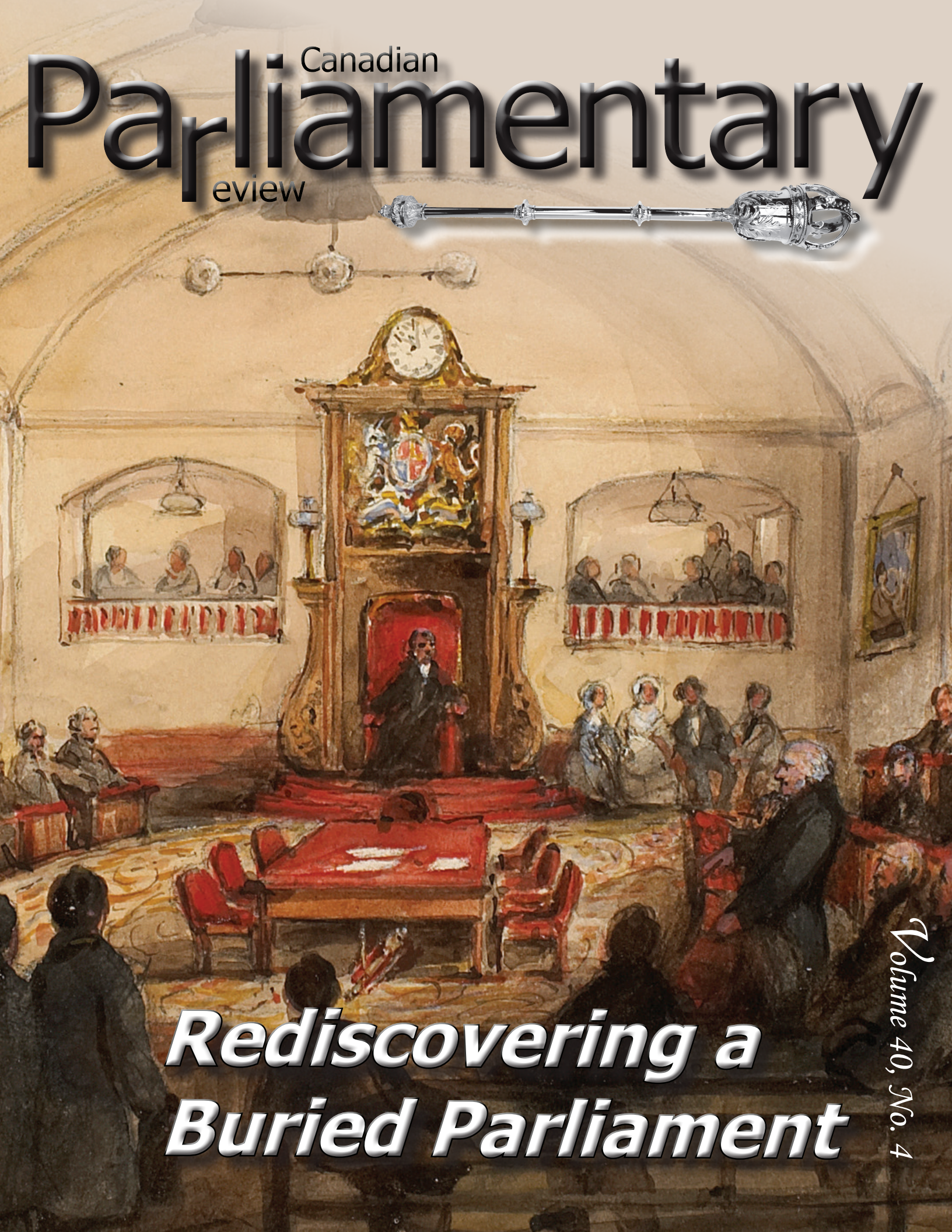


Canadian  
**Parliamentary**  
review



***Rediscovering a  
Buried Parliament***

*Volume 40, No. 4*

# Know Your Mace

On September 10, 1964, in Charlottetown, those attendants at the Canadian Area Conference of the Commonwealth Parliamentary Association unanimously resolved to mark the occasion of the 100th anniversary of the meeting of the Fathers of Confederation by presenting, on behalf of the provincial and federal branches of the CPA, a Mace to the Legislative Assembly of Prince Edward Island. To that end, a committee composed of the Speakers of the Senate, House of Commons, Ontario and Quebec was appointed to make arrangements for the design and presentation of a suitable Mace.

The committee chose the design submitted by Canadian company Henry Birks and Sons Ltd., and the Mace was presented to the Legislative Assembly in a special ceremony on February 24, 1966, in Province House. Prior to this, PEI did not have a Mace.

The Mace is approximately four and a half feet tall and weighs 10 pounds. It is made of gold-plated silver. The crests of the 10 provinces encircle the Mace just below its crown. Below those crests, engravings show the Coat of Arms of Canada and set forth the donors of the Mace. PEI's provincial flower, the Lady's Slipper, is engraved in several places.

When the Mace is placed upon the Table, PEI's crest always faces up.

Ryan Reddin  
Legislative Assembly of Prince Edward Island



The *Canadian Parliamentary Review* was founded in 1978 to inform Canadian legislators about activities of the federal, provincial and territorial branches of the Canadian Region of the Commonwealth Parliamentary Association and to promote the study of and interest in Canadian parliamentary institutions. Contributions from legislators, former members, staff and all other persons interested in the objectives of the Review are welcome.

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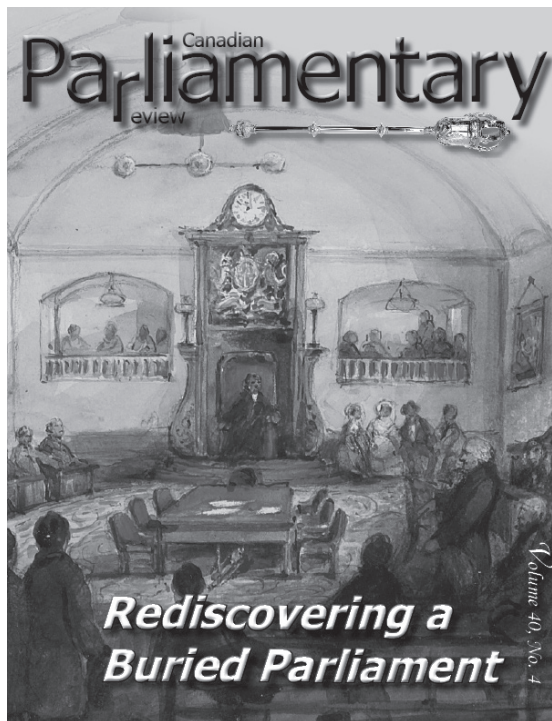
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James Duncan. The House of Assembly, Montreal, c. 1848. Watercolour and gouache over graphite on wove paper, 27.7 x 40 cm. Purchased 1982, National Gallery of Canada, Ottawa. Photo: NGC.

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# *Is There a Lawyer in the House? The Declining Role of Lawyers in Elected Office*

Fewer lawyers are being elected to Nova Scotia's Legislative Assembly in recent years. In this article, the author traces the decline over the past decades, provides some hypotheses as to why this trend has occurred, and analyzes what the relative absence of lawyers in a representative legislative body may mean. He cites the 1970s as a turning point for the decline of MLA-lawyers and suspects the shift from part-time work to full-time duties as an MLA, the relatively low salary compared to professional fees, and the poor post-politics job prospects, contributed to making the role less of a draw for practicing lawyers. The author also highlights skills lawyers may bring to the role of an MLA in terms of writing legislation and helping constituents with casework. He concludes by examining the Attorney General and Minister of Justice roles and the potential legal/constitutional questions that may arise if and when this cabinet position and the deputy minister position are occupied by non-lawyers.

**Graham Steele**

**T**here is a common perception that lawyers dominate our elected assemblies. It was true at one time, but it is not true today.

In the May 2017 provincial general election in Nova Scotia, for example, the voters returned only two lawyers to a legislature with 51 seats. That is a post-Confederation low, both in absolute numbers and as a percentage of the seats.

This paper looks at the declining number of lawyers in the Nova Scotia assembly since Confederation, considers the possible reasons for the decline, then discusses a few implications.

Although this paper focuses on Nova Scotia, it is a reasonable hypothesis that the results would be similar across Canada.

## **Methodology: Where do the numbers come from?**

To count the number of lawyers who have served in the Nova Scotia House of Assembly since Confederation, I started with a comprehensive biographical directory of Nova Scotia MLAs compiled by former legislative librarian Shirley Elliott.<sup>1</sup> That directory includes an occupational listing for almost all members up to 1983.

To bring the count up to date, I consulted the Nova Scotia legislative library about lawyer-MLAs who served since the end of Elliott's directory.<sup>2</sup>

This methodology produces good results, but we have to be a little cautious. What is a "lawyer"? Certainly it includes a person who has been admitted to the bar and who has practiced law. But should it include a person with a law degree but who was never admitted to the bar? Should it include a person who was admitted to the bar but never practiced?

---

*Graham Steele served as a Nova Scotia MLA from 2001-2013. He teaches at the Rowe School of Business at Dalhousie University and is a member of the Nova Scotia Barristers' Society.*

For the sake of consistency and simplicity, I counted an MLA as a lawyer if they are listed by Elliott as a “barrister”. For MLAs serving after the end of Elliott’s book, I counted them as a lawyer if they were, to my knowledge, admitted to a bar. That omits two MLAs who held a law degree, but were never admitted to a bar.

The next step was to compile a spreadsheet listing the sessions of the House of Assembly in which the lawyer-MLAs served. A “session” is the entire period between general elections. For example, the first general election after Confederation elected the 23<sup>rd</sup> House of Assembly. The current House, elected in 2017, is the 62<sup>nd</sup> Assembly. This spreadsheet allows us to count how many lawyers served in a given session.

One quirk of this methodology is that it is possible for some lawyer-MLAs to have served in the same session, but not at the same time.<sup>3</sup>

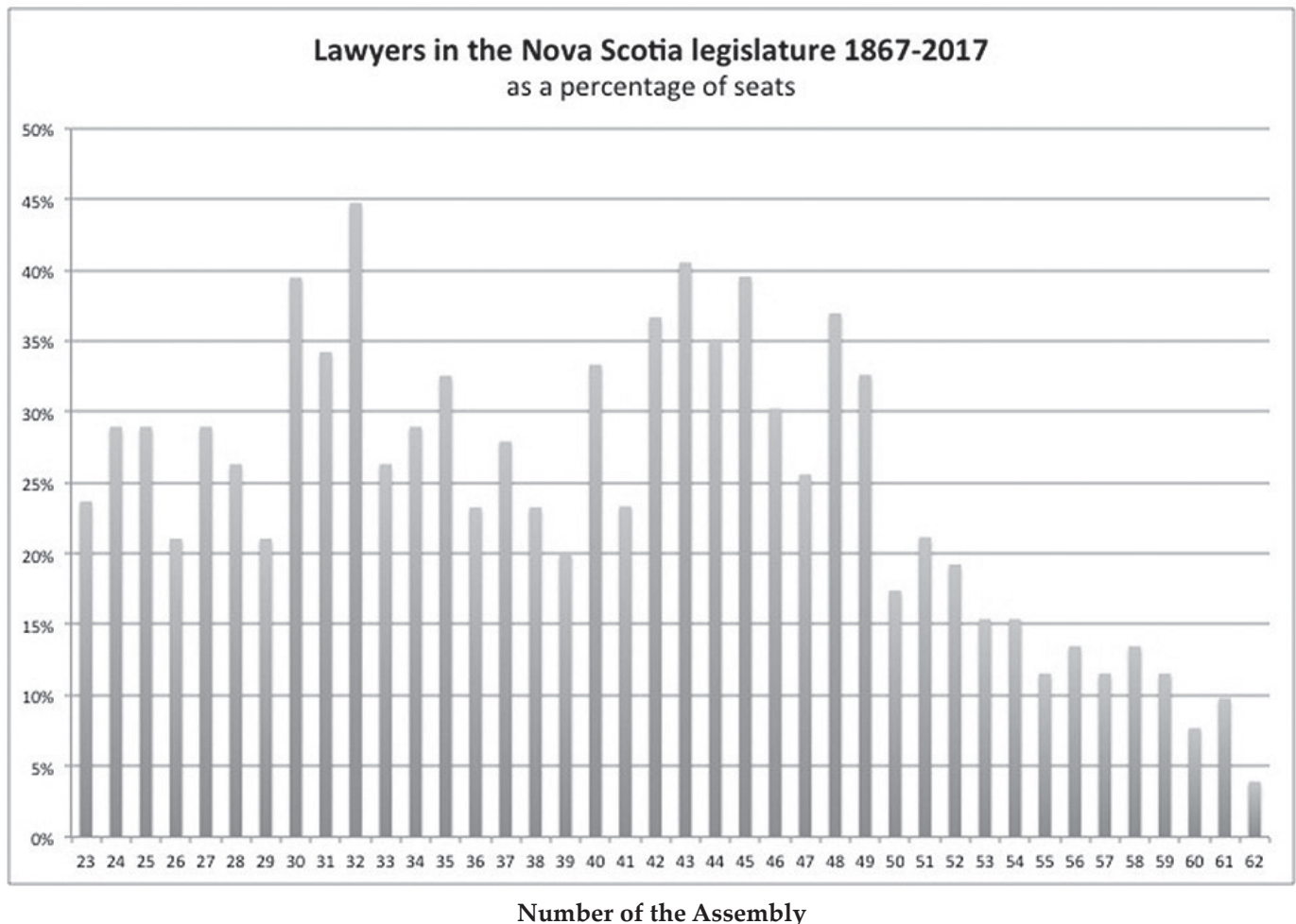
**Results: What do the numbers show?**

The results are shown in Figure 1. The most striking result is the steady decline in the percentage of lawyers in the House, starting in the 1970s and continuing to the present day.

Since Confederation, 155 lawyers have served in the Nova Scotia House of Assembly.

During that time, the total number of seats available during general elections was 1711. Taking into account the fact that many lawyers were elected

**Figure 1**



more than once, and leaving aside the complications of partial terms and by-elections, 490 of the 1711 positions (28.6 per cent) have been filled by lawyers.

From Confederation in 1867 until 1974, the percentage of lawyers in the House of Assembly never fell below 20 per cent. In 1974 (the 50<sup>th</sup> Assembly) the percentage of lawyers dropped to 17.4 per cent, the first time it had ever been below 20 per cent. Since then the trend has been steadily downward, and the 2017 election (the 62<sup>nd</sup> Assembly) produced the lowest absolute number of lawyer-MLAs (two) and the lowest percentage of the House (3.9 per cent) since Confederation.

The highest percentage of lawyers was the 1902-06 House (the 32<sup>nd</sup> Assembly), which had 38 members, of whom 17 or 44.7 per cent were lawyers. The 1957-60 House (the 45<sup>th</sup> Assembly) also had 17 lawyers, but by that time the House had grown to 43 members, so the percentage was a little lower (39.5 per cent).

Of the 155 lawyers who have served as an MLA since Confederation, 17 became premier. That is remarkable, considering Nova Scotia has had only 27 post-Confederation premiers. Even more remarkable is the fact that in the 94 years from 1896 to 1990, a lawyer was premier for all but six years.

### **Analysis: What's the story behind the numbers?**

---

How can we explain the steadily declining numbers of lawyers in the House of Assembly?

Inevitably, there has to be some speculation involved in trying to find an answer. What follows are the most likely explanations. There may be others.

#### *The shift from part-time to full-time work*

Prior to the 1970s, the work of an MLA was generally considered to be a part-time job. The House of Assembly held a spring sitting that typically lasted under two months. Being an MLA was quite compatible with continuing with one's regular occupation, and so that is what most MLAs with a professional occupation did.

After the 1970s, the work of an MLA was generally considered to be a full-time job. One former MLA-lawyer, first elected in 1978, told me that he tried

to carry on a practice after being elected, but it was not easy and required the co-operation of judges and opposing counsel. For example, he participated in a five-day trial that was held on five consecutive Mondays, because the House of Assembly did not sit during the day on Mondays.<sup>4</sup> He gave up his law practice entirely after three years, when his legislative duties became heavier.

The shift from part-time to full-time work was not legislated or otherwise mandated, so it is difficult to pinpoint a precise point when the shift occurred. It seems to be generally accepted that a pair of NDP MLAs from Cape Breton, Jeremy Akerman and Paul MacEwan, changed the game in the 1970's by working full-time. They experienced electoral success which they attributed to their full-time constituency work.

#### *Relatively low salary*

Until the 1970s, the pay of an MLA was low, in keeping with the part-time nature of the work.

Jeremy Akerman, one of the MLAs who led the change to full-time work for an MLA, wrote a book about his time in politics. He noted how difficult it was to maintain his family on the meagre pay of an MLA.<sup>5</sup> In 1970, when Akerman was first elected, the MLA indemnity was \$7,500.<sup>6</sup> In today's dollars, that is about \$48,000. A salary at that level did not justify, then or now, giving up a professional practice.

As more MLAs worked full-time, or wanted to, the pay of an MLA grew. Today, in 2017, a Nova Scotia MLA's base salary is \$89,235.<sup>7</sup> This compares with the base pay of a Member of Parliament at \$172,700.<sup>8</sup>

There is an additional salary for Cabinet ministers. In Nova Scotia, that is currently \$49,047,<sup>9</sup> and for a federal Cabinet minister it is \$82,600.<sup>10</sup> Those salaries—payable in addition to the base pay of an MLA or MP—are more compatible with the income of a practicing lawyer. It goes without saying, however, that a lawyer could serve in office for many years without any guarantee of holding a Cabinet position.

Although an MLA's base pay has grown, it likely does not match the average income of a Nova Scotia lawyer. A full-time practicing lawyer who wanted to be an MLA would have to give up some income,

perhaps a lot of income.<sup>11</sup> Pay for lawyers in the provincial public service very quickly outstrips the pay for MLAs.<sup>12</sup>

One reasonable hypothesis, then, is that standing for public office became less attractive to lawyers when being an MLA became a full-time position with pay lower than could be earned in the practice of law.

#### *Post-politics prospects are lowered*

Once MLAs started working full-time, another career-related question arose: what would happen when one's political career is over? For lawyers and other professionals who have left a practice to enter politics, there is some evidence that their post-politics careers are stunted.

The average MLA-lawyer in Nova Scotia has served 2.6 terms of office, and the median is two terms of office.<sup>13</sup> In our political system the length of a term of office is variable, but it is typically about four years. That means a lawyer who enters politics as an MLA can typically expect to serve for 8–10 years.

Even a relatively short time in politics—perhaps just one term, or about four years—may cause the lawyer to lose a client base. After 8–10 years, that is a virtual certainty. Law firms are unlikely to be interested in hiring lawyers who do not have a book of business they can bring with them.

There is a fairly recent phenomenon of legally trained ex-politicians being hired as counsel to law firms (and other consulting firms). These roles appear to be mainly non-practicing, and in the nature of business development. They also appear to be mainly restricted to ex-politicians who reached the highest levels of public office, such as prime ministers and premiers, and senior ministers. For everyone else, post-politics employment prospects may be unpromising.

#### *No path to the bench*

At one time, there was a well-travelled path from politics to the bench. Going into politics was considered a stepping stone to the judiciary. In many cases, it eliminated the question of what the lawyer-MLA would do after politics.

Of the 155 lawyers who have served as MLAs in Nova Scotia since Confederation, 40 (25.8%) were later appointed to the bench. That is a remarkably high percentage. Some went directly from the legislature to the bench, while others had to wait a while.

That well-trodden path from politics to the bench no longer exists.

Modern practices of judicial appointment mean that fewer and fewer ex-politicians are being appointed. The last MLA to be appointed to a Nova Scotia court was Bob Levy (MLA for Kings South) in 1988.

#### **Analysis: What are the implications?**

---

Does it matter how many lawyers are in the House of Assembly?

MLAs are law-makers, but the work of a modern MLA goes well beyond anything to do with law, and there is little reason to believe that lawyers are better at the non-legal parts of the job than anyone else.<sup>14</sup>

Indeed, one might argue that lawyers have historically been over-represented in the House of Assembly. The recent drop in the number of lawyers may be seen as a re-calibration of the House's composition.

Nevertheless, there are two specific job functions for which legal training may provide an advantage: legislative work and constituency casework.

#### *Legislative work*

The assembly is the lawmaking body for the province. One of an MLA's core functions is to be a lawmaker.

While we surely do not want to assert that lawyers are inherently better at this function than others—at least some lawyer-MLAs have been spectacular failures<sup>15</sup>—we should not dismiss a lawyer's training and experience as being irrelevant to the law-making function.

A lawyer is more likely than other MLAs to have an understanding of the constitutional and legal framework within which the legislature and

government is operating. The constitutional division of powers, the *Charter of Rights and Freedoms*, judicial review of legislation, defamation, privilege—those are no small things for an MLA to be conversant with on the day they first walk through the doors of the House.

A lawyer also brings a ready-made knowledge of substantive and procedural law. A lawyer will understand the basics of contract law, tort law, property law, corporate law, and commercial law that give sense to the bills presented to the legislature for debate.

Based on my own experience as a legislator, I would suggest that a lawyer's training and experience can be of assistance to an elected member in at least the following ways:

- Understanding bills tabled in the House, and their implications.
- Translating policy ideas into legislative drafting instructions.
- Drafting amendments to bills, and analyzing amendments to bills tabled by others.
- Sifting through large volumes of documents to identify key issues.
- Understanding real and potential litigation in which the government is involved.
- Questioning witnesses in legislative committees.

Certainly non-lawyer MLAs can have or develop some or all of these skills, and not all lawyers have all of these skills. But an MLA with legal training is, one would hope, more likely to be able to perform these functions efficiently and effectively.

In particular, lawyers have a certain comfort level with legislation, and that is one of a legislature's two principal work products (the other being budgets).

It is very easy for lawyers to forget that, to the untrained eye, legislation is like a foreign language. It is not like any other kind of written material with which MLAs have had experience. When there are fewer lawyers in the House, there are fewer MLAs with the training and experience to work closely with legislation. There are also fewer MLAs to whom their colleagues can turn for advice.

With the relative paucity of lawyer-MLAs, an MLA who wants to evaluate legislation has limited options. The reality is that, in the hurly-burly of

legislative proceedings where time is often at a premium, most MLAs have to try to get by with no legal advice at all.

But let's not kid ourselves. Today's assemblies are largely rubber-stamps for the government's legislative program. Many MLAs do not read the legislation. There are many better, more politically advantageous uses of their time than to try to read, decipher and act on a personal understanding of the legislation that is before the House. In an era of rubber-stamp assemblies, perhaps the occupational composition of the House is irrelevant.

#### *Constituency work*

Casework is when an MLA acts as a sort of ombudsman for individual constituents who are having some kind of difficulty with government services.

Casework has come to dominate the working lives of modern Canadian politicians:

Besides the belief that casework is tied to electoral success, there is a more altruistic reason why MLAs do it: there are so many people who need help, and there's really nobody else to help them. Legal aid covers only the poorest and is mostly limited to criminal and family law. The non-profits are well meaning, but their resources are limited, and advocacy isn't usually why they were set up. Because the MLA has no job description, everything fits. So, when the casework call comes in, it's pretty well impossible to say no. You say yes, over and over, until one day you realize that casework is all you're doing.<sup>16</sup>

A lawyer who has been in private practice will find constituency casework familiar. Good casework involves good file management.

It's like a law practice, but without the timekeeping and billing.

Not all casework files involve a legal issue, but many do. It is difficult for example, to work on an immigration file without a basic understanding of immigration law. The same goes for social assistance files, workers' compensation files, and Canada Pension Plan files. In that respect, a lawyer-MLA is going to have an advantage over non-lawyers.



## **Analysis: When the Attorney General is not a lawyer**

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When there are fewer lawyers in the House, there is at least one other important issue: what happens when the Attorney General is not a lawyer? Does it matter?

### *Lawyers as Attorney General*

In Nova Scotia, since Confederation, 32 lawyer-MLAs have served as Attorney General. That is not surprising, because it used to go without saying that the Attorney General would be a lawyer. When the government caucuses were well-stocked with lawyers, premiers would have no problem finding a lawyer to serve as Attorney General.

With the declining number of lawyers, it is getting harder for premiers to find lawyer-MLAs to serve as Attorney General. The Nova Scotia House of Assembly has not yet experienced a government caucus with no lawyer in it, but in recent years the number has been as low as one, as it is currently.

Nova Scotia's first non-lawyer Attorney General was appointed in 1993, and since then, there have been more non-lawyers than lawyers in the job.<sup>17</sup>

### *Attorney General as legal adviser*

The Attorney General and Minister of Justice—which is a single position, despite the two-part title—has a unique role as a legal adviser.

The Attorney General and Minister of Justice is “the law officer of the Crown, and the official legal adviser of the Lieutenant Governor, and the legal member of the Executive Council”.<sup>18</sup> Moreover, the minister “shall advise the heads of the several departments upon all matters of law.”<sup>19</sup> The Attorney General has “the functions and powers that belong to the Attorney General of England by law or usage”,<sup>20</sup> which imports a special constitutional role within the context of responsible government.

Nova Scotia has a particularly painful history in delineating the role of the Attorney General.

