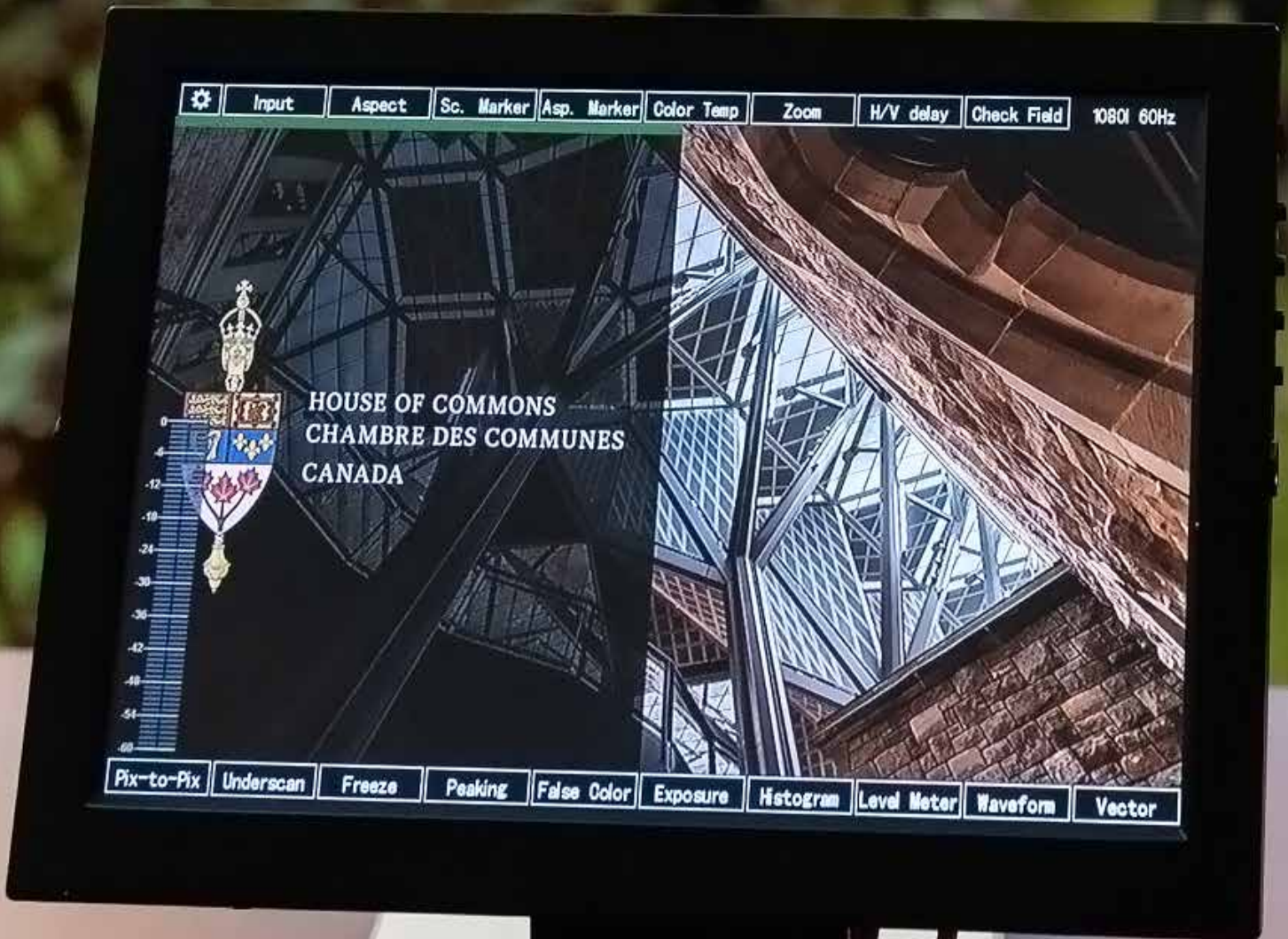


# Canadian Parliamentary Review



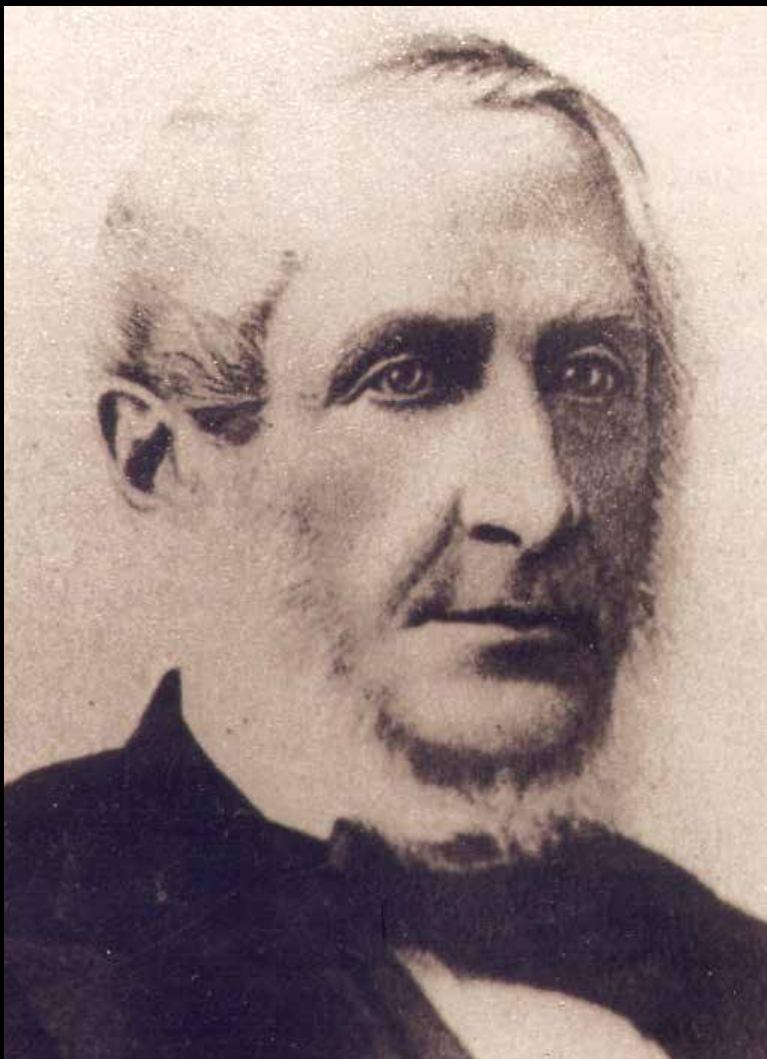
## *The Story of Virtual Parliament*



*Volume 44, No. 1*

# *Political Pedigree on Prince Edward Island*

It's an interesting anecdote when a family has more than one parliamentarian, but it's remarkable when a family has two premiers. This phenomenon has occurred not once, not twice, but three times on Prince Edward Island. The Campbell, Ghiz, and Palmer families have all produced prominent politicians who held premierships for a combined 39 years.



Edward Palmer

PEI's first political dynasty began shortly after the Island achieved responsible government. Edward Palmer was the third premier elected on PEI, serving one four-year term as a Conservative. He was elected twice but was ousted as party leader by fellow Conservative John Hamilton Gray. Edward's son, Herbert Palmer, was appointed premier in 1911 but was defeated in a subsequent by-election after only seven months as premier. The Palmer family was the only dynasty divided by partisan lines as Edward Palmer was a devout Conservative and Herbert Palmer a dedicated Liberal.

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

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

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Four (4) issues in English or French  
*Canada* \$40.00 - *International* \$75.00  
Four (4) issues in English and French  
*Canada* \$75.00 - *International* \$125.00

Cheques should be made payable to:  
*Canadian Parliamentary Review*

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Legal Deposit:  
National Library of Canada  
ISSN 0229-2548

*Cette revue est aussi disponible en français*

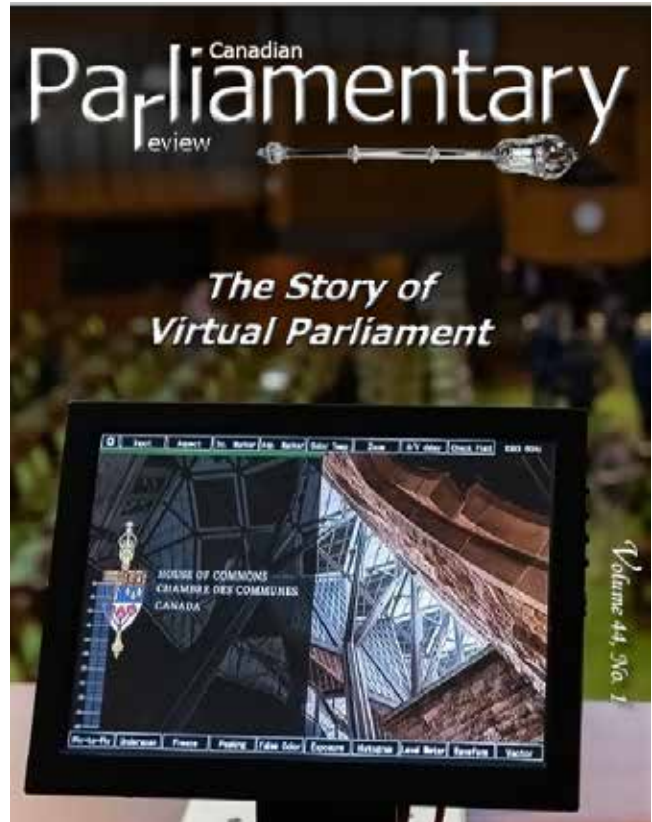


Photo: House of Commons

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## Parliamentary Relatives



**Alex Campbell**

The Campbell family of Summerside, PEI, was the second family dynasty of Island premiers. Thane Campbell, a Rhodes Scholar and practicing lawyer, became premier in 1936, serving as a war-time leader through World War II. He established the Island's first national park and enacted the first public service legislation on PEI. Alexander, the second Campbell premier, won his seat in 1966, becoming the youngest premier elected in Canadian history and the longest-serving premier on PEI to this day. During his 12 years (1966-1978) as premier he ushered in a new era of Island politics, modernizing social and economic programs and establishing a cooperative provincial-federal relationship.

PEI's third executive dynasty started with the premiership of Joseph Ghiz. Joseph's initial electoral victory was a significant milestone as he was the first premier in Canada of non-Western descent. Joseph



**Herbert Palmer**

had a deep love of Canada and supported the federal government at the Meech Lake and Charlottetown Accords. His patriotism would later surface in one of PEI's most controversial issues, the fixed link to mainland Canada. The successful completion of the Confederation Bridge in 1997 ended a contentious debate in Island politics and advanced one of the most notable infrastructure projects in Atlantic Canada. Years later, Robert Ghiz followed in his father's footsteps, becoming premier at the relatively young age of 32 when elected in the 2007 election. Many critics and political opponents overlooked his candidacy due to his age, which resulted in two unexpected electoral victories, decisively winning 23 of 27 seats in 2007 and 22 of 27 seats in 2011. Robert served as premier until 2015 when he resigned to take a diplomatic post.

**Ben Morrissey**

Intern, Legislative Assembly of Prince Edward Island

# *The Story of the Virtual Parliament*

As it became apparent in March 2020 that the COVID-19 pandemic would significantly disrupt many aspects of Canadian life, the MPs and the House of Commons Administration began to discuss how parliamentary business could continue in these exceptional circumstances. In this article, the author, Speaker of the House of Commons Anthony Rota, explains how the Standing Committee on Procedure and House Affairs (PROC) met to determine how to resume parliamentary sittings in a way that would respect health and safety protocols while maintaining their parliamentary rights and privileges. He notes that longstanding relationships within the House of Commons Administration were key to facilitating a shift to hybrid virtual sittings in a timely manner. By learning from the experiences of other parliaments and drawing on technical infrastructure that had been built over several years, the House of Commons Administration helped make the seemingly impossible possible. The author concludes by noting that the Members have drawn on the modernity and nimbleness of the Administration to transform the way they fulfil their parliamentary responsibilities during the pandemic while honouring the history and tradition of the House of Commons.

## **Hon. Anthony Rota**

**O**n March 13, 2020, in response to the COVID-19 outbreak in Canada, the House of Commons unanimously adopted a motion that adjourned its scheduled sittings until April 20, 2020.

The nation went into lockdown, and our lives came to a standstill. It quickly became apparent that the disruption to the regular proceedings of the House would not be short-lived. Behind the scenes, the House of Commons Administration was already talking with Members of Parliament to find some way for them to once again come together, and also to reach out to their constituents.

On March 24, the House was recalled and empowered two standing committees, Health and Finance to meet by teleconference or videoconference to receive evidence in relation to COVID-19.

On April 11 the House of Commons was recalled again to add (among others) the Standing Committee on Procedure and House Affairs (PROC) to the list of committees allowed to meet. PROC was instructed to study ways in which Members could fulfill their parliamentary duties while the House stood adjourned.

---

*The Honourable Anthony Rota is the Speaker of the House of Commons, and the Member of Parliament for Nipissing-Timiskaming, Ontario.*



Photo: Ed Regan

The recall of the House was something that had only happened 12 times since Confederation.

It would be recalled six times through the summer to pass emergency legislation to support Canadians during lockdown until Parliament was prorogued on August 18.

PROC began its study and, over the next month, held nine meetings and heard from 38 witnesses, myself included. In my capacity as Chief Administrative Officer, I appeared before the Committee four times to inform its discussions and decision-making.

During my appearances, I reaffirmed that the House Administration remained committed to providing all necessary operational support for members to sit and hold meetings in a format of their choosing and in a way that would respect health and safety protocols while maintaining their parliamentary rights and privileges.

There were principles I felt important for the Committee to keep in mind as they weighed the various options for enabling Parliament to sit.

- Any model would have to uphold the rights, immunities and privileges of the House and its Members.
- It was essential for simultaneous interpretation in both English and French to be available to Members.
- All Members would have to be able to participate.
- Any changes to the House's rules and practices (Standing Orders) would have to be made in a manner that ensured the legal validity of the proceedings.
- Finally, any solution would have to limit the changes to the rules and practices of the House to what would be temporarily required for its implementation.

As a result, the Committee discussed a number of options and presented two reports on the issue to the House, the first on May 20, the second on July 21.

The Committee also advocated for Members to maintain reasonable expectations and demonstrate patience as the House's technical capacity grew and improved.

And so, employees from across the Administration marshaled their talents, their ingenuity and most importantly, their determination to ensure that

Members of Parliament could continue their vital work, whether in person or virtually from another location.

The story of how this happened is ultimately a story about relationships. At the heart of the Administration of the House of Commons is an intricate and longstanding personal and professional network, and it is the ties that bind the people throughout this organization that helped make the impossible possible.

Many people who were instrumental in creating the virtual Parliament have been part of the Administration for decades. These include employees in the Information Technology team, Procedural Services, Human Resources and Finance.

