained that since a government bill is considered an initiative of the entire Cabinet, it is the practice of the House that one minister can move a motion on behalf of another. The Speaker mentioned that practice was followed when the *Journals* were drafted to indicate that the

motion had been moved by the Government House Leader, and thus, ruled that the House could proceed with the third reading debate. Later that day, Bill C-45 was read a third time and passed.

On December 12, 2012, the Speaker delivered a more comprehensive ruling on the points of order raised on November 28, 2012, by Mr. Cullen and Mr. Van Loan. The Speaker stated that there are several precedents to justify the selection of motions and their grouping for voting purposes at report stage, and that these are long-standing practices of the House. He then clarified that the Chair is and will continue to be guided by procedural imperatives in all of its decisions, and that report stage motions are not, and never have been, selected for debate and grouped for voting on the basis of the likely outcome of a vote. Lastly, the Speaker addressed the role and rights of independent Members during report stage. He explained that independent Members do not currently sit on committees, suggested that a satisfactory mechanism could be found to afford them opportunities to move motions in committee, and mentioned that the report stage selection process by the Chair would adapt to such a new reality. Accordingly, the Speaker concluded that unless and until new ways of considering the motions of all Members to amend bills in committee were found, he intended to continue to protect the rights of independent Members to propose amendments at report stage.

On December 14, 2012, Bill C-45 received Royal Assent.

Points of Order and Procedure

On November 27, 2012, the Speaker ruled on a point of order raised on November 5, 2012, by **Marc Garneau** regarding the nature of an answer given to a written question. Stating that it is not in order to indicate in a response to a written question the total time and cost incurred by the government in the preparation of that response, Mr. Garneau objected to a response given during Question Period by the Minister of Public Safety, **Vic Toews**, in which the Minister had indicated the large cost of answering a specific written question. In his ruling, the Speaker suggested that the Member asking the question and the government find a way to achieve a result that would satisfy both parties, and noted that the rules that apply to the content of replies to written questions do not apply to responses given during Oral Questions – even if the oral question relates to a written question. Accordingly, he ruled the reply by the Minister of Public Safety to be in order.

Several dilatory motions were moved between November 21 and 23, 2012, resulting in unexpected recorded divisions. The motions "that the House do now adjourn", "that the Member be now heard", "that the House do now proceed to the Orders of the Day", and "that the debate be now adjourned" were moved a total of seven times during this three-day period and each time decided on a recorded division. Two of these motions, "that the House do now proceed to the Orders of the Day" and "that the Member be now heard", were agreed to; all the others were negatived by the House.

On December 12, 2012, at the end of Oral Questions, the Speaker made a statement concerning order and decorum in the House. He noted that, in recent months, the atmosphere in the Chamber had been difficult at times, and encouraged all Members to make a greater effort to curb disorder and unruly behaviour. He then reminded them that the Chair's authority to enforce the rules depends on the co-operation of the House. He finished, on behalf of all Members, by saluting and thanking the other Chair Occupants for their excellent work.

Private Members' Business

On December 6, 2012, the Speaker ruled on a point of order raised on November 22, 2012, by **Alexandre Boulerice** regarding Bill C-377, *An Act to amend the Income Tax Act (requirements for labour organizations)*. Mr. Boulerice argued that the Bill contained provisions that would require new spending for purposes currently not authorized by the legislation, and that it should therefore be accompanied by a royal recommendation. **Tom Lukiwski**, Parliamentary Secretary to the Leader of the Government, and **Russ Hiebert**, the sponsor of the Bill, in turn both responded that any spending proposed by the Bill was already authorized under existing provisions. The Speaker found that the provisions in the Bill could result in an increased workload or operating costs, but would not require spending for a new function, and that therefore the requirements contained in the Bill could be said to fall within the existing spending authorization. Accordingly, he ruled that Bill C-377 did not require a royal recommendation, and that it could proceed through the legislative process.