In 1971, Donald Marshall Jr. was a young Mi'kmaq living near Sydney, Nova Scotia. He was convicted of a murder he did not commit. He spent eleven years in prison before being released. A public

inquiry was established into Marshall's wrongful conviction.<sup>21</sup> The inquiry looked at what went wrong in Marshall's specific case, but also ranged widely over questions of racism in the justice system and political influence over prosecutions.

The opening paragraph of the inquiry report reads:

The criminal justice system failed Donald Marshall, Jr. at virtually every turn from his arrest and wrongful conviction for murder in 1971 up to, and even beyond, his acquittal by the Court of Appeal in 1983. The tragedy of the failure is compounded by evidence that this miscarriage of justice could - and should - have been prevented, or at least corrected quickly, if those involved in the system had carried out their duties in a professional and/or competent manner. That they did not is due, in part at least, to the fact that Donald Marshall, Jr. is a Native.

The inquiry led to the establishment of a Public Prosecution Service, under the direction of an independent Director of Public Prosecutions (DPP), and with a strict statutory delineation of the relationship between the DPP and the Attorney General.<sup>22</sup>

The Marshall Inquiry was central to fixing the role of the Attorney General and Minister of Justice with respect to criminal prosecutions. Less clear is the Attorney General's role on the civil side, such as being the legal adviser of the Crown, the Cabinet, and the departments.

When the Attorney General is not a lawyer, one may wonder in what meaningful sense he or she can offer legal advice to the government.

The first non-lawyer Attorney General in Canada was Jim McCrae in Manitoba, appointed in 1988. There was a serious question at the time as to whether it was constitutional for a non-lawyer to hold the position of Attorney General, but the point does not appear to have been litigated back then. The point did come up in a recent British Columbia case, in which the BC Court of Appeal ruled that the Attorney General does not need to be qualified to practice law.<sup>23</sup>

The BC Court of Appeal decision relies on some very careful interpretation of several BC statutes, so it is not clear that the case puts the issue to rest for the rest of Canada. The court essentially skated around the issue by noting that the deputy minister of justice was, as a matter of fact, a lawyer. Since the deputy minister was empowered to perform the functions of the minister, there was (wrote the court) no obstacle to having an Attorney General who was not a lawyer.

Interestingly, there is in Nova Scotia no legal requirement that the deputy attorney general be a lawyer.<sup>24</sup> Indeed, Nova Scotia recently advertised for the position of deputy Attorney General, and did not specify that the deputy had to be a lawyer. In the end, a very experienced lawyer was hired to the position.<sup>25</sup> A constitutional crisis was averted, at least until the inevitable day that a non-lawyer deputy minister of justice is appointed.

Chances are very high that we will continue to see non-lawyers as Attorney General, at least as long as premiers feel constrained by the constitutional convention that the cabinet should be comprised of elected members, with few and brief exceptions.<sup>26</sup>

In an era when the number of lawyers in the government caucus is declining, a premier selecting ministers has very few choices. The premier may have other roles in mind for the lawyer(s) in caucus, if indeed there are any at all. It is constitutionally permissible to appoint non-MLAs to Cabinet, but that option creates a raft of other issues having to do with responsible government.

Like it or not, the era of non-lawyer Attorneys General is here to stay. Lawyers are turning away from elected office, and there is no reason to believe that trend is about to change.

## Notes

- 1 Shirley Elliott, ed., *The Legislative Assembly of Nova Scotia, 1758-1983: a biographical directory* (Province of Nova Scotia, 1984). Elliott's directory is itself an update of a biographical directory prepared by the Public Archives of Nova Scotia. That directory covered the period 1758-1958.
- 2 MLAs are not anywhere required to file biographical data, including occupation, so there is no formal database. The library does its best to compile information both from public sources and from voluntary disclosure by MLAs, but it cannot guarantee the completeness or accuracy of its results.
- 3 An example may be taken from the 51<sup>st</sup> Assembly, which ran from 1978 to 1981. Gerald Regan, a lawyer, was elected in the 1978 general election as the MLA for Halifax Needham, but resigned his seat in February 1980 to run federally. Fisher Hudson, also a lawyer, was elected in a by-election in Victoria County in May 1980. Regan and Hudson did not serve in the House at the same time. Nevertheless, both show up as lawyers serving in the 51<sup>st</sup> Assembly. Nevertheless, these occasions appeared to me to be relatively rare, so I adopted the simplest counting method rather than delve into the time-consuming task of precise historical dating.
- 4 Personal communication with the author.
- 5 Jeremy Akerman, *"What Have You Done For Me Lately?": A Politician Explains* (Lancelot Press, 1977).
- 6 Personal communication with the author.
- 7 Members' Manual: Members' Compensation, Expenses and Constituency Administration, June 2017, at page 10. Obtained from Nova Scotia legislature website, [nslegislature.ca/pdfs/people/CompensationExpenses.pdf](http://nslegislature.ca/pdfs/people/CompensationExpenses.pdf) (accessed October 18, 2017).
- 8 Indemnities, Salaries and Allowances, Members of the House of Commons, obtained from Library of Parliament website, [lop.parl.ca](http://lop.parl.ca) (accessed October 18, 2017).
- 9 See Members' Manual, note 7 above, page 10.
- 10 See Indemnities, Salaries and Allowances, note 8 above.
- 11 There is not any good public data on lawyer income in Nova Scotia. The legal recruiter ZSA publishes averages for Toronto, Montreal, Vancouver, Edmonton, Calgary and "Atlantic Canada": see [www.zsa.ca/salaries](http://www.zsa.ca/salaries) (accessed October 24, 2017). For 2017, the salary range for a seventh-year lawyer in a large firm in Atlantic Canada is listed as \$90,000-\$110,000, which exceeds the salary of a Nova Scotia MLA.
- 12 The Nova Scotia Public Service Commission publishes pay scales for public-sector lawyers: see [novascotia.ca/psc/employeeCentre/payScales.asp](http://novascotia.ca/psc/employeeCentre/payScales.asp). The last published pay scale for Legal Services is for 2014-2015. There have been very modest increases since then. Using Compa Ratios of 1.00, the pay for a Solicitor 1 is \$87,072; Solicitor 2, \$99,950; Solicitor 3, \$109,112; and Solicitor 4, \$114,674. Managers earn more.
- 13 These figures are derived by totalling the number of post-Confederation terms served by each lawyer-MLA and then calculating the average and the median. The largish difference between the average and the median suggests that there is a wide distribution around the mean, i.e. many lawyer-MLAs served fewer than 2.6 terms while a few served much longer terms. The champions, with seven terms each, are George Murray, who was MLA and premier 1896-1923; George Isaac "Ike" Smith, who was MLA 1949-

- 1974 and premier 1967-1970, and John Buchanan, who was MLA 1967-1990 and premier 1978-1990. In contrast, 54 lawyer-MLAs were elected only once, and another 36 were elected twice.
- 14 Graham Steele, *What I Learned About Politics* (Nimbus, 2014) esp ch 3, "What Does an MLA Actually Do?". "Today's MLA is essentially a full-time constituency worker who occasionally—and reluctantly—goes to Province House for a sitting of the legislature" (p. 36).
  - 15 Douglas Benjamin Woodworth, for example, was a lawyer expelled from the House in 1874 for "misconduct and contempt". He was nevertheless re-elected the same year, then resigned his seat for an unsuccessful run at federal politics. He later emigrated to Nevada and California. Numerous other examples could be given of lawyers with undistinguished political careers.
  - 16 Steele, *What I Learned About Politics*, note 14 at 44.
  - 17 The first non-lawyer was Dr. William (Bill) Gillis, who before politics was a professor of geology at St. Francis Xavier University. Gillis was the MLA for Antigonish from 1970 to 1998. The pre-politics occupations of Nova Scotia's attorneys general, after Gillis left the position in 1996, were: business owner, lawyer, physician, teacher, lawyer, teacher, police officer, economic development consultant, police officer (with a law degree), lawyer, management consultant, police officer.
  - 18 *Public Service Act*, RSNS 1989, c 376, s 29(1)(a). The functions, powers and duties of the Attorney General and Minister of Justice (which, despite its name, is one position) are enumerated in s 29.
  - 19 Section 29(1)(c).
  - 20 Section 29(1)(f).
  - 21 Royal Commission on the Donald Marshall, Jr., Prosecution (1989), commonly referred to as "the Marshall Inquiry". The Marshall Inquiry's research papers includes a series of opinion papers written by Prof. John LL. J. Edwards and published under the title "Walking the Tightrope of Justice: an examination of the Office of the Attorney General".
  - 22 *Public Prosecutions Act*, SNS 1990, c 21, especially s 6.
  - 23 *Askin v Law Society of British Columbia*, 2013 BCCA 233 (CanLII), aff'g 2012 BCSC 895 (CanLII), leave to appeal dismissed 2013 CanLII 71613 (SCC).
  - 24 *Public Service Act*, RSNS 1989, c 376, s 30(1): "The Governor in Council may, on the recommendation of the Minister of Justice, appoint a person to be Deputy Attorney General and Deputy Minister of Justice, who shall be paid such salary as the Governor in Council determines and shall perform such duties as are, from time to time, prescribed by the Governor in Council."
  - 25 News release, "Deputy Minister of Justice Appointed" (August 2, 2016), <https://novascotia.ca/news/release/?id=20160802007>.
  - 26 In Nova Scotia, the last non-MLA to be in Cabinet was Premier Russell MacLellan, who was sworn in as premier in July 1997 but was not elected to the assembly until November 1997. Before that, Premier Donald Cameron appointed two non-MLAs to his Cabinet just prior to the 1993 provincial election. Both were defeated in the election, so their time in Cabinet was brief.

# *The Applicability of the Salisbury Doctrine to Canada's Bi-Cameral Parliament*

The presence of a large number of non-partisan Senators, the work of the Special Senate Committee on Senate Modernization, and the growth of a more activist Senate has focused much attention on the Salisbury Doctrine. This convention of the United Kingdom's Parliament holds that the appointed House of Lords should not reject a government bill passed by the elected House of Commons if the content of the bill was part of the government's electoral campaign platform. In this article, the author outlines the Salisbury Doctrine, examines political consideration which may have influenced its development and use, and reviews whether it may be applicable in Canada's bi-cameral Parliament. He contends Canada's Senate should not be beholden to the Salisbury Doctrine. The author concludes that while the Senate should show deference to the elected Commons when necessary, it should not accept any agreement, legal or political, that hampers its ability to outright reject any bill it deems outside the apparent and discernable popular will. However, he suggests the Senate should exercise this power with restraint.

**Christopher Reed**

The recently more activist Senate has given rise to the consideration of the applicability of the Salisbury Doctrine, a convention of the United Kingdom's Parliament, to Canada's bi-cameral Parliament. At its core, the modern interpretation of the Salisbury Doctrine is that the appointed House of Lords should not reject a government bill passed by the elected House of Commons if the content of the bill was part of the government's electoral campaign platform.<sup>1</sup>

The Salisbury Doctrine is relatively new, dating back to 1945 when the Labour Party won a strong majority in the House of Commons. The new Labour Government faced a large Conservative Party majority

in the Lords. The then Viscount Cranborne (later the Fifth Marquess of Salisbury), the Conservative Leader of the Opposition in the Lords along with his counterpart the Viscount Addison, the Labour Leader of the Government in the Lords, developed what became known as the Salisbury Doctrine, so as to not paralyze the legislative agenda of the government by having government bills unduly blocked in the Lords.<sup>2</sup>

However, the Doctrine has its roots much further back than 1945 and in fact speaks to a larger subject – the relationship between the House of Commons and the House of Lords.

As early as 1832 during the debate of the Reform Bill, which would expand the electorate in Britain and signal the beginning of the shift of political power from the Lords to the Commons, it was stated by the Duke of Wellington that no matter how bad a bill is that comes from the Commons, if it was a government bill that was endorsed by the elected house, the Lords had a duty to pass it. However, the

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Third Marquess of Salisbury proposed that the House of Lords had a 'referendal function'; which meant that if the Government of the day was using the Commons merely as its tool to pass a bill for which there was no expressed mandate of support from the people then the Lords had a duty to defeat the Bill. This theory put the Lords in the position of guardians of the people despite their non-elected nature.<sup>3</sup>

### Political considerations

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The 1945 agreement which gave rise to the Doctrine has been interpreted as a face-saving measure by the Conservative Lords. The appointed nature of the Lords, at that time still largely a hereditary body, often generated low popular opinion of the Lords. The Labour Party, portraying itself as the party of the people and the workers, could have easily whipped up popular opinion against the Lords and by extension the Conservative Party who held the majority there. That may have been the reason why Viscount Cranborne proposed the Salisbury Doctrine in the first place, so as to not injure the popular opinion of his party.<sup>4</sup>

The politics of popular opinion aside, there was another fear amongst the Lords – that of being swamped.

In 1909, the Liberal Government passed a budget in the House of Commons and sent it to the House of Lords for their approval. The Lords refused to give the bill second reading. Eventually the government sought dissolution and went to the people – winning a renewed (but smaller) majority in 1910. Determined to not repeat the troubles of 1909, the Government introduced the *Parliament Act* which set out a suspensive veto power for the Lords as opposed to an absolute veto. After much debate and back and forth on amendments between the two chambers, the bill was passed by the Lords, but only after it was revealed that the government had sought, and achieved, the agreement of the King to create enough new Liberal Peers to assure a Liberal majority in the House of Lords and thereby passage of the bill. Essentially the government was willing to use its executive power of appointment to swamp the Lords into submission.<sup>5</sup>

So, in 1945, between the low popular opinion of the Lords, the potential political machinations of the Labour Party, and the possibility of being swamped by Labour Peers, there were justifiable fears that may have led Viscount Cranborne to propose the Salisbury Doctrine.

### More Modern Circumstances

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In 1999, as a result of the Wakeham Commission on Reform, all but 92 of the Hereditary Peers were expelled from the House of Lords and an independent Appointments Commission was established to seek greater input for nominees to the peerage. Prior to this reform, the House of Lords was largely dominated by members of the hereditary aristocracy, many of whom were Conservative supporters. In addition, the majority of Life Peers created before the Wakeham reforms were political appointees who were affiliated with the government party of the day, which recommended their appointment. The relatively new Appointments Commission, along with the reduction of hereditary peers, has led to a House of Lords that is no longer dominated by one party but rather one where independent peers, the Cross Benchers, hold the balance of power.<sup>6</sup>

This has led to growth in popular support for the Lords in recent years. Nominees for peerages now come from all parties represented in the House of Commons as well as from retired professional public servants granting a degree of accountability and responsibility to the newly created members of the House of Lords. This is something the Lords did not enjoy when the membership was largely seen as a political reward or inherited by virtue of birth.<sup>7</sup>

Circumstances have not only changed in the House of Lords but also in the House of Commons. The Salisbury Doctrine relies on the bill in question not only to be a government bill but also to be a bill that enacts a part of the government's platform from the previous election. Modern politics has led to political platforms that are greater in size but not necessarily in substance. The growth of centrist, big tent parties has meant that political parties as organizations want to appeal to the largest segment of the population as they can in an effort to win a majority of seats in the House of Commons. That begs the question: can a bill truly encapsulate a particular electoral promise? Parties invariably need to leave wiggle room in their promises to broaden interpretation and appeal, and governments invariably need latitude in drafting legislation to allow for unforeseen or future circumstances. This means that it may be difficult to find direct links between campaign promises and draft legislation.<sup>8</sup>

The above has led to calls in Britain for the Doctrine to be restricted in its use if not abolished all together.<sup>9</sup>

## Applicability in Canada

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Given the new dynamics of the current Senate, the applicability of the Salisbury Doctrine to Canada's bi-cameral Parliament has been of interest to some Senators and to the Special Senate Committee on Senate Modernization as part of its ongoing study. But, in many ways, if not in name, the Salisbury Doctrine has always been in place in Canada vis-à-vis the relationship between the Senate and the House of Commons.

The Senate, while not hereditary, is not unlike the House of Lords – an appointed elite. One only need look at the original financial and property qualifications required to become a Senator to determine the desire to have what amounted to a landed gentry in Parliament. For that reason, and its corresponding low support in popular opinion brought about by its lack of an electoral mandate, has meant that the Senate itself has restrained its use of a veto over government bills. Two examples in recent history are excellent case studies of the views of both Marquesses of Salisbury – the Third and the Fifth.

The Senate's refusal to adopt legislation enabling the free trade agreement (FTA) with the United States in the late 1980s led directly to the calling of the 1988 election. Some Senators at that time argued that the FTA was not part of the government's election platform and, if inspired unknowingly by the Third Marquess, they wanted to refer the legislation back to the people. Likewise, the Senate's insistence to amend the bill regarding the cancellation of the Pearson Airport contracts in the early 1990s proceeded not unlike the Doctrine enunciated by the Fifth Marquess. The bill, which was a major campaign plank for the government, received second reading and was sent to committee where amendments were made regarding the protection of the right to seek remedy in the court for the cancelled contracts; the amended bill did eventually pass. So, if the Senate practiced restraint in the past, why has it become part of the discussion now to apply the Salisbury Doctrine?

Arguably, the Salisbury Doctrine was an attempt by the Conservative majority in the House of Lords to save face for their party and not offer a plank of attack for the governing Labour Party. Likewise, if a majority of senators are from a party different than the government, they often show some restraint so as to not enable the government to score political points on the back of the majority party in the Senate. However the growth of an independent Senate and

of individually independent senators does not offer such a political motivation for restraint; hence the search for ways to govern the relationship between the Senate and the House of Commons. But is the Salisbury Doctrine applicable to Canada? If it is, is it even needed?

The factors that have led to calls for reform or abolishment of the Doctrine in Britain are very much the same in Canada. Like Britain, Canada now has an independent Appointments Committee that advises the Prime Minister regarding potential nominees to the Senate. Also, partisan senators do not hold the balance of power in the Senate, it is the cross bench group – the Independent Senators Group (ISG) that does. In fact, the only partisan political caucus left in the Senate is the Conservative Party Caucus because the Senate Liberals are not affiliated in any formal way with the Liberal Party of Canada. In addition, Canadian political party platforms – like in Britain – are often vague and left open to interpretation. Likewise, any ensuring legislation is broad in scope; it can be difficult to create a 100 per cent direct link between a campaign promise and a bill before Parliament.

None of these factors take into account the multi-party and first-past-the-post systems where often the party that forms government, even a majority, does so only with a plurality of votes.<sup>10</sup> Who then speaks for the other voters when a majority government can run roughshod over the House of Commons? The Senate exists as a safety valve to what the Fathers' of Confederation considered the possible partisan excesses of the House of Commons.<sup>11</sup>

Finally, two factors in Britain that led in part to the contemporary relationship between the House of Commons and the House of Lords are not present in Canada; first, the threat of swamping and second, the acknowledgement of the primacy of the House of Commons. The Canadian Senate is a body of fixed size. While there is the extraordinary power of the Queen to appoint an additional eight senators, it has only been used once. Therefore there is no fear on the part of Canadian Senators of being suddenly swamped by new colleagues on the premise that a certain piece of legislation needs to be passed.

The threat of swamping in Britain led to the passage of the 1911 *Parliament Act* that recognized in law the supremacy of the House of Commons. Further, on April 25, 2006, in creating a joint committee of the Houses of Parliament to study the relationship

between the two chambers – the Lords expressly stated: “That [they are] accepting the primacy of the House of Commons.”<sup>12</sup>

Canada’s Senate, by contrast, with the exception of certain matters such as the power to introduce money bills or collect revenue, has never formally acknowledged the supremacy of the Commons.

For the reasons set out, namely: the already existing prudent nature of the Senate’s legislative powers, the increasing vagueness of party platforms, the broadening scope of enabling legislation, governments exercising a majority of their powers without a majority of popular support and, lastly, the co-equal nature of the Senate to the House of Commons, Canada’s Senate should not be beholden to the Salisbury Doctrine. The Senate should show deference to the elected Commons when necessary but should not accept any agreement, legal or political, that hampers its ability to outright reject any bill it deems outside the apparent and discernable popular will. However, the Senate should exercise this power with restraint.

## Notes

- 1 Glenn Dymond and Hugo Deadman. *The Salisbury Doctrine*. London: House of Lords Library, 2006, p. 1.
- 2 *Ibid.*, pp. 5-6.
- 3 Richard Kelly. *House of Lords: Conventions*. London: House of Commons Library, 2007, p. 2.
- 4 *Ibid.*, pp. 5-6.
- 5 Dymond and Deadman, p. 19.
- 6 Lizzie Wills. “The Conservatives and the Lords – the slow death of the Salisbury Doctrine.” *WA Comms*, August 6, 2015. URL: <https://wacomms.co.uk/the-conservatives-and-the-lords-the-slow-death-of-the-salisbury-doctrine/>.
- 7 David Browne. “Snooping and Salisbury: A Second Chance for the Red Benches” *The Forum TT15 Journal*, June 2015, pp. 10-11.
- 8 *Ibid.*, p. 10.
- 9 Wills.
- 10 *Ibid.*
- 11 *Reference re Senate Reform SCC 32* (Supreme Court of Canada 2014), p. 737.
- 12 Kelly, p. 4.

# *Fusion of Powers? Building Connections Between the Public Service and the Legislative Branch*

As a former legislative intern, the author has had the opportunity to employ the knowledge of the legislative process he gained through his internship to great effect in his current role as a policy analyst with the federal public service. In this article he suggests this type of experience, if more widely available to public servants, could reinforce a sense of appreciation for the principle of parliamentary review, provide insight into how the legislative process can impact policy development, and allow them to develop their political acuity.

**Adam Walter**

From January to June of 2014, I had the unique opportunity to be part of the British Columbia Legislative Internship Program (BCLIP). This six-month program included five weeks working in a Ministry in the British Columbia (BC) Public Service, one week working in the constituency office of a Member of the Legislative Assembly (MLA), and over four months working within the Legislative Assembly performing research and analysis for MLAs during the spring legislative session. As a result, I was able to observe the inner workings of the legislature, including Question Period, legislative committee hearings, and debates on legislation.

The stated objectives of the BCLIP are to provide recent university graduates with real-world exposure to the legislative process with the long-term goal that participants will be able to contribute to a greater public understanding and appreciation for the parliamentary system of government. While former interns have gone on to pursue a wide variety of different career paths, many continue to work in public policy in

the non-partisan, professional public service.<sup>1</sup> In my experience, the knowledge of the legislative process that I gained as a legislative intern has provided significant value in my career as a policy analyst in the public service. The purpose of this article is to identify why and how knowledge of the legislative branch can be beneficial to public servants, and to identify opportunities in which current and aspiring public servants can increase their understanding of it.

First, I outline the institutional relationship that the legislative and executive branches of government have in Westminster systems of government. Given this background, the next section describes the benefits that a more robust understanding of the legislative process can have for public servants. In a final section, I identify ways in which Canada's various legislatures and public services can help increase that knowledge and build connections between the two.

## **Responsible Government in Canada**

The fusion of the executive and legislative branches of government is perhaps the defining component of the Westminster parliamentary system – it is the basis for representative government in which members of cabinet are drawn from the democratically elected legislature or parliament and are collectively dependent on that body's support. Thus, ministers of the Crown are constantly subjected to scrutiny at the hands of their fellow parliamentarians or legislators.

Despite being such an integral component of our

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*Adam Walter is a former participant in the BC Legislative Internship Program. Building upon his experience at the legislature, he completed a master's degree in public administration and joined the federal public service as part of the Advanced Policy Analyst Program. Any opinions expressed in this essay are strictly his own.*



parliamentary system, the rules and principles of responsible government cannot be found in our written constitution. Instead, responsible government has developed slowly through time as a series of unwritten constitutional conventions.

Like most aspects of our parliamentary system, responsible government was originally developed in Britain.<sup>2</sup> Beginning in the 13<sup>th</sup> century, power slowly began to shift from the Crown to Parliament. The Crown still formally wields the executive powers of government, but Parliament gained responsibility for making laws and raising taxes. By the 19<sup>th</sup> century, the Crown began appointing ministers drawn from Parliament to the Privy Council, led by a prime minister, to assist in securing funds for initiatives and coordinating the administration of government. As party politics emerged in the House of Commons, it became increasingly complicated for the Crown to simply appoint Members of Parliament that agreed with its proposals to the Privy Council. By 1835, following the passage of the *Reform Act of 1832*, it became custom for the Crown to only appoint a prime minister that could command the confidence of the majority of the House of Commons. In turn, the prime minister would appoint cabinet ministers from among the party's parliamentary caucus, each of whom would be given responsibility for the administration of a government department. Thus, responsible government, in which the *de facto* government decision-making authority is vested in the prime minister and cabinet as opposed to the Crown, began to emerge.

In Canada, responsible government initially emerged in the British colonies. Prior to Confederation, these colonies essentially followed a strict separation of powers system: all laws were required to be passed through the democratically legislative assemblies, but executive governing authority was held exclusively by the colonial governors who were appointed by the British government. This situation led, in part, to rebellions against the colonial governments in Upper and Lower Canada in 1837-38. The rebellions prompted Lord Durham's *Report on the Affairs of British North America* in 1840, which, among other things, recommended the establishment of responsible government. However, it was not until 1848 that the British government agreed to implement responsible government in Nova Scotia, followed by the other colonies. By the time of Confederation in 1867, responsible government was considered a fundamental principle of the Canadian governing system.

This history had created a fundamental link – often referred to as a ‘fusion of powers’ – between the legislative and executive branches of government in Canada. Thus, cabinet ministers are both members of and fully accountable to the legislative branch. Given this reality, public servants can benefit greatly from a deeper understanding of the legislative branch to which their minister is accountable.