Over the years, their professional paths have crossed countless times, and today they have achieved a familiarity with one another that proved to be a real advantage during the preparations for the virtual Parliament. When time is short and deadlines are tight, it helps to work with experienced and trusted colleagues who know you so well they can almost finish your sentences.

Even before the pandemic struck, in fact, for the past three or four years, the Information Technology team was investing in technology infrastructure, recognizing the importance of providing Members with the ability to connect to their constituents. It was just as important to enable all House Administration employees to stay in touch with the organisation network from anywhere, at any time.

However, when COVID-19 confined almost everyone to their home, it became critical for both parliamentarians and employees to be securely and reliably connected to the House of Commons and to one another. And of course, speed was of the essence.

To help decide how best to provide the House with a safe and effective way to work remotely, the Administration reached out to industry leaders, national and international security partners, and to several of its counterparts to share information and advice. Building on its longstanding relationships around the world, the team met on a daily basis with colleagues in a number of legislatures to discuss strategies and exchange ideas.

Not only were the approaches taken by the different legislatures interesting, they sometimes helped guide the choices made by our Parliament.



**Speaker Rota at a meeting of the Special Committee on COVID-19.**

The House of Commons of the United Kingdom was an obvious choice for consultation; it made the decision in April to hold hybrid committee and chamber meetings because the Speaker did not want to forbid members from entering the chamber at Westminster, which he described as “a very ancient right.”

In the National Assembly of Wales, the only statutory requirement that affected the implementation of virtual proceedings was the requirement to hold bilingual proceedings, an obligation shared by our House of Commons.

The team also consulted the Brazilian Parliament, which shares our geographical challenges and was the first Parliament to conduct a hybrid broadcasted plenary meeting.

Within a week, Members of Parliament and Administration employees working from home had the tools they needed. Members were not just connecting remotely for committee meetings, they were also finding ways to stay in touch with their constituents, despite the challenges posed by the pandemic.

While witnesses outside the capital have appeared before parliamentary committees via videoconference for many years, organizing a committee meeting where both MPs and witnesses would be participating remotely was a much more ambitious task.

When West Block was renovated to serve as the interim home of the House of Commons during the rehabilitation of Centre Block, committee rooms in the building were fitted with all the technology required to conduct videoconferences; in addition, employees from language interpreters to IT technicians were deployed so as to enable more than one committee to host witnesses appearing by videoconference.

This was certainly an impressive achievement but adapting to the effects of the pandemic would require a level of complexity, collaboration and agility few could have imagined. It was one thing to arrange and conduct a committee meeting with several witnesses making virtual appearances; it was a much more elaborate undertaking to organize one where MPs and witnesses were participating both in person and remotely.

On April 20, the House agreed by unanimous consent to create a special committee that would examine the response to COVID-19 in Canada. COVI, as it was called, would be composed of every Member of Parliament, chaired by me as Speaker, and would meet virtually. It would be difficult to overstate the technological and logistical challenge of preparing for such meetings.

To ensure that every MP could attend COVI meetings, the Administration had to conduct an inventory of the technological and electronic equipment in each Member's constituency office. It would then locate, purchase and ship any missing equipment to the MP in time for the first meeting. Given the remoteness of some ridings, and the world shortage of headsets, the Administration was fortunate (and grateful) to be able to call on some of its private sector partners for assistance. Over the years, it has worked closely and well with these external organisations; when it became necessary to secure a thousand headsets and ship them quickly across the country, they were instrumental in making it happen.

The Administration determined that Zoom, when integrated with the House's existing systems and infrastructure, was the platform that could best be used and adapted to serve the needs of the COVI meetings, as it has built-in simultaneous interpretation functionality and contains a number of important measures that would make it safe and secure for Members to use.

Once again, the Administration drew on its valuable relationships with other Parliaments to test Zoom, observing the process and applying its findings to its preparations.

It took three weeks to integrate videoconferences into committees, from ensuring the technological setup in all committee rooms, to ensuring the privacy and security of in camera meetings. This required complex and ongoing internal development, simulations and technical tests by the Administration employees.

To prepare for the eventuality of a virtual meeting of all Members of Parliament, the Administration held large scale simulations using its employees.

In addition to the more than 300 employees who filled in for Members, the Administration dedicated more than 120 managers and employees to establish the virtual meetings.

The 25 meetings of the Special Committee on the COVID-19 Pandemic were successful, with more than 300 Members from across Canada taking part simultaneously. Given that success, the House agreed to move to additional virtual proceedings, during the pandemic, for all regular business of the House.

For the first 13 weeks following the initial adjournment of the House on March 13, the employees of the Administration setting up a virtual Parliament did so without a break; quite simply, it was the only way such a monumental task could be accomplished in the time available.

As it has always done, the House Administration took up the challenge with the team spirit that is its hallmark. After all, its reason for being is to meet the evolving needs of Members so that they may continue to work on behalf of the Canadians they represent. The employees have their individual roles and responsibilities, but all place their skills in service to the Members and to the House of Commons.

Perhaps the greatest adaptation the Administration had to undergo was to become more comfortable with taking risks. This did not mean acting recklessly, rather it meant adapting the internal culture to take more calculated risks while continuing to provide the best service possible.

As the Administration worked to manage and mitigate the inevitable risks of creating a virtual Parliament, I tried to demonstrate by example that it was possible to make the transition fairly easily.

For example, I worked with the information technology team to be able to chair the early COVI meetings from home and I did so using a headset. It was my hope that this would encourage Members to embrace the concept of teleworking.

There were growing pains, to be sure. I regularly found myself having to ask Members to either mute OR unmute themselves, and I myself would occasionally miss the "raised hand" of a colleague trying to get my attention.

From time to time, I may have had to remind a Member that there is a dress code, even if one is at home, or that props are not allowed...

But like many Canadians, Members learned to adapt to teleworking, and I found that, until in person





### Some of the equipment used to enable the House of Commons to create a virtual Parliament.

meetings could resume in the Chamber, it was just as easy and quite a bit safer to chair the meetings from home.

I felt it was important for Members to appreciate that the first stages of a virtual Parliament would be a work in progress, that things would not immediately work perfectly, but that we would learn from our mistakes, and that everyone would strive to improve the process over time.

Members of Parliament live and work all across the country and given its sheer size, vast rural lands and multiple time zones, consistent and reliable internet is not a given.

However, the Administration regularly worked with Members to address these issues, and, while there were some initial technical challenges – something to be

expected when you are conducting videoconferences for hundreds of people – these were largely resolved.

Members from all parties expressed their thanks to the team that made it possible for the House to assemble once again.

\*\*\*\*

Since the early days of the pandemic, there has been a remarkable evolution in the way Members conduct their parliamentary business.

Since September 23, following the will of the House, the House of Commons has been sitting in a hybrid format. A limited number of Members are in the House, observing physical distancing and following the health measures in place, while others are connected virtually.

Earlier, the House Leaders came to an agreement and directed the Administration to prepare options for a secure electronic voting system for conducting votes in virtual sittings, and on September 28, the House held its first remote vote.

Shortly before the House returned on September 23, the Administration conducted several hybrid voting simulations involving its employees at first, then Members of Parliament. As with the first few virtual meetings, things did not go perfectly, but the Administration continues to improve its service to Members. Although it has learned that it cannot let the perfect be the enemy of the good, it will nevertheless strive for perfection, as it has always done.

In addition, following a decision by unanimous consent of the House, a secure remote voting application was developed. On February 25, I received notice from the House leaders of all recognized parties that they were satisfied it was ready for us. On March 8, the Members participating remotely used the electronic voting system for the very first time. The application, which makes it even easier for Members to vote remotely, will be available until June 23.

The adjustment the House has undergone in the last months is just part of a much longer story. The pandemic, and the enormous challenges it has posed and continues to pose to the institution of Parliament, has provided a silver lining of sorts.

The House of Commons has adapted to some of the challenges posed by COVID-19. Not long ago, telework was viewed with skepticism, but we have seen over the last months that work can continue from home or remotely.

The 338 MPs are now using Zoom to take part in meetings and social events with their constituents, and a number of them have begun conducting virtual town halls, with great success.

While honouring the history and tradition of the House of Commons, the Members have drawn on the modernity and nimbleness of the Administration to transform the way they fulfil their parliamentary responsibilities during the pandemic.

The second session of the 43<sup>rd</sup> Parliament is now underway, and the House of Commons Administration stands ready to support the Members as they write the next chapter of their story.



Photo: House of Commons

**Members of the Special Committee on COVID-19 meeting in-person and virtually.**

# Para-Diplomacy by Provincial Legislatures: How Turkey and Caribou Make the Case

The notion of cooperative federalism has come to supplant executive federalism as the preferred modus operandi of federal-provincial relations; provinces are increasingly promoting their interests both domestically and abroad. In this article, the author explains how provincial legislatures can participate in these promotional diplomatic efforts when a matter is non-partisan. He outlines how Newfoundland and Labrador's recent Speakers have been instrumental in using their offices and status to achieve the province's diplomatic goal: erecting a caribou statue in Gallipoli to honour the Royal Newfoundland Regiment – the site where the Regiment's first gallantry awards were earned after 29 men of the Regiment were killed in action and 10 more died of disease.

**Mark D. Browne**

## Introduction

The first half of the 20<sup>th</sup> century was marked by stark shifts in Newfoundland and Labrador's political status. It began as a country with its own standing army during World War I (WWI), and would surrender its self-governing status in 1934 before joining Canada in 1949.

Though inhabited by Indigenous peoples and visited by the Vikings, Newfoundland and Labrador was not colonized by England until 1497 for its bountiful cod fishery. It was granted representative government in 1832, responsible government in 1855, and semi-autonomous Dominion status in 1907, governed by its own prime minister and government. This struggle for self-determination yielded a brimming pride and stubborn nationalism, so much so that the prospect of joining Canada in the 19<sup>th</sup> century was jettisoned by prominent Newfoundlanders fearful of compromising their national identity. Later attempts by Newfoundland to join Canada would be

rebuffed by Canada as a result of Newfoundland's constant struggle to maintain its financial solvency and sovereignty<sup>1</sup>.

The First World War left an indelible mark on Newfoundland's political evolution and cultural ethos. Newfoundland's WWI fighting force, the Royal Newfoundland Regiment - labelled by British Prime Minister Winston Churchill as "better than the best"<sup>2</sup> was the only regiment to receive the prefix "Royal" during the First World War and only the third, and last, in the history of the British Empire to receive such an honour during hostilities<sup>3</sup>.

Part of that indelible mark was its cost – in money and in casualties – which contributed to the pervasive feeling that a generation was lost to the War. The effects are starkly noticed on July 1<sup>st</sup> each year; while the rest of the country commence Canada Day celebrations, Newfoundlanders and Labradorians pause until noon to commemorate the major losses sustained by members of the Regiment on the morning of July 1, 1916 at Beaumont-Hamel, France. It was then, during the Battle of the Somme, that one of the deadliest days of the War transpired. Eight hundred men went over the top that morning, but only 68 answered the call the next morning.

The War's financial cost compounded an already dire fiscal situation for the Dominion. The subsequent decline of the fishery and global economic crisis led Newfoundland into a financially crippling decade.

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*Mark D. Browne (MHA for Placentia West-Bellevue from 2015-2019) was the youngest person ever to be elected to the Newfoundland and Labrador House of Assembly in 2015 at the age of 22. He was subsequently appointed to serve as Parliamentary Assistant to the Premier of Newfoundland and Labrador. Since his tenure in public office, he has completed a Master's Degree in International Relations with Distinction in Paris, and is currently studying law at the University of New Brunswick.*



### The Caribou Monument at Beaumont-Hamel.

By 1933, the public debt had doubled, service charges comprised 60 per cent of annual revenues, and borrowing capacity ceased<sup>4</sup>. As a result, Newfoundland – a country which had its own Regimental Force and established global relationships of trade and commerce<sup>5</sup> – ceded its self-governing status. By 1949, following a razor-thin referendum, Newfoundlanders and Labradorians opted to join Canada.

### Transition to a Province of Canada

The shift from country to province for Newfoundland and Labrador involved the negotiation of the Terms of Union, where its transition was formalized. They included some localized provisions such as a guarantee of a ferry service to mainland Canada, but by and large Newfoundland and Labrador was expected to integrate into the Canadian mosaic of provinces.

Lines have long been drawn in the Canadian federation on the respective roles assigned to the federal and provincial levels of government in the

division of powers of our Constitution. This leads to a *mostly* harmonious federation predicated on the notion that where cooperation can exist between two levels of government, it does, but ultimately one level of government does not intrude on the other. But, as the world becomes more connected than ever, strict division of powers become increasingly untenable.

In 1648, the peace of Westphalia solidified the notion of sovereignty by concentrating the power of the state over its territorial jurisdiction and the power to engage with other states in acts defending itself, but also in the exercise of peaceful relations. The pre-eminence of sovereignty within the international relations framework left little room for actors other than states themselves to develop, conduct, or exercise foreign policy.

However, a lot of water has gone *under the bridge* since 1648. Over the last 75 years, as states gradually became more involved in the welfare of their economies – particularly in the post-war era – a role emerged for sub-national actors to occupy a larger role within international affairs<sup>6</sup>.

Paradoxically, however, a federation is predicated on an explicit divisibility of sovereignty<sup>7</sup>. For Canada, this manifests itself in the provinces, each of which have significant responsibilities and devolved legislative autonomy. The notion of cooperative federalism has come to supplant executive federalism as the preferred *modus operandi* of federal-provincial relations; provinces are increasingly promoting their interests both domestically and abroad.

As provinces play a larger role within the federation, this has been accompanied by a rise in the phenomenon of para-diplomacy. Para-diplomacy is essentially sub-national jurisdictions promoting their interests internationally, often in coordination with, rather than at odds with, the national interest.<sup>8</sup> It should not be confused with proto-diplomacy- wherein a non-central government pursues a foreign policy agenda of political independence<sup>9</sup>.

The concept is simple: the central government manages areas of *high-politics* such as international security and diplomatic relations, but space is created for sub-national jurisdictions to pursue areas of *low-politics* such as economic, cultural, or sport promotion. This has become common-place since the 1980s<sup>10,11</sup>, not only in Canada but also in other federal jurisdictions such as the United States, Germany, and Denmark.

While the federal government can negotiate treaties with sovereign states, the provinces are often relied upon to implement provisions which affect provincial responsibilities, ranging from dropping protectionist trade measures to curbing greenhouse gas emissions. As a result, provinces are increasingly consulted on matters of Canada's foreign policy intersecting on provincial interests, thus producing a state of co-dependency<sup>12</sup>.