Committees

Following recent examples, the Standing Committee on Public Safety and National Security adopted a motion regarding its consideration of Bill S-7, *An Act to amend the Criminal Code, the Canada Evidence Act and the Security of Information Act*, to set a specific date for the end of the clause-by-clause consideration; to instruct the Chair of the Committee, if the consideration had not been completed by a specific time on this date, to put every question necessary to dispose of the Bill without further debate; and to order the Chair to report the Bill back to the House at the next available opportunity. On December 11, 2012, Bill S-7 was reported back to the House without amendment.

Other Matters

As a result of recent by-elections the Speaker informed the House on December 11, 2012 of the election of **Murray Rankin** as the new NDP Member for Victoria. The next day, the Speaker announced the election of Conservatives **Joan Crockatt** for Calgary Centre and **Erin O'Toole** for Durham.

On November 7, 2012, following the Statement by Minister of Veterans Affairs **Steven Blaney** on Remembrance Day observances, and replies by **Peter Stoffer** on behalf of the Official Opposition, **Sean Casey** for the Liberals, **Louis Plamondon** and **Elizabeth May** on behalf of the Bloc Québécois and the Green Party, the Acting Speaker invited Members to observe two minutes of silence.

On December 6, 2012, at the end of Statements by Members, **Jean-François Fortin**, **Bob Rae**, **Thomas Mulcair** and **Shelly Glover** each made statements commemorating the National Day of Remembrance and Action on Violence Against Women. Afterwards, the House observed a moment of silence.

Philippe Grenier-Michaud
Procedural Clerk
Table Research Branch

CPA Activities: The Canadian Scene

Thirtieth Presiding Officers' Conference

The Presiding Officers from Canada's federal, provincial and territorial Legislatures held their 30th annual conference January 31-February 3, 2013 in Victoria, British Columbia. The host was Speaker **Bill Barisoff** of British Columbia.

The Speakers in attendance were: **Gene Zwozdesky** (Alberta), **Andrew Scheer** (House of Commons), **Daryl Reid** (Manitoba), **Dale Graham** (New Brunswick), **Ross Wiseman** (Newfoundland and Labrador), **Jackie Jacobson** (Northwest Territories), **Gordon Gosse, Jr.** (Nova Scotia), **Hunter Tootoo** (Nunavut), **Dave Levac** (Ontario), **Carolyn Bertram** (Prince Edward Island), **Jacques Chagnon** (Quebec), **Dan D'Autremont** (Saskatchewan), and **David Laxton** (Yukon).

Chaired by Speaker D'Autremont, the first business session featured a roundtable discussion that covered the challenges and opportunities faced by new Speakers. The discussion was followed by a presentation by Speaker Chagnon on the challenges he faced as President of the National Assembly in a new parliament with a minority government and numerous Independent Members.

The topic of the third session, "Responding to an Audit", featured presentations by Speaker Gosse, (Nova Scotia), Speaker Wiseman (Newfoundland and Labrador) and **Audrey O'Brien**,

Clerk of the House of Commons. The session was introduced and chaired by **Craig James**, Clerk of the British Columbia Legislative Assembly.

The final session of the first day was on "Transparency and Accountability in Disclosing Members' Expenses", and included presentations from **Tim Mercer**, Clerk of the Northwest Territories, Speaker D'Autremont and Clerk **Greg Putz** from the Saskatchewan Legislative Assembly, and **Patricia Chaychuk**, Clerk of the Manitoba Legislative Assembly.

On Saturday, February 2nd, Speaker Barisoff (British Columbia) and **Charles MacKay**, Clerk of the Prince Edward Island Legislative Assembly, discussed their respective provincial Black Rods.

The next session, chaired by Speaker Graham (New Brunswick), was a roundtable discussion led by Speaker Tootoo (Nunavut) to discuss the financial accountability of the Commonwealth Parliamentary Association.

The final business session chaired by Speaker Bertram (Prince Edward Island), featured a presentation by **Jill Anne Joseph**, Director, Internal Audit and Strategic Planning, Senate of Canada, on benchmarking and developing standards for Parliament.

In addition to the business sessions, delegates attended an event at Government House, hosted by British Columbia's Lieutenant Governor, **Judith Guichon**, and a dinner at CFB Esquimalt that included a presentation on the role of the Canadian Pacific Naval Fleet.