### **Benefits to Public Servants**

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Despite the key role the fusion of legislative and executive branches plays in our system of government, there is a growing risk for the public service (which provides ministers with non-partisan policy advice and implements government decisions) and the legislative branch (which debates and scrutinizes those decisions) to operate in silos and without a strong grasp of how the two branches relate to and interact with one another.

A key strength of the federal and provincial public services is in their diverse workforces. Policy advice is generated by professionals with expertise in economics, science, sociology, health, and numerous other disciplines. However, these backgrounds do not necessarily include a deep understanding of the parliamentary system of government and the important role it plays in Canadian society. Even those with degrees in political science may not have sophisticated knowledge of parliamentary procedure beyond the steps needed for a bill to become law. In my personal experience, if I am not working on a file that is directly affected by one of the handful of pieces of legislation that are passed in the legislative session, it is completely possible to work day-to-day without knowing that the legislature is even sitting.

It is ironic that in the United States, which has a very strict separation between the executive and legislative branches, public servants seem to move between these two branches much more freely than they do in Canada. While some have argued that this leads to an increased politicization of the US bureaucracy, it does provide public servants with useful insight into the legislative branch. While I am a staunch supporter of Canada's professional, non-partisan public service, I do believe that the public service and individual public servants themselves would be well-served by a more complete perspective of the parliamentary system.

The first major benefit of a more robust understanding of the legislative process and

history of our parliamentary institutions is that it will reinforce the appreciation for the principle of parliamentary review which is so critical to a democratic society. The opportunity to observe the daily ins and outs of the legislature and to see first-hand the role that elected officials play in representing their constituents can have a strong impact on a public servant. It illustrates how public policies impact different components of the public in various regions of a territory, province or the country.

I believe that building up greater institutional knowledge of and appreciation for the legislative branch within the public service can empower legislative assemblies to better review government proposals. For instance, it may prompt public servants to make greater efforts to ensure that their analysis and findings are more accessible to legislators and the broader public.

The second major benefit for public servants is that knowledge of the legislative process will provide insight into how parliamentary debate and committees can influence the policy process and particular policy issues. As explained by David Good in his insightful book *The Politics of Public Money*, legislators can play a variety of different roles in the policy process, including helping to set priorities, guarding public funds, advocating for spending, or scrutinizing past government performance.<sup>3</sup> In particular, legislative committees have an enormous opportunity to study public policy issues or amend proposed legislation. First, committees offer an air of democratic legitimacy to the policy review process by subjecting proposals to scrutiny by opposition parties, which is more reflective of the ideological diversity in a particular jurisdiction. Second, committees have the ability to call witnesses to provide expert testimony, and to perform additional consultative efforts with members of the public. The culmination of these activities could have very important impacts on both legislation and public policy.

Consequently, public servants who are familiar with the legislative process and the committee system may be better able to anticipate how the policies that they are responsible for will be affected once they reach the legislature. As a result, an analyst could engage relevant stakeholders who may be present at committee hearings or conduct additional research that legislators may need before it ever reaches the legislature. This practice would have the dual

benefit of providing legislators with the information they require earlier and possibly lead to a smoother path through the legislative process.

The third major benefit of familiarity with the legislative branch is that it can help public servants gain political acuity, an increasingly valuable core competency in the public service. An article in the *Canadian Government Executive* defines political acuity as “a capacity to analyze situations, devise strategies and employ nuanced knowledge, behaviours, and tactics related to social astuteness, influence, power, and relationships – both formal and informal – in pursuit of a personal agenda or to attain organizational goals and objectives.”<sup>4</sup> While this is an admittedly intricate definition, the article goes on to unpack its many components. Chief among these components is a need to understand formal structures and processes and to be aware of political factors, both individual and organizational. Political acuity requires a public servant to understand who the key decision-makers are, what motivates them, and the institutional context in which they operate. Unless one works closely with the minister’s office, it can often be easy for public servants to forget that their minister is simultaneously a member of cabinet and of the legislature.

A recent op-ed by former partisan political advisor Geoff Norquay argued that we should reduce the barriers between working for the public service and ministers’ political offices and, for some cases, re-implement the policy providing former political advisors with preference for positions in the public service.<sup>5</sup> His rationale was that too often these two sides suffer from breakdowns in communication and an inability to understand one another; he explained that people with experience in both environments would be able to act effectively as a bridge between the two. While providing political advisors with preferential access certainly goes a step or two beyond the argument being made in this article, I do agree with his argument that experience in different environments can be beneficial in making connections. However, as I discuss in the next section, one can gain this new perspective without necessarily working in a partisan role. Increased exposure to the legislative branch will allow public servants to witness the hyper-political environment in which ministers operate. This exposure will undoubtedly develop one’s political acuity and allow public servants to work more effectively at the nexus of the bureaucracy and the political arena where decisions are made.

## Opportunities for Collaboration

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As this article has hopefully demonstrated, greater knowledge integration between the legislative and executive branches can have some important benefits, both at the individual and institutional levels. As a result, I believe that legislatures and public services across the country should explore opportunities to facilitate this knowledge transfer, a few of which are outlined below.

First, there should be continued support for legislative internships targeted at current or recently graduated university students with an interest in public affairs. At the time of writing this article, the federal Parliament, seven out of 10 provincial legislatures, and one territorial legislature had some sort of internship program, several of which have been established for over 40 years. Over time, each of these programs has developed unique characteristics reflective of the political context in which they operate and the history of the programs themselves. For instance, BC is the only program which includes a placement in the public service while other programs include placements with both government and opposition parties. However, the one thing that each legislative internship program has in common is that each provides a unique opportunity for interns to gain valuable experience working in the legislative branch with elected officials and other staff. Potential activities include providing research and analysis of public policy issues before the legislature, drafting correspondence and speeches, or working in members' constituency offices. While legislative interns go on to pursue a wide variety of different career paths, many continue on within the public sector, either as political advisors or as non-partisan public servants. As a result, former interns are able to bring valuable knowledge and experience that will serve them well should they pursue a career in the public service.

While legislative internships are targeted at those at the beginning of their careers, opportunities also exist for mid-career public servants as well. A good example is the Parliamentary Procedure Workshops run by the Legislative Assembly of BC. These one-day workshops are designed to provide provincial public servants with a greater understanding of parliamentary procedure through sessions with a variety of different speakers. Topics covered include: an overview of the parliamentary system of government; the legislative process; the passage of Orders-in-Council; and the annual budget and

estimates process. As a result, participants in these workshops are able to gain a deeper understanding of how the activities in the legislative branch inform and impact their work in the public service. The development of similar programs across the country would offer public servants a very useful addition to their professional development plans.

A final recommendation would be for legislatures and public services to collaborate with one another and facilitate secondment or interchange opportunities between positions in the public service and non-partisan positions in the legislative branch, such as in committee research departments or the legislative libraries. Many public organizations already recognize the positive effects that temporary assignments can have by allowing employees to gain additional knowledge and skills. For instance, the Interchange Canada Program operated by the Treasury Board of Canada Secretariat facilitates temporary assignments from the federal public service to other sectors to fulfill a number of goals, including to "support the acquisition and transfer of knowledge and expertise, contribute to an enriched understanding of how the core public administration functions, understand the business of other sectors, [and] foster the professional and leadership development of participants."<sup>6</sup> As the third section of this article illustrates, temporary assignments in the legislative branch could certainly fulfill the goals outlined in the Interchange Canada Program and provide public servants with significant professional development opportunities. While Interchange Canada is an example from the federal public service, the concept holds true for provincial public services as well.

I believe that each of these examples offers an opportunity to build linkages between the legislative and executive branches of government in Canada. However, this list of opportunities is by no means intended to be exhaustive and support for innovative ideas to facilitate further linkages should be strongly encouraged.

## Conclusion

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As a former student of both political science and history, perhaps I am predisposed to seeing the value in understanding the parliamentary process and its development over the centuries. That being said, in this article I have outlined several benefits that knowledge of our parliamentary system has beyond historical appreciation for both the public service and individual public servants: it reinforces a sense

of appreciation for the principle of parliamentary review and strengthens our democracy, it provides insight into how the legislative process can impact policy development, and it allows public servants to develop their political acuity. As a result, I believe the various legislatures and public services across the country should continue to support existing programs and develop new opportunities that allow public servants and prospective public servants to gain experience and knowledge so that they may build deeper connections with the legislative branch.

## Notes

1 For the purposes of this article, the term “public service” is defined as the professional, non-partisan institution that advises on and implements government decisions and is composed of various departments, ministries, agencies, and other organizations that report to a

government minister. The term “public servants” is narrowly defined to include those who work in the public service.

- 2 A comprehensive history of responsible government can be found in *Democratizing the Constitution: Reforming Responsible Government* (2011) by Peter Aucoin, Mark D. Jarvis, and Lori Turnbull.
- 3 David A. Good, *The Politics of Public Money* (University of Toronto Press: Toronto, 2014), 242.
- 4 “Political acuity: the elusive competency,” *Canadian Government Executive*, June 16, 2015.
- 5 Geoff Norquay, “Trudeau’s blurring the line between ministries and the public service. Good for him,” *iPolitics*, March 4, 2016.
- 6 Treasury Board Secretariat of Canada, *Interchange Canada*, Ottawa: Treasury Board Secretariat of Canada, 2012. <http://www.tbs-sct.gc.ca/psm-fpfm/learning-apprentissage/pdps-ppfp/ic-ec/index-eng.asp/>.

# *It Takes Two to Tango — Exempt Staff and the Lobbying Act*

Canada's federal Lobbying Act is focussed on the lobbyist rather than the lobbied. However, the lobbied can play an important role in contributing to a culture of compliance. Given lobbying rules focus on the lobbyists, the lobbied do not have a strong incentive to learn about lobbying regulations. Furthermore, training from the Commissioner of Lobbying's office is not mandatory. Thus, it is expected that a knowledge gap on the Lobbying Act exists. A survey sent to ministerial Chiefs of Staff revealed such a knowledge gap – although factors like experience as a lobbyist have a positive correlation to knowledge of lobbying regulations. This gap is concerning and speaks to challenges with training in the unique context of the Hill.

**Christina Vietinghoff**

Contrary to its negative public perception, lobbying is a legitimate and regulated channel through which organizations and individuals influence policy in a Parliamentary democracy. It requires two parties: the lobbyist who is asking for something and the public office holder who is being asked. Parliament created lobbying regulations which focus almost exclusively on the former. Although the public office holder being lobbied is an integral party to the act of lobbying, there is very little research on the participation of the lobbied in the Canadian federal context. A study of one such category of public office holders, chiefs of staff in Ministers' offices, demonstrates some of the challenges with regulating lobbying in a Parliamentary democracy and areas where further research is essential.

Despite a rigorous public debate in Ottawa around lobbying, there is still confusion around basic definitions and concepts. Lobbying is any direct or indirect communication, for payment, with a federal

public office holder regarding making or changing any policies, programs, legislation, regulations or funding. Canada's *Lobbying Act* and associated regulations and interpretations are based on the premise that access to and lobbying of decision makers is an important part of democracy.

Parliament designed Canada's lobbying regulatory system to frame the burden of compliance on the lobbyists. At Westminster, in contrast, it is the Members of Parliament who are subject to lobbying oversight through the Registrar of Members' Interests<sup>1</sup>. In Canada, federal lobbying was first addressed through legislation in 1989 with the *Lobbyists Registration Act*. Since the responsibility for compliance was first placed on the lobbyists, subsequent legislation, regulations and interpretations have predominantly reinforced this as a defining feature of the Canadian lobbying regulatory system.

Within the category of designated public office holders (DPOH) who are on the receiving end of lobbying, exempt staff make up a unique sub-category that includes all political staff appointed at the Minister's discretion in their office. Chiefs of staff are a particularly interesting category of exempt staff because they serve both a strategic policy role and a management role in a minister's office<sup>2</sup>. They are a key player in lobbying as they are gate keepers to the minister and are also lobbied themselves. Furthermore, they are usually responsible for training

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*Christina Vietinghoff was a participant in the Parliamentary Internship Programme of 2015-2016 when she conducted her research on lobbying. She recently managed Samara Canada's MP Exit Interview project.*

in a minister's office and hire the rest of a minister's staff. There is little recent academic literature in Canada on the demographics of ministerial staff and especially on chiefs of staff<sup>3</sup>.

These public office holders are affected by the *Act* in two ways: first, they are subject to a five-year ban on lobbying after leaving their position and, second, they must verify communication reports. The current Commissioner of Lobbying, Karen Shepherd, highlighted that DPOH are not required to keep records in a public letter in 2011: "The *Lobbying Act* does not specify that DPOHs must keep records, only that they confirm, if requested by my Office, the information provided by a lobbyist."<sup>4</sup> This is a serious weakness in Canada's regulations.

Despite this weakness, DPOHs have an incentive to verify communication reports; if they fail to do so, they face "naming and shaming". This means the Commissioner can publish their name and explain that they failed to comply with the *Act*. However, according to a policy advisor in the Commissioner's office, as of 2016 no DPOH has ever failed to verify a communication report. The quality of their verification, given they are not required to keep records, is another question.

With the change in government and ensuing staffing turnover on the Hill, the *Lobbying Act* has become politically salient and subject to considerable debate. In particular, the five-year ban on lobbying after working as an exempt staff has been subject to criticism in several articles and opinion-editorials<sup>5</sup>.

The practical reality of lobbying is not only governed by legislation. The government elected in October 2015 reinforced the role that public office holders have in verifying information about lobbying through the Open and Accountable Government document. Published a month into its mandate, the document states: "The Commissioner of Lobbying may ask designated public office holders, including Ministers and Parliamentary Secretaries, to verify information about lobbying communications that has been registered by lobbyists. Every effort should be made to meet this responsibility using routine records."<sup>6</sup> However, though this change reflects one government's potential desire for an increase in responsibility for DPOH, it is merely symbolic as it is not enforceable by the Commissioner.

Many lobbyists have criticized the *Lobbying Act* and, in particular, the Lobbyists' Code of Conduct. They have complained that the rules are ambiguous and over-burdensome<sup>7</sup>. The Commissioner's interpretations around some of these rules have also been called confusing<sup>8</sup>. Based on the confusion amongst lobbyists, who have the strongest incentive to understand the regulations, it seems probable that the lobbied, with even less incentive, are likely not fully literate in Canada's lobbying rules.

To address this question, an electronic survey was distributed to chiefs of staff, who make up a small (at the time, N=30) but significant population. The survey tested knowledge of the *Act* and asked about hiring practices in terms of potential staff knowing about the five-year post-employment lobbying prohibition. The survey contained 17 questions. Five of these questions tested knowledge of the *Act* and were developed in consultation with staff from the Commissioner's office. The survey concluded with two open ended questions asking respondents for their perception on how lobbying regulations can be improved. Due to turnover it was possible to send the bilingual survey to only 28 chiefs of staff. Seven chiefs of staff responded although one answer was incomplete resulting in a response rate of 21 per cent. In addition to the survey, a conversation was conducted with the Commissioner and informal fact checking was done with staff in the Commissioner's office and an exempt staff. Interviews were sought with a sample of chiefs of staff, none of whom were willing to be interviewed. Finally, primary documents such as the training presentation given to ministers' offices, the feedback survey after the presentation, a letter of offer to an exempt staff and the conflict of interest paperwork were also analyzed.

Though the results must be considered in the context of the small sample size, the answers to some questions were both alarming and informative. One respondent scored perfectly on the test and the rest had only one or two questions incorrect. These results give the impression that chiefs of staff consistently have some basic knowledge of the *Lobbying Act*. There was a strong positive correlation between respondents who had been a registered lobbyist and a higher score on the knowledge test.

Respondents were asked to list all the sources of training/information they had received:

## Sources of Information on Lobbying

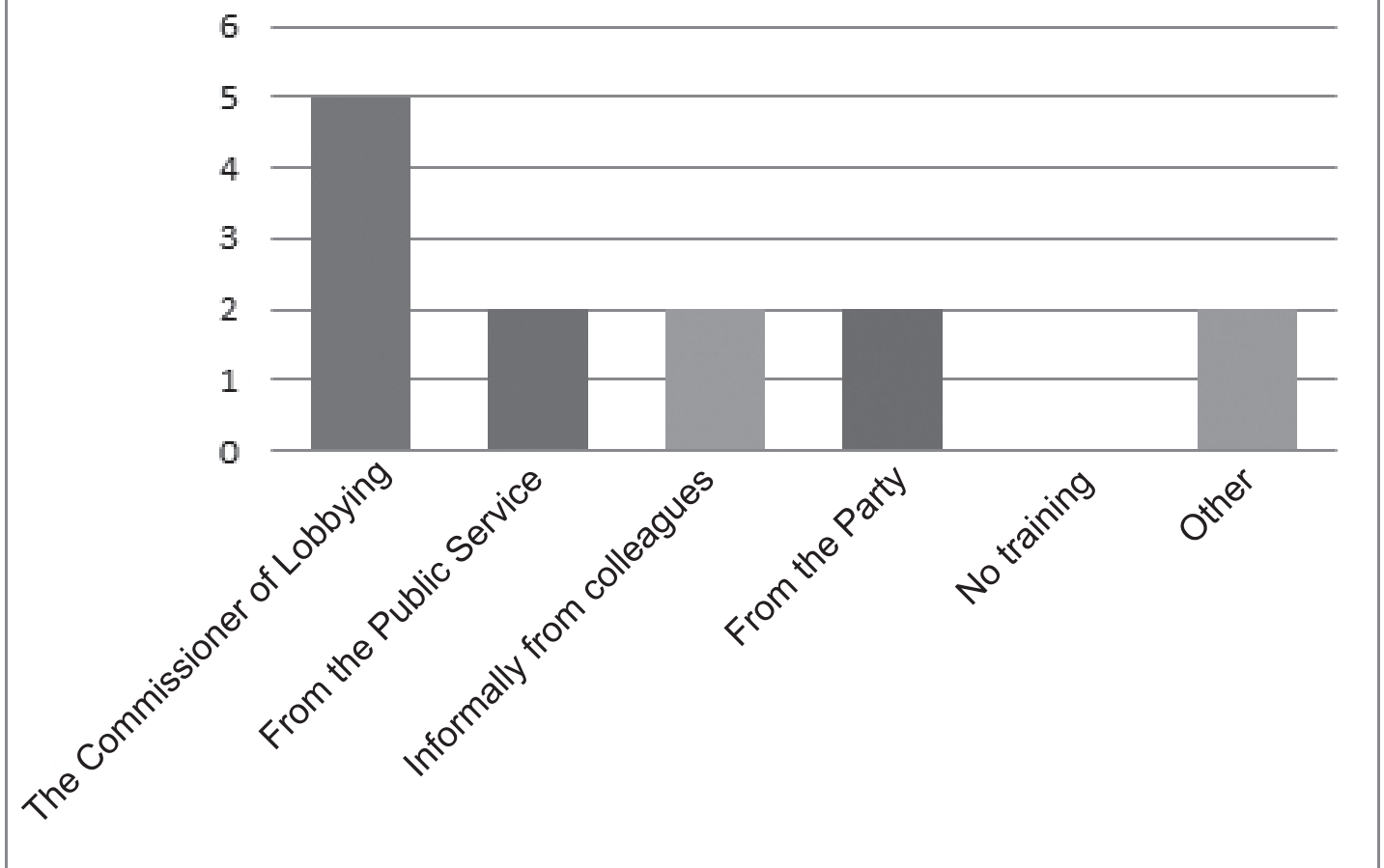


Figure 1.2

As Figure 1.2 shows although most respondents receive training or information from the Commissioner of Lobbying, many also rely on the public service, their political party and informal information from colleagues.

Surprisingly, when asked if they had been informed of the five-year post-employment lobbying ban before they were hired, two respondents said no. When asked if they had informed staff they hired about the five-year post-employment lobbying ban, two chiefs of staff again said no. Regardless of the small sample size, it is worrisome that any respondent answered no to these questions. This ban is taken seriously by the Commissioner – the few exceptions she has granted are published online<sup>9</sup>.

The open-ended questions about improving the system also yielded fruitful responses. When asked if there are any tools that could help them discuss lobbying with lobbyists, one respondent said “Yes... the Government should provide a simple little business card that directs Lobbyists to the registration web site and informs them of their responsibilities under the *Act*.” This idea was implemented at the municipal level in Ottawa and Toronto<sup>10</sup>.

A third respondent to this question said “The *Federal Accountability Act* is a badly written piece of legislation that requires significant amendment. The main problem for lobbyists and those they lobby is that there is little shared vernacular between the Ethics and Lobbying Commissioner’s office...”.

When asked more specifically how training on the *Lobbying Act* could be improved, one person suggested there should be an obligatory session for all new ministerial staff. Another respondent to this question said they would like to see “more formal training for political staff.” A third person suggested an online training module might be a good approach. Finally, one respondent said the *Act* needs to be amended to “make the definitions and advice more realistic [with] the situation in Ottawa and create uniformity to approach.”

A conversation with the Commissioner of Lobbying reinforced the notion that DPOH have very few responsibilities under the *Act*. The Lobbying Commissioner, however, has the mandate to train. At the beginning of the mandate of the new government her office reached out to the chiefs of staff to offer training. However, the Commissioner says the beginning of the mandate of a new government is a unique time and in many cases chiefs of staff had yet to be hired. For this reason, the Commissioner periodically re-contacts these offices and continuously offers training.

The Commissioner said the main impact the lobbied can have on federal lobbying is contributing to what she calls a “culture of compliance”. Staff can adopt a series of best practices, such as asking lobbyists if they are aware of the lobbying regulations and code of conduct and if they are in compliance. The survey found that all but one chief of staff had had a conversation with a lobbyist about lobbying. Finally, the Commissioner has seen a positive trend in terms of Public Office Holders wanting to help with compliance.

Though it remains to be determined why some staff know more than others about lobbying, it is clear that there is a knowledge gap among some chiefs of staff about lobbying rules. For instance, two chiefs of staff were not informed of the five-year post-employment ban prior to being hired and respondents gave varied answers to the section of the knowledge test on rules such as whether lobbyists can give gifts. Mandating that all letters of offer to exempt staff include an explicit reference to the five-year ban on lobbying is one way to ensure staff are informed. However, letters of offer do not fall under the mandate of the Commissioner of Lobbying, but rather the Treasury Board.

The diffused nature of sources of information on lobbying is a key potential source of confusion on

lobbying rules. Although Parliament established the Commissioner of Lobbying as the hub for information about lobbying, as the survey results demonstrates, chiefs of staff’s seek out a range of sources of information including “informally from colleagues” or “other” which are potentially sources of inaccurate information. These diffused sources of knowledge are problematic because misinformation on lobbying abounds in Ottawa. For instance, a *Canadian Parliamentary Review* article incorrectly states: “MPs and Senators are required to keep records about what pre-arranged oral communications they have with registered lobbyists.”<sup>11</sup> (\*This article has since been corrected online.)

Training on lobbying for ministerial staff should go beyond content of the *Lobbying Act* to actually equip staff with the ability to facilitate compliance and include how and why exempt staff can contribute to lobbying oversight. As one respondent said, innovative tools for exempt staff such as a card with the Commissioner’s contact information could also better equip ministers’ staff to facilitate compliance. One respondent acknowledged they feared repercussions for reporting unregistered lobbyists. Better training could address these concerns. However, equipping staff with the ability to facilitate compliance goes beyond the responsibility DPOH have under the current *Act*.

Training must ensure political staff will use their knowledge. A thorough study on the lobbied in Quebec found that 85 per cent of Quebec’s public office holders were aware of the provincial Registry of Lobbyists; yet, there is a gap between this knowledge and concrete action by public office holders. For example, 69 per cent of respondents had never consulted the website of the Commissaire au lobbying and 72 per cent had never invited a lobbyist to register their activities or respect the Code of Conduct<sup>12</sup>. A similar study should be conducted at the federal level to help Parliamentarians and their staff better understand the practical reality of lobbying and the limitations of the current rules.

Knowledge of the rules around lobbying is necessary but not sufficient to ensure actions to promote compliance are taken. Thus, although more training is needed to provide DPOH the knowledge to promote compliance, it is essential they also be provided the skills and tools to apply this knowledge. Finally, legislative change is possible with the *Lobbying Act* up for review every five-years.



Further research on the participation of the lobbied in federal lobbying is essential. Given the important role the lobbied can play in facilitating a culture of compliance, the gap in the literature on the lobbied is concerning. Although the sensitivities in the political environment make this a difficult topic to research, it is worth investigating. The potential for staff to serve as a check for lobbying regulation compliance could help to increase the public's confidence in our system. Furthermore, a fundamental purpose of lobbying regulation is to ensure equal access to influencing decision makers. Ensuring staffers are equipped to assist in compliance contributes to a system where people with disproportionate access are held to account.

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# *The Parliament of United-Canada in Montreal, 1843-1849: an exceptional archaeological site*

The exposure of the remains of the Parliament of United-Canada in recent years by Pointe-à-Callière culminated in 2017 with massive archaeological excavations. Coinciding with Montreal's 375th anniversary and Confederation's 150th, the discoveries made at this important place in the political history of Montreal, Québec and Canada are significant; the site's spatial extent and the wealth of material remains discovered have captured our imagination. All through the summer, visitors have been able to come close to archaeologists in an environment that promoted comprehension of a site characterized by the remarkable state of preservation of its architectural remains. But a number of surprises were awaiting: the richness of the artifacts recovered and documents thus far unknown challenge our understanding of this fundamental episode in Canadian history. Here are some highlights of this ongoing investigation.