Canadian provinces have engaged in para-diplomacy, in varying degrees. For example, Québec has a stand-alone Ministry of International Relations, permanent representative offices abroad, and maintains delegations to UNESCO and La Francophonie<sup>13</sup>. New Brunswick has a presence at La Francophonie and has dedicated bureaucrats assigned to international trade files, but to a lesser extent than Québec. Ontario has established 'marketing centres' globally in cities such as Shanghai, London, and New York, but makes a conscientious effort to leverage the 'Canada brand' by working in tandem with the federal government<sup>14</sup>. Alberta follows a similar model as Ontario, and aggressively pursues resource development and economic diplomatic goals<sup>15</sup>. While the foregoing examples do not account for all of Canada's provinces, it gives a representative sample of western, central, and eastern Canadian provinces and their well-established para-diplomatic efforts.

There is no reason why legislatures in Canada should not play a supportive role to the para-diplomatic objectives of their respective provinces. Such support can be offered without affecting the non-partisan nature of the legislature. Para-diplomacy is often conducted in areas such as resource development, "sports, cultural exchange, trade agreements, tourism promotion, and disaster preparedness"<sup>16</sup>. Increasing export development, immigration attraction, tourism promotion, or preparing for disaster preparedness are issues of common cause. Exchanges of sport and culture build good-will. In other words, to pursue such endeavours is in the institutional interest of any province regardless of which political party is in power. The legislature can support a province's apolitical para-diplomatic pursuits in a way that does not compromise the independence and separation expected and required between the legislative and executive branches of government.

Canada's Parliament has a well-established history in international affairs. This includes a host of multilateral and bilateral formal parliamentary



Mark Browne

### Remembrance Day, 2019 at Beaumont-Hamel.

associations, interparliamentary groups, and less official friendship groups. Such entities represent Canada's Parliament abroad and involve exchanges of ideas, information, and experience with fellow legislators at the international level. While parliamentarians do not necessarily speak for the federal government, when these meetings occur they are representing Canadians while promoting Canadian values and interests within the international sphere.

Legislatures across Canada may not have the desire, fiscal resources, or even the necessity to engage in similarly elaborate structures to pursue foreign affairs or para-diplomatic objectives as those established by Parliament. Complementing a province's para-diplomatic agenda with legitimate and measurable objectives does not require large junkets or frivolous expenditures. *Au contraire*, the strategic deployment of legislative assets can be just as impactful. This is exactly what recently occurred in Newfoundland & Labrador to great success.



Gallipoli Site Visit at Hill 10 Cemetery, January 23, 2018.

### Caribou Monument in Turkey

As previously noted, Newfoundland's WWI fighting force, The Royal Newfoundland Regiment, and the sacrifices its members made during the War have had significant impacts on the political, social, financial and cultural evolution of Newfoundland and Labrador. Following the War, as a tribute to the Regiment's sacrifices and valiant efforts during the War, five battlefield memorials in France and Belgium were established. At each site, a bronze Caribou monument was placed. The caribou is an animal indigenous to Newfoundland and Labrador; it was, and still is, part of the symbol of the Royal Newfoundland Regiment.

The five memorials have come to be known as *The Trail of the Caribou*. Each year, a delegation including veterans, members of the Royal Canadian Legion, and students led by the Premier, or a minister, travels along 'The Trail' to pay homage to Newfoundland and Labrador's fallen soldiers. *The Trail*, though, has long been considered unfinished, however. The placement of a bronze caribou at Gallipoli, where the Regiment's first gallantry awards were earned after 29 men of the Regiment were killed in action and 10 more died of disease proved elusive for years, until recently<sup>17</sup>.

All political parties in Newfoundland and Labrador have been on record as supporting the erection of the caribou monument at Gallipoli. Between 2003-2015, while led by the Progressive Conservative Party, the Government of Newfoundland and Labrador met with Turkish officials who expressed ambivalence at the idea of the placing of a caribou monument. They preferred instead that the province place a commemorative plaque on the battlefield.<sup>18</sup>

Following the 2015 general election, the Liberal Party formed Newfoundland and Labrador's Government and, with a renewed push by Premier Dwight Ball, worked to establish the elusive caribou monument at Gallipoli. Speaker Tom Osborne took the lead, in collaboration with the Premier and the Minister responsible for Culture, Christopher Mitchelmore, and began outreach with Turkish officials.

This involved Speaker Osborne travelling to Ottawa to meet with Turkish Ambassador Selçuk Ünal- who would prove critical to advancing this issue in his home country- and hosting reciprocal visits of Turkish delegations in the provincial capital. These visits would blend being hosted by the legislative branch, while also carrying on meetings and discussions with executive branch officials including the Premier and

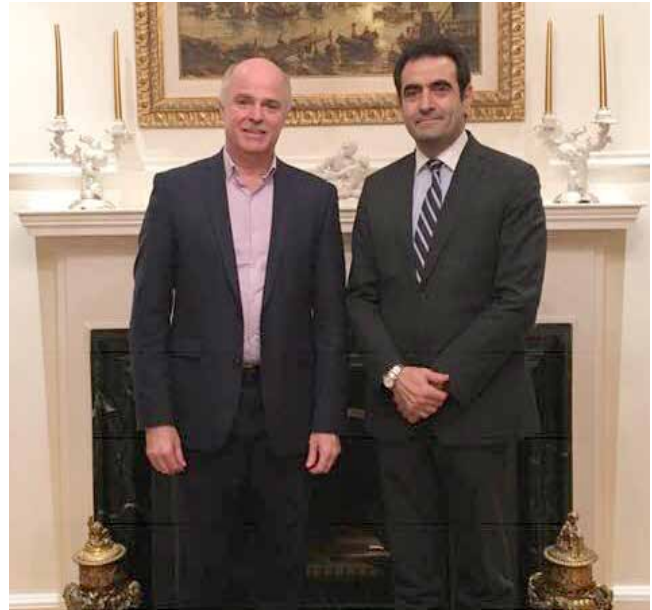
Minister. While the diplomatic functions of the Office of Speaker usually entail merely hosting courtesy visits with visiting ambassadors, Speaker Osborne embraced these diplomatic functions in conjunction with the Government to advance this critical policy priority.

The back-channel diplomacy led to a December 2017 resolution of the House of Assembly authorizing then-Speaker Perry Trimper to travel to Turkey as an emissary of the people of Newfoundland and Labrador to advance discussions on the placement of the caribou monument at Gallipoli. He was accompanied by a senior provincial government official; the mission's primary objective was to secure a commitment by Turkey to send a reciprocal delegation to St. John's to meet with Government of Newfoundland and Labrador officials to conclude a possible agreement, in hopes of breaking Turkey's longstanding moratorium on the erection of monuments at Gallipoli.

It is clear that the position and office of Speaker from a Canadian legislature opened doors for Speaker Osborne in Ottawa at the Turkish Embassy and also for Speaker Trimper's delegation that may have otherwise continued to prove elusive. The Speaker of Turkey's Grand National Assembly offered to host Speaker Trimper's visit, giving prominence to the six-day visit which included meetings at the national level with the country's Opposition Leader, Foreign Affairs Minister and Culture Minister. Meetings also took place which yielded the signing of a memorandum of understanding between a Turkish university and Memorial University of Newfoundland, as well as a twinning agreement between high schools in St. John's and Istanbul to enhance cultural comprehension and educational exchange.

Upon arriving in the region of Çanakkale on the Gallipoli Peninsula, Speaker Trimper was greeted in the middle of the night by the Governor and Mayor. He toured the battlefield and cemeteries with high-level officials, where the moratorium on the erection of new monuments had long been in place.

While the mission's objective was to secure a reciprocal delegation to Newfoundland and Labrador, it was met and exceeded. At the mission's final stop, a banquet in Istanbul hosted by Turkey's Minister of Culture, Speaker Trimper and Canadian Ambassador Chris Coons learned that he was proposing to place the caribou monument at Hill 10 Cemetery in Gallipoli National Park. This site is fitting as it is the resting place of 13 regimental soldiers, including Private Hugh



Provided

### **Former Speaker Tom Osborne and Turkish Ambassador Selçuk Ünal.**

McWhirter, the Royal Newfoundland Regiment's first fatal casualty at Gallipoli on September 22, 1915.

In consultation with the Newfoundland and Labrador Government, the offer of land was accepted, and a delegation was arranged to visit Newfoundland and Labrador four months later. At that point, the role of the Speaker's Office concluded. Later that year, Minister Mitchelmore and Speaker Trimper would visit Gallipoli again to reinforce the ties established in the original mission. Before leaving office in 2020, Premier Ball announced an engineering and project management firm had been awarded a contract for the fabrication of the bronze caribou monument to be placed at Gallipoli, the final, and consequential step to completing the Trial of the Caribou.

### **Conclusion**

Legislatures' involvement in para-diplomatic endeavours do not need to be anomalies. When the issue is consistent with the non-partisan aspect of the legislature – as was the case here – the use of an institutional office already in place and funded by the taxpayer is a strategic deployment of legislative resources for maximum gain. A Canadian speaker travelling overseas opens high-level access; using soft diplomatic tools can advance a province's para-diplomatic agenda.



**Ismail Kasdemir, Chairman of Historic Sites at Gallipoli, and Perry Trimper, former Speaker of the House of Assembly, standing on the proposed site for monument facing northwest.**

Junkets or inter-parliamentary associations can be effective; however, they may be neither practical nor feasible depending on the circumstances of the issue or size of the legislature. Smaller legislatures lack the resources to support large structures aimed at foreign affairs. However, this should not stop legislatures from playing a targeted and strategic role in appropriate foreign affairs issues where the involvement of the legislative branch can enhance viability of success.

While the Government's commitment was crucial to advancing the issue, it is also fair to conclude the work of the Speaker's office was critical to breaking an impasse. In a fitting ending, the same legislature that authorized the formation of the Royal Newfoundland Regiment would also play a critical role in completing the *Trail of the Caribou*. As a result, the memory of valiant members of the Royal Newfoundland Regiment will be honoured in a way befitting of their sacrifice.

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# A Counting Conundrum: How Many Amendments?

There's more than one way to count amendments depending on how you define the term. In this article, the author explores a myriad of possibilities using hypothetical examples. However, he concludes by noting that counting the number of amendments is not necessarily the best metric to assess the extent of change in legislation.

**Charlie Feldman**

When the Senate returned the government's energy legislation (Bill C-69) to the House of Commons in June 2019, media attention focused on the unprecedented number of amendments proposed by the Upper House. The only problem: Nobody quite agreed on the number.

According to the CBC, "The Senate passed an unprecedented 188 amendments".<sup>1</sup> For its part, *The Hill Times* reported there were "nearly 100 amendments from the Senate".<sup>2</sup> Meanwhile, the *National Post* stated that "The Senate passed more than 229 amendments".<sup>3</sup> They can't all be right... or can they?

The reality that takes many by surprise is that there is no one way to count amendments. At least one columnist alluded to the myriad approaches by writing that "Bill C-69 is the subject of more amendments than any bill in Canadian history - ostensibly 187, but because many are multi-part, in reality upwards of 250".<sup>4</sup> The fully story, however, is even far more complex.

"Amendment" is an ambiguous term. In the parliamentary world, amendments are made by motion. A motion in amendment in its simplest form is a parliamentarian advancing the proposition "I move that Bill X be amended...". A single motion in amendment, however, might have multiple elements

- that is, "I move that Bill X be amended by changing thing one and changing thing two".<sup>5</sup> To that end, when speaking of "an amendment" is one speaking about a motion or the individual elements of a motion, of which there could be many?

Even if one has clarity about whether "amendments" refers to the number of motions moved or the number of individual elements in motions, the actual metric of "amendments" made to a bill is unlikely to yield useful information.

To illustrate some of the challenges with counting amendments, let's take a hypothetical bill establishing a tax credit for which group A is eligible. While being considered before a committee of Parliament, suppose a parliamentarian moves to add group B and another parliamentarian moves to add group C - and that both of these amendments are adopted. If the legislation were to pass in this form, the list would read that groups A, B and C are eligible. While two separate amendments - corresponding to two motions - were moved, some may suggest that only one amendment was actually made because only one thing changed in the bill: the list of eligible groups.

Imagine now that this same hypothetical bill leaves committee with groups A, B, and C eligible, but group C is struck from the bill by an amendment at a later stage of the legislative process. The motion to remove group C is also an amendment, but does it count towards the total? While the bill now reads that groups A and B are eligible - which may look like one amendment has been made since the bill started - three separate motions in amendment brought the bill to its current form.

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Suppose now that a further amendment is made to revise terminology – for example, group B was phrased in terms of “Aboriginal peoples” but legislators now believe it should read “Indigenous peoples”. The bill, as amended, still only has two groups eligible (A and B) but four motions in amendment have passed. However, here there’s an additional twist: This vocabulary change is only necessary in English and so the French version of the bill shows no change even though this additional motion in amendment was passed.

Practitioners, scholars, and pundits advance competing conceptions of how amendment counting should occur. The truth is that there is no one universally accepted method and they all can lead to confusion. Some scholars propose not attempting to assess any number of amendments but instead to measure legislative change in other ways. One of the more creative contributions to the discussion is a 2019 work entitled “Mapping Mutations in Legislation: A Bioinformatics Approach”,<sup>6</sup> which examines how much text variation there is in a bill from one state to the next drawing parallels to DNA code mutations.

Importantly, the fact that an amendment is made reveals nothing about the impact or the extent of its associated change. A single amendment to a bill can correct a small typo or attempt to insert an entirely new enactment within the bill. The single addition of “not” in English or “ne pas” in French can change the entire way in which a scheme is to function. As well, depending on the procedure of the legislature there may also be multiple ways to effectuate the same legislative change, something which can lead to misleading amendment statistics.

For example, if a bill creates a regime where something is approved in three phases, each lasting 30 days, it could be that one amendment changes all references from “30 days” to “60 days” in the bill (this is possible, for example, in the Senate at Third Reading). Or, this same change could be accomplished through three individual amendments, one for each phase. Amendments are not always as efficiently packaged as possible, and in some cases, it may be politically advantageous for legislators to divide their amendments. For example, parliamentarians of a caucus may seek to slow proceedings by forcing more votes or they might simply divide amendments to involve more members in a particular debate.

A slight wrinkle can also come from how one considers clause deletions. In the case of a committee

of the Senate or House of Commons defeating a clause of a bill, this is not accomplished through a vote on a proposed amendment. Instead, the committee does not agree to carry the clause and the result is an amendment to the bill deleting the clause. There is therefore no motion to count in relation to this ‘amendment’.

Yet, a motion in amendment to delete a clause is the proper way to accomplish this same modification at a later legislative stage in both the Senate and House. Accordingly, if one counts ‘motions in amendment’ one would not capture committee clause deletions but would capture clause deletions later in the legislative process. Again though, the number of clauses deleted might not provide a reflection of anything: In Bill C-69 as received by the Senate, clause 1 was approximately 90 pages of text whereas clause 122 was two lines in English, three in French. Deleting clause 1 would result in a 90-page difference in the bill, a far cry from a few lines of change that would have been observed through a deletion of clause 122.

