

New and Notable Titles

A selection of recent publications relating to parliamentary studies prepared with the assistance of the Library of Parliament (April 2019 - May 2019)

Bédard-Rubin, Jean-Christophe. "Senate reform and the political safeguards of Canadian federalism in Québec." *Constitutional Forum constitutionnel* 28 (1), 2019: 19-27.

- ...in light of the Trudeau government's new Senate appointment policy and institutional reform, the meaning and the role of the Senate in Canada's constitutional architecture might change. The Senate reform could transmute what was a politically moribund institution into a genuine political safeguard of Canadian federalism. The path is neither straightforward nor ineluctable, but recent events seem to suggest that Québec, at least, is willing to step into that newly-opened door. The aim of this article is to chronicle this change by focusing on Québec's recent attempts to channel its political grievances through the Senate.

Brown, Jennifer. "Protests around Parliament." *Briefing Paper 03658* - House of Commons Library, May 2, 2019: 17p.

- This briefing paper provides an overview of the current provisions on protests around Parliament, including a background of previous legislation, and controversies and legal cases arising from different provisions over the years.

Campagnolo, Yan. "Cabinet immunity in Canada: the legal black hole." *McGill Law Journal / Revue de droit de McGill* 63 (2), December/décembre 2017: 315-74.

- Fifteen years ago, in *Babcock v. Canada (A.G.)*, the Supreme Court of Canada held that section 39 of the *Canada Evidence Act*, which deprives judges of the power to inspect and order the production of Cabinet confidences in litigation, did not offend the rule of law and the provisions of the Constitution. The aim of this article is to revisit this controversial ruling and challenge the Supreme Courts reasoning ... the author argues that section 39 is an unlawful privative clause, a form of legal black hole, which offends the rule of law and the provisions of the Constitution.

Campagnolo, Yan. "Cabinet secrecy in Canada." *Journal of Parliamentary and Political Law / Revue de droit parlementaire et politique* 12 (3), February/février 2019: 583-613.

- The term 'Cabinet secrecy' refers to the political and legal rules that protect the confidentiality of Cabinet deliberations and documents in Westminster jurisdictions. This article reflects the notes of a three-hour introductory course on Cabinet secrecy taught at the Department of Justice Canada from 2011 to 2017.

Johnston, Neil, Kelly, Richard. "Recall elections." UK House of Commons Library *Briefing Paper* 5089, March 19, 2019: 39p.

- Recall is used to describe a process where the electorate in an area can trigger a special election to remove an elected representative before the end of their term. A recall procedure was introduced in the UK in 2015. It only applies to Members of Parliament.

Martin, Andrew Flavelle. "The Attorney General's forgotten role as legal advisor to the legislature: a comment on *Schmidt v Canada (Attorney General)*." *UBC Law Review* 52 (1), January 2019: 201-26.

- ...in law - if not in reality - the Attorney General is a legal advisor to the House of Commons. This role is not just forgotten, it is inherently problematic. The problem arises because the Attorney General is in a joint retainer, providing legal advice to both the executive and the House of Commons, but is unable to meet the ethical requirements of a joint retainer. However, this problem does not justify, and cannot effect, a judicial elimination of that role. The decision in *Schmidt* presents an opportunity to examine this forgotten role, in order to resolve its problem or to recommend its proper elimination.

Martin, Andrew Flavelle. "The Minister's Office lawyer: a challenge to the role of Attorney General?" *Journal of Parliamentary and Political Law / Revue de droit parlementaire et politique* 12 (3), February/ février 2019: 641-58.

- As legal counsel in the Prime Minister's Office [PMO] of Stephen Harper, Ben Perrin was the archetype of a new legal role in government: the Minister's Office lawyer. The PMO lawyer, a particularly notable iteration of the Minister's Office lawyer, understands himself as a practicing lawyer representing the government as client. In doing so, he appears to pose an inherent and fundamental role challenge to the lawyers traditionally representing government: the Attorney General and her delegates, the government lawyers of the bureaucracy. How then, might this challenge be resolved?