**Louise Pothier and Hendrik Van Gijseghem**

## **A site rescued from oblivion**

For more than 80 years, until 2010, a vast urban tract located on Place D'Youville in Old Montreal was used as a parking lot. Nonetheless, that place was burdened with history. In 1832, what was to become Montreal's first indoor market, St. Anne's Market, was built in a neoclassical style inspired by Boston's Quincy Market and London's Kensington Market. Measuring more than 100 meters long, it was then the largest civil building in the city. Even more remarkable, architects John Wells and Francis Thompson erected the building squarely on top of Little Saint-Pierre River. This became possible through the construction of a gigantic stone vaulted canal. From then on, the river flowed underground over a few hundred meters toward the St. Lawrence River.

A short decade after its inauguration, the building's vocation was modified: food distribution made way for politics! In 1843, the government of the Province of Canada, also known as United-Canada, had been centered in Kingston for only two years when all the representatives called for relocation to a more suitable place, for themselves as well as for their families and

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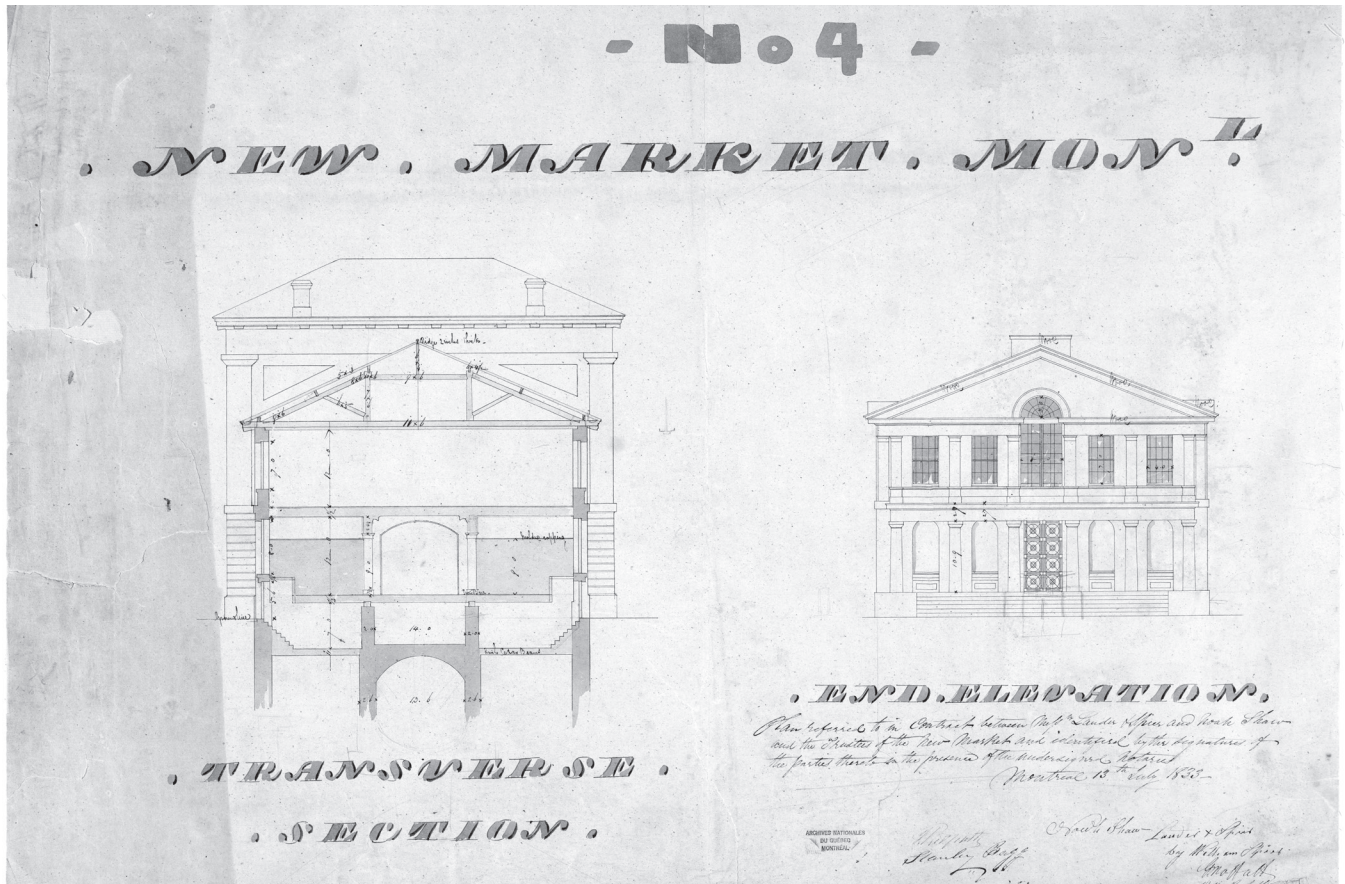
*Louise Pothier and Hendrik Van Gijseghem are archaeologists at Pointe-à-Callière, Montreal's Archaeology and History Complex. The archaeological research project on the city property was made possible thanks to a grant from the Ville de Montréal.*



Alain Vandal, Pointe-à-Callière.

**Ongoing archaeological excavations at the site, 2013.**

the employees that gravitate around the institution. All eyes turned to Montreal, which was then the country's largest city. The city's businesses were thriving and it had brand new maritime infrastructures and a booming downtown with hotels and inns. It was decided that Montreal was to become the first permanent capital of



Cross section and elevation of the St. Anne's Market and the channelled river, 1833.

the Province of Canada. At least that was the plan. The government leased the St. Anne's Market to house the Parliament Chambers. Architect George Browne was in charge of renovations to modernize the interior spaces and adapt them to their new function. Until 1849 it housed successive governors, representatives, writers, clerks, and the population who came to debates and hearings at the Legislative Assembly and Council.

Numerous changes to the governmental institutions occurred during a period we could call a "bureaucratic revolution," not the least of which was a slow transition from a colonial state toward a modern liberal state. Among the innovations during this period: the creation of various ministries, reform of the education system, rapid increase of per capita spending, official censuses and statistics, establishment of two national libraries (with 16,000 tomes in the Legislative Assembly's and about 6,000 in the Council's). In 1848 the Governor General, Lord Elgin, yielded to long-standing requests from Louis-Hippolyte LaFontaine and Robert Baldwin

*Anna Thirion and Nathalie Charbonneau, Laboratoire d'histoire et de patrimoine de Montréal, UQÀM.*



**The Montreal Parliament. A 3D reconstitution after iconographic sources and archaeological documentation.**

and embraced the principle of responsible government. The adoption of this foundation of parliamentary democracy, in which the government must have the support of the chamber and its elected representatives, is a turning point in our political history.

These changes occurred in spite of the opposition of a small class of citizens who long had much influence on colonial affairs. This oligarchy, also known as Family Compact, had remained close to the sitting Governor since the start of the 19<sup>th</sup> century and enjoyed powers and privileges within administration and commerce. In response to the 1837-38 Rebellions in both provinces, the union of Upper and Lower Canada in 1841 heralded change. The abolition of the Corn Laws (preferential tariffs on crops coming from the colonies) by London in 1846 denied economic advantages to leading Canadian businessmen, especially Tories. With the establishment of responsible government, the Tory oligarchy's capacity to preserve its privileges was threatened. Their struggle with the British Crown and its representative, the Governor General, culminated in April 1849, when he was about to sanction a bill for the indemnity of Rebellion victims; the Tories were outraged. On April 25, a demonstration degenerated into a riot at the Parliament. The building was ransacked and burned along with its contents, including both libraries. Montreal lost its capital status and the Parliament then alternated between Quebec and Toronto until 1864, the year when Ottawa became

Canada's capital. One of the lesser-known outcomes of the Parliament's destruction was the massive display of popular support, throughout all regions, for the Governor General's decisions and the parliamentary system in general, despite the Family Compact's concerns and some Republican attitudes (the latter wishing an American-inspired political model).

Two years after the fire, the ruins of Montreal's Parliament were razed and a new market was rebuilt directly on its foundations. That market was demolished in 1901 and the place remained vacant for much of the 20<sup>th</sup> century.

### **The Parliament rises from its ashes**

The 2017 excavations were among the largest ever undertaken in Montreal in recent years, and possibly in most North American cities. Excavations reached a depth of 5 meters below the modern surface. Many levels were excavated mechanically, but the main occupation levels, including the Parliament's, were carefully excavated manually, using trowels and brushes.



*Alain Vanadal, Pointe-à-Callière.*

**The British tableware from the Parliament restaurant.**

A Parliament is a rather unique building and preserved archaeological examples are few. Upon starting work, many aspects of the site were unknown, and many questions were pending. Among those: What modifications were required to transform the St. Anne's Market into a building suited to house the nation's government? What activities were taking place in the different rooms and on the ground and the upper floors? Not only were we to answer many of these, but unexpected surprises were awaiting.

Archaeologists have unearthed close to 800 000 objects; these artifacts allow the discovery and documentation of a wide variety of functions within the edifice, such as writing, food preparation and consumption, or personal hygiene. In the building's central part, complete tableware sets were discovered. Another astonishing discovery was a number of burned books found at the site of the rich Legislative Assembly Library. After restoration, one of them could be identified.

#### **An unexpected discovery: two official Parliament handstamps**

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Two discoveries revealed themselves on the same summer day. Among the fragile remains of burned books, in the building's east wing, archaeologists found the handstamp of the Legislative Council Library. Historical documents claimed that the Council Library was located there and this discovery confirmed it.

Even more remarkable, at the opposite side of the building, the official handstamp of the Legislative Assembly was found. It is an absolutely unique object that bears a strong symbolic charge. It brings us closer to the official dimensions of politics and bureaucracy of that place, reminding us if such a thing was necessary, that this was the epicenter of Canadian politics. This handstamp was used to render documents official. For instance, the representatives' correspondence leaving the Assembly was always stamped. It was created in Montreal in 1849, one year after the recognition of responsible government, making it the earliest official handstamp used by the Canadian government.

Until its discovery, this first official handstamp in use after the union of Upper and Lower Canada was only known from antique manuscript documents that bore the stamp in blue, red, or green ink. The handstamp we found among the burned ruins is the only known specimen.



**The "Legislative Council Library" handstamp.**

Pointe-à-Callière acquired one of the few existing contemporary documents bearing the stamp, dated April 17, 1849, one week before the fire. For archaeologists, to be able to reunite objects that have been separated for 160 years, in this case a handstamp and a document that it made official, amounts to creating a peculiar time-warp!

#### **Saving the coat of arms from the blaze**

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With the exceptions of the Queen's portrait, the golden mace, and a few documents hurriedly taken out of the burning building, the Parliament's entire content was considered lost. But the research program undertaken by Pointe-à-Callière at the Parliament site in 2010 has led to an outstanding and peculiar chance discovery. The late Robert Kaplan, former minister and Solicitor General in Pierre-Elliott Trudeau's liberal government, deserves all the credit.

Once, on his way to his New York City apartment, he stopped in a flea market where he spotted a large but damaged wooden item, painted in gold and other colors: the Royal coat of arms of Great Britain. The vendor, who was Québécois, assured him that they were from the old Montreal Parliament that burned down in the 19<sup>th</sup> century. Even though the story sounded dubious to Kaplan, the item was definitely esthetically interesting. He acquired it and it remained in his living room, above the piano. That is until he heard about oncoming excavations on the Montreal Parliament site... What if the antique store owner's story had been true?

Alain Vandal, Pointe-à-Callière.



Kaplan then contacted the museum and offered to donate the object in case a firmer link could be made between the arms and the Montreal Parliament. After some research, the convergence between contemporary descriptions, an 1848 illustration of the Assembly chamber by James Duncan, and analysis of the pigments, there is no doubt: it is the genuine coat of arms of the Parliament. Hypotheses that it may have been taken as a trophy by some of the rioters, or simply salvaged from the fire by Members of Parliament are plausible.

The bronze "Legislative Assembly Canada" handstamp and an official parcel dated April 17th 1849.





©Government of Canada, Canadian Conservation Institute

**The Montreal Parliament's coat of arms, once restored by the Canadian Conservation Institute. The abuse suffered by this item during the 1849 riot can be clearly seen.**

### **Conclusion**

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Once restored, the coat of arms constituted a valuable object of memory and a symbol of a rich national history. Pointe-à-Callière now wishes to present it to the original site, along with more of the objects found during these last years within the remains of the Parliament. Once protected, they will be made accessible to the population.

Showcasing the site of the Parliament of United-Canada would become part of the historic heritage complex in Old Montreal, where our political history and the foundations of our democratic institutions

would be transmitted to the current and future generations. Already, the Archaeology and History Complex exhibits essential aspects of Montreal's past, such as a Native firepit and artifacts from the prehistoric period at the site of the city's foundation (1642), the French fortifications (1717), the monumental stone masonry collector-sewer (1832), and the old Custom House (1836), are all accessible to visitors. By adding Canada's first Parliament to this complex, Pointe-à-Callière wishes to combine all major dimensions essential to the city's history and offer all Canadians and foreign visitors a heritage worthy of the greatest cultural, patrimonial and archaeological experiences found throughout the world.

# Canadian Study of Parliament Group: The New Senate

On September 15, 2017, the Canadian Study of Parliament Group convened a one-day conference where academics, journalists, parliamentary staff and parliamentarians were asked to share their thoughts on some of the changes that have occurred in the Senate over the past few years. Diverse perspectives prompted some animated discussions among presenters and audience members, but there was general agreement that we are experiencing a unique moment in parliamentary history.

## Will Stos

### Evolution of the Senate – Historical Perspective

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Members of this first panel, including David Smith, a distinguished visiting professor at Ryerson University, Jean-François Godbout, associate professor of political science at the University of Montreal and Jack Stilborn, formerly of the Library of Parliament, examined the original intent behind the formal structure of the Senate in 1867 and some past reform proposals.

Smith, who remarked on the considerable interest in the second chamber today due to the new independent selection process and the Supreme Court ruling on reform rendered in 2014, explained that, constitutionally, the three parts of Parliament are inextricably bound – change in one affects the others. Indeed, he reminded the audience that the Supreme Court called the Senate a key part of the architecture of Confederation. Smith suggested that, to many Canadians outside of Ontario, the Senate was, and remains, an important balance to that province's power. He said it is not “a vestigial institution” to be dismissed merely as a bargaining chip in helping Confederation happen, as some scholars have argued. Smith wondered if Canada will move in the direction of a suspensive veto similar to the UK's 1911 *Parliament Act*. Although a *Globe and Mail* editorial supports this idea, Smith suspects the Court may have something to say about such a policy. In closing, he highlighted a link between a rejuvenated independent Senate and the party-constrained MPs in the House. The Senate becomes a protector of the public interest if, as the *St. John's Telegram* notes, a minority of Canadians can elect a majority government.

Godbout's presentation delved into his research on all recorded divisions in both the House (12,106) and the Senate (1,285). He is using these votes to examine party loyalty and discipline and hopes his analysis may help to explain why there appears to be much more cohesion in parties since the 1930s. Is this cohesion related to electoral pressure and partisan sorting? Franchise expansion? Career or replacement effects? Legislative agenda and Parliamentary rules? Member ideology? Godbout noted that in the Senate there is no electoral pressure or franchise expansion to account for party cohesion as there is in the House, yet he identified an increase in partisanship in the Senate. Why is partisanship in the Senate a problem? Godbout contends the chamber was supposed to be one of sober second thought and to represent regional interests. Partisanship didn't occur as quickly in the Senate as it did in the House, but since the 1960s his research suggests it has become quite partisan. Godbout states that only 133 bills have been vetoed by the Senate. When the same party controls both chambers, only one per cent of bills are vetoed. When the houses are divided, it increases to two per cent. He concluded by noting that social choice theory suggests the new independent selection process predicts little impact on the extent of partisanship.

Stilborn provided a brief history of Senate reform initiatives. Early attempts looked to enhance regional representation, while a second round examined the German Bundesrat model in which provinces would appoint Senators. More recently, a proposal for an elected Triple E Senate emerged out of Alberta. Stilborn joked that Senate reform sounds like it comes out of a fashion runway, not a serious political discussion of institutions: every five years some hot new proposal comes strutting down the runway. He contended Canada's Senate continues to act better in practise

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*Will Stos is Editor of the Canadian Parliamentary Review.*



than in theory (to borrow a phrase in one of Smith's books), and lamented that when speaking about reform we haven't articulated what problems we're trying to solve and whether they call for institutional reform, and specifically upper chamber reform. "Until we work out that framework we're doomed to walk in a no-man's land of incoherence," he said.

### **Machinery of the New Senate**

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A second panel, featuring Heather Lank, principal clerk of chamber operations and procedure, Blair Armitage, principal clerk of committees, and Michel Bedard, parliamentary counsel in the Office of the Law Clerk and Parliamentary Counsel, brought together Senate administrators to discuss rule changes in the chamber and to recount how specific practices came to be.

Lank stressed the importance of understanding the unique context and circumstances from which this new Senate has developed. The Supreme Court noted there was a constitutional impediment to reform and former Prime Minister Stephen Harper did not fill many vacancies during parts of his mandate. The rules of the Senate were designed with a two-party model in mind, but the current composition of the Senate is dramatically different from the historical tradition of government/opposition caucuses. Now there is an Independent Senator Group (ISG) and this new reality has required that rules be adapted. Some of these developments show flexibility of the institution. Historically, government bills are sponsored by senators aligned with the government. In the current case, only three senators are aligned with the government, so Independent senators, and in one case, a Conservative senator (at the time) sponsored government bills. Lank noted that many amendments are now occurring at third-reading, not just at committee. Moreover, many messages between the Senate and the Commons are being sent. Also respecting Bill C-14 – the Senate agreed to a modified third reading process. Another change has occurred with the scroll meeting – in the past government and opposition leaders were central; now, the meetings are held in neutral spaces and consist of more caucus leaders. The Senate now invites ministers from the House of Commons to answer questions about their portfolio. Different groups in the Senate meet to discuss a rotation of the questions. Lank concluded by stating the most significant change concerns the way parties or groups are formed and recognized. Facilitator of the ISG has most of the same privileges of the party leaders in the Senate. All of these changes

have created an air of unpredictability and the Speaker must be ready at all times to respond to changes in circumstances.

Armitage reported on changes in Senate committees, which have long been lauded for the quality of their work. He doesn't see this reputation changing, explaining that Senators can develop specialities, long-term knowledge and have less need to consider job prospects, etc. Armitage noted that allocation of committee seats had never been explicitly outlined. Senators were named not to act as their party delegate, but individually. Once named to a committee, only a decision of the Senate could change their membership. Independent Senators began asking for proportional access to committees. With growth of Independents and former partisans opting to become Independents, individual Senators were not bound by a whip. This change was a concern for the parties. Senators could be replaced by members of their own party if they had other business to attend to, but the Independents didn't have the same ability and this became an irritant. For the first time, committee appointments are now made proportionally.

Bedard explained how there are certain procedural advantages to being a member of a recognized group in the Senate. Senate rules did recognize the possibility of the third caucus in the chamber, but not that the government would not have a caucus in the Senate. For the first time we are in a situation where this is the case. Bedard noted that the ISG started informally. These Senators were not recognized as a group under the old rules because they were not a registered party under the Elections Act. Eventually the ISG was recognized by a special order and the Senate Committee of Internal Economy, Budgets and Administration has allocated funding to the ISG since that time. Bedard also reported on changes to the system of amendments. Previously, most amendments came from the opposition and usually there was one lead Senator making these amendments. Very rarely were these amendments passed. Now, there isn't the same kind of coordination. Some Senators may propose similar amendments and then discuss them amongst themselves in order to make changes. Bedard also highlighted that in committee, sponsors of bills are proposing amendments to their own bills. This scenario can't happen at Third Reading, but can happen in the committee.

### **The New Senate in the News**

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Carleton University political science professor



**Peter Harder**

Philippe Lagassé, opted to chair this panel, featuring journalists Kady O'Malley and Dale Smith, as a conversation and encouraged questions from the floor throughout.

When asked of their overall impression of the upper chamber, O'Malley said she always found the Senate quirky. It was independent, though not nearly as much as it is now, but there was unpredictability... at least up to four to five years ago. Within the media at large, O'Malley said the Senate would usually be ignored until a Senator did something scandalous. Then, the entire institution would be maligned. Smith said he most vividly recalls a Canada Post bill in which the Senate questions caused the minister and staff to scramble as they attempted to answer. He said he finds less childishness in the Senate than what he saw from the House galleries. Lagassé asked why the press gallery, as a whole, is less enamoured with the Senate? Smith suggested it is partially due to the state of journalism – there are sparse resources to cover activities and a need to focus on the House. Much political writing is also personality-based – journalists cover the antics, not so much the policy – and these



**Paul Massicotte**

types of stories are more common in the House. O'Malley mentioned the lack of regularity in terms of what may be discussed in the Senate compared to the House. She said it can be difficult to convince editors to send reporters there if they aren't certain about what votes or debates will occur in a given day. When asked about their thoughts on recent trends in the Senate, O'Malley said she sees the Senate as one big opposition versus the government representative, Peter Harder. The government now has to convince individual Senators to support its legislative agenda. She added that she's been seriously impressed by the quality of new Senators in terms of their ability to hit the ground running. Smith cautioned that recent changes may have swung the pendulum too far and could cause unintended consequences. Noting the decline of partisanship as more Independent Senators enter the chamber, he contended there is, and should be a role for partisan caucuses. These caucuses should be able to renew their numbers while keeping 'crossbenchers.' Smith asked if 100 or so independent fish are swimming against a government, can they really push back effectively? O'Malley responded that the absence of partisan caucuses does not mean that



**Renee Dupuis**

ad hoc caucuses won't form around different issues. The panel closed with both journalists complimenting the Senate's Twitter feed model, and suggesting other institutions follow its example. O'Malley also added that it's time to consider ethics rules about what senators can do in terms of sitting on boards. Lagassé concurred, saying this is especially important when Senators can self-select what committees they sit on.

### **The New Senate in Action**

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A final panel brought together four Senators from various caucuses/groups to reflect on how they see the institution advancing. Government representative Peter Harder, Independent Senator Paul Massicotte, Independent Senator Renee Dupuis, and Conservative Senator David Tkachuk sometimes agreed, or agreed to disagree, about the effects of recent changes in the upper chamber.

Giving a forecast of future Senate appointments in the next few years, Harder said it will basically take a generation to turn back the clock on an independent Senate (provided there are no defections). "I believe



**David Tkachuk**

we are working towards what political scientists will describe as robust bicameralism," he told attendees, adding that the new Senate is working better in practice than in theory. Harder recounted how a year ago some critics said this new Senate could be a dog's breakfast; but he says it's working well. Part of the change has been in the tone of debate, and Harder noted that it's not only new Senators who have had a part in this change. In terms of the increasing number of amendments to legislation from the House, Harder suggested the prime minister and Cabinet have been "serene" about accepting or rejecting amendments, but they are listening to the Senate. All of these changes have been done without constitutional change. Rather, Harder says, it's been done in a good old Canadian way of building on good policy.

Massicotte provided a brief history of Senate modernization. He explained that for years a group of Senators had felt the Senate was not working as well as it could and that it had not realized its potential as a body of sober second thought. They met and talked about this behind the scenes and in small groups at informal dinners. He and Senator Greene

organized a meeting in September 2013 and received consensus on 11 resolutions. The Senate Committee on Modernization was created in 2015. Massicotte spoke about a less partisan Senate, explaining that partisanship in the Senate showed cracks with the expulsion of the Senate Liberals, the growth of new Independent Senators, and the changes in terms of group membership. Personally, he said he prefers groupings by values rather than by party ideology though not all Senators share this idea and some think it's necessary to have partisan groups and an official opposition. Massicotte highlighted the increasing trend towards amending legislation from the House and praised the recent experimentation with thematic debates – something that will become especially important when proceedings begin to be televised. He concluded by noting the added value of the Senate is its role as a sober second thought. “We need to redouble our efforts to support this independence,” he stated.

Dupuis suggested the independence of the Senate and senators was brought up in public discussions as soon as the Liberal Senators were expelled from the parliamentary caucus. This preceded the first Trudeau appointments in 2015. Adjustments had to be made because new Senators wanted the resources and ability to fulfill their duties. She's observed there is a will and desire of the Senate Modernization Committee to work on this. Dupuis said this new reality led to a wide range of reactions from the opposition. She notes some senators were very opposed or suspicious about this change. The Independent Senators appointed in 2016 had to have discussions amongst themselves to see if they could form a group. They organized themselves under an experienced senator, Senator Elaine McCoy.

Dupuis stressed that the Senate is not an advisory body, or council of learned elders, but rather, as the Supreme Court has stated, it is a complimentary legislative body. She and other Independent Senators, regardless of when or how they were appointed, believe concrete changes must be made to ensure the Senate functions as the second legislative body in parliament. This includes tighter deadlines for passing bills with priority given to government bills.