Further counting discrepancies can arise depending which documents are used to count amendments, particularly if they reflect consolidated amendments. Suppose an amendment is made to replace line one on a page of a bill and another amendment is made right after it to replace line two on the same page. A committee report might indicate one amendment – a combined amendment replacing lines “1 and 2”. In the committee, two motions were passed – and nominally two amendments were made – but the document reporting the amendments reflects only one amendment.

Such a ‘consolidated’ amendment could also find expression in the message sent by the House that amends a bill when reporting its amendments back to the House in which the bill originated. Someone counting motions in amendment from the transcript of a proceeding could tabulate the amendments made (i.e. the number of adopted motions in amendment) and arrive at a different number than a person looking at a document resulting from those same proceedings (such as a committee report or message).

A related wrinkle also occurs when there are sub-amendments. Should each proposal for legislative change agreed to by the legislature be counted individually as an amendment?

When amendments are proposed by one House to a bill originating in the other, the messages



**Bills receiving Royal Assent as part of a traditional Royal Assent ceremony in the Senate of Canada on June 21, 2019. The legislation pictured includes Bill C-69 and other bills with amendments made by the Senate. It is believed that more Senate amendments were sanctioned during this ceremony than any other in history.**

subsequently exchanged between the Houses may provide for additional amendments – but these may also be hard to count. For example, suppose the Senate adopts amendments and presents them to the House for its concurrence. The House might accept some amendments and reject others – or, it might propose further modifications to Senate amendments or propose amendments in consequence to Senate amendments (or even in consequence to its proposed changes to a Senate amendment). The counting can get quite tricky at this stage if one seeks to establish a figure for total modifications made by one Chamber or the other in the end legislative result.

In limited cases, it may also be that a bill is modified from its original form but not through the express adoption of a motion in amendment or a deletion of a clause. For example, some Senate

committees have adopted a motion that the “Law Clerk and Parliamentary Counsel be authorized to make technical, numerical and typographical changes and adjustments to the amendments adopted by the committee.” Similarly, House of Commons Standing Order 156 permits the House’s Law Clerk to make non-substantive corrections to bills.

To that end, comparing the text of a bill between stages of the legislative process may reveal that changes have been made but not as the direct result of any identifiable amendment proposed during the legislative process. In some – albeit rare – cases, a change might occur without explicit amendment because the correction of an error is required. As explained by the Law Clerk and Parliamentary Counsel of the Senate when testifying before the Standing Senate Committee on Fisheries in 1999:

The options for correcting a bill are twofold.

The first option is to correct the bill by amendment. If you wish to correct the bill by amendment, you can correct a small matter or you can make major changes.

The second option is to correct the bill through your officers. However, that is called a “correction of a parchment error,” and obviously there is very limited room to make those sorts of corrections. [...] A parchment error cannot be corrected if there is any possibility that we are going against the will of Parliament.<sup>7</sup>

As explained by the Speaker of the House of Commons:

There is a longstanding practice between the law clerks of the two Houses that they will administratively correct errors in bills when they both agree that they are faced with an obvious printing error. This is an authority that they exercise with extreme care, in rare cases, and only after they are satisfied that the error is a manifest error.<sup>8</sup>

Parchment corrections, modifications under Standing Order 156 in the House or made under an authorization of the Law Clerk in the Senate can result in modifications to the text of a bill though they are not truly amendments in the traditional sense and may not necessarily be evident at a particular moment.

As such, a number provided for ‘amendments’ at a particular time during the legislative process does not necessarily reflect the number of modifications made to a bill at that time let alone how many might be in the end resulting legislation even if no further motions in amendment are adopted. Again, it needs to be recalled that a single amendment can affect anything from one word to multiple pages of a bill.

Depending on what information is being sought, it might be appropriate to speak of motions in amendments moved or adopted, percent change of legislative text between stages, or even the total length of printed amendment text (for example, to compare the length of one legislative message to another in the Journals for a particular House within a given session).

However, it must be kept in mind that changes may not always be evident if looking at only one language version of a bill or parliamentary document.

In sum, while legislative metrics such as the number of amendments made to a bill may make for eye-catching headlines, there is no uniform approach to counting. Further, any number – regardless of the method of calculation – may not necessarily convey any information of value. At the end of the day, having a number to indicate how many changes were made to a bill during its journey in Parliament reveals nothing about the extent of the changes made and, ultimately, how the amended legislation will operate and affect Canadians.

## Notes

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# *Bicameral Conflict Resolution: Developments in the 42nd Parliament*

As co-legislators, the Senate and the House of Commons are central to the legislative process in the Canadian Parliament. Since both Houses must pass legislation in identical form before it can become law, the way the Chambers resolve their differences is crucial to the legislative process. This article focuses on how the Senate and the House of Commons use messages to resolve their differences on legislation.

**Guillermo Renna**

A central aspect of Canada's federal legislative system is its bicameralism. Like the United Kingdom, Canada has an appointed Upper House, the Senate, and an elected Lower House, the House of Commons. As co-legislators, the Houses of Parliament may on occasion disagree on legislative matters, and the process by which they resolve their disagreements is an important part of the legislative process. This article focuses on how the Senate and the House of Commons use messages to communicate about legislative matters, and in particular, how they use this process to settle differences on legislation.

Historically, the Senate did not attract much scholarly attention. As recently-retired Senator Serge Joyal, a prominent constitutional scholar and expert on the Senate, notes:

[t]he Senate is likely the least admired and least well known of our national political institutions. Its work attracts neither the interest of the media, the respect of elected politicians, the sympathy of the public, nor even the curiosity of academia.<sup>1</sup>

However, the Senate attracted considerable attention during the 42<sup>nd</sup> Parliament because of its willingness to amend bills passed by the House of Commons, which resulted in an increased level of unpredictability.<sup>2</sup> The change in the Senate appointment process, introduced by Prime Minister Trudeau, resulted in an

increase in the number of senators without a party affiliation. A plurality of senators are now a part of the Independent Senators Group (ISG), which does not require its members to have a unified legislative position. This lack of party discipline contributed to the increased level of unpredictability since it was not clear how senators would vote on a given issue.<sup>3</sup> Senators appointed through the new process appeared to view their legislative role differently than their predecessors.<sup>4</sup> Understanding the relationship between the Senate and the House of Commons is important because "bicameral institutions do not just affect how governments form but also how governments structure their legislative agenda."<sup>5</sup>

This article looks at the rules in each Chamber to deal with amendments from the other Chamber. While the way the Chambers resolve their legislative disagreements is not new, the 42<sup>nd</sup> Parliament saw an increase in the number of bills amended by the Senate, which resulted in its increased use. This article argues that developments relating to the message process during the 42<sup>nd</sup> Parliament raise important questions that the Chambers may want to resolve moving forward.

The article describes the message process in detail and outlines the rules in each Chamber regarding this process. To gain a better understanding of the process, the author interviewed two procedural officers, who have asked to remain anonymous, and Senator Peter Harder, former Government Representative in the Senate. The article focuses on three important elements: the difference between the Chambers regarding what they permit as a response to amendments; whether the current structure provides parliamentarians with the information in an accessible way; and, the issue of consequential amendments in the House of Commons.

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## **A Paper Trail: Communication between the Chambers**

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To become a law, a bill must pass through both Houses of Parliament in identical form. If the Chambers disagree, there are two ways to resolve disagreements. First, they can communicate amendments through a seldom studied but vital mechanism, the written message. The Chambers may engage in a back-and-forth using these messages. This process is colloquially known as ‘ping-pong’. Alternatively, they could put together a conference with members of both Chambers to discuss disagreements. According to *House of Commons Procedure and Practice*, a conference can be initiated by the Chamber that has the bill.<sup>6</sup> However, this practice has fallen into disuse.<sup>7</sup>

The message is a physical piece of paper that is sent from one Chamber to another. A message may concern bills, the appointment of joint committees and their membership, joint resolutions, or a request for the presence of a Member of one Chamber in the other.<sup>8</sup> These messages are signed by the Clerk of the initiating Chamber and signed by the Clerk of the receiving Chamber. The messages appear in the *Journals* of the House in which there are received.<sup>9,10</sup>

Messages may also be used to communicate more political matters, including when one Chamber is displeased with the actions of the other. For example, on April 11, 2019, the Senate received a message urging it to pass two pieces of legislation since they “ha[d] been in [the] possession of Honourable Senators for many months and both bills should be passed into law at the earliest opportunity.”<sup>11</sup> These messages are not always well received; the Hon. Yonah Martin remarked: “I can hear Senator Cools’ voice rising and saying ‘How dare the other house tell this house what we should or should not do’”.<sup>12</sup> Moreover, even if there is agreement, one Chamber may choose to communicate observations to the other Chamber.<sup>13</sup>

For simplicity, let us take the case of a bill originating in the House of Commons. Once it is passed by the House, the Senate may wish to amend the bill. If the Senate passes the bill with amendments, the bill would be sent back to the House of Commons along with the message from the Senate, which contains the proposed changes, and the engrossed amendments.<sup>14, 15</sup>

## **An Amendment Message**

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The message containing amendments to a bill contains either two or three elements. The first element of the message informs the receiving Chamber which bill is being discussed and asks that the receiving Chamber concur with its changes. The second element is legal and sets out the amendments that are being proposed to the bill. The last element, which is not included in every message, is political.

In its response to an amendment message, a Chamber may include information about why a particular amendment was included or rejected. For instance, the motion presented by the Minister of Public Safety and Emergency Preparedness to disagree with certain amendments made by the Senate to Bill C-59 stated that:

the House ... respectfully disagrees with amendment 1 made by the Senate because the intent of the legislation is to ensure ministerial responsibility and accountability, and the legislation provides that the Intelligence Commissioner must review whether or not the conclusions of the Minister of National Defence, when issuing a foreign intelligence authorization, are reasonable; additionally, subsection 20(1) already requires the Commissioner to provide the Minister with reasons for authorizing or rejecting a foreign intelligence authorization request.<sup>16</sup>

The procedure for considering a message containing amendments varies by Chamber and will be described in detail below.

## **The Message Process Explained**

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### *Purpose of the message process*

Each stage of the legislative process restricts the scope of discussion and potential amendments to ensure that the purpose of that stage is achieved. For instance, second reading debate focuses on the principle of the bill, to explore whether the subject matter or policy intent of the bill is worth pursuing. As a result, the scope of amendment allowed at this stage is limited. The text of the bill cannot be amended, only the motion for second reading, and “debate must focus on the principle of the bill and not on its individual provisions.”<sup>17</sup>

While each Chamber's procedure for dealing with amendments from the other Chamber differs, it would appear that both aim to achieve the same goal. Namely, the purpose is to help legislators focus on the elements of legislative disagreement that remain. As one interviewee stated, the use of the message process to resolve disagreements is "meant to focus [debate]. That is to say that the messages should deal with the amendments and either seek to replace the amendments appropriately or drill down. It's not meant to widen [debate]."<sup>18</sup> Another interviewee described the message process "as a funnel. When you ping pong back, what remains open for discussion are the remaining points of discord."<sup>19</sup> Senator Harder echoed a similar idea: "it is a different debate than the bill. The message is not the bill. Unfortunately, some Senators now think we have a fourth reading, as opposed to a message. And that's one where we have to continue to make that clear."<sup>20</sup>

#### *Procedure in the House*

A message with amendments sent by the Senate will appear in the House of Commons' *Journals* on the day it was received. If the House wishes for the bill to become law, then it must respond to the proposed amendments. Usually, the sponsor of the bill proposes a motion, which requires notice, in which they propose to reject, accept, or amend the amendments. The motion may do all three in any one message (i.e., it can reject some amendments, accept and amend others, all in the same message). There are instances, however, where it is not the sponsor of the bill that proposes the motion, but rather someone who proposes it on the sponsor's behalf. In particular, for Government bills, a minister can present a motion on behalf of another minister.<sup>21</sup> For instance, on June 17, 2019, Hon. Bernadette Jordan (Minister of Rural Economic Development) moved a motion on behalf of Hon. Marc Garneau (Minister of Transport) regarding Senate amendments to Bill C-48, *Oil Tanker Moratorium Act*.<sup>22</sup>

The motion presented to respond to Senate amendments in the House of Commons is debatable and can be amended during debate. The rules in the House are explicit that, "the motion [responding to the amendments made by the Senate] must relate exclusively to the Senate amendments, and not to other provisions of the bill not contemplated by Senate amendments."<sup>23</sup> Moreover, "[w]hen debate takes place on Senate amendments, Members who speak must confine themselves to the amendments being considered and may not address other aspects of the bill, or the bill as a whole."<sup>24</sup> When the House

is ready to debate and vote on the amendments made by the Senate, the heading, "Motions Respecting Senate Amendments to Bills" will appear on the *Notice Paper*; however, the length of time between when a message is received and when it is considered can vary significantly.<sup>25</sup> If the House votes to approve the motion, it will then send a message to the Senate to inform it of the House's decision.

#### *Procedure in the Senate*

The Senate rules for considering the House's amendments to Senate bills are less restrictive. In the case where the House of Commons has disagreed with the amendments made by the Senate, the latter can choose to insist on its amendments, which it would do by instructing a committee to write up the reasons for which the Senate is choosing to insist.<sup>26</sup> Moreover, should the House further amend amendments sent to it, the Senate must choose whether it will accept the modifications to its amendments. However, the rules are silent on the scope of the motion that must be presented and on the rules of debate at this stage. As we will see below, this has produced interesting consequences for certain bills.

### **Differing Approaches to the Scope of Motion for Amendment Messages**

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This section examines the differences in the scope of the motion presented to respond to a message by focusing on two bills, namely Bill C-14 and Bill S-3. As we will see, when the House of Commons sends a message with amendments to the Senate, the Senate's approach allows senators to propose amendments to clauses not contemplated by the message from the House. On the other hand, the House is far more restrictive, insofar as its members have less flexibility in proposing amendments. This difference, in essence, gives individual Senators more power than individual Members of the House. It also highlights that, "when the rules of one chamber permit legislation to include provisions that are prohibited in the other, problems of policy and procedure become intertwined."<sup>27</sup>

#### *Approach in the Senate*

Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, was introduced because of a Supreme Court ruling legalizing medical assistance in dying.<sup>28</sup> The Government introduced the bill in the House on April 14, 2016. Once in the Senate, the bill was passed with several amendments. The House of Commons

disagreed with certain amendments and sent a message back to the Senate to inform it of its choices. At this point, procedurally, the Senate could have concurred in the House's message or insisted on its amendments. Senator Harder introduced a motion that the Senate not insist on its amendments.

During the Senate's debate on this motion, Senator Joyal argued the following:

I think there's a way for us to solve the impasse that we might have with the other place on the essential element of this bill, and the proposal I want to make to you, honourable senators, is the following. We would adopt the bill as it stands now, but we would do one thing. We would suspend the implementation of the section of the bill that is the object of dispute on the nature of its constitutionality and medical implementation up to the time that the government will have requested the Supreme Court's ruling on its constitutionality.<sup>29</sup>

His proposed amendment would have introduced two new clauses to delay the coming into force of certain aspects of the bill.