Moore, Christopher. "A fully realized Senate." *Literary Review of Canada* 27 (2), March 2019: 4-5.

- The upper chamber is finally doing what it's supposed to do.

Newson, Nicola. "Parliamentary freedom of speech and the rule of law debate on 23 May 2019." *UK House of Lords Library Briefing*, 15 May 2019: 10p.

- On 23 May 2019, the House of Lords is due to debate a motion moved by Lord Brown of Eaton-under Heywood (Crossbench) that 'this House takes note of the potential conflict between the right of members to speak freely in Parliament

and the obligation under the rule of law to obey court orders'. Lord Brown is a former justice of the Supreme Court. The purpose of this briefing is not to go into detail about any specific cases that have occurred. Rather, it explores the underlying principles and sets out the findings of parliamentary committees that have previously examined the subject.

Norton, Philip. "Power behind the scenes: the importance of informal space in legislatures." *Parliamentary Affairs* 72 (2), April 2019: 245-66.

- Studies of legislatures focus on what happens in formal space, principally the chamber and committee rooms. Such studies are necessary, but not sufficient, for explaining behaviour within legislatures and its consequences. The use of space for members to interact informally with one another - informal space - can contribute to the institutionalisation of a legislature through facilitating autonomy. Such space provides an arena for socialisation, information exchange, lobbying and mobilising political support. This article examines the significance of informal space, drawing on the experience of the UK Parliament.

Taylor of Bolton, Baroness (Chair). "Parliamentary scrutiny of treaties." House of Lords Select Committee on the Constitution - 20th Report of Session 2017-19, Ordered to be printed 24 April 2019 and published 30 April 2019., *HL Paper* 345: 52p .

- Treaty-making is a significant responsibility of the Government...Parliament's scrutiny of treaties is based on the Ponsonby rule, established nearly 100 years ago and subsequently set out in the *Constitutional Reform and Governance Act 2010*. These provisions limit Parliament's scrutiny to a 21 sitting day period after the Government lays a completed, signed treaty before both Houses. No systematic scrutiny of treaties currently takes place prior to signature...To address the shortcomings in Parliament's scrutiny of treaties, we recommend that a new treaty scrutiny select committee be established...

Thomas, Paul G. "Moving toward a new and improved Senate." Institute for Research on Public Policy *IRRP Study No. 69*, March 2019: 40p.

- The Senate of Canada has changed significantly as a result of the 2014 decision by Justin Trudeau, then leader of the Liberal party, to remove Liberal senators from the parliamentary caucus; and by his introduction, as prime minister, of a new procedure for the selection of senators... the author concludes that further changes are needed to carry forward the present renewal. These include the establishment of a business committee to plan and organize the work of the Senate and the development of a set of criteria, perhaps enshrined in the Senate's rules, to guide it in determining whether to delay, amend or defeat a government bill.

Walker, Charles (Chair). "The House's power to call for papers: procedure and practice." House of Commons Procedure Committee - Ninth Report of Session 2017-19, HC 1904, 15 May 2019: 37p.

- One of the powers of the House of Commons is a power to 'call for papers': that is, to require Ministers to produce documents and information to assist the House in discharging its functions. The right of the House to demand papers on this basis has never been challenged.

In theory the power is capable of being exercised without limitation, but the House has, through practice, established certain limits: the power is not used to obtain papers which are not in the Government's possession or which are of a personal nature. Although limited at present by the House's established practice, the power could in the future be limited by a resolution of the House, by statutory provision or by judicial intervention.

Walfish, Simcha. "Responsible government in the age of secrecy: Parliamentary privilege and national security information." *Journal of Parliamentary and Political Law / Revue de droit parlementaire et politique* 12 (3), February/février 2019: 829-62.

- ...the *National Security and Intelligence Committee of Parliamentarians Act* - is an attempt to resolve the legal status of secret information by enabling parliamentarians to access previously unseen information, while, at the same time, inscribing into law that residual power to withhold information. The author argues that the *Act* constitutes a major revision to the *lex parliamenti*, the law governing Parliament.