Tkachuk noted he disagreed with some of his colleagues' interpretations about 'the new Senate.' He contended the Senate was never popular, and “the idea that we're now going to be popular and liked is not going to happen. It's too much to expect.” Tkachuk stated there is nothing inherently new about this government's appointment process. It has been used elsewhere and he suggests it is simply a formal way to do what has been done informally – consultation with people. The PM still maintains power to appoint. If anything, Tkachuk remarked, it has made the process less transparent. Quoting former Senate Clerk Gary O'Brien, Tkachuk said partisanship was not holding back independence. Moreover, he contends the way people are using 'independence' is not correct. Independence initially came from being appointed until you die. “I am as independent as any Trudeau appointee,” he added. Tkachuk also said he views the newly independent Senators as mostly activists of the left, and the attitude among many of them that partisanship is a negative is similar to what he is increasingly seeing on university campuses where there are attempts to clamp down on hurt feelings by minimizing dissenting views. “I truly believe this is a very dangerous road we're going down,” he concluded. “You get rid of the opposition in the Senate, you risk despotism.”

## *The Canadian Scene*



**Hon. Joe Enook**

### **New Nunavut Speaker**

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On November 17, Tununig MLA **Joe Enook** was acclaimed as Speaker of the Legislative Assembly of Nunavut. "Lets get to work," Mr. Enook said, after assuming his duty as chair of the forum where the territory's premier and cabinet were also selected. He formally took the Speaker's chair on November 21 at the beginning of the first sitting of the 5<sup>th</sup> Legislative Assembly of Nunavut.

Formerly the Chair of the Baffin Divisional Board of Education, Vice-President of Nunavut Operations for the Nunasi Corporation, and Executive Assistant to the President of Nunavut Tunngavik Incorporated, Mr. Enook has also held positions in the travel and tourism industry.



**Hon. Darryl Plecas**

Previously elected to the 3<sup>rd</sup> and 4<sup>th</sup> Legislative Assemblies, Mr. Enook had served as the Deputy Speaker and Chair of the Committee of the Whole.

Outside of the legislature, Mr. Enook's interests include reading, sports and camping. He lives with his partner is Mary D. Kilabuk.

### **New British Columbia Speaker**

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On September 8, Abbotsford South MLA **Darryl Plecas** was acclaimed as the new Speaker of the Legislative Assembly of British Columbia. The position had been vacant since Speaker **Steve Thomson** resigned on June 29 following the defeat of the Liberal government on a non-confidence motion.

Plecas's decision to seek the speakership was met with a mixture of joy and dismay among his colleagues in the Assembly. Having been re-elected to a second-term as a Liberal MLA in the 2017 election, he was expelled from the party on September 9. Party officials said the expulsion was in response to "repeated promises and assurances that he would not" seek the Speaker's position under an NDP minority government.

Premier **John Horgan** congratulated Plecas and said he was delighted the MLA had "taken up the challenge of keeping us honest, keeping us fair and keeping us on course." In his remarks following the acclamation, Interim Opposition Leader **Rich Coleman** noted the Speaker's job is "to protect the integrity of the institution and always to act honourably."

Plecas noted that he had always wanted to become Speaker. "The Speaker's job is an incredibly honourable role," he said. "If somebody said to me, 'What is the single best role a person could have as an MLA, especially for somebody from my background?' That would be it."

A former criminology professor at the University of the Fraser Valley, he also spent eight years working as a federally-appointed prison judge. Plecas explained that in this role he had heard over 5,000 cases and thus has "a track record of being impartial in difficult circumstances." He holds two degrees in Criminology from Simon Fraser University and a Doctorate in Higher Education from the University of British Columbia.

In the previous parliament, Plecas served as Parliamentary Secretary to the Minister of Health for Seniors and Parliamentary Secretary to the Minister of Justice and Attorney General for Crime Reduction.

*Correction: Due to an editing error, incorrect French text appeared in Ginette Grandmont's "Message to my Younger Self" submission in the previous issue. We reprint her message here and offer our sincere apology for the mistake.*

## A Message To My Younger Self

**Ginette Grandmont**  
Former MNA for  
Masson (Quebec)



A surprise awaited me at the end of two very busy careers and after I had raised my family: to my great surprise, I was elected to the National Assembly in 2007. It was a wonderful experience, but ended too quickly.

If I had known when I was younger that political life would be so rewarding, I would have gone into it much sooner.

If you're an ambitious young woman, don't hesitate to jump into politics. It is rewarding and demanding, but it is worth the effort.

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\*As of December 31, 2017

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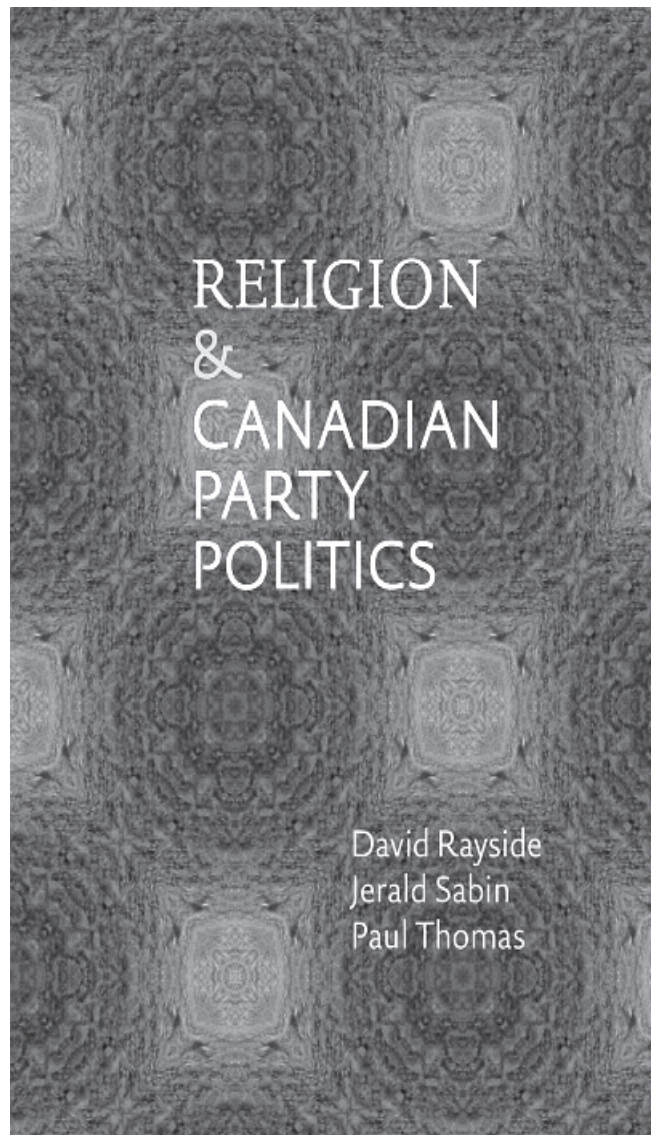


# *Parliamentary Bookshelf: Reviews*

**Religion and Canadian Party Politics, David Rayside, Jerald Sabin and Paul E.J. Thomas, UBC Press, Vancouver, 2017, 429 pp.**

In this monograph, the authors demonstrate that religious faith continues to be a relevant factor in Canadian party politics. They identify three major axes of religious contention: the historic division between Protestants and Catholics (especially English-speaking Protestants and French-speaking Catholics); the more recent division between moral conservatives and political and social progressives (especially over the issues of LGBT rights and the legality of abortion); and finally, the division between those willing to recognize minority religious practices and institutions in Canada (especially those of Canada's growing Muslim population) and those who fear that such recognition would undermine Canadian values. The authors then provide multiple case studies – federal, provincial and territorial – to illustrate how these axes of contention are evident in Canadian party politics, primarily over the past 30 years.

One of the many strengths of this study is its skillful exploration of the relationship between party leaders, elected officials, and ordinary Canadian voters. For example, the authors show that federal and provincial leaders of Canada's right-wing parties court socially conservative voters (including evangelical Christians, conservative Roman Catholics, and in some cases, recent immigrants). These leaders know that such voters are more likely to gravitate to right-of-centre parties (such as the federal Conservatives), especially as centre-left parties (such as the federal Liberals and NDP) have become wedded to progressive positions on sexuality and abortion. These leaders also know that many of their caucus members are religiously-motivated social conservatives. However, right-of-centre politicians know that most Canadians are not



social conservatives; and, although campaigning on a moral conservative platform (for example, to roll back LGBT rights or limit access to abortion) might play well to their party base, it could alienate potential support from other voters. They also know that Canadian courts have limited their ability to successfully enact the kind of legislation that might appeal to moral conservative voters. Consequently, the authors show that in recent years, right-of-centre politicians have chosen to walk a fine line between signalling their support for moral conservatism (so as not to alienate their party base and caucus members) while not signalling too much support (so as not to alienate other Canadian voters).

On the issue of minority religious rights, the authors find that most Canadian politicians have not been eager to exploit popular fears over minority religious groups (notably Muslims), and the perceived threat that minority religious faith practices and institutions pose to “Canadian values.” The authors highlight two notable exceptions: the debate in Quebec over public accommodation of minority religious groups; and the positions articulated by Stephen Harper’s Conservatives during the 2015 federal election campaign. The authors contend that the outcomes of the 2014 Quebec provincial election, and the 2015 federal election, suggest that there is only limited support for policies designed to limit minority religious rights.

This is a solid monograph, based on an impressive array of sources (including extensive use of polling data). It is also very readable, and mercifully free of jargon, making it accessible for undergraduates and interested lay readers outside academia. It is recommended to anybody seeking to understand the role of religion in the recent Canadian political landscape. It is also an important contribution to the ongoing debate over “secularization” in Canadian society. Recent scholarship has presented us with a more nuanced understanding of the meaning and workings of secularization; *Religion and Canadian Party Politics* is consistent with this recent scholarship. Its authors demonstrate that faith is an integral part of Canada’s political party landscape, and in spite of a secularizing society, we shouldn’t expect it to disappear any time soon.

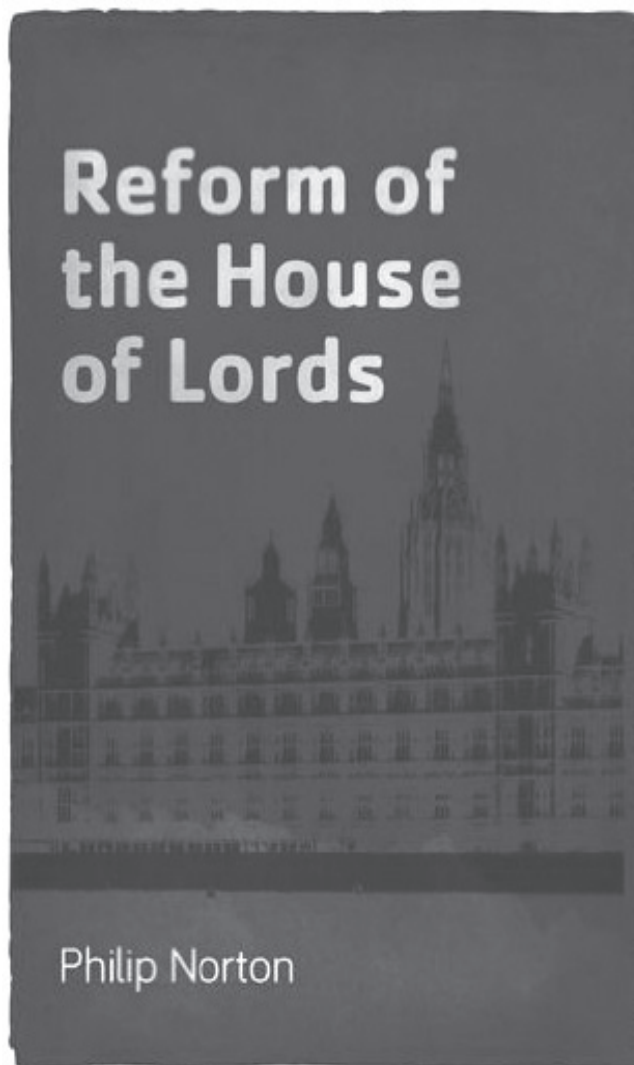
**Bruce Douville**

History Department, Algoma University

**Reform of the House of Lords, Philip Norton, Manchester University Press, Manchester, 2017, 96 pp.**

During recent hearings by the Senate Modernisation Committee witnesses like Senator Peter Harder and Professor David Smith made the point that Canada has nothing to learn from the House of Lords. Be that as it may, no one would ever suggest we have nothing to learn from Philip Norton.

A professor of Government at the University of Hull, he is perhaps the leading expert on Westminster-style government, having written dozens of books and articles over a 40-year period since his classic work



on Intra-party dissent in the House of Commons was published in 1975. In 1998, he was appointed to the House of Lords as Lord Norton of Louth. He now brings a practical and academic perspective to his subject.

This small book, more an essay than an academic treatise, focuses on attempts to reform the House of Lords. Norton has been a central figure in many of the debates.

He identifies four distinct opinions regarding what to do about the British Upper House. Three of these will be familiar to Canadians: “Retain” (by which he means the status quo of a wholly appointed Chamber), “Replace” (by which he means a wholly elected Upper House) and “Remove” (by which he means abolition). The fourth opinion calls for both appointed and elected members, which has not been discussed much in Canada but has been debated at length in the UK. His analysis of each option includes the strongest arguments advanced by the proponents while pointing out the weaknesses and logical inconsistencies posed by the opponents.

There is not much new in this book but it is an excellent survey of the literature and an ideal introduction to the subject in non technical and readable language. For Canadian readers the most interesting part is in the concluding chapter on “the future of the second chamber”. Norton laments the

absence of any intellectually coherent thinking about “parliamentary reform” as opposed to reform of the House of Commons or reform of the House of Lords. In other words, the real question should be considering how the two houses work together rather than fixating on trying to change one or the other.

This is exactly the type of question we should be asking in Canada, where Parliament is going through a profound transformation. The House of Commons has, over the last decade, given up on some of its more important conventions including the idea that procedural change should be done by consensus.

The Senate is busy transforming itself from a chamber where supporters of two political parties have alternated with mixed success at providing the sober second thought envisaged by the founders to a chamber of independent members who consider themselves non-partisan and plan to conduct themselves accordingly.

Perhaps, we too, have been spending too much time and energy thinking about how to fix one or the other. Let’s start to reflect on how these two transformed bodies must work together to give us a more coherent parliamentary system.

**Gary Levy**

**Former Editor of the *Canadian Parliamentary Review* and  
past Visiting Scholar with the Bell Chair in Canadian  
Parliamentary Democracy at Carleton University**

# New and Notable Titles

AGorohov / shutterstock.com

A selection of recent publications relating to parliamentary studies prepared with the assistance of the Library of Parliament (August 2017-October 2017)

Allan, James. "Time to clip the [Australian] Senate's wings." *Quadrant*, 61 (1): 66-70, October 2017.

- Many Australians think that having a strong Upper House is normal in a democracy. It is not.

Bartlett, Gail and Everett, Michael. "The Royal Prerogative." Briefing Paper 03891, UK House of Commons Library, 34p., August 17, 2017.

- This briefing paper sets out the constitutional basis to the Royal Prerogative, describes general prerogative powers and the Crown's personal prerogative powers. It then sets out recent proposals for reform, and the case law that has led to the current understanding of the prerogative.

Beelen, Kasper, *et al.* "Digitization of the Canadian parliamentary debates." *Canadian Journal of Political Science*, 50 (3): 849-64, September 2017.

- This paper describes the digitization and enrichment of the Canadian House of Commons English Debates from 1901 to present.

Bercow, John. "Taking back control." *The House*, 1592: 12-13, 16 October 2017.

- The UK Speaker sets out his vision to further strengthen the Commons - and empower backbench MPs.

Carney, Gerard. "Parliamentary privilege - Part 1: The test of necessity." *Australasian Parliamentary Review*, 32 (1): 6-14, Autumn/Winter 2017.

- Of all areas of the law, parliamentary privilege in Australia and elsewhere remains clouded in a veil of mystery. This is due in part to the relatively few cases that reach the courts, compounded by the failure in their reasoning to connect sufficiently with the existing jurisprudence. This article focuses on recent judicial pronouncements in Canada, United Kingdom and New Zealand. Regrettably, these pronouncements confuse rather than clarify the position. Moreover, it is argued here that

they threaten in some respects the foundations of parliamentary privilege. In so doing, they ought to be, and in fact are, ringing parliamentary alarm bells.

Carney, Gerard. "Parliamentary privilege - Part 2: Exclusive cognisance of internal affairs." *Australasian Parliamentary Review*, 32 (1): 15-29, Autumn/Winter 2017.

- Part 2 considers the assertion of the exclusive cognisance of each House by the UK Supreme Court in *R v Chaytor*. It follows the discussion in Part 1 which considered the test of necessity adopted by the Supreme Court of Canada in *Canada (House of Commons) v Vaid* in determining whether the House of Commons had exclusive jurisdiction over an alleged case of workplace discrimination by the Speaker of the House.

Carney, Gerard. "Parliamentary privilege - Part 3: Article 9 'proceedings of parliament.'" *Australasian Parliamentary Review*, 32 (1): 30-42, Autumn/Winter 2017.

- This is the final part of an article which argues that the Supreme Courts of Canada, United Kingdom and New Zealand have adopted radical approaches to parliamentary privilege which ought not to be followed.

Doherty, Peter. "What is this 'mysterious power'? - An historical model of parliamentary privilege in Canada." *Journal of Parliamentary and Political Law*, 11 (2): 383-425, July 2017.

- On May 20, 2015, the Supreme Court of Canada delivered a landmark judgment on parliamentary privilege in *Canada (House of Commons) v Vaid*. Through *Vaid*, the Court developed a general approach for considering questions of parliamentary privilege...by situating *Vaid* within the historical development of privilege law in Canada, this article hopes to explain why the Court reached its controversial decision.

Lewis, Colleen. "Parliament: Legislation and accountability [book review]." *Australasian Parliamentary Review*, 32 (1): 178-81, Autumn/Winter 2017.

- This collection - *Parliament: Legislation and accountability*, edited by Alexander Horne and Andrew Le Sueur, Hart Publishing, Oxford 2016 - will be of great interest to those engaged in the study of Parliament and associated matters.

Massicotte, Louis. "Constitutional issues raised by the Canadian parliamentary dispute of 2008." *Journal of Parliamentary and Political Law*, 11 (2) : 261-91, July 2017.

- In late 2008, the Canadian parliamentary scene was shaken by a dispute, some said a 'crisis', during which an attempt was made by the opposition parties to topple the Harper government... and to replace it with a Liberal-NDP coalition supported by the Bloc Québécois...this article focuses on three major constitutional issues raised during the debate and explores the precedents in parliamentary history.

Newman, Jacquetta (Jacquie). "Language please! - Balancing privileges and gender-sensitive parliaments." *Journal of Parliamentary and Political Law*, 11 (2): 427-42, July 2017.

- Increasing recognition of the need for gender-sensitive parliaments makes now a good time to seriously review language and decorum in the House of Commons and consider rebalancing what privileges should take precedence.

Purser, Pleasance. "Overseas Parliamentary News - July 2017." New Zealand Parliamentary Library, 5p.

- Ireland - Slogans and promotional messages not to be worn or displayed in chamber.

Purser, Pleasance. "Overseas Parliamentary News - August 2017." New Zealand Parliamentary Library, 4p.

- Australia-Northern Territory-The Standing Orders Committee has recommended the establishment of

two portfolio scrutiny committees, which would consider bills and other matters referred by the Assembly or a Minister, and the absorption by the Public Accounts Committee of the functions of the Subordinate Legislation Committee.

Purser, Pleasance. "Overseas Parliamentary News - September 2017." New Zealand Parliamentary Library, 7p.

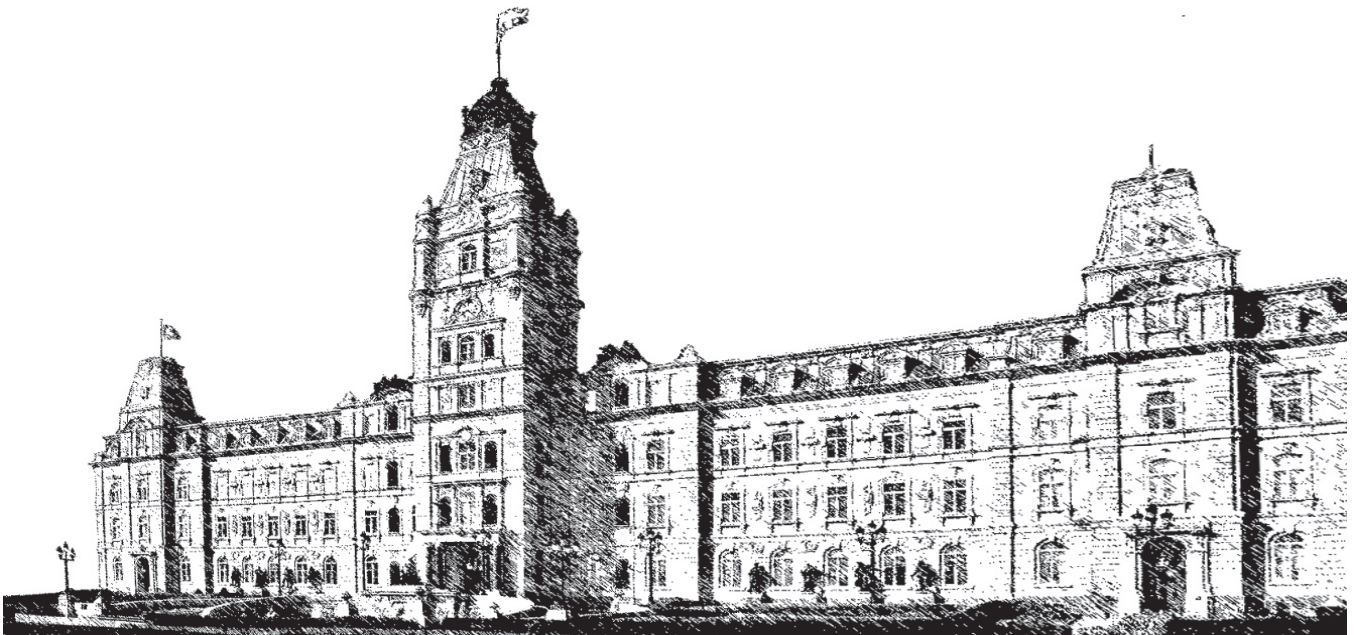
- Australia - Senators' dress standards under consideration...Denmark - Committee members debate topical issues with the public...United Kingdom - Police received 102 complaints of offences against MPs.

Baroness Taylor of Bolton (Chair). "The legislative process: Preparing legislation for Parliament." House of Lords Select Committee on the Constitution - 4th Report of Session 2017-19, HL Paper 27, 64p, Ordered to be printed October 18, 2017 and published October 25, 2017.

- This report focuses on the preparation of legislation before it enters Parliament, as better policy preparation should result in better legislation. It is also important to recognise that Parliament's capacity to scrutinise legislation is limited, and therefore the process by which legislation is developed before it enters Parliament is key to ensuring the quality of the laws on the statute book.

Tink, Kayla. "Courting parliamentary privilege: Exploring the quasi-dialogue between the courts and the chamber." *Journal of Parliamentary and Political Law*, 11 (2): 357-81, July 2017.

- Parliamentary privilege ensures that legislative chambers are able to function without external interference and intervention. Accordingly, protecting the privileges, immunities, and powers enjoyed by legislative chambers and their members is of the utmost importance...this article addresses the treatment of parliamentary privilege in selected Canadian cases and finds that there is a 'quasi-dialogue' between the courts and the chamber that claims the privilege.



## Québec

### National Assembly Proceedings

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#### *Visit of Kathleen Wynne, Premier of Ontario*

The President of the National Assembly, **Jacques Chagnon**, welcomed the Premier of Ontario, **Kathleen Wynne**, to the National Assembly on September 21. At the invitation of Québec Premier **Philippe Couillard**, Ms. Wynne addressed the Québec parliamentarians in the House. This was the first time that the head of government of a Canadian province took the floor in the Québec National Assembly Chamber.

Ms. Wynne was in the national capital for the seventh joint meeting of the Cabinet ministers of both governments. Several topics of common interest were addressed during this meeting, which took place in Québec City on September 22.

#### *New Sergeant-at-Arms at the National Assembly*

Work in the Blue Room resumed on September 19, 2017, with a first. Indeed, **Catherine Durepos**, Coordinator of the Sitings Service of the General Directorate for Parliamentary Affairs, was asked to take on the duties of Sergeant-at-Arms in addition to her current tasks. She thus became the first woman to hold this position in Québec.

Furthermore, the Sergeant-at-Arms' duties will now be shared with an Associate Sergeant-at-Arms

and a Deputy Sergeant-at-Arms. **Daniel Lavoie**, Assistant Director of Security, will act as Associate Sergeant-at-Arms for security. He will be in charge of the "security" component that has traditionally been under the responsibility of the Sergeant-at-Arms. **Gilles Jourdain** will continue carrying out the duties of Deputy Sergeant-at-Arms in close collaboration with Ms. Durepos.

#### *Bills Passed*

Since the resumption of proceedings, the National Assembly has passed Bill 121, *An Act to increase the autonomy and powers of Ville de Montréal, the metropolis of Québec*, which, among other things, changes the title of the Charter of Ville de Montréal to "Charter of Ville de Montréal, Metropolis of Québec," as well as Bill 137, *An Act respecting the Réseau électrique métropolitain*, whose purpose is to facilitate the construction and operation of a new shared transportation infrastructure publicly announced as the "Réseau électrique métropolitain."