On a point of order, Senator Harder argued that amendment was out of order, because "[a]ny attempt to deal with any other aspect of the bill is procedurally out of order or out of bounds. It is up to the Senate to accept or not the House of Commons' message. Any other matter is beyond the scope of our message and beyond the scope of the main motion before us."<sup>30</sup> The Speaker ruled briefly thereafter:

[W]e must recognize that we are engaged in a dialogue between the two houses to reach an acceptable compromise on Bill C-14. We have agreed on most points, and the disagreement between the two houses has narrowed to limited aspects of the bill. As Senator Cools pointed out, it would be inappropriate to bring entirely new issues into play at this point. It is this legitimate concern that is at the heart of Senator Harder's point of order. However, as I understand it, the amendment that Senator Joyal has moved accepts most of what the House of Commons has proposed to us in relation to amendments 2(b), 2(c)(ii) and 2(c)(iii). The effect of his amendment, if accepted by the two houses, will be to delay the coming into force of a provision of the bill that is already included in the message. As such, the

amendment can reasonably be seen as being relevant to the message. In situations such as this, however, where there is uncertainty, it is our longstanding practice to allow debate to continue.<sup>31</sup>

While the amendment was found admissible, it was not adopted by the Senate.

#### *Approach in the House*

By contrast, a Speaker's ruling in the House of Commons reveals a narrower understanding of relevance that restricts MP's ability to introduce amendments. Bill S-3: *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada (Procureur general)* was introduced in the Senate in 2016. After considering a first round of amendments made by the House, the Senate sent the bill back to the House in the fall of 2017, with new amendments, which the House began to consider on November 17, 2017.

Hon. Carolyn Bennett (Minister of Crown-Indigenous Relations and Northern Affairs), introduced a motion that agreed with all the amendments made by the Senate. In his speech in response to the motion, MP Romeo Saganash proposed several changes to the motion, two of which are particularly salient for our discussion.

In the original bill, the Government had included a liability clause (clause 10), which would eliminate the ability of individuals to sue the Government, Government employees, or band councils to receive compensation as a result of not being registered under the *Indian Act* prior to the coming into force of Bill S-3. In its original form, part of clause 10 read, "a person was not registered, or did not have their name entered in a Band List, immediately before the day on which this Act comes into force."<sup>32</sup> One of the Senate proposals was to replace the word "Act" with the word "section".

In his proposed amendments, Mr. Saganash proposed deleting the liability clause altogether. Moreover, his proposal would have amended clause 11, which required that the Minister begin consultations with First Nations on a wide range of issues relating to registration and band membership. In particular, his proposal would have included a new provision requiring the Government to complete the consultations within 18 months of Royal Assent.



Hon. Anthony Rota, then-Assistant Deputy Speaker, ruled that the amendment was out of order for two reasons. First, *House of Commons Procedure and Practice* states that the motion must relate exclusively to Senate amendments, and “The hon. member ... proposed deleting clause 10 [the liability clause] while the Senate is simply proposing a technical amendment.”<sup>33</sup> Second, the Senate amendments did not deal with clause 11. Therefore, the Assistant Deputy Speaker concluded that the motion was out of order.

The second part of the ruling is in line with the procedural requirement that the amendments deal only with clauses that the Senate amended. However, the Assistant Deputy Speaker also included a second reason to reject the proposed amendments. He argued that the amendment that Saganash was proposing did not consider the type of amendment that the Senate proposed. The ruling suggests that, at this stage, not only should the scope of debate be restricted to those clauses included in the message, it adds that the House of Commons must only allow for discussion and disagreement to substantive amendments. Interestingly, prior to the ruling there was no indication that the motion should take into consideration the type of change that the Senate was proposing. While it is possible that the Speaker was not creating a new distinction (i.e. substantive vs. technical amendments), the fact that the Speaker went out of his way to include this in his reasoning raises interesting questions.

As illustrated in these rulings, the Senate allows for a much broader discussion at this stage than does the House. Therefore, while the Senate and the House want to focus debate and narrow down the discussion to the elements of disagreement, the Senate does not preclude the introduction of new ideas if it can reasonably be seen as relating to the elements of disagreement between the Chambers.

### *Policy Change*

The two Chambers’ differing approaches to the scope of the motion responding to messages concerning legislative amendments, highlighted in the case studies above on Bills C-14 and Bill S-3, demonstrate that the Senate’s procedural approach provides it (and potentially the Government) with the opportunity to revise legislation late in the legislative process, which the House of Commons would be unable to do. The Senate’s substantive changes to Bill S-3 at the message stage highlight how the Senate’s

approach can have substantive effects on policy outcomes.

Bill S-3 was introduced as a result of the decision of the Superior Court of Québec in *Deschenaux v. Canada (Procureur general)* and sought to deal with the sex-based inequities under the *Indian Act*. The *Indian Act* provided that women with Indian status who married men without Indian status lost their Indian status, whereas men with Indian status who married women without Indian status did not, and men’s spouses would also be able to gain Indian status. On August 3, 2015, the Court ruled that this inequity was a violation of the equality provision in the *Charter of Rights and Freedoms* and suspended the implementation of its decision for 18 months, until February 3, 2017, to allow Parliament to rectify the situation.<sup>34</sup>

In its original form, the bill only rectified discrimination going back to 1951. Given the timeline set out by the court, the Government was pressed for time when it introduced the bill in October 2016. However, during its hearings, the Standing Senate Committee on Aboriginal Peoples heard from several stakeholders critical of the Government’s choice to rectify inequities only from 1951 onwards. Because of the time it was taking for Parliament to pass the bill, the Government asked for an extension on the implementation of the judgment, which it received, extending the deadline to July 3.<sup>35</sup> The Senate amended the bill such that it would have removed the 1951 cut-off date, in favour of an approach “that would [have] register[ed] all descendants of entitled individuals, born prior to April 17, 1985, under paragraph 6(1)(a) of the *Indian Act*,”<sup>36</sup> and passed the bill on June 1, 2017.

The House of Commons disagreed with the approach taken by the Senate, and passed the bill on June 21 with amendments that disagreed with the Senate approach of removing the 1951 cut-off date. The Senate did not respond before Parliament adjourned for the summer; therefore, the Government had to ask for another extension from the Court. The Quebec Superior Court did not grant the extension;<sup>37</sup> however, the Government appealed to the Québec Court of Appeal, which granted an extension until December 17, 2017.<sup>38</sup> During the summer, the Government conducted more consultations, and decided to adopt the Senate’s policy approach.

As a result, the Senate needed to modify the bill extensively. Senator Harder introduced an extensive and complex motion responding to the message

from the House of Commons – reflecting the change in policy direction. The motion dealt with sections not considered by the message received from the Commons, and it dealt with issues far beyond those considered by the message. The House of Commons ended up agreeing with the Senate amendments.

The ability of the Senate to introduce a wider range of amendments at the message stage provided the Government the opportunity to change its policy direction without having to introduce an entirely new piece of legislation to rectify the perceived problems. However, this raises important questions about the consequences of the differing approaches taken by the House and the Senate at this stage. Would a Senator be able to introduce an entirely new section of a legislation, proposing a new policy approach as long as it dealt with the topic of disagreement between the Houses? How flexible the Senate will be remains to be seen.<sup>39</sup>

### **Accessibility of the Message Process**

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Should the Senate continue to amend Government bills as much as it did during the 42<sup>nd</sup> Parliament, the message stage will become an increasingly important element of the legislative process, as it is the main mechanism for the Chambers to resolve their disagreements. Given its importance, a question that needs to be addressed is whether the process is accessible to all MPs or Senators. As the 42<sup>nd</sup> Parliament demonstrated, the Senate is not afraid to provide extensive and substantial amendments to bills from the House of Commons. When this is the case, the House often has little time to consider those amendments. This was the case, for instance, for Bill C-69.

The Government introduced Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts* on February 8, 2018. The bill, a priority for the Government, intended to change the environmental assessment process, including expanding the list of considerations to be taken into account during the assessment process, which the Government hoped would restore its effectiveness and its credibility;<sup>40</sup> to establish the Canadian Energy Regulator, tasked with regulating the “exploitation, development, and transportation of energy”<sup>41</sup> within Parliament’s jurisdiction; and included new provisions in the *Navigation Protections Act*,<sup>42</sup> which would “restore navigation protection for every navigable waterway

in Canada.”<sup>43</sup> The House of Commons passed the bill on June 20, 2018.

By the time it made its way to the Senate Committee on Energy, the Environment and Natural Resources, the bill had attracted national attention and become a source of controversy.<sup>44</sup> Six provincial premiers sent a letter to the Prime Minister to warn him that the bill threatened national unity, stating that “immediate action to refine or eliminate these bills [Bill C-69 and C-48] is needed to avoid further alienating provinces and their citizens and focus on uniting the country.”<sup>45</sup>

The Senate committee tasked with studying the bill was already struggling with the volume of amendments proposed in committee. Senators had a difficult time following the process, including where to find amendments and what those amendments meant, even with a follow-along document created by the committee clerks and analysts. With one even asking, “Do I understand we’re on number 31? That’s where I am.” With other senators responding, “**Some Hon. Senators:** No.”<sup>46</sup>

The bill made its way back from the Senate on June 6, 2019, with over 180 amendments. Strong opponents of the bill celebrated the work of the Senate and urged the Government to accept all of the changes. This included Jason Kenney, recently elected Premier of Alberta and vocal opponent of the bill, who in a letter to Senator Harder stated that, “While we remain concerned about the overall spirit of Bill C-69, we believe that with the inclusion of all these amendments, that the bill would be acceptable to the interests of Albertans.”<sup>47</sup>

On June 12, the House began consideration of Senate amendments, and on June 13, the House sent a message back to the Senate with its own amendments. In their message, the House of Commons accepted a number of amendments, rejected others and further amended some of the Senate’s amendments. With the partial or whole acceptance of almost 100 Senate amendments, some senators expressed that they were pleased with the new bill.<sup>48</sup> The Senate began consideration of the House of Commons’ message on June 17, 2019, and on June 20, 2019, it chose not to insist on its amendments, and the bill proceeded to Royal Assent.

The example of Bill C-69 raises an important question regarding how accessible this process is for parliamentarians, who are expected to review these amendments. As mentioned earlier, when a

message comes from the Senate with amendments, the Senate will also send back the bill. In order for MPs to read the message, they need two or three items. First, they need the message which contains all of the amendments made by the Senate. They must also have the bill under consideration as passed by the House. Lastly, in the case where the bill under consideration amends existing legislation, they need to have the original legislation. Then they must follow the amendment from the Senate message, to the amending bill or original bill.

This process requires extensive amount of time and technical knowledge to follow. In the case of Bill C-69, Members of Parliament had approximately six days to examine the over 180 amendments proposed by the Senate. Senators, once the bill returned from the House, had three days to review the House of Commons' message before discussions began. Given the tight timelines, the complexity of the legislation and its amendments, one might wonder if parliamentarians are concerned about whether the process as it currently stands provides them with information in such a way that they are satisfied with the information before them to make with the decision they have been asked to make.

### **Consequential Amendments**

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As we saw, the House of Commons places strict limits on the types of amendments MPs can propose when dealing with a Senate message; however, there remain important questions about a 'grey area', namely consequential amendments. Consequential amendments occur when a part of the bill has to be amended because of another amendment. For instance, in order to ensure a legislatively cohesive bill, if I amend clause 3, then I must also amend clause 5. The use of consequential amendments is a normal part of the legislative process; however, it poses an interesting problem in the House of Commons when it deals with amendments from the Senate.

As noted above, the House of Commons requires that the motion presented to respond to amendments made by the Senate deal only with the parts of the legislation that were dealt with in the message. However, what were to happen if the House needed to include a consequential amendment as a result of an amendment proposed by the Senate, or if it needed to include a consequential amendment as a result of its amendment? Over the course of the interviews, one of the interviewees stated that, in the case of consequential amendments:

if such a thing were to arise, though I still think that would be a little weird, but if such a thing were to arise there would be an opportunity to open up an amendment, or clause of the bill for the purposes of putting in the cross-reference. There's nothing substantive taking place.<sup>49</sup>

Another interviewee added that:

You can sometimes see it in the Government motion is as a consequence of amendment 4 [hypothetical scenario], proposes the following amendment. Now, how clear that consequence is, there's room for procedural argument around that. I tend to agree, we're pretty strict in terms of scope and relevance in terms of Senate amendments so there's not a huge opportunity. The idea is, again, that the funneling down, if you're going to add something new, then all of a sudden your ping-pong gets wider, and you don't want this to go on interminably.<sup>50</sup>

A similar situation occurred in the case of Bill C-69. In the motion responding to the Senate's amendments, the House of Commons amended certain amendments proposed by the Senate. In some instances, as a result of its amendments, it allegedly also needed to amend other sections of the bill. For instance, in its motion, the Government proposed certain amendments in the following form: "that as a consequence of the amendment to amendment 1(af) (ii), the following amendment be added."<sup>51</sup>

However, if one were to look at the proposed consequential amendment, it dealt with a clause of the bill included in the Senate message; however, it did not amend the same part of that clause, nor deal with the same subject matter. This raises an important question about what criteria, if any, will be used to determine whether such an amendment constitutes a technical amendment, or whether it is a substantive amendment not dealing with a matter raised in the message from the Senate. Moreover, one can easily imagine that an amendment which may seem technical, such as including a comma, could in fact change the meaning of a sentence and therefore be substantive in nature.

### **Conclusion**

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As this article demonstrates, the increased number of messages in the 42<sup>nd</sup> Parliament highlights the need to better understand the way the Senate and House of Commons resolve their disagreements over legislation.

The Chambers have a similar understanding of what they are trying to achieve when dealing with amendments from the other Chamber; namely, the scope of debate should be narrowed and focused on the elements of disagreement or difference and it is not about reopening settled matters. However, each Chamber has adopted a unique approach. The Senate has a broader approach, which allows for a wider range of discussion than the House of Commons and gives senators more flexibility in their response to an amendment message. While the Senate still considers the issue of relevance, it takes a broader approach to what it considers relevant, and therefore what kind of amendments are admissible. The House of Commons, on the other hand, has a more restrictive approach, which places more limits on the ability of its members to discuss new ideas at this stage.

There are a number of questions that remain unanswered. This lack of clarity may cause challenges going forward. For instance, the House of Commons will have to provide more clarity on how it will determine whether an amendment, on its own or as a consequential amendment, is acceptable even if it deals with a part of the bill not dealt with in the message from the Senate. Since we could continue to see a high number of ‘ping-pongs’ between the Chambers, it will be important that all parliamentarians are aware of the details of this procedure in order to be able to engage with the process. It would be worthwhile for the Senate and House of Commons committees dealing with procedure to study these questions further.