#### *Rulings and Directives from the Chair*

On September 27, 2017, the President of the Assembly, Mr. Chagnon, gave a ruling following requests for an urgent debate from the Second Opposition Group House Leader and from the Official Opposition House Leader. These requests involved the US Department of Commerce's decision to impose preliminary countervailing duties bordering on 220 per cent on Bombardier C Series aircraft.

The Chair indicated that to determine whether a request for an urgent debate is receivable, the Chair must base its decision on the criteria set out in the Standing Orders and established by jurisprudence. To be receivable, a request for an urgent debate must concern a specific, important matter that falls under the Assembly's jurisdiction and that concerns a sudden, acute crisis or the worsening of such a crisis. The Chair must also take into consideration whether the matter has been discussed in other circumstances and whether there will be upcoming opportunities to do so.

In this case, the US Department of Commerce's decision to impose preliminary countervailing duties bordering on 220 per cent on Bombardier C Series aircraft constitutes a specific, important matter that falls under the Assembly's jurisdiction. This decision could have significant repercussions for the Québec economy. It is a situation in which everyone, particularly the parliamentarians, has a keen interest.

Given the decision's importance, its potential consequences and the fact that the public is entitled to expect a reaction from Québec's elected officials, the Chair indicated that it considered that the Members must be allowed to express their views on this subject and that, as we were just beginning the sessional period, we would have ample time for the Government's legislative agenda. Therefore, these requests for an urgent debate were ruled admissible.

## Interparliamentary Relations

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### *Parliamentary Assembly of La Francophonie (APF)*

It is within the framework of the 43<sup>rd</sup> Session of the Assemblée parlementaire de la Francophonie (APF), held in Luxembourg from July 6-11, 2017, that the Québec National Assembly was elected to chair this organization. This being a two-year elective position, the Assembly will therefore carry out its mandate from July 2017 to July 2019. The position is filled by the President of the National Assembly, Mr. Chagnon, who chose to place this mandate under a unifying theme, that of the digital age. It should be noted that the APF is celebrating its 50<sup>th</sup> anniversary this year.

### *Québec-Massachusetts Parliamentary Association (QMPA)*

The fifth session of the Québec-Massachusetts Parliamentary Association (QMPA) was held in Boston, Massachusetts, from August 9-11. On this occasion, the President of the National Assembly, Mr. Chagnon, and

the Québec delegation were received by the Speaker of the Senate, **Stanley Rosenberg**, and the Speaker of the House of Representatives, **Robert DeLeo**, accompanied by senators and representatives of the General Court of Massachusetts. Together, they discussed energy, climate change and reaffirmed their commitment to reach the targets set with regard to reducing greenhouse gas emissions.

### *Association of Clerks-at-the-Table in Canada*

The Professional Development Seminar and the 2017 Annual General Meeting of the Association of Clerks-at-the-Table in Canada was held in Québec City, from July 31 to August 4, 2017. Among the items of business on the meeting's agenda, we should note the separation of powers, citizen participation, the organization of debates and parliamentary privileges.

### *Eastern Regional Conference of the Council of State Governments (ERC/CSG)*

A resolution concerning the NAFTA, sponsored by the Québec National Assembly, was adopted unanimously at the conclusion of the 57<sup>th</sup> Annual Assembly of the Eastern Regional Conference of the Council of State Governments (ERC/CSG), held in Uncasville, Connecticut, from August 12-16, 2017. The ERC/CSG is thus the first American interparliamentary organization to take a position on the renegotiation of NAFTA. The Québec National Assembly delegation, led by the Member for Chomedey, **Guy Ouellette**, was also composed of the Member for Mégantic, **Ghislain Bolduc**, and the Member for Marie-Victorin, **Catherine Fournier**.

## Committee Proceedings

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On August 14, 2017, the standing committees resumed their proceedings after the summer break. From mid-August to the end of September, they held 48 sittings for a total of close to 180 hours of work, 70 of which were set aside for public hearings. Whether during special consultations or clause-by-clause consideration, the examination of bills made up 75 per cent of the work carried out.

### *Public Hearings*

During this period, six standing committees held public hearings linked to eight mandates. Four committees held special consultations, including the Committee on Culture and Education (CCE) for Bill 144, *An Act to amend the Education Act and other*

legislative provisions concerning mainly free educational services and compulsory school attendance. The main purpose of this bill is to extend the scope of the right to free educational services and strengthen measures to ensure compliance with compulsory school attendance by clarifying, among other things, certain provisions with regard to the situation of a child exempted from compulsory school attendance because the child receives appropriate homeschooling. In order to obtain the necessary information for the clause-by-clause consideration of this bill, the Committee members heard 19 witnesses over a three-day period, totalling slightly over 17 consultation hours. The Committee on Public Finance also began special consultations on Bill 135, *An Act to reinforce the governance and management of the information resources of public bodies and government enterprises*. This bill introduced by the Minister responsible for Government Administration and Ongoing Program Review and Chair of the Conseil du trésor, **Pierre Moreau**, aims, among other things, to modify the functions of information officers and the structure of their group of positions, to strengthen the governance of information resources by establishing a committee and to give the chief information officer the power to require a public body to report on an information resources project. Within the framework of these consultations that took place over a four-day period, 13 witnesses were heard.

The National Assembly also instructed the Committee on Institutions (CI) to hold a general consultation. This consultation, which was held in September, was on the 2016 five-year report on the application of the *Act respecting Access to documents held by public bodies and the Protection of personal information* and the *Act respecting the protection of personal information in the private sector*. For this mandate, 27 witnesses were heard and the same number of briefs was tabled.

Two committees also carried out orders regarding the accountability of public bodies pursuant to the National Assembly's Standing Orders 293.1 and 294. The Committee on Agriculture, Fisheries, Energy and Natural Resources heard the Régie des marchés agricoles et alimentaires du Québec on its policy directions, activities and administrative management. The Committee on Labour and the Economy did the same with Québec's three research funding agencies, namely: the Fonds de recherche du Québec – société et culture, the Fonds de recherche du Québec – santé, and the Fonds de recherche du Québec – nature et technologies. It was the first time that these funding

agencies were heard by this committee for such a mandate.

The Committee on Public Administration held its first fall 2017 hearing by receiving, for a three-hour sitting, the Department of Sustainable Development, the Environment and the Fight Against Climate Change on chapter 3 of the Auditor General of Québec's spring 2017 report, entitled "Contaminated Land Rehabilitation".

#### *Clause-by-clause Consideration of Bills*

From mid-August to the end of September, four committees examined a total of six public bills. The CI concluded the examination of Bill 62, *An Act to foster adherence to State religious neutrality and, in particular, to provide a framework for requests for accommodations on religious grounds in certain bodies (modified title)*. The consideration of this 18-section bill required slightly over 37 hours of work during which 55 amendments and subamendments were tabled, including 22 that were adopted, among which one that adds a preamble to the bill. The CI also concluded, in a single sitting, the clause-by-clause consideration of Bill 133, *An Act to make wearing of the uniform by police officers and special constables mandatory in the performance of their duties and respecting the exclusivity of duties of police officers who hold a managerial position (modified title)*. After 30 hours of sittings, the Committee on Health and Social Services (CHSS) concluded the examination of Bill 99, *An Act to amend the Youth Protection Act and other provisions*, which contained 88 sections. Finally, the Committee on Transportation and the Environment ended the clause-by-clause consideration of Bill 137, *An Act respecting the Réseau électrique métropolitain*, which had begun in early June, after 37 hours of work.

The consideration of Bill 130, *An Act to amend certain provisions regarding the clinical organization and management of health and social services institutions*, which had been interrupted for the summer break, resumed in August and was still underway in late September. The CHSS, which was mandated to examine this bill, had accumulated over 45 hours of work from mid-May to the end of September.

**Sylvia Ford**

General Directorate for Parliamentary Affairs  
Sittings Service

**Stéphanie Pinault-Reid**

General Directorate for Parliamentary Affairs  
Committees Service





## British Columbia

British Columbia's minority parliament continued to evolve following the closest electoral result in the province's history in the May 9 provincial general election.

### New Cabinet

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Following the June 29, 2017 defeat of the minority government led by BC Liberal Members, BC New Democratic Party (NDP) leader **John Horgan** was sworn in as Premier on July 18, 2017, along with a 22-Member Cabinet. The Cabinet is the province's first to have an equal number of men and women, and the first to have an Indigenous female Cabinet Minister. Premier Horgan's mandate letters to Ministers stated that the "2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus" will be critical to the success of the new government.

### Resignation of BC Liberal Party Leader

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Former Premier **Christy Clark** announced her resignation as BC Liberal Party leader and as MLA for Kelowna West effective August 4, 2017. Former Cabinet Minister **Rich Coleman** was selected as interim party leader and Leader of the Official Opposition, and the party will elect a new leader on February 3, 2018. Party standings in the House are now: 41 BC Liberals; 41 BC NDP; 4 Independent (BC Green and Speaker); and 1 vacancy.

### Second Session of the 41<sup>st</sup> Parliament

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The first session of the 41<sup>st</sup> Parliament prorogued on September 8, 2017, following the acclamation of **Darryl Plecas** as Speaker. Speaker Plecas, a former

BC Liberal Member, was first elected in 2013 and re-elected in 2017, and is sitting as an Independent. **Raj Chouhan**, Assistant Deputy Speaker in the previous Parliament, was selected to serve as Deputy Speaker. **Linda Reid**, Speaker in the previous Parliament, now serves as Assistant Deputy Speaker. **Spencer Chandra Herbert** is Deputy Chair of the Committee of the Whole.

The second session opened in the afternoon of September 8, 2017 with the Speech from the Throne, followed by the presentation of the provincial budget on September 11, 2017 by Minister of Finance **Carole James**.

### Legislation

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In addition to an interim *Supply Act*, which was adopted on September 21, 2017, and legislation to implement the provincial budget, government introduced the following bills to implement key electoral platform commitments:

Bill 3, *Election Amendment Act, 2017*, which would make a number of campaign finance changes, including eliminating corporation and union donations, limiting political donations by individuals, and establishing publicly financed annual allowances for eligible political parties for a 2017-21 transitional period; the amendments also propose a special parliamentary committee to review the annual allowance provisions to determine whether the allowance should continue beyond 2022;

Bill 6, *Electoral Reform Referendum 2018 Act*, provides the legislative framework for the conduct of a province wide referendum, in fall 2018, on whether to change from the current first-past-the-post voting system to a form of proportional representation; and

Bill 8, *Lobbyists Registration Amendment Act, 2017*, which would ban former public office holders and senior staff from lobbying government for two years after leaving government.

To implement a commitment in the "2017 Confidence and Supply Agreement between the BC Green Caucus and the BC New Democrat Caucus" to amend the statutory threshold for official party recognition, government introduced Bill 5, *Constitution Amendment Act, 2017*, which proposes to lower the threshold for recognition as an official party in the House from four Members to two Members. Once adopted, the legislation would result

in official party recognition for the three BC Green Party Members. The bill also proposes to move the fixed election date from May to October and provides the authority to appoint acting Cabinet Ministers to ensure the continuity of government.

### Committees

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Pursuant to Standing Order provisions, the Legislative Assembly established nine select standing committees on September 8, 2017, along with the membership of the Special Committee of Selection.

On September 14, 2017, the Legislative Assembly adopted Terms of Reference for the mandate and membership of the Select Standing Committee on Finance and Government Services, given the Committee's requirement under the *Budget Transparency and Accountability Act* to hold province-wide public consultations on the upcoming provincial budget. The Committee launched public consultations along with a new online Consultation Portal to facilitate public participation, and is statutorily required to release its report and recommendations to the Legislative Assembly by November 15. Membership and terms of reference for additional committees are expected in the coming weeks.

### Change to Standing Orders

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The Legislative Assembly unanimously agreed on September 18, 2017 to amend its Standing Orders to move the daily Question Period to the morning on Tuesdays and Thursdays, confirming a previous sessional arrangement. Question Period remains in the afternoon on Mondays and Wednesdays.

### Members' Orientation

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The Legislative Assembly continued a series of administrative and procedural orientation programs to support new and re-elected Members following the provincial general election. On September 20, 2017, an Open House was held to provide an opportunity for Members to meet and learn more about the role of the Statutory Officers and their staff. The Assembly also hosted its second Constituency Assistant Seminar on October 23 and 24, 2017.

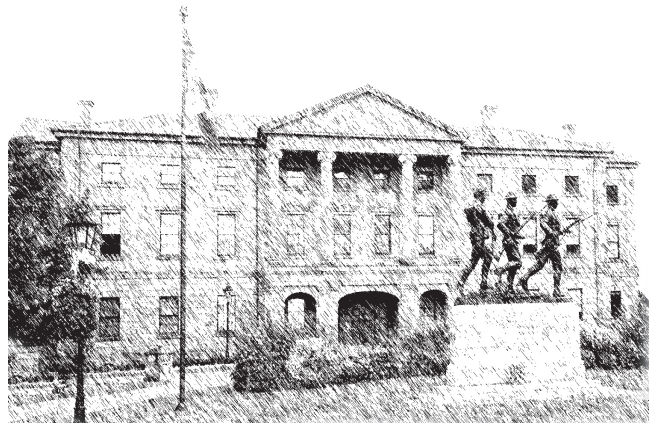
### Parliamentary Attachments

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Following the January 2017 signature of a twinning agreement between the Legislative Assembly and the Parliament of Guyana, the Assembly welcomed three

senior Guyanese procedural officials for a three week attachment program at the Legislative Assembly to strengthen their procedural and operational experience and abilities in the fields of parliamentary procedure, parliamentary committee operations, Hansard broadcasting, and parliamentary research activities.

**Alayna van Leeuwen**  
Committee Research Analyst



## Prince Edward Island

### Third Session, Sixty-fifth General Assembly

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The Second Session of the Sixty-fifth General Assembly shall prorogue on November 13, 2017, and the Third Session shall commence with a Speech from the Throne on November 14, 2017, at 2:00 p.m. in the Legislative Chamber of the Honourable George Coles Building.

### New Lieutenant Governor

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On September 14, 2017, Prime Minister **Justin Trudeau** announced the appointment of **Antoinette Perry** as the next Lieutenant Governor of Prince Edward Island. Ms. Perry has had a distinguished career as a teacher in Tignish, PEI, and is an active member of various community and cultural organizations. She will be the first female Acadian to serve as Lieutenant Governor of the province. Her installation ceremony will take place on October 20, 2017, in Tignish, which shall mark the first time the ceremony will be held outside of Charlottetown. Ms. Perry will be the 42<sup>nd</sup> Lieutenant Governor of PEI, following **Frank Lewis**, who has served as Lieutenant Governor since 2011.

## Live-streaming of Committee Meetings

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As of September 1, 2017, meetings of the standing and special committees of the Legislative Assembly have been live-streamed on the Assembly's website and Facebook Live page. This change was made at the direction of the Standing Committee on Legislative Management. The change necessitated some operational adjustments, primary among which is the use of the Legislative Chamber for committee meetings due to the lack of live-streaming capability in the room previously used by committees. Audio recordings and transcripts of committee meetings continue to be available. A video archive of meetings from September 1 onward is available at the Legislative Assembly website.

## Committees of the Legislative Assembly

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The various standing committees of the Legislative Assembly met multiple times to conduct their business during the late summer and early fall, 2017. The Standing Committee on Agriculture and Fisheries examined fish kill events in Island waterways, receiving a briefing from the Department of Communities, Land and Environment. The Standing Committee on Communities, Land and Environment has received briefings on the Workers Compensation Board, PEI's property tax system, and the *Freedom of Information and Protection of Privacy Act*. The Standing Committee on Education and Economic Development has looked into the federal government's proposed tax changes for private corporations. The Standing Committee on Health and Wellness has examined smoking cessation, suicide prevention and the province's mental health and addictions strategy. The Standing Committee on Public Accounts met several times with the Auditor General to review her 2016 and 2017 annual reports.

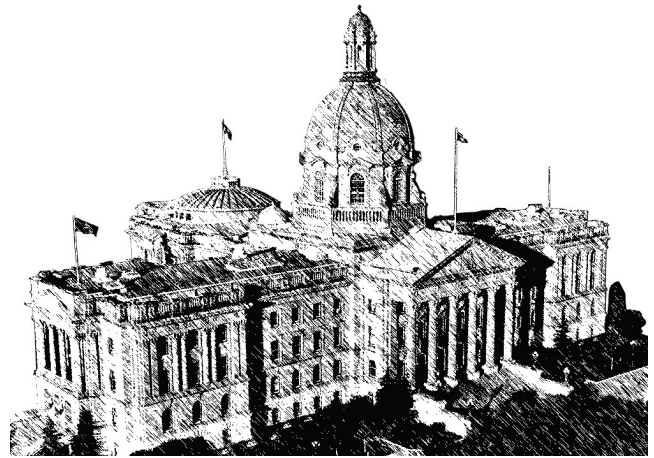
## Canadian Regional Seminar, Commonwealth Parliamentary Association

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From October 10-13, 2017, the Legislative Assembly hosted the 39<sup>th</sup> Canadian Regional Seminar of the Commonwealth Parliamentary Association, Canada Region. Delegations of parliamentarians and parliamentary officers from across Canada met to discuss topics such as partisanship in parliaments, sustainable arctic communities, and women in politics. Delegates also enjoyed social events and tours that showcased PEI's culture and traditions.

**Ryan Reddin**

Clerk Assistant – Research and Committees



## Alberta

### Third Session of the 29<sup>th</sup> Legislature

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The Legislative Assembly was scheduled to resume for its fall sitting on October 30, 2017, and adjourn on December 7, 2017. One of the items for the Assembly to consider is Bill 203, *Alberta Standard Time Act*, which proposes to remove the daylight savings time change in Alberta so that the province would be six hours behind coordinated universal time all year round. On October 2, 2017, the Standing Committee on Alberta's Economic Future released its report on the Bill, which had been referred to the Committee for consideration on April 3, 2017, prior to the Bill receiving Second Reading. As part of the consultation process the Committee received over 13,500 written submissions from stakeholders and members of the public, and eight stakeholders made oral presentations to the Committee. In addition, the Committee appointed a five-member subcommittee to conduct public hearings on the Bill in Edmonton, Calgary, Lethbridge, and Grande Prairie. After completing its review the Committee recommended that Bill 203 not proceed. The Committee further recommended that the Government of Alberta engage with other jurisdictions in Canada and the United States to discuss a coordinated approach to eliminating the practice of observing daylight saving time. The Assembly will consider a motion to concur in the report this fall.

### Caucus Composition

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In July 2017, the Wildrose Party (WR) and the Progressive Conservative Association of Alberta (PC) each held a vote regarding a proposal to merge the two parties into a new United Conservative Party

(UCP). Party members supported the proposal, with approximately 95 per cent of the voters in each organization voting in favour of the merger, and the new UCP was registered with Elections Alberta. Most Members who were previously affiliated with the WR or PC parties joined the new UCP caucus. However, **Richard Starke**, MLA (Vermilion-Lloydminster), decided to maintain his designation as a Progressive Conservative Member, and **Rick Fraser**, MLA (Calgary-South East), who initially opted to be affiliated with the UCP, has since decided to sit as an Independent. **Nathan Cooper**, MLA (Olds-Didsbury-Three Hills), is serving as interim leader of the UCP until the leadership contest due to be held on October 28, 2017, determines the new leader of the party. **Brian Jean**, MLA (Fort McMurray-Conklin) resigned as leader of the WR and announced his candidacy for leader of the UCP.

On August 15, 2017, **Derek Fildebrandt**, MLA (Strathmore-Brooks), announced he would leave the UCP caucus to sit as an Independent MLA. Earlier that week, media reports indicated that Mr. Fildebrandt had made errors in his expense claims and that he had rented out his apartment in Edmonton, for which he claimed a temporary residence allowance, on Airbnb.

On October 4, 2017, **Karen McPherson**, MLA (Calgary-Mackay-Nose Hill), announced that she was leaving the New Democrat (NDP) caucus to sit as an Independent Member.

When the Assembly reconvenes on October 30, 2017, if there are no further changes to caucus affiliation before that time, the composition of the Assembly will be: 54 NDP, 27 members of the UCP Official Opposition, one Member each for the Alberta Liberals, the Alberta Party, and the Progressive Conservatives, and three Independent Members.

### **Committee Activity**

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On July 19, 2017, the Standing Committee on Resource Stewardship released its report regarding its review of the *Lobbyists Act*. The report included five recommendations related to reducing the annual threshold for organization lobbyists, tightening restrictions on gifts, prohibiting contingency fee payment arrangements for consultant lobbyists, expanding the definition of “lobby” to include grassroots communication, and removing restrictions on the application of the *Act* regarding responses to requests from public officer holders for advice or comment. The Committee is now reviewing the 2016

*Annual Report of the Property Rights Advocate Office.*

At a meeting on September 14, 2017, the Special Standing Committee on Members’ Services passed a motion referring consideration of the subject matter of a letter to the Speaker, who is also Chair of the Committee, from **Greg Clark**, MLA (Calgary-Elbow), to the Subcommittee presently reviewing the Members’ Services Committee Orders. In the letter, Mr. Clark raised concerns relating to the temporary residence allowance provisions of the Orders, asked whether penalties might be applied in circumstances where Members claim more than their actual expenses, and inquired about the possibility of auditing Members’ claimed living expenses. The Committee also passed an amendment to the Members’ Services Orders to prohibit MLAs from renting out a residence as a vacation rental or other short-term accommodation when the temporary residence allowance is also claimed for that residence.

**Jody Rempel**  
Committee Clerk



## **Ontario**

### **Membership Changes**

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Effective September 1, 2017, a vacancy occurred in the membership of the House following the resignation of Liberal MPP **Glen Murray**. Mr. Murray was the MPP for Toronto Centre, as well as the Minister of the Environment and Climate Change.

On September 11, 2017, the House welcomed its newest Member, **Ross Romano** (MPP for Sault Ste. Marie). Mr. Romano was returned as duly elected following a by-election on June 1, 2017.

## Condolences

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During this period, the House expressed its condolence on the death of **Edward Michael Havrot**, Member for the Electoral District of Timiskaming from October 21, 1971 to September 17, 1975 and from June 9, 1977 to May 1, 1985.

## Casting Vote

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On September 21, 2017, the Deputy Speaker **Soo Wong** (Scarborough-Agincourt) cast a deciding vote on the motion for Second Reading of Bill 146, *An Act to amend the Ontario Energy Board Act, 1998 to provide transparency in gas pricing*. The motion for Second Reading of the Bill carried on the following division: 17-16, and the Bill was subsequently referred to the Standing Committee on Finance and Economic Affairs. This is the tenth time in the history of the Legislative Assembly of Ontario that a presiding officer was required to deliver a casting vote. The previous nine occasions also occurred during Private Members' Public Business, most recently in November 2009.

## Temporary Financial Accountability Officer of Ontario

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On September 27, 2017, an Order in Council was issued appointing **J. David Wake** as the temporary Financial Accountability Officer of Ontario, commencing September 26, 2017.

## Committee Activities

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### *Standing Committee on Estimates*

The Standing Committee on Estimates began its consideration of the 2017-2018 Estimates of selected ministries and offices.

### *Standing Committee on Finance and Economic Affairs*

The Standing Committee on Finance and Economic Affairs met for consideration of Bill 148, *An Act to amend the Employment Standards Act, 2000 and the Labour Relations Act, 1995 and to make related amendments to other Acts*. The Committee, having been referred the Bill after First Reading, held public hearings in 10 cities across the province in July and conducted clause-by-clause consideration of the Bill in August. The Bill was subsequently reported back to the House as amended and ordered for Second Reading on September 11, 2017. Among other things, the Bill would raise the provincial minimum wage; and mandate equal pay for

part-time, temporary, casual and seasonal employees doing the same job as full-time employees.

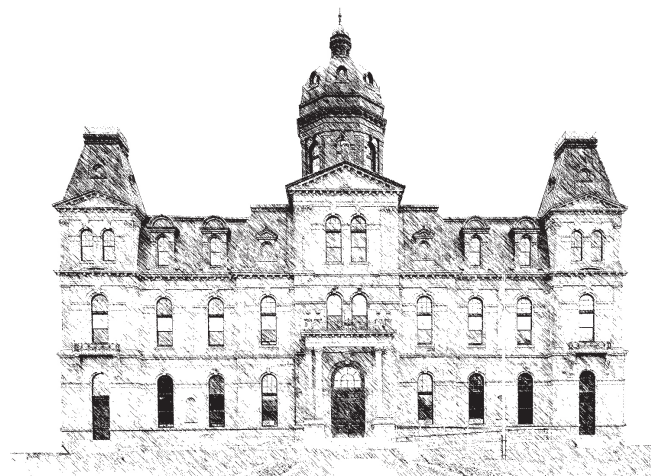
### *Standing Committee on the Legislative Assembly*

Following the changes made to the Executive Council, in which the Office of Francophone Affairs was succeeded by a new Ministry of Francophone Affairs, the Standing Committee on the Legislative Assembly updated the list of the ministries and offices assigned to the Standing Committees pursuant to Standing Order 111(b).

### *Standing Committee on Public Accounts*

Members of the Standing Committee on Public Accounts attended the annual CCPAC/CCOLA Conference in Fredericton, New Brunswick from September 10 to September 12, 2017. With the resumption of the House, the Committee began report writing on six separate sections of the *2015 Annual Report of the Office of the Auditor General of Ontario*, following reviews conducted during the winter session.

**Jocelyn McCauley**  
Committee Clerk



## New Brunswick

### Cabinet Shuffle

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A cabinet shuffle was announced by Premier **Brian Gallant** in September. Three new ministers joined cabinet: **Benoît Bourque**, Minister of Health; **Andrew Harvey**, Minister of Agriculture, Mines and Rural Affairs; and **Gilles LePage**, Minister of Labour, Employment and Population Growth.

Ministers **Donald Arseneault**, **Victor Boudreau** and **Ed Doherty** announced their departure from cabinet. The three members were joined by **Bertrand LeBlanc** in announcing that they would not be seeking re-election in 2018.

An informal system of regional ministers that had previously been in place in New Brunswick was also formalized during the cabinet shuffle. Five ministers were tasked with the additional responsibility of “regional minister” to advocate on behalf of five provincial regions at the cabinet table.

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### Sergeant-at-Arms

In October, following an extensive search process, **Gilles Côté** was appointed Sergeant-at-Arms of the Legislative Assembly of New Brunswick. Mr. Côté brings with him over 27 years of service and experience with the Royal Canadian Mounted Police. Mr. Côté replaced **Daniel Bussièrès**, who had served the Legislature as Sergeant-at-Arms since 2002.

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### Committees

On September 1, the Select Committee on Cannabis, chaired by Mr. Bourque, released its final report entitled *Consulting New Brunswickers: The Legalization of Recreational Cannabis in New Brunswick*. The report is based on public consultations held in seven locations across the province during the month of July.

The committee met with the public following the release of the *Report of the New Brunswick Working Group on the Legalization of Cannabis*, which looked at the challenges and opportunities of legalizing recreational cannabis and proposed a model for a legal cannabis industry. The working group report was used as a discussion guide during public consultations.

Although the select committee heard varying viewpoints on the proposed model for a legal cannabis industry, presenters agreed that a strategy for the legalization of recreational cannabis should include priorities such as: keeping cannabis out of the hands of youth; shutting out organized crime; investing in education; addressing health concerns; and ensuring public safety.

The Standing Committees on Public Accounts and Crown Corporations, chaired by **Trevor Holder** and **Chuck Chiasson**, reviewed various

government departments, Crown corporations and other entities during September and October. On October 3, the committees met jointly to review the *Report of the Auditor General of New Brunswick 2017, Volume II - Performance Audit*. The report presented a special examination which detailed findings and work performed to address remaining unanswered questions from the 2015 Report “*Financial Assistance to Atcon Holdings Inc. and Industry*.”

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### Conferences

From July 30 to August 4, the Legislature hosted the 33<sup>rd</sup> Regional Conference for the North American Region of the Assemblée parlementaire de la Francophonie (APF). Thirty-six delegates, representing provincial and national Canadian members of the APF, attended the six-day conference. Special guests from the European Region and Haiti were also in attendance. Business sessions revolved around the demographic decline in francophone populations within Canadian provinces, as well as jurisdictional updates.

New Brunswick also hosted the 38<sup>th</sup> annual joint conference of the Canadian Council of Public Accounts Committees (CCPAC) and Canadian Council of Legislative Auditors (COLLA). Held from September 10-12, presenters included parliament consultant and former MLA Elizabeth Weir and the Canadian Audit and Accountability Foundation, who released their latest research publication entitled *Accountability in Action: Good Practices for Public Accounts Committees*. The CCPAC also voted on a revised constitution for their council.

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### Vimy Oak

In recognition of National Peacekeepers’ Day, held annually on August 9, the United Nations flag was raised at the Legislative Assembly and members of the *Blue Helmets*, a Veteran Peacekeepers Association, planted a “Vimy Oak” sapling on the grounds of the Legislature.

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### Youth in Transition

During one evening in September, from 6 p.m. to 6 a.m., the grounds of the Legislature were occupied by Youth in Transition to raise money for Chrysalis House, a residence focusing on the lives of homeless and at-risk teenage youth through education, engagement and life skills development.

## Standings

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The Legislature is scheduled to open the 4<sup>th</sup> Session of the 58<sup>th</sup> Legislature on October 24. The standings in the House are 26 Liberals, 22 Progressive Conservatives, and 1 Green.

**John-Patrick McCleave**  
Committee Clerk



## The Senate

### In the Chamber

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Toward the end of the third quarter, Bill S-228, *An Act to amend the Food and Drugs Act* (prohibiting food and beverage marketing directed at children), was read a third time and sent to the House of Commons for study. In September, the second reading debate began on three government bills, C-23, *An Act respecting the preclearance of persons and goods in Canada and the United States*, C-25, *An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act*, and C-36, *An Act to amend the Statistics Act*. In addition, Bill C-277, *An Act providing for the development of a framework on palliative care in Canada*, was read a second time and referred to the Standing Senate Committee on Social Affairs, Science and Technology on September 26, 2017.

### Committees

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In September, two reports of the Standing Joint Committee on the Scrutiny of Regulations, one dealing with documents incorporated by reference and the other with marginal notes, were adopted along with requests for government responses. The Senate also

adopted a report of the Standing Committee on Internal Economy, Budgets and Administration designating **Jacqueline J. Kuehl** as Law Clerk and Parliamentary Counsel.

In addition, several committee reports were tabled with the Clerk of the Senate over the course of the summer adjournment. These included two reports of the Standing Senate Committee on National Finance (*Getting Ready: For a new generation of active seniors* and *Smarter Planning, Smarter Spending: Ensuring Transparency, Accountability and Predictability in Federal Infrastructure Programs*), a report of the Standing Senate Committee on Foreign Affairs and International Trade on the crisis in Venezuela, and a report of the Standing Senate Committee on Banking, Trade and Commerce entitled *Study on the current and emerging issues of the banking sector and monetary policy of the United States*.

### Leadership

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Late in the second quarter, it was announced that Senator **Terry Mercer** would become the Deputy Leader of the Senate Liberals, effective June 29, 2017.

As previously reported, many of the independent senators appointed since the beginning of the current session, together with other non-affiliated senators, have created a group called the Independent Senators Group (ISG). The group held its first elections at the end of this quarter. On September 25, Senators **Yuen Pau Woo** and **Raymonde Saint-Germain** were named Facilitator and Deputy Facilitator.

### Senators

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Senator **David Adams Richards** was introduced and sworn in on September 19, 2017, the first sitting day following the summer adjournment. He was appointed by Prime Minister **Justin Trudeau** in late August 2017, following the selection process the Prime Minister has implemented. Senator Richards is an acclaimed Canadian novelist, essayist, screenwriter and poet. He was a co-winner of the 2000 Giller Prize for his novel *Mercy Among the Children* and has received numerous other prestigious awards. He is a member of the Order of Canada and the Order of New Brunswick. Senator Richards opted to join the ISG.

In terms of departures from the Upper House, Senators **Robert Runciman**, **George Baker**, and **Elizabeth Hubley** retired this quarter (as of August 10, September 4 and September 8, respectively), while Senator **Daniel Lang** resigned as of August 15.

Senator Baker was appointed by Prime Minister **Jean Chrétien** in 2002. He served on numerous Senate standing committees, such as National Security and Defence, National Finance, Human Rights, Aboriginal Peoples, and Legal and Constitutional Affairs. He was also vice-chair of the latter from 2013 to 2015. Senator Baker was previously a Liberal member of the House of Commons, representing the constituency of Gander–Grand Falls from 1972 to 2002. He served in a number of Critic roles, as well as Parliamentary Secretary (Environment and National Revenue), Secretary of State (Atlantic Canada Opportunities Agency) and as Minister of Veterans Affairs.

Senator Hubley was appointed by Prime Minister Chrétien in 2001, and was a member of many Senate standing committees during her tenure, including Banking, Trade and Commerce, Energy, the Environment and Natural Resources, as well as Fisheries and Oceans, of which she was vice-chair from 2004 to 2007 and from 2011 to 2017. Senator Hubley served as Deputy Opposition Whip from 2006 to 2015, Deputy Opposition Whip of the Senate Liberals from 2015 to 2016, and Deputy Leader of the Senate Liberals from 2016 to 2017. She was previously a Liberal member of Prince Edward Island Legislative Assembly, representing the district of 4<sup>th</sup> Prince from 1989 to 1996, and served as Deputy Speaker from 1991 to 1995.

Senator Runciman was appointed by Prime Minister **Stephen Harper** in 2010. He was a member of several Senate standing committees, including National Finance, Aboriginal Peoples, and Fisheries and Oceans, and from June 2011 until his retirement he served as chair of the Senate Committee on Legal and Constitutional Affairs. Senator Runciman was previously a Progressive Conservative member of the Legislative Assembly of Ontario, representing the riding of Leeds–Grenville from 1981 to 2010. During that time he was responsible for a number of portfolios, including Solicitor General and Minister of Correctional Services, Minister of Public Safety and Security, Minister of Economic Development and Trade, and he also served as Leader of the Official Opposition.

Senator Lang was appointed to the Senate by Prime Minister **Stephen Harper** in 2009, and from 2013 until his retirement served as chair of the Senate Standing Committee on National Security and Defence. He was previously a Progressive Conservative member of the Yukon Legislative Assembly, representing the electoral district of Whitehorse Porter Creek East from

1978 to 1992, during which he was responsible for numerous ministerial portfolios. Prior to the creation of the legislative assembly in 1978, he served a term on the non-partisan Yukon Territorial Council from 1974 to 1978.

## Officers

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Following the departure of **Charles Robert**, who was appointed Clerk of the House of Commons, **Nicole Proulx** was appointed Interim Clerk of the Senate and Clerk of the Parliaments in July 2017. As noted above, Ms. Kuehl was appointed Law Clerk and Parliamentary Counsel in September. They are both the first women to serve in their respective role.

**Max Hollins**  
Procedural Clerk



## Manitoba

The Second session of the 41<sup>st</sup> Legislature resumed on October 4, 2017. The House will sit until November 9 to complete consideration of the following five Designated Bills selected by the Official Opposition in the Spring for further consideration this Fall:

- *Bill 23 – The Fisheries Amendment Act*, which eliminates the monopoly that the Freshwater Fish Marketing Corporation had on the marketing of freshwater fish in Manitoba;
- *Bill 24 – The Red Tape Reduction and Government Efficiency Act, 2017*, which amends several Acts and repeals three Acts to reduce or eliminate regulatory requirements or prohibitions and to streamline government operations;
- *Bill 27 – The Elections Amendment Act*, which establishes a new permanent register of voters and requires voters to present proof of identity and



address when they vote;

- *Bill 30 – The Local Vehicles for Hire Act*, which will allow municipalities to make by-laws regulating the vehicle-for-hire industry, including taxis, limousines, and vehicles hired through an online application, a digital network or platform or a website;
- *Bill 31 – The Advanced Education Administration Amendment Act*, which amends the restrictions on tuition increases and removes the restrictions on course-related fees.

The House may also consider other government bills that did not fall under the Specified or Designated categories, as well as completing consideration of the Estimates of the Departmental Expenditure in the Committee of Supply and concluding the remaining steps for the passage of the Budget.

### **Standing Committees**

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The Standing Committee on Public Accounts met in August to consider the newly tabled Auditor General Report on the management of the Manitoba's Apprenticeship Program.

In addition, the Standing Committee on Crown Corporations met in September to consider the Annual Reports and Financial Statements of Manitoba Public Insurance Corporation.

### **The Newly Renovated Chamber**

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During the summer months, the Chamber underwent extensive renovations to enhance accessibility. On October 2, the Speaker held a ceremony for the official re-opening of the 97-year-old Chamber. This last segment of works was the final stage of a four-year-old program to make the centre of Manitoba's politics wheelchair accessible.

The floor was raised to allow the construction of a ramp on the left side of the Speaker's Chair. Thanks to this addition, it is now possible to have wheelchair access to the floor of the Chamber and the entire first row. Once five levels, the Chamber now has three levels of flooring, which will allow persons with disabilities to access also the Speaker's Dais as well as the Clerks' Table. The front benches in the first row will now be accessible as well, as the desks in this row have been moved closer to the center of the room to allow for the proper turning radius of mobility devices. Although the front benches were moved a little closer to the Clerks' Table, there was no need to alter its position.

Last year the entire third row of desks was made completely accessible by raising the flooring and modifying the desks, which means that now two of the three rows of desks for members are fully accessible.

At the same time the renovations took place, a new Hansard sound system and new wiring was also installed, together with new audio consoles on each member's desk. In addition, the Hansard desk was raised from the level of the floor to give the Recorders better sight lines.

### **New Leader of the Official Opposition**

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On September 16, 2017, the New Democratic Party of Manitoba held a leadership election to find a successor for **Greg Selinger**, who resigned following the defeat in the 2016 Manitoba General Election. In a two candidate race, **Wab Kinew**, MLA for Fort Rouge, was elected new Leader of his Party and also became the new Leader of the Official Opposition in the Manitoba Legislature. The 35-year-old is originally from the Onigaming First Nation and in the past has worked as journalist, broadcaster, musician, and author. He was first elected on April 19, 2016 and in the past year and a half served as critic for Education and Training.

### **New Security Measures at Legislative Building and Grounds**

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On October 5, Justice Minister **Heather Stefanson** and the Speaker of the Legislative Assembly **Myrna Driedger** announced the signing of a Memorandum of Understanding to implement new security measures at the Legislative Precinct that will include improved security planning and response protocols.

The agreement outlines how security programs for the Legislative Building, Government House and the grounds will be managed by Manitoba Justice and the Speaker together. The *Legislative Security Act* and the agreement between the Speaker and the Minister, which came into effect on October 7, implements the following:

- establishment of the position of director of legislative security, responsible for providing direction of legislative security officers on the legislative precinct;
- establishment of a Legislative Security Management Working Group consisting of the director of legislative security, the sergeant-at-arms, the deputy clerk of the legislative assembly and officials from the Community Safety Division of Manitoba Justice;

- provision of peace officer status to legislative security officers and authorization of the use of reasonable force by security officers to deny entry or evict a person;
- authorization of security officers to refuse entry of a person or enforce eviction for a variety of reasons including refusal to verify identity, refusal to be screened for weapons, threats to safety or interference with the operations of the assembly, or if an individual refuses to comply with a reasonable request by a security officer to ensure safety;
- authorization of the director of legislative security to enter into information sharing arrangements with police and government agencies, and to also enter into arrangements with police to provide security services in the legislative precinct when warranted; and
- authorization of the Registrar of Motor Vehicles to disclose vehicle licensing records to legislative security officers.

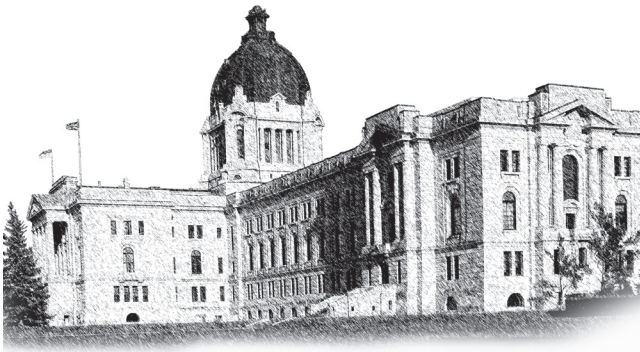
### Current Party Standings

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The current party standings in the Manitoba Legislature are: Progressive Conservatives 39, NDP 13, with five Independent members.

**Andrea Signorelli**

Clerk Assistant/Clerk of Committees



## Saskatchewan

### Premier Brad Wall Announces Retirement

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On August 10, 2017, Premier **Brad Wall** announced that he will retire from politics. In his statement, he

said he would continue to serve as Premier until the new leader is chosen.

### Concurrent Leadership Races

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The nomination filing deadline for candidates for the Saskatchewan Party leadership race is November 24, 2017, and a new leader will be elected at a leadership convention in Saskatoon on January 27, 2018. At the time of submission, five candidates are seeking the leadership.

The provincial NDP is also seeking a new leader. The leadership convention scheduled for May 2018 was moved to March 3, 2018. This will allow the new leader to be in place for the spring sitting on March 6, 2018. Thus far, two candidates have declared their intention to run for the leadership.

### Resignation of Member for Kindersley and Conflict of Interest Commissioner Report

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**Bill Boyd**, the member from Kindersley, announced on August 15 that he would resign effective September 1, 2017. Questions began to be asked about the use of his public office to influence and promote a private business interest during a trip to China. He was the keynote speaker at a seminar in China, and the advertisement poster incorrectly stated that he was the Minister of the Economy and featured a government logo.

Mr. Boyd, as well as the Leader of the Opposition, **Nicole Sarauer**, requested Conflict of Interest Commissioner **Ronald Barclay** provide an opinion regarding his compliance with *The Members' Conflict of Interest Act*. On August 28, 2017, the Conflict of Interest Commissioner stated, “. . . I conclude that he inaccurately represented the involvement of the Government of Saskatchewan in this irrigation project he was promoting in China . . . Mr. Boyd's actions in respect of this matter fall below the standards expected of Members of the Legislative Assembly”.

Mr. Boyd resigned from the Saskatchewan Party caucus later that day. No date has been set for the by-election in the Kindersley constituency.

### Cabinet Shuffle

With several cabinet ministers resigning their portfolios to run for the leadership of the Saskatchewan Party, Premier **Brad Wall** announced a number of changes to his cabinet.

Five cabinet ministers switched portfolios:

- **Kevin Doherty** became the Minister of Advanced Education;
- **Dustin Duncan** became the Minister of Environment and Minister Responsible for SaskPower, SaskWater, Water Security Agency, and Global Transportation Hub;
- **Bronwyn Eyre** became the Minister of Education and Minister Responsible for the Status of Women;
- **Donna Harpauer** became the Minister of Finance; and
- **Don Morgan** became the Minister of Justice and Attorney General, and remains as the Deputy Premier and minister responsible for Labour and Workers' Compensation Board.

Five MLAs are entering cabinet, four of which are new to cabinet:

- **Steven Bonk** became Minister of the Economy and Minister Responsible for Tourism Saskatchewan and Innovation and Trade;
- **Larry Doke** became Minister of Government Relations and Minister Responsible for First Nations, Métis and Northern Affairs;
- **Nancy Heppner** re-enters cabinet as Minister of Energy and Resources and Minister Responsible for the Public Service Commission;
- **Gene Makowsky** became Minister of Parks, Culture and Sport and Minister Responsible for Saskatchewan Liquor and Gaming Authority; and
- **Paul Merriman** became Minister of Social Services.

Six other cabinet ministers retained their current portfolios:

- **Joe Hargrave**, Minister Responsible for Crown Investments Corporation, Minister Responsible for Saskatchewan Government Insurance, and adds Minister Responsible for SaskTel and SaskEnergy to his portfolio;
- **Dave Marit**, Minister of Highways and Infrastructure;
- **Greg Ottenbreit**, Minister of Rural and Remote Health;
- **Jim Reiter**, Minister of Health;
- **Lyle Stewart**, Minister of Agriculture and Minister Responsible for Saskatchewan Crop Insurance; and
- **Christine Tell**, Minister of Central Services and Minister Responsible for SaskGaming Corporation and Minister Responsible for the Provincial Capital Commission.

**Nadine Wilson** remained in the role of Provincial Secretary and Legislative Secretary to the Premier. **Warren Kaeding** became the Legislative Secretary to the Minister of Responsible for SaskTel (Cellular and Internet Coverage) in addition to his duties as Legislative Secretary to the Minister of Agriculture (Irrigation Expansion).

**Greg Brkich** was appointed as Government House Leader and **Jeremy Harrison** as Government Deputy House Leader.

Given all the changes to cabinet, there were many changes to the membership of the standing committees. Two new chairs and a new deputy chair were elected: **Laura Ross** was elected as the chair for the Standing Committee on Intergovernmental Affairs and Justice, **David Buckingham** was elected as the chair for the Standing Committee on the Economy, and **Don McMorris** was elected as the deputy chair for the Standing Committee on Public Accounts.

#### **Saskatoon Fairview By-election**

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The resignation of **Jennifer Campeau** led to a by-election in the constituency of Saskatoon Fairview on September 7, 2017. The NDP candidate, **Vicki Mowat**, won the election and was sworn-in on October 5, 2017.

As a result of one member resigning and one member being elected in the by-election, the composition of the Assembly is now 48 Saskatchewan Party members, 12 NDP members, and one vacancy.

#### **Usher of the Black Rod**

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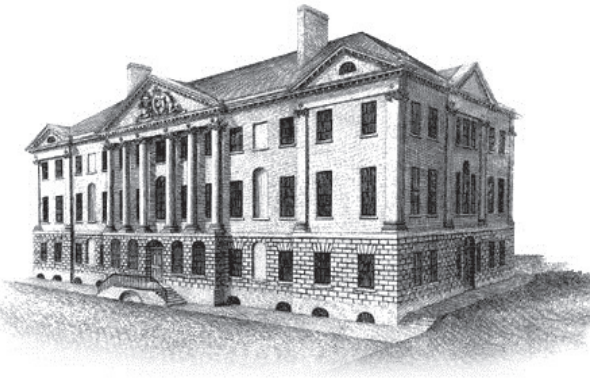
**Gwen Bourque** was appointed as the new Usher of the Black Rod upon the recommendation of the Premier. She performed her inaugural duties at prorogation and the opening of the new legislature in October.

#### **Prorogation and the Opening of a New Session**

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At the request of the government and pursuant to the order adopted by the Assembly on May 18, 2017, the first session of the twenty-eighth legislature was prorogued on the morning of October 25, 2017. The second session of the twenty-eighth legislature was opened in the afternoon with Lieutenant Governor **Vaughn Solomon Schofield** delivering the Speech from the Throne.

**Stacey Ursulescu**  
Committee Clerk



## Nova Scotia

### Commonwealth Parliamentarians with Disabilities

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From August 31 to September 1, 2017, **Kevin Murphy**, Speaker of the Nova Scotia House of Assembly hosted the inaugural Commonwealth Parliamentary Association meeting of Commonwealth Parliamentarians with Disabilities. Twenty-nine parliamentarians from 12 Commonwealth countries participated in meaningful exchanges and deliberations which lead to the recommendation that the Commonwealth Parliamentary Association International Executive Committee move forward with the creation of a network to be known as the Commonwealth Parliamentarians with Disabilities (CPwD).

### 1<sup>st</sup> Session of the 63rd General Assembly

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On September 21, 2017, Lieutenant Governor **Arthur J. LeBlanc**, delivered his first Speech from the Throne opening the 1<sup>st</sup> Session of the 63<sup>rd</sup> General Assembly.

The Budget for the fiscal year 2017-2018 had been presented on April 21, 2017 during the Spring sitting of the House of Assembly but had not been passed as the House of Assembly was dissolved when the writs of General Election were issued on April 30, 2017. As a result, a new 2017-2018 budget address was given by the Minister of Finance on September 26, 2017 and the estimates were referred for consideration to the Committee of the Whole on Supply. On October 13, 2017, the estimates and the Appropriations Bill were passed by the House.

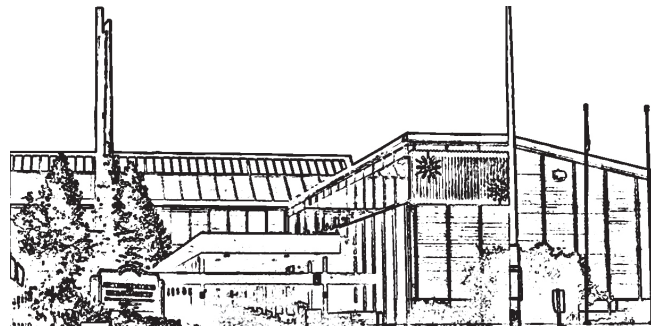
On October 2, 2017, Bill # 16, *An Act Respecting Representative Decision-making* was introduced to fill the void created when the *Incompetent Persons Act* was

struck down by the Supreme Court of Nova Scotia on June 28, 2016. The effective date of the Bill will be December 28, 2017 – the court imposed deadline by which the new legislation was ordered to be in place.

On October 5, 2017, Bill # 27, *An Act Respecting the Unauthorized Distribution of Intimate Images and Protection Against Cyber-bullying* was introduced to fill the void created when the *Cyber-Safety Act* was struck down by the Supreme Court of Nova Scotia on December 11, 2015.

**Annette M. Boucher**

Assistant Clerk



## Yukon

### Fall Sitting

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The 2nd Session of the 34<sup>th</sup> Legislative Assembly reconvened on October 3. The 2017 Fall Sitting must be a minimum of 20 and a maximum of 30 sitting days. Should the House sit for the maximum number of days permitted, the final day of the Sitting will be November 27.

### Government Bills

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The following government bills were introduced:

- Bill No. 6, *Public Airports Act* – **Richard Mostyn**, Minister of Highways and Public Works
- Bill No. 7, *Act to Amend the Dental Profession Act (2017)* – **John Streicker**, Minister of Community Services
- Bill No. 8, *Act to Amend the Workers' Compensation Act and the Occupational Health and Safety Act (2017)* – **Jeanie Dendys**, Minister responsible for the Workers' Compensation Health and Safety Board

- Bill No. 9, *Act to Amend the Pounds Act (2017)* – **Ranj Pillai**, Minister of Energy, Mines and Resources
- Bill No. 10, *Act to Amend the Income Tax Act (2017)* – **Sandy Silver**, Premier and Minister of Finance
- Bill No. 11, *Act to Amend the Health Act (2017)* – **Pauline Frost**, Minister of Health and Social Services
- Bill No. 12, *Act to Amend the Hospital Act (2017)* – Ms. Frost, Minister of Health and Social Services
- Bill No. 13, *Missing Persons Act* – **Tracy-Anne McPhee**, Minister of Justice
- Bill No. 14, *Legal Profession Act, 2017* – Ms. McPhee, Minister of Justice
- Bill No. 202, *Third Appropriation Act 2016-17* – Mr. Silver, Premier and Minister of Finance
- Bill No. 203, *Second Appropriation Act 2017-18* – Mr. Silver, Premier and Minister of Finance

### Standing Order Changes

On the first day of the Fall Sitting, **Paolo Gallina**, Chair of the Standing Committee on Rules, Elections and Privileges, presented the Committee's First Report to the House.