## Notes

- 1 Serge Joyal, “Introduction” in Serge Joyal, ed, *Protecting Canadian Democracy: The Senate You Never Knew*, (Montréal: McGill-Queen’s University Press, 2003) at xvii.
- 2 Alex Boutilier, “Unpredictable Senate causing trouble for Trudeau’s agenda, documents show”, *Toronto Star* (23 April 2017), online: < <https://www.thestar.com/news/canada/2017/04/23/unpredictable-senate-causing-trouble-for-trudeaus-agenda-documents-show.html>>. Eric Grenier, “Why the Senate is unpredictable – and its independents not so independent”, *CBC News* (19 June 2017), online: < <https://www.cbc.ca/news/politics/grenier-senators-votes-1.4162949>>
- 3 Institute for Research on Public Policy, “Renewal of the Canadian Senate: Where to from Here?” (February 2019) at 9, online: *Institute for Research on Public Policy* < <https://irpp.org/wp-content/uploads/2019/02/Renewal-of-the-Canadian-Senate.pdf>>
- 4 Will Stos, “Canadian Study of Parliament Group: The New Senate,” *Canadian Parliamentary Review* 40:4 (2017).
- 5 David Fortunato, Thomas König & Sven-Oliver Proksch, “Government Agenda-Setting and Bicameral Conflict Resolution” (2013) 66:4 *Political Research Quarterly* at 948.
- 6 Marc Bosc and André Gagnon, *House of Commons Procedure and Practice*, 3rd ed (Cowansville: Yvon Blais, 2017) at 797.
- 7 *Ibid* at 796; Dan Hays, “Reviving Conference Committees” 31:3 (2008) *Canadian Parliamentary Review*.
- 8 Canada, Senate of Canada, *Senate Procedure in Practice* (June 2015) at 79.
- 9 *Supra* note 6 at 794.
- 10 *Supra* note 8 at 149.
- 11 Senate, *Journals of the Senate*, 42nd, 1st Sess, (11 April 11, 2019) at 4540 .
- 12 *Debates of the Senate*, 42nd Parl, 1st Sess, vol 150 (11 April 2019) at 7850 (Hon. Yonah Martin).
- 13 The Senate may also choose to include recommendations or comments made by the Committee that studied the bill even if it has not made amendments. See *Supra* note 6 at 794. For instance, on January 23, 1990, the House of Commons received a message the Senate had passed Bill C-3, *An Act to establish the Department of Industry, Science and Technology, to repeal the Department of Regional Industrial Expansion Act and to make consequential amendments to other Acts*, without amendment. However, the Senate “ALSO ORDERED: That the Message to be sent to the House of Commons acquainting that House that the Senate have passed Bill C-3, contain the observations and recommendation appearing in the Eighth Report of the Standing Senate Committee on Social Affairs, Science and Technology, dated 12th December, 1989, as follows:” House of Commons, *Journals*, 34th Parl, 2nd Sess, vol 131 (23 January 1990) at 1091.
- 14 If the Senate does not propose any amendments, it sends a message to the House to inform it that it has passed the bill without amendments.
- 15 The engrossed amendments translate the message into ‘legislative language’ and indicate to the legislative drafters how the modifications should be included in the bill.
- 16 House of Commons, *Order Paper and Notice Paper*, 42nd Parl, 1st Sess, No. 427 (5 June 2019) at XV.
- 17 *Supra* note 6 at 749.
- 18 Interview with House of Commons Procedural Officer, (June 7, 2019) Ottawa, Canada.
- 19 *Ibid*.
- 20 Interview with Senator Harder, (June 7, 2019) Ottawa, Canada.
- 21 In the case of Private Members’ Bills, it must be the sponsor of the motion that gives notice of the motion.
- 22 House of Commons, *Journals*, 42nd Parl, 1st Sess, No. 435 (17 June 2019) at 5647.
- 23 *Supra* note 6 at 795.

- 24 *Ibid.*
- 25 For instance, for Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, it took one day. The Senate sent its message on June 15<sup>th</sup>, 2016, and the House of Commons took up consideration of amendments June 16<sup>th</sup>, 2016. Whereas in the case of Bill C-7, *An Act to amend the Public Service Labour Relations Act, the Public Service Labour Relations and Employment Board Act and other Acts and to provide for certain other measures*, it took almost a year. The Senate sent a message on June 21, 2016 and the House of Commons took up consideration amendments on May 12, 2017, almost a year later.
- 26 *Supra* note 8 at 150; *Rules of the Senate of Canada*, Rule 16(3)-3: “[t]he Senate shall charge a committee with the task of drawing up the reasons required in a message under this rule.” The Senate insisted on its amendments in the case of Bill C-49, *Transportation Modernization Act*. It was the first time in 12 years that it had done so. See John Paul Tasker, “Senate rejects Commons’ transportation bill C-49 for 2nd time” *CBC News* (9 May 2018) online: <<https://www.cbc.ca/news/politics/senate-insists-on-amendments-transport-bill-1.4656010>>
- 27 Stanley Bach, “Germaneness Rules and Bicameral Relations in the U.S. Congress” 7:3 (1982) *Legislative Studies Quarterly* at 342.
- 28 Ian Austen, “Justin Trudeau Seeks to Legalize Assisted Suicide in Canada” *New York Times* (15 April 2016) online: <<https://www.nytimes.com/2016/04/15/world/americas/canadian-prime-minister-seeks-to-legalize-physician-assisted-suicide.html>>
- 29 *Debates of the Senate*, 42nd Parl, 1st Sess, vol 150 (17 June 2016) at 1216 (Hon. Serge Joyal).
- 30 *Debates of the Senate*, 42nd Parl, 1st Sess, vol 150 (17 June 2016) at 1217 (Hon. Peter Harder).
- 31 *Debates of the Senate*, 42nd Parl, 1st Sess, vol 150 (17 June 2016) at 1220 (The Hon. The Speaker).
- 32 Bill S-3, *An Act to amend the Indian Act (elimination of sex-based inequities in registration)*, 1st Sess, 42nd Parl, 2017 (as passed by the Senate on June 1, 2017).
- 33 *House of Commons Debates*, 42nd Parl, 1st Sess, Vol 148 (29 November 2017) at 15752 (Mr. Anthony Rota).
- 34 *Descheneaux v. Canada*, 2015 QCCS 3555.
- 35 CBC News, “Quebec Superior Court grants extension for update to ‘discriminatory’ Indian Act”, *CBC News* (26 January 2017), online: <<https://www.cbc.ca/news/indigenous/court-extension-update-indian-act-1.3953515>>
- 36 Canada, Indigenous Services Canada, *The Government of Canada’s Response to the Descheneaux Decision* (Ottawa: Indigenous Services Canada, 2018), online: <<https://www.sac-isc.gc.ca/eng/1467227680166/1572460465418>> accessed, 26 August 2020.
- 37 Michelle Zilio, “Quebec Superior Court blocks extension to fix discrimination in Indian Act”, *The Globe and Mail* (29 June 2017), online, <<https://www.theglobeandmail.com/news/politics/quebec-superior-court-blocks-extension-to-fix-discrimination-in-indian-act/article35507784/>>
- 38 *AG Canada c. Descheneaux*, 2017 QCCA 1238.
- 39 The House could, for instance, by unanimous consent discard its own rule; however, barring it doing this every time, its rules will remain less flexible.
- 40 Martin Olszynski, “Proposed Bill C-69 amendments undermine science”, *Policy Option* (27 May 2019) online <<https://policyoptions.irpp.org/magazines/may-2019/proposed-bill-c-69-amendments-undermine-science/>>
- 41 *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*, 2019, c. 28.
- 42 Renamed the *Canadian Navigable Waters Act* in Bill C-69.
- 43 *House of Commons Debates*, 42nd Parl, 1st Sess, vol 148 (14 February 2018) at 17204 (Hon. Catherine McKenna).
- 44 Tony Seskus, “Senate roadshow stops in Alberta’s oilpatch for feedback on impact-assessment bill”, *CBC News* (9 April 2019) online: <<https://www.cbc.ca/news/business/bill-senate-alberta-pipelines-1.5088809>>. Peter Zimonjic, “Premiers ‘threatening national unity’ with their demands on federal environmental bills: Trudeau”, *CBC News* (11 June 2019) online: <<https://www.cbc.ca/news/politics/tory-premiers-threaten-national-unity-trudeau-1.5171359>>
- 45 David Akin, “In ‘urgent letter,’ 6 premiers tell Trudeau national unity would be threatened if bills C-49, C-69 become law.” *Global News* (10 June 2019) online: <<https://globalnews.ca/news/5374642/ford-kenney-moe-pallister-higgs-letter-to-trudeau/>>
- 46 Evidence, Standing Senate Committee on Energy, the Environment and Natural Resources, 42nd Parl, 1st Sess, No. 70 (May 13, 2019); see also Evidence, Standing Senate Committee on Energy, the Environment and Natural Resources, 42nd Parl, 1st Sess, No. 70 (May 16, 2019).
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- 48 Anis Heydari, “Changes to Bill C-69 ‘unprecedented’ says Alberta senator, but energy industry isn’t placated”, *CBC News* (13 June 2019) online: <<https://www.cbc.ca/news/canada/calgary/senate-changes-c69-unprecedented-1.5173985>>
- 49 Interview with House of Commons Procedural Officer, (June 7, 2019) Ottawa, Canada.
- 50 *Ibid.*
- 51 House of Commons, *Order Paper and Notice Paper*, 42nd Parl, 1st Sess, No. 432 (12 June 2019) at XII.

# *Inside and Outside of the House Of Commons: The Relationship Between Freedom of Expression, Freedom of Speech and Parliamentary Privilege*

Freedom of expression is an essential condition for democracy, but under the *Canadian Charter of Rights and Freedoms*, it is not absolute. In this article, the author explores the concepts of freedom of expression and freedom of speech within Canadian society generally and in the House of Commons in particular. She concludes that the House of Commons is a place where the more restrictive concept of freedom of speech – subject to and limited by the parliamentary privilege of the legislature to control its internal proceedings – applies because a fully realized *Charter* guarantee to freedom of expression would actually hamper the proper functioning of the House. If Members of Parliament were able to express themselves freely and without limitations, then debate would be neither productive nor orderly and it is likely that some Members would have no opportunity to speak at all. While freedom of speech may seem at first glance to be overly restrictive in comparison with the guarantee to freedom of expression that exists outside of the House of Commons, the author contends its existence and exercise is, in fact, necessary to its proper and functioning.

**Jennifer Dumoulin**

## **Introduction**

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Freedom of expression is a necessary condition for democracy. It ensures that issues of common concern are freely and openly debated and allows for the criticism of public institutions.<sup>1</sup> Among other things, its purpose is to “[promote] the free flow of ideas essential to political democracy and the functioning of democratic institutions”.<sup>2</sup> Despite this important function, freedom of expression is not absolute. *Section 1* of the *Canadian Charter of Rights and Freedoms* permits limits on freedom of expression if they are reasonable and justifiable in a free and democratic society.

Freedom of speech, which exists solely in a legislative context, is also a necessary condition for democracy. Like freedom of expression, freedom of speech has constitutional status; its origins trace back to the *Constitution Act, 1867* and the *Parliament of Canada Act*. The two freedoms, however, differ in scope and application. Freedom of expression entails the right to express oneself and the right to be free from compelled speech and, per the *Charter*, applies to everyone; freedom of speech on the other hand applies only to elected representatives, granting them immunity from civil or criminal prosecution for statements made in the course of parliamentary business. Further, while freedom of speech permits Members to speak freely, it does not allow them to speak whenever they wish. This is because the parliamentary privilege of freedom of speech is limited by and subject to the internal control of legislatures.<sup>3</sup>

While it is possible to debate whether any limits to such fundamental freedoms are ever justifiable, it is commonly accepted to be true. Constitutional freedoms related to expression and speech are limited not only within society as a whole, but also within

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its governing democratic institutions through both formal procedures and informal practices. At first glance, such limitations appear counterintuitive. How can everyday citizens and, more specifically, elected representatives properly deliberate and create laws if they do not have the ability to express themselves freely while doing so? This article explores this contradiction by comparing the leading legal tests for the right to freedom of expression within the parliamentary privilege of freedom of speech in order to determine whether the limits imposed within the House of Commons are reconcilable with the *Charter*.

### **The right to freedom of expression**

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While *Section 2(b)* of the *Charter* guarantees the right to freedom of expression, it provides very little guidance on the actual content of the freedom. The courts have filled in this gap, identifying two branches of the right, including the right to express oneself. The 1989 case *Irwin Toy* established the three steps of the freedom of expression test, each of which will be discussed in further detail below.

#### ***Step 1: Is the activity protected by freedom of expression?***

Every expression has both form – the method of communication – and content – the meaning conveyed. As established in *Irwin Toy*, any activity that is expressive and *attempts* to convey meaning is *prima facie* protected by freedom of expression.<sup>4</sup> Further, there are “an infinite variety of forms” that expression can take, including the written and spoken word and physical acts and gestures,<sup>5</sup> and only violent forms of expression have been excluded from the protection.

#### ***Step 2: Was the purpose or effect of government action to restrict freedom of expression?***

Even though an activity may be protected by freedom of expression, if government action either in purpose or effect does not restrict the expression itself then there is no *Charter* infringement. Where the purpose of government action is, however, to single out particular meanings not to be conveyed, control access to the meaning, or control the ability of a person to convey meaning, then freedom of expression is violated.<sup>6</sup> Where the purpose of government action is to restrict the consequences of the activity – irrespective the meaning – then its purpose is not to control expression and there is no infringement.

#### ***Step 3: Is the limitation reasonable and justifiable in a free and democratic society?***

An infringement can be justified under *Section 1* of the *Charter* if it satisfies the test found in the 1986 case *R. v. Oakes*. To do so, the government must demonstrate that the limitation is rationally connected to a pressing and substantial concern, that it minimally impairs freedom of expression, and that its benefits outweigh its deleterious effects.

Some restrictions to freedom of expression are more easily justifiable than others. For example, the Supreme Court of Canada found that commercial expression and pornography were on different “footing” from other forms of expression that “directly engage the ‘core’ of freedom of expression values”.<sup>7</sup> Commercial expression and pornography are primarily economic, therefore any resulting losses would also be economic in nature. The court held that this is more acceptable than the “loss of opportunity to participate in the political process or the ‘marketplace of ideas’” – values that lie at the core of freedom of expression.<sup>8</sup>

### **Freedom of expression and the impact of location**

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In *Montréal (City) v. 2952-1366 Québec Inc.*, the Supreme Court held that freedom of expression includes “the right to express oneself in *certain* public spaces”.<sup>9</sup> Whether a space is ‘public’ turns, first, on ownership. While a space may be public “by dint of being the property of some government entity”,<sup>10</sup> not all government-owned spaces are ‘public spaces’ – “many government places are essentially private in use”.<sup>11</sup> Office space, for example, is a private space that even if located on government-owned property would not be recognized as a space for public expression. Whether the right to freedom of expression is protected within a government-owned space depends on how that space is used.