The Committee's report contained two recommendations – one concerning Tributes, the other calling for fixed Sitting dates. With regard to its first recommendation, the Committee's report recommended amending the Standing Orders to limit the time that could be spent on the Daily Routine rubric "Tributes" to 20 minutes per sitting day (formerly, there was no time-limit on Tributes).

The Committee's second recommendation concerned establishing fixed Sitting dates for the Assembly. The Committee recommended that the Standing Orders be amended to stipulate that each Spring Sitting commence the first week of March, and each Fall Sitting begin in the first week of October. The Committee further recommended that adjustments to the start date could be made in years in which there is a general election, or should the Premier decide that "extraordinary circumstances require that the established start date for a Sitting be changed." (While the existing Standing Orders had long provided for a Spring Sitting and a Fall Sitting, they were silent as to when the Sittings would begin.)

On October 5, Mr. Gallina moved a motion in the House for concurrence in the Committee's report; the motion carried.

### Public Accounts Committee Reports

On October 3, the Chair of the Public Accounts Committee, Official Opposition Leader **Stacey Hassard**, presented the Committee's First and Second reports to the House. The reports concerned public hearings that the Committee had held on June 28 and 29 on two performance audits of the Auditor General of Canada, **Michael Ferguson**. The Committee's report on Yukon government transfers to societies (the Committee's first report) was made public on August 11; the report on capital asset management was made public on September 18 (the Committee's second report).

### Women's Caucus Outreach

From September 18-21, the Yukon branch of the Commonwealth Women Parliamentarians (CWP) hosted the 10<sup>th</sup> CWP Outreach Program. That month also marked the 50<sup>th</sup> anniversary of the election of the first woman to the Yukon Territorial Council (the Yukon Legislative Assembly's predecessor). Whereas at the time of her election, **Jean Gordon** was the lone female in the Chamber, the current makeup of the House is nearly 38 per cent women, with women holding seven out of 19 seats.

An opening reception for the outreach event was hosted by Equal Voice at the MacBride Museum of Yukon History in Whitehorse. Participants were welcomed by Chief **Doris Bill** of the Kwanlin Dün First Nation, Deputy Chief **Michelle Telep** of the Ta'an Kwäch'än Council, and Saskatchewan MLA **Laura Ross**, Vice-Chair, CWP Canadian Region and delegation leader. The guest speaker was **Ione Christensen**, who had in the past held the roles of Yukon Commissioner, Senator, and Mayor of Whitehorse. Yukon MLA **Kate White**, who is the CWP Yukon Chair, unveiled an archival project to commemorate 50 years of women in the Assembly. Ms. Gordon's daughter also delivered remarks at the reception (also present at the reception was Ms. Gordon's granddaughter).

As part of the outreach program, on September 19, young women leaders from Yukon took part in a Daughters of the Vote event held in the Yukon Legislative Assembly Chamber in Whitehorse. At the outset of proceedings, the participants were welcomed by Speaker **Nils Clarke**. Equal Voice and Daughters of the Vote gave a presentation on the state of women in politics. The presentation was

followed by a discussion in the Chamber with women parliamentarians, who shared their experiences of what it is like to run for and work in political office. A discussion with attendees on “systemic change for gender sensitive parliaments” was chaired by Yukon MLA and former Speaker **Patti McLeod**.

Participants toured the government and opposition offices and the Legislative Assembly. Later that day, participants travelled to Haines Junction for a cultural event and to meet with high school students from rural Yukon at the Da Kų Cultural Centre.

On September 20, proceedings held at the Kwanlin Dün Cultural Centre included a session on women in First Nations government (guest speaker Chief Bill), a blanket exercise, and a brainstorming session on barriers to access and challenges facing women in politics.

During the program, the young women had the opportunity to meet with women parliamentarians not just from Yukon, but from Alberta, Saskatchewan, Manitoba, Ontario, and New Brunswick.

### **Electoral District Boundaries Commission**

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As noted in its June 14 new release, the Electoral Boundaries Commission, created by Yukon’s *Elections Act* to “consult with the public after every two elections to review the electoral district boundaries and make proposals to the Legislative Assembly”, has begun its work.

The 2017/2018 Electoral District Boundaries Commission is chaired by **Ronald S. Veale**, Chief Justice, Supreme Court of Yukon. The other members of the Commission are **Darren Parsons**, **Jonas Smith**, **Anne Tayler**, and Yukon’s Chief Electoral Officer, **Lori McKee**.

### **Conflict of Interest Commissioner’s Report**

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On June 29, Yukon’s Conflict of Interest Commissioner, **David Phillip Jones**, provided the Commission’s 2016-17 annual report to Speaker Clarke; the same day, the report was distributed to members and the public. On October 3, the annual report was tabled in the House. The report is available at: [http://www.conflictinterest.gov.yk.ca/pdf/2016\\_17\\_annual\\_report.pdf](http://www.conflictinterest.gov.yk.ca/pdf/2016_17_annual_report.pdf)

**Linda Kolody**  
Deputy Clerk



## **House of Commons**

The First Session of the Forty-Second Parliament continued as the House reconvened on September 18, 2017, having adjourned for the summer on June 21, 2017. The report below covers the period from August 1 to October 6, 2017.

### **Committees**

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On September 26, 2017, the Standing Committee on the Status of Women met in order to elect a new Chair. When a motion was moved nominating **Rachael Harder** (Lethbridge) to be Chair, the Liberal Members of the Committee expressed their opposition to the motion and left the room, resulting in a lack of quorum. As a consequence, the election could not continue and the Members dispersed. On October 3, 2017, the Committee met again to elect a new Chair. Another motion was moved nominating Ms. Harder to be Chair. The question was put on the motion and it was defeated. Subsequently, a motion was moved nominating **Karen Vecchio** (Elgin—Middlesex—London) to be Chair. Despite Ms. Vecchio’s expressed desire to not occupy the position of Chair, there was no unanimous consent for the motion to be withdrawn. The question was put on the motion and she was duly elected Chair of the Committee.

### **Other Matters**

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#### *Members*

On September 18, 2017, the Speaker informed the House of the resignation of **Rona Ambrose** (Sturgeon River—Parkland) effective July 4, 2017. On September 18, 2017, the Speaker informed the House of the resignation of **Denis Lebel** (Lac-Saint-Jean) effective August 9, 2017.

On September 18, 2017, the Speaker informed the House that a vacancy had occurred for the Electoral District of Scarborough—Agincourt, by reason of the death of **Arnold Chan** who passed away on September 14, 2017, after a battle with cancer. Immediately after Oral Questions, the House paid tribute to Mr. Chan. **Justin Trudeau** (Prime Minister), **Andrew Scheer** (Leader of the Official Opposition), **David Christopherson** (Hamilton Centre) and Members from unrecognized parties, **Gabriel Ste-Marie** (Joliette), the Bloc Québécois and **Elizabeth May** (Saanich—Gulf Islands), the Green Party, made statements in tribute to Mr. Chan. The Speaker then invited Members to observe a moment of silence in his honour.

On September 28, 2017, **Judy Foote** (Bonavista—Burin—Trinity) made a statement on the occasion of her imminent resignation as Member of Parliament. Prime Minister Trudeau, **Tom Lukiwski** (Moose Jaw—Lake Centre—Lanigan), **Carol Hughes** (Algoma—Manitoulin—Kapusksasing), as well as Ms. May and the Speaker, also made statements in tribute to Ms. Foote. On October 2, 2017, the Speaker informed the House of the resignation of Ms. Foote, effective September 30, 2017.

On October 2, 2017, the Speaker informed the House of the resignation of **Dianne Watts** (South Surrey—White Rock) effective September 29, 2017.

On October 3, 2017, the Speaker informed the House of the resignation of **Gerry Ritz** (Battlefords—Lloydminster), effective October 2, 2017.

#### *Emergency Debates*

On September 26, 2017, the House held an emergency debate on the situation of the Rohingyas in Myanmar.

#### *Governor General*

Pursuant to a motion passed by the House on September 22, 2017, the order of business for the House was modified for October 2, 2017, in order to allow Members of Parliament to attend the investiture of Canada's 29<sup>th</sup> Governor General, **Julie Payette**. The ceremony took place in the Senate Chamber.

#### *Resolutions*

On September 21, 2017, the House adopted by unanimous consent a resolution that the House respect

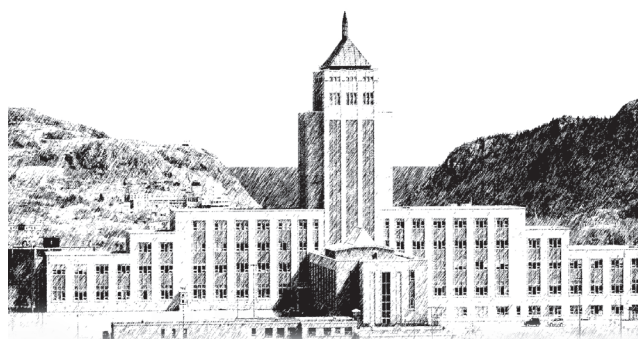
democracy and reaffirm Québec's right to debate and legislate on all issues under its jurisdiction.

On September 26, 2017, the House adopted by unanimous consent a resolution that the House reiterate its desire to fully preserve supply management during the NAFTA renegotiations.

On September 27, 2017, the House adopted by unanimous consent a resolution that the House acknowledge the importance of the aerospace industry and the fact that Bombardier is a major employer in Quebec and elsewhere in Canada, as well as reiterate the importance of standing up to protect the industry and jobs against Boeing's unjustified complaint and the United States government's preliminary decision.

**Marisa Monnin**

Table Research Branch



## Newfoundland and Labrador

On August 1, **Tom Osborne**, MHA (Waterford Valley), former Speaker of the House, was appointed Minister of Finance and **Lisa Dempster**, MHA (Cartwright-L'Anse au Clair) former Deputy Speaker was appointed Minister of Children, Seniors and Social Development.

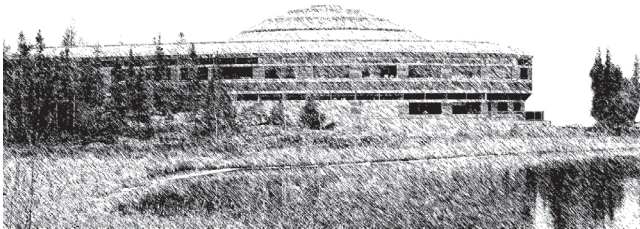
On August 8, the House convened for the election of a Speaker to succeed Mr. Osborne. There were two candidates for the position: **Pam Parsons**, MHA (Harbour Grace-Port de Grave) and **Perry Trimper**, MHA (Lake Melville). Mr. Trimper was elected Speaker and is the first Member representing a Labrador District to occupy the office.

**Brian Warr**, MHA (Baie Verte-Green Bay), former Deputy Chair of Committees was elected Deputy Speaker and **Scott Reid**, MHA (St. George's-Humber) was elected Deputy Chair of Committees.

On October 11, **Steve Kent**, MHA (Mount Pearl North) resigned his seat.

The House reconvened on October 16 to debate an amendment to the *Elections Act, 1991* which became necessary as a result of a decision of Madam Justice **Gillian Butler** who ruled that certain provisions of that statute, relating to special ballots, were unconstitutional.

**Elizabeth Murphy**  
Clerk Assistant



## Northwest Territories

The Second Session of 18<sup>th</sup> Legislative Assembly reconvened on September 19, 2017. Premier **Robert R. McLeod** delivered a sessional statement which highlighted the government's Mandate successes over the first two years of its term, including protection of the environment, growing demand for natural resources and reconciliation with Indigenous peoples.

On September 19, Finance Minister **Robert C. McLeod** tabled the capital estimates for the fiscal year 2018-19. The following day he delivered a fiscal update, summarizing the infrastructure projects which the Government of the Northwest Territories has deemed a priority for the coming year. These estimates were considered in Committee of the Whole from September 25-28. On September 28, the Finance Minister made a statement in Committee of the Whole reflecting on the recommendations of Members with regard to the capital budget and committing an additional \$1.255 million to advance projects associated with the implementation of junior kindergarten in 2018-2019.

On October 4, 2017 newly-appointed Commissioner **Margaret M. Thom** entered the Chamber and gave assent to bills and prorogued the Second Session.

### Legislation

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During the final sitting of the Second Session the following legislation was considered:

- Bill 24: *An Act to Amend the Coroners Act*, which allows for the assembly of a jury panel from which an inquest jury may be selected, outlines procedures for selecting jurors from a jury panel, allows for persons to be excused from jury service in certain circumstances, allows the Chief Coroner to create rules of procedure, and improves clarity and readability of certain provisions.
- Bill 25: *An Act to Amend the Residential Tenancies Act* which adjusts the definition of tenant, provides authority to rental officers to correct minor errors in decisions, orders and decisions of rental officers must be filed in accordance with regulations, and addresses inconsistencies and improve clarity and readability of provisions.
- Bill 27: *An Act to Amend the Environmental Protection Act* which makes several amendments to the *Environmental Protection Act*, including provisions for the creation of air quality regulations.
- Bill 28: *Interpretation Act* which sets out fundamental concepts governing all territorial statutes.
- Bill 29: *Miscellaneous Statute Law Amendment Act, 2017* which corrects inconsistencies and errors in the statutes of the Northwest Territories. The bill also deals with other matters of non-controversial and uncomplicated statutes.
- Bill 30: *Health Statutes Law Amendment Act (Cremation Services)* which is a Private Member's Bill introduced by Frame Lake MLA **Kevin O'Reilly**, that clarifies that the Commissioner may make regulations respecting cremations and crematoriums. The bill also amends the *Vital Statistics Act* to define cremations and crematoriums and prohibit cremation except by a funeral planner in a crematorium operated by a funeral planner.
- Bill 33: *Appropriation Act (Infrastructure Expenditures), 2018-2019*, which authorizes the Government of the Northwest Territories to make appropriations for infrastructure expenditures for the 2018-19 fiscal year.

All of the aforementioned bills received Royal Assent on October 3, 2017.



## Committee Activity

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Five bills were referred to the Standing Committee on Social Development during the May/June sitting. Bill 24: *An Act to Amend the Coroners Act*, Bill 25: *An Act to Amend the Residential Tenancies Act*, Bill 28: *Interpretation Act*, Bill 29: *Miscellaneous Statute Law Amendment Act*, and Bill 30: *Health Statutes Law Amendment Act (Cremation Services)*. The Standing Committee held public hearings and clause-by-clause reviews of each of these bills on August 22. All five bills were reported to the House on September 21.

Bill 27: *An Act to Amend the Environmental Protection Act* was referred to the Standing Committee on Economic Development and Environment on May 31. The Committee held a public hearing on August 29, 2017, and had a clause-by-clause review on September 26, 2017. An amendment was brought forth during the clause-by-clause review which was carried by Committee and concurred with by Environment and Natural Resources Minister, **Robert C. McLeod**. The bill was reported to the House on September 28.

## Mandate

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The *Mandate of the Government of the Northwest Territories, 2016-2019*, established by all Members at the beginning of the 18<sup>th</sup> Assembly, describes the strategic direction that the Government of the Northwest Territories will undertake to advance the priorities of the 18<sup>th</sup> Assembly. Members agreed to review the Mandate as part of a broader midterm review process.

Members of the 18<sup>th</sup> Assembly held a 3-day caucus retreat starting on August 23, 2017 in the Inuvik region. Members and staff travelled to Inuvik, and proceeded by boat to Reindeer Station, where they reviewed potential changes to the Mandate document.

A revised Mandate document was tabled in the House on September 19, 2017. It was considered by Committee of the Whole on October 4, 2017. Five motions to adjust specific action items and related wording in the Mandate were introduced and subsequently adopted. The final revised and updated Mandate that will guide the Government for the remaining two years of the 18<sup>th</sup> Assembly will be tabled in the House at a later date.

## New Commissioner

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Ms. Thom was sworn in as the 17<sup>th</sup> Commissioner of the Northwest Territories on September 18, 2017, by **Jurica Capkun**, Assistant Clerk of the Privy Council for the Government of Canada. In contrast to the provinces, the Northwest Territories is not given the authority to govern under the *Constitution Act*, therefore the position of Commissioner is created by the federal *Northwest Territories Act* and has a similar function to that of a provincial lieutenant governor. The position also has a ceremonial role by representing the Government of the Northwest Territories at important events across the Territories. Ms. Thom, born on the land in the Deh Cho region of the Northwest Territories, was initially named as the new Commissioner on June 26. Commissioner Thom served as Deputy Commissioner from 2005-2011 and succeeds **George L. Tuccaro** who served as Commissioner from 2010-2016.

**Jennifer Franki-Smith**  
Committee Clerk Trainee

# Senator Raoul Dandurand: Champion of an Independent Senate

As the number of independent, non-partisan senators has grown, Canadian parliamentary observers have been increasingly mentioning the name Raoul Dandurand in conversations. The author of this article suggests the legacy of Senator Dandurand, who long ago advocated for an independent Senate that was more of a dispassionate reviewing body than a replica of the partisan House of Commons, is particularly relevant to the Senate's contemporary discussions and debates on its procedures and practices.

## Peter Price

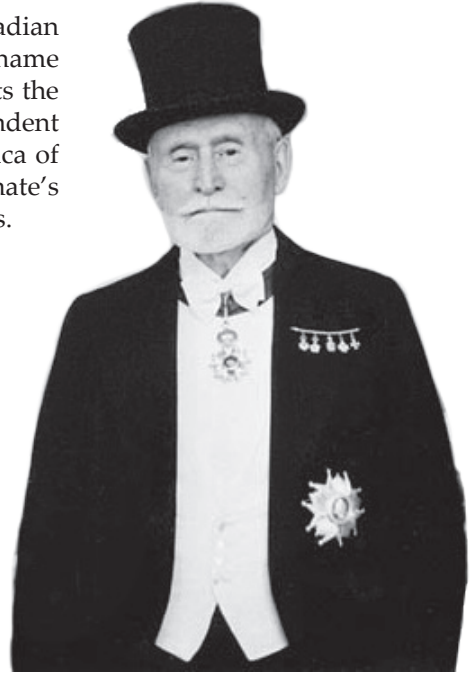
After Mackenzie King's Liberals formed government following the 1921 election, the new Government Leader in the Senate was wary of changing his seat in the chamber. To Raoul Dandurand, the electoral reconfiguration of the House of Commons and the formation of a new government had little bearing on the work of the Senate. "I disliked the idea of crossing the floor," he said in his first speech as Government Leader. "What did that action purport? Its meaning was there were in this Chamber victors and vanquished."<sup>1</sup> This made little sense for a legislative chamber that he understood to be more of a dispassionate reviewing body than a replication of the partisan politics of the House of Commons.

The principle of the Senate's independence and its functioning as a non-partisan chamber were hallmarks of Senator Dandurand's approach to the upper chamber. Appointed to the Senate in 1898 by Wilfrid Laurier, he served in the upper chamber for 44 years, including two decades as either Government Leader or Opposition Leader in the Senate and one term as Speaker between 1905 and 1909.

Dandurand often expressed concern that the Senate had become something different than originally imagined, shaped increasingly over time in the image of the partisan environment of the House of Commons.

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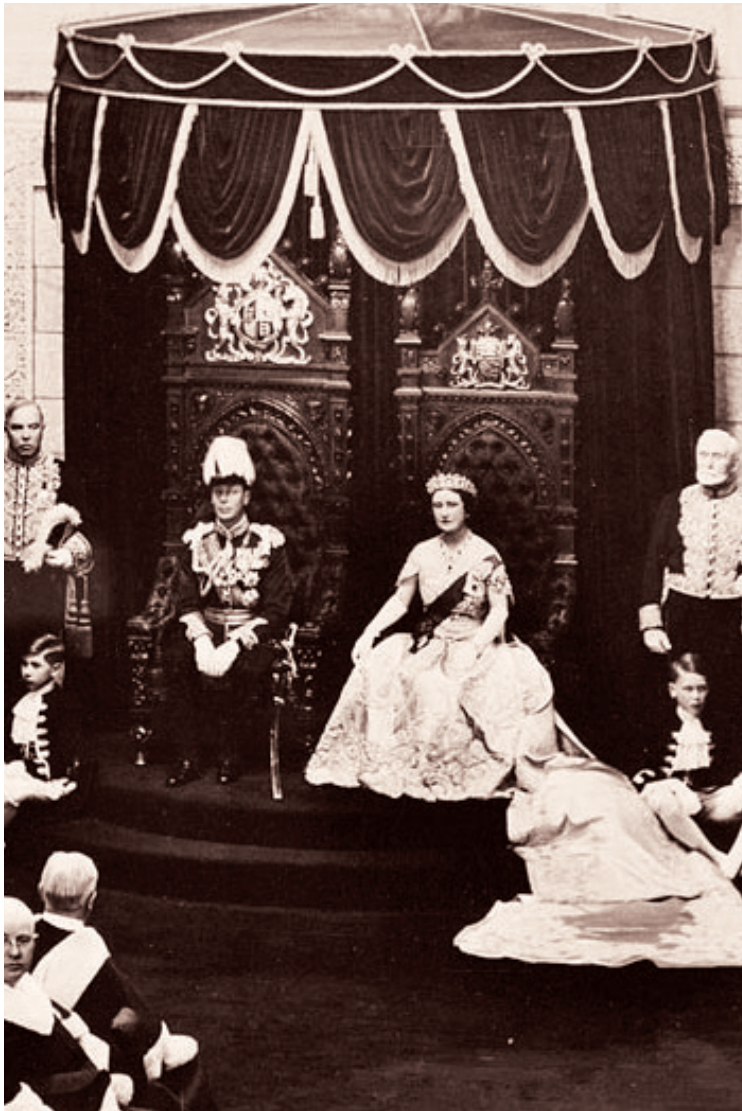
*Peter Price is a parliamentary affairs advisor for the offices of Senators Elaine McCoy and Marc Gold. He holds a PhD in History from Queen's University.*



Raoul Dandurand, 1861-1942

The solution that he proposed was to eliminate the conduits of partisanship in the Senate altogether. He envisioned a chamber without party cleavages and without official government and opposition sides. In its place, he proposed that the Senate be run by a "floor managing committee," consisting of around 15 senators that would oversee the carriage of legislation through the chamber. For government bills, ministers would select senators to sponsor the legislation in the Senate, ensuring that responsibility was diffused in the Senate rather than concentrated in the hands of a Government Leader.

He was never successful in convincing Prime Minister Mackenzie King to support his ideas for Senate reform. King had his own ideas for reform, including introducing a retirement age and a suspensory veto, which were equally rebuffed by Dandurand. For him, it was critical to maintain the independence and autonomy of the upper chamber, rather than diminish its constitutional role in favor of the elected chamber. He saw his proposals less as a dramatic overhaul of the Senate's operation than as a restoration of its intended purpose.



**King George VI and Queen Elizabeth in the Senate Chamber, flanked by Prime Minister Mackenzie King and Senator Dandurand, giving Royal Assent to Bills in 1939.**

The irony of his insistence on non-partisanship in the Senate was that Dandurand was a thoroughly political man. He had long been an influential figure in the Liberal Party in Quebec, and Mackenzie King often relied on his advice about political matters there, especially seeking his counsel when deciding on cabinet ministers and judicial appointments. Beyond his career in the Senate, Dandurand was intimately involved in the League of Nations, acting as a Canadian delegate and serving as President of the Assembly in 1925. As his extensive correspondence reveals, he was a very well-connected figure who was especially preoccupied with francophone language rights in Canada and guarding peace in Europe in the aftermath of the First World War.

Senator Dandurand died on March 11, 1942, while still serving as Government Leader in the Senate. In their tributes to him, senators recalled his commitment to an independent Senate,

with some adding that he influenced their decision to not attend party caucuses. It was not surprising then that when a group of senators later formed an independent block to rebel against party discipline in the Senate in 1980, they adopted the moniker “Dandurand Group.”<sup>2</sup> Though his name has gradually faded in the Senate, his legacy remains especially relevant today at a critical juncture in the institution’s history. As the Senate debates ways to change its procedures and practices to reflect the increasing number of independent senators, it is worth remembering that today’s suggestions regarding Senate “modernization” echo in many ways Senator Dandurand’s vision of an independent, non-partisan chamber from nearly a century ago.



**Prime Minister William Lyon Mackenzie King and Senator Raoul Dandurand**

#### Notes

- 1 *Debates of the Senate*, 14<sup>th</sup> Parliament, 1<sup>st</sup> Session, March 14, 1922, p. 16.
- 2 Senator Daniel Lang, “The Senate Should not be a Carbon Copy of the House,” *Canadian Parliamentary Review*, Vol. 7, No. 1, 1984, p. 26.