Two legal tests emerged in the 1991 Supreme Court case *Committee for the Commonwealth of Canada v. Canada* to determine whether there should be blanket protection for freedom of expression within a public space, however neither has been identified as definitive. The first test asked whether the primary function of the space is compatible with free expression. The second test considered whether protecting free expression in the space serves the underlying values of the guarantee. In both cases, if the test can be answered in the affirmative, then free expression should always be guaranteed within the space at issue.

The Supreme Court revisited the issue of location again in *Montréal (City)* when it brought together elements from both pre-existing tests. Under this new approach, the question to answer is “whether the place is a public place where one would *expect* constitutional protection for free expression [if] that expression does not conflict with the purposes which s.2(b) is intended to serve”.<sup>12</sup> Two factors are to be considered in this analysis: the historical or actual function of the place and whether there is any reason that free expression within that space would actually undermine the values of the freedom.

Determining the function of a space provides an answer to whether free expression within a space is consistent with the *Charter*. Where free expression has traditionally been permitted, protecting it would not undermine the values of freedom of expression. In contrast, if the actual function of a space and the activity occurring within it would be hampered by free expression, then it would likely not be protected because extending freedom of expression to such places “might well undermine democracy and efficient governance”.<sup>13</sup>

If an analysis determines that the public space is one where free expression would be expected *and* such expression does not undermine the values of freedom of expression, then expression within that location is protected under *Section 2(b)*. One would then need to complete the limitation analysis by considering whether the purpose and effect of the government was to restrict freedom of expression within that space and, if so, determine whether that restriction is justifiable under the *Charter*.

### **Parliamentary privilege and freedom of speech**

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Freedom of speech, a privilege enjoyed individually by Members of Parliament, is subject to the parliamentary privilege of exclusive control over legislative proceedings, which is extended to the legislature as a whole. At the federal level, this privilege allows the House of Commons to set its own rules of procedure and practice, which are established in the *Standing Orders of the House of Commons* as well as by temporary, sessional or special orders. Among other things, these rules and procedures control the timing and duration of speech, the allocation of speaking time, the subject of speech and the manner in which a Member can speak.<sup>14</sup>

In addition to the formal rules, speech may also be subject to internal traditions and norms that constrain

expression. For example, Members must refer to each other by constituency or ministerial title rather than by name and must address all speeches and questions to the Speaker. The use of a list system to allocate questions during Question Period is another example of how free speech is limited in the House.<sup>15</sup>

### ***Are the limits of freedom to speech imposed by the exercise of parliamentary privilege reconcilable with the Charter right to freedom of expression?***

Under the *Parliament of Canada Act*, parliamentary privileges are part of the general and public law of Canada. They are also legal rights with constitutional status derived from the Preamble of the *Constitution*, from tradition and from the principle of necessity. The principle of necessity is used to determine whether the exercise of privilege is justifiable. In particular, it asks whether the exercise of privilege is necessary to ensure “the dignity and efficiency of the House” and its proper functioning.<sup>16</sup>

That the exercise of parliamentary privilege may be necessary does not, however, reconcile the difference between the scope of the *Charter* guarantee to freedom of expression and the parliamentary privilege of freedom of speech within the House of Commons. Nor does it explain whether the exercise of control over the proceedings and internal affairs of the House is consistent with limitations to the guarantee of freedom of expression. This is perhaps because once the exercise of parliamentary privilege is deemed necessary, the courts do not have the jurisdiction to review how the privilege is used.<sup>17</sup> The necessity test articulated in *New Brunswick Broadcasting* as well as those tests from *Irwin Toy* and *Montréal (City)* can be used theoretically to address this gap.

### ***Is freedom of speech necessary for Members of the House of Commons to fulfill their role as an elected representative?***

Traditionally, the role of an elected representative has been to pass legislation and policy. Now, however, this role is seen as “less central”, as Members must balance the duties of four different activities: law-making, surveillance of government activity, providing constituency services and fulfilling party obligations.<sup>18</sup> This shift can be attributed to the increasing importance of political parties, partisan politics, and party discipline which hold great influence over Members, requiring them to speak and vote along party lines.<sup>19</sup>



There are numerous mechanisms within the House to facilitate the oversight and surveillance of government activity. Oral Question Period, the most high profile of these proceedings, garners significant media attention. As such, it is carefully and rigorously controlled by political parties. Question Period therefore blurs the roles of elected representatives – requiring them to hold the government accountable for its actions while simultaneously affirming their parties’ position on the issue at hand. This undoubtedly pits Opposition Members against Government Members, with the former criticizing government action or inaction and the latter defending it.

In order to properly execute their duties of oversight and party allegiance, Members require the ability to speak freely and criticize the position of others without the fear of legal consequences. They need the ability to make assertions – or even accusations – in order to seek out the ‘truth’. To this extent, the guarantee of freedom of speech within the House is not only necessary but also consistent with two of the underlying values of the *Charter* guarantee to freedom of expression: the enhancement of democracy and the pursuit of truth through the exchange of ideas.

***Is the control over the internal proceedings and affairs of the House of Commons necessary for its proper functioning?***

Unlike the primary function of Members of Parliament, that of the House of Commons is clear and identifiable – its central purpose is law-making.<sup>20</sup> To fulfill this purpose, legislatures must foster true deliberation involving the presentation and critique of the different positions on an issue in order to make an informed collective decision about the content of legislation.<sup>21</sup> Inside the House, like outside of it, debate over diverse and contentious points of view can quickly become heated and politically charged. Parliamentary procedures reduce the use of inflammatory and offensive speech in the House and decrease the likelihood of outbursts and interruptions. They also promote equity and fairness by limiting the length of speeches so that all Members wishing to do so may have an opportunity to express themselves on an issue.

Parliamentary procedures that restrict the duration, content and manner of speech are used to foster civility among Members and ensure that deliberation occurs in a productive manner. They also minimize

the obstruction and unnecessary prolongation of parliamentary business.<sup>22</sup> Absent such rules and procedures, debate would likely occur in an ad hoc and disruptive manner – if it occurred at all. As such, control over the internal affairs and proceedings of the House ensures its proper functioning. This conclusion echoes the findings of the Supreme Court in *New Brunswick Broadcasting*, which considered the ability of legislatures to exclude strangers from its proceedings.

***Are the limitations to freedom of speech resulting from the control of the internal affairs and proceedings of the House of Commons reconcilable with the Charter?***

It is not necessary to delve into great detail to determine whether freedom of speech as provided for under parliamentary privilege is consistent with the broader guarantee of freedom of expression found in the *Charter*. Simply put, freedom of speech allows Members to critically engage in debate with other Members. In fact, it could be argued that when understood as the freedom to speak on matters of parliamentary business without fear of criminal or civil prosecution, freedom of speech actually encourages free expression by reducing the risks of participation. As such, despite its difference in scope and application, freedom of speech is consistent with the right to freedom of expression found in *Section 2(b)* of the *Charter*. It therefore remains to be seen whether the limitations imposed on freedom of speech by the parliamentary privilege to control the internal affairs and proceedings of the House is consistent with the *Charter*.

In the House of Commons, all acts of expression convey meaning. Furthermore, all acts are either written or oral, although an argument could certainly be made that some acts are physical such as abstaining from or casting a vote. Regardless, the acts in question are not a prohibited form of content and are therefore comparable with acts protected by freedom of expression.

The second step of the *Irwin Toy* test considers whether the purpose or effect of the limitation is to restrict freedom of expression. Both a purposive and a plain meaning approach to interpretation of the *Standing Orders* result in the same conclusion: that their purpose is to restrict expression. *Standing Order 18*, for example, explicitly singles out particular meanings, such as offensive words, that are not to be conveyed in the House. Other *Standing Orders*

control the ability of a person to convey meaning by limiting the content and subject matter of speech to topics on the Order Paper. They also set the duration, frequency and timing of speech.

The *Charter* test for freedom of expression requires that any limitation imposed on the freedom be justifiable. To do so, a limitation must address and be rationally connected to a pressing and substantial concern, minimally impair freedom of expression and the benefits of the limitation must outweigh any deleterious effects.

The purpose of the *Standing Orders* is to ensure orderly and productive debate within the House. Without orderly and productive debate, it would be impossible to deliberate on legislation. Thus, the *Standing Orders* address both a pressing and substantial concern and are rationally connected to that concern. It could be argued, however, that they do not minimally impair freedom of expression because many individual Orders, including *Standing Order 18*, contain blanket prohibitions on expressive activity. Existing jurisprudence on the law of freedom of expression has found that complete bans generally do not minimally impair freedom of expression.<sup>23</sup> They will, however, be acceptable if it can be shown that *only a full prohibition* on expressive activity would achieve the objective of the legislation.<sup>24</sup>

Based on the foregoing, it appears that elected representatives are subject to more restrictive limitations on freedom of speech than would be permitted outside of the legislature under the *Charter* right to freedom of expression. That the limitations imposed on freedom of expression by the *Standing Orders* may not be justifiable in a free and democratic society is problematic. It implies that meaningful debate within the House is not possible, which in turn undermines all legislative action and the very purpose of legislatures. This issue can be reconciled through an application of the *Montréal (City)* test and, by extension, under both tests articulated in *Committee for the Commonwealth of Canada*.

The question to be answered under the revised approach in *Montréal (City)* can be broken down into the following elements: whether the House of Commons is a public space where one would expect constitutional protection for free expression and whether free expression within the House would conflict with the underlying purposes of *Section 2(b)* of the *Charter*. To answer these questions, it is necessary to consider both the traditional and actual function

of the House of Commons. Freedom of expression has never been permitted outright in the House of Commons, as it has always been constrained by the parliamentary privilege of the legislature to control its internal procedures. In addition, completely unfettered expression would actually hamper the proper functioning of the House of Commons because limits are needed to ensure both fairness and equity between Members as well as the occurrence of productive and orderly debate. Further to this point, without productive and orderly debate, the underlying values of freedom of expression – namely, the enhancement of democracy and the pursuit of truth through the exchange of ideas – cannot be fulfilled. As such, freedom of speech within the House could be argued to fall *outside* of the sphere of conduct protected by freedom of expression and any resulting limitations would be justifiable.

## Conclusion

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The underlying values of freedom of expression, in particular those related to the pursuit of truth and the enhancement of democratic decision-making, parallel the underlying values of democracy embodied in the House of Commons and other legislatures. These spaces are a forum where elected representatives come together to consider issues affecting their constituents and to create laws that will bind them.

Despite these shared values, freedom of expression has a limited presence within the House of Commons. This is because a fully realized *Charter* guarantee would actually hamper the proper functioning of the House. If Members of Parliament were able to express themselves freely and without limitations, then debate would be neither productive nor orderly and it is likely that some Members would have no opportunity to speak at all. As such, the House of Commons is not a space where blanket freedom of expression should be permitted. Instead, a narrower form of this individual guarantee – freedom of speech – that is subject to and limited by the parliamentary privilege of the legislature to control its internal proceedings has been put in place to ensure that when Members are permitted to speak they may do so freely and without the fear of legal consequences. While freedom of speech may seem at first glance to be overly restrictive in comparison with the guarantee to freedom of expression that exists outside of the House of Commons, its existence and exercise is, in fact, necessary to its proper and functioning.

## Notes

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- 1 Robert J. Sharpe & Kent Roach, *The Charter of Rights and Freedoms*, 4th ed (Toronto, ON: Irwin Law, 2009), 150.
- 2 *R. v. Keegstra*, [1990] 3 SCR 697 at 802, 117 NR 1.
- 3 JP Joseph Maingot, *Parliamentary Privilege in Canada*, 2<sup>nd</sup> ed (Canada: House of Commons and McGill-Queen's University Press, 1997), 14.
- 4 *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 SCR 927 at 968, 94 NR 167.
- 5 *Irwin Toy*, para. 969.
- 6 *Irwin Toy*, para. 974.
- 7 *R. v. Butler*, [1992] 1 SCR 452 at 500, 134 NR 81.
- 8 *Rocket v. Royal College of Dental Surgeons*, [1990] 2 SCR 232 at 247, 73 OR (2d) 128.
- 9 *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62 at 62, [2005] 3 SCR 141, emphasis added.
- 10 Lyn H. Lofland, *The Public Realm: Exploring the City's Quintessential Social Territory* (Piscataway, NJ: AldineTransaction, 2009), 210.
- 11 *Montréal (City)*, para. 64.
- 12 *Montréal (City)*, para. 74.
- 13 *Montréal (City)*, para. 76.
- 14 For a more detailed analysis of how parliamentary procedures limit deliberation in the House of Commons, see Jennifer Dumoulin, *Canada's House of Commons and the Perversion of the Public Sphere* (Communication, University of Ottawa, 2011) Chapter 3, online: uO Research <http://www.ruor.uottawa.ca>.
- 15 See e.g. Michael Chong et al., "What to do about Question Period: A Roundtable", *Canadian Parliamentary Review*, 33, no.3, (2010), 3.
- 16 *New Brunswick Broadcasting*, para. 374-375, 383.
- 17 *New Brunswick Broadcasting*, para. 384-385.
- 18 Jack Stilborn, *The Roles of the Member of Parliament in Canada: Are They Changing* (Ottawa, ON: Library of Parliament, 2002), 6-7.
- 19 See e.g. Michael Chong, "Rethinking Question Period and Debate in the House of Commons of Canada", *Canadian Parliamentary Review*, 31, no.3 (2008), 6. See also Pierette Venne, "Parliament and Democracy in the 21st Century: The Role of MPs", *Canadian Parliamentary Review*, 20, no.3 (2003), 2.
- 20 Jeremy Waldron, "Principles of Legislation", In R. W. Bauman & T. Kahana (Eds.), *The Least Examined Branch: The Role of Legislatures in the Constitutional State* (pp. 15-32) (West Nyack, NY: Cambridge University Press, 2006) 15.
- 21 See Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 2001), 72. See also Archon Fung, "Survey article: Recipes for the public spheres: Eight institutional design choices and their consequences", *Journal of Political Philosophy*, 11, no.3 (2003), 344.
- 22 Chris Charlton, Chris. (1997). "Obstruction in Ontario and the House of Commons", *Canadian Parliamentary Review*, 34, no.2 (1997), 21.
- 23 *RJR MacDonald*, para 162.
- 24 *RJR MacDonald*, para 164.

# Democracy Dialogues: Empowerment through Accessibility: Toward Inclusive Democratic Engagement

Canada's first Deaf parliamentarian recently spoke about his experience seeking elected office and how Ontario's Legislative Assembly worked with him to accommodate his needs and, as a result, became one of the most accessible legislatures in the world.

**Wendy Reynolds**

Ryerson University's Democracy Dialogues series<sup>1</sup> recently invited, Gary Malkowski, the first deaf parliamentarian in Canada,<sup>2</sup> to speak about his experiences in office.

Elected to the Ontario Legislature in 1990, Malkowski confessed that his first experience of voting was to vote for himself in the 1990 provincial election. For most candidates, this might be an unusual career path – many young politicians gain experience and exposure to democratic processes by participation in school government, developing connections to other politically engaged students, and developing an appreciation for and understanding of democratic tools and processes.

Malkowski, on the other hand, had little exposure to the democratic process in his youth. His secondary schooling did not include a civics class and he did not participate in school government. His first experience came when he moved to Washington DC to attend Gallaudet University, the world's only university for Deaf students. Gallaudet University is a world-class institution with a rich history of transformation and impact. For more than 150 years, Gallaudet has been the political, social, and economic engine of the signing community.<sup>3</sup> There, he developed an appreciation for activism, and a willingness to engage.

On his return to Ontario, he became part of the Deaf Ontario Now movement, which demanded American Sign Language (ASL) and langue des signes du Québécoise (LSQ) interpretation in schools for deaf children. Inspired by his experiences with Deaf Ontario Now, Malkowski ran for the NDP in the riding of York East. Reflecting on his time as a candidate and parliamentarian, Malkowski recounted a number of changes which had to be made to parliamentary operations:

- The Elections Finance Committee ruled that extraordinary expenses incurred by the candidate for sign-language interpretation would not count under the candidate's expense ceiling.
- The first bill passed in the Ontario Legislature in that parliament was to allow sign-language interpreters on the floor of the Chamber.
- Malkowski was given a small monitor for his desk so that he could see the closed captioning on the screen.
- Flashing lights were installed to supplement the bells traditionally used to call Members into the Chamber.

When asked, Malkowski responded that his reception at Queen's Park was "phenomenal" and he felt that he was "treated as an equal." Working together with the new Member, the Legislative Assembly of Ontario became "one of the most accessible legislatures in the world."

Legislation, such as the *Accessible Canada Act* and the *Accessibility for Ontarians with Disabilities Act* can point the way to more inclusive institutions. But no written standard can anticipate the range of people and the ways

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*Wendy Reynolds is Manager of Accessibility, Records and Open Parliament in the Information Services Division at the Legislative Assembly of Ontario*



Former York East MPP Gary Malkowski stands in front of his constituency office.

that they interact, use information and communicate. This truth highlights the need for consultation with people with disabilities, a feature of both the federal and Ontario acts which Malkowski approves of. He also urged participants with disabilities to consider running for office, or supporting issues of importance to the Deaf and Disabilities communities.

Malkowski noted that people with disabilities are more politically active now than when he was a candidate and MPP. However, it is clear that some barriers remain to full political participation by people with disabilities. For example, Elections Canada and Elections Ontario both place the duty to provide interpretation or captioning at all-candidates meetings on the organizers. This means that these services are frequently forgotten, or provided at the last minute, because organizations may not know of the need for such services.

Elections Ontario offers information on its website about accessible voting<sup>4</sup> and for people considering becoming a candidate.<sup>5</sup>

Elections Canada, through its Inspire Democracy toolkit, provides information on the barriers<sup>6</sup> faced by

specific groups in Canadian society. It also provides information on how to become more engaged with democratic processes, and community resources to help.

Now in its third season, Democracy Dialogues is “a free virtual series that will answer some of the biggest questions and concerns we have about what it takes to build a vibrant and inclusive democracy now and in the future.”

#### Notes

- 1 <https://www.engageddemocracy.ca/democracydialogues>
- 2 <https://richardmedugno.medium.com/25-years-ago-i-started-writing-a-book-today-its-finally-published-302be2f1c72e>
- 3 <https://www.gallaudet.edu/about>
- 4 <https://www.elections.on.ca/en/voting-in-ontario/accessible-voting.html>
- 5 <https://www.elections.on.ca/en/political-entities-in-ontario/candidates.html>
- 6 <https://inspirerlademocratie-inspiredemocracy.ca/learn/index-eng.asp>

# *The Canadian Scene*

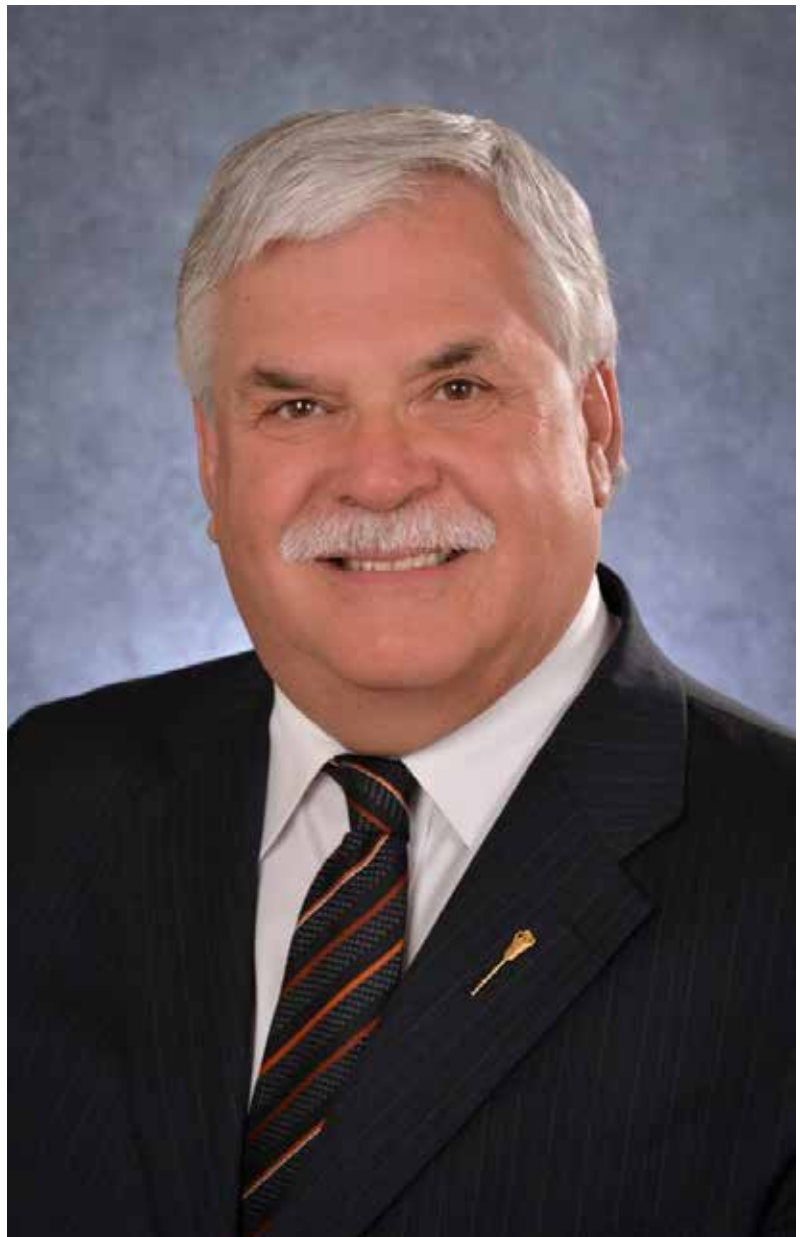
## New Saskatchewan Speaker

On November 30, 2020, **Randy Weekes** was elected Speaker of the Saskatchewan Legislature. The Saskatchewan Party MLA defeated five other challengers, including incumbent Speaker **Mark Docherty**, **Greg Ottenbreit**, **Hugh Nerlien**, **Nadine Wilson** and **Lisa Lambert**.

COVID-19 protocols meant the election had a very different look and feel than previous elections. Legislative officers sanitized the wooden ballot box after each round of voting and when Speaker Weekes addressed his colleagues after his victory he faced a rearranged Chamber. Only about half of the Assembly's MLAs were present and they sat in spaced out desks behind plexiglass shields.

"I really am humbled by the trust you put in me," Speaker Weekes said. "Thank you to all the members, especially the members who ran for Speaker." He promised to serve without any bias and follow the rules and traditions of the assembly. He then thanked Mr. Docherty for his service.

A former minister responsible for rural and remote health and deputy government whip, Weekes has been the member for Biggar-Sask Valley since 1999 and is the longest serving Saskatchewan Party MLA. He was born in Biggar and still lives nearby.



**Hon. Randy Weekes**

## **New British Columbia Speaker**

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On December 7, 2020, **Raj Chouhan** was acclaimed as Speaker of British Columbia's Legislative Assembly. He became the first person of South Asian heritage to serve as speaker in any legislature in Canada. Speaker Chouhan replaces outgoing Speaker **Darryl Plecas**.

The Burnaby-Edmonds MLA was first elected in 2005. He became Assistant Deputy Speaker in 2013 and has served as the Deputy Speaker since 2017.

"As a proud member of the Indo-Canadian community, I am tremendously proud of this historic occasion and honoured to continue my public service in this new role," Speaker Chouhan said



**Hon. Raj Chouhan**

after his acclamation. "I am truly grateful to have been entrusted with this role by all members of the legislative assembly," he said.

Emigrating from Punjab, India, Mr. Chouhan landed in Canada in 1973. While working on a farm, he was fired for speaking up for the rights of his fellow workers. The experience prompted him to help found the Canadian Farmworkers' Union in 1980.

Premier **John Horgan** praised Speaker Chouhan for his commitment to social justice and his strength in resisting and speaking out against racism wherever it emerged. "Coming from the fields and now

overseeing the commons for all British Columbians is truly extraordinary," the Premier said.

Speaker Chouhan said he planned to take steps to make the Legislative Assembly work place more friendly and more practical for everyone.

## **New New Brunswick Clerk**

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On November 13, 2020, **Donald J. Forestell** retired as Clerk of the Legislative Assembly. Mr. Forestell began his career at the Legislative Assembly in 1993 as Clerk Assistant. He was appointed Clerk of the Legislative Assembly by resolution of the House in 2012.



**Shayne Davies**

On December 18, based on the recommendation of the Legislative Administration Committee, **Shayne Davies**, the Deputy Clerk and Acting Clerk at the time, was appointed Clerk of the Legislative Assembly by resolution of the House. Mr. Davies began his career at the Legislative Assembly in 2000 as a Committee Clerk.

Raised in New Brunswick, Mr. Davies graduated from the University of New Brunswick with a degree in Business Administration in 1995 and a Bachelor of Laws degree in 1999.

Mr. Davies articulated with the New Brunswick Court of Appeal and was admitted to the practice of law in New Brunswick in 2000. He briefly practiced law as a sole practitioner before assuming the position of Committee Clerk with the Legislative Assembly of New Brunswick.

In 2003, he was promoted to the position of Clerk Assistant and Committee Clerk, and in 2018 he was further promoted to the position of Deputy Clerk.

Mr. Davies is currently the vice-president of the Canadian Association of Clerks-at-the-Table.



**James Charlton**

#### **New Nova Scotia Clerk**

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**James Charlton** was appointed Chief Clerk of the Nova Scotia House of Assembly effective November 30, 2020. Mr. Charlton replaces Acting Chief Clerk **Annette Boucher**. Ms. Boucher, who retired from the Assembly in December, had been in the role since the retirement of former Chief Clerk **Neil Ferguson** in February 2020.

Formerly Chief Legislative Counsel of Alberta, from 2019–2020, Mr. Charlton also served as Legislative Counsel with the Nova Scotia Office of the Legislative Counsel from 2011–2018, Law Clerk with the Nova Scotia Court of Appeal 2010–2011 and Research Officer with the Legislative Research Service, Legislative Assembly of Ontario from 2008–2010.

He holds an LL.B. from the University of New Brunswick (2005) and an LL.M. from the University of Toronto (2007).



## Regional Executive Committee, CPA\*

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\*As of March 31, 2021

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# New and Notable Titles

A selection of recent publications relating to parliamentary studies prepared with the assistance of the Library of Parliament (December 2020 - February 2021)

Burns, Ian. "Possibility of conflict in chief justice's role as acting governor general limited: legal scholar." *The Lawyer's Daily* 3p., February 10, 2021.

- The resignation of Julie Payette as governor general last month after allegations of workplace harassment led to Chief Justice Richard Wagner assuming her powers on an interim basis until a replacement is found. But legal scholars are saying any concerns about potential conflicts of interest between the chief justice seemingly straddling both the executive and judicial branches are fairly minor.

Hazell, Robert. "The *Fixed-term Parliaments Act*: should it be amended or repealed?" *Constitution Unit* 8p., December 11, 2020.

- A parliamentary committee has been established to review the effectiveness of the *Fixed-term Parliaments Act 2011*. Rather than wait for its conclusions, the government has published a draft bill designed to return control of the timing of general elections to the executive. The author examines the issues the committee will have to consider, and proffers some possible improvements to the status quo.

Inter-Parliamentary Union. "Social media guide for parliaments and parliamentarians." Geneva: Inter-Parliamentary Union, 52 p., 2021.

- The COVID-19 pandemic that emerged in 2020 has again brought into sharp focus the vital role that social media plays in keeping people connected and allowing them to share information and

opinions...this guide is structured as a "playbook": a more informal and adaptable format that includes a series of short case studies. As well as supporting parliaments in using social media more effectively, it is also geared towards parliamentarians.

Lim, Jordan Preston. "Parliamentary debate as a driver of military justice reform in Canada." *Canadian Journal of Law and Society / La Revue Canadienne Droit et Société* 35 (3): 437-54, December 2020.

- In June 2019, the Supreme Court of Canada pronounced judgment in the case of *R v Stillman*, upholding the military justice system's ability to try serious civil offences. The *Stillman* decision highlighted one key mechanism of military justice reform: court judgments. This article argues, however, that military legal experts have overlooked Parliamentary debate as a key driver of military reform...

Lovewell, Mark. "Opinion - Royal Descent - Rideau Hall is brought down to earth." *Literary Review of Canada* 29 (2): 7, March 2021.

- ...Justin Trudeau should set aside whatever animus he feels toward Stephen Harper and reinstitute the perfectly sensible arrangements of his immediate predecessor.

Mahéo, Valérie-Anne, Bélanger, Éric. "Lowering the voting age to 16? A comparative study on the political competence and engagement of underage and adult youth." *Canadian Journal of Political Science/Revue canadienne de science politique* 53 (3): 596-617, September 2020.

- One reform considered for increasing voter turnout rates is to lower the voting age to 16 years old. Advocates of such a reform argue that young people would vote for the first time while they are still in school and living with their parents, which would provide a social context that is supportive of their electoral participation. However, opponents argue that 16- and 17-year-olds are not mature enough to take part in elections...

Manning, Susan M, "The Canadian Senate: An institution of reconciliation?" *Journal of Canadian Studies/Revue d'études canadiennes* 54 (1): 1-24, Winter/hiver 2020.

- Growing mainstream awareness of tensions surrounding Indigenous rights and recent political movement to promote reconciliation suggest that the time might be ripe to revisit some of the most important ideas for strengthening Indigenous Peoples' place and space within the Canadian federation, particularly within the country's central political institutions. This article argues that the Canadian Senate has the potential to be an important institution for reconciliation in Canada's system of federalism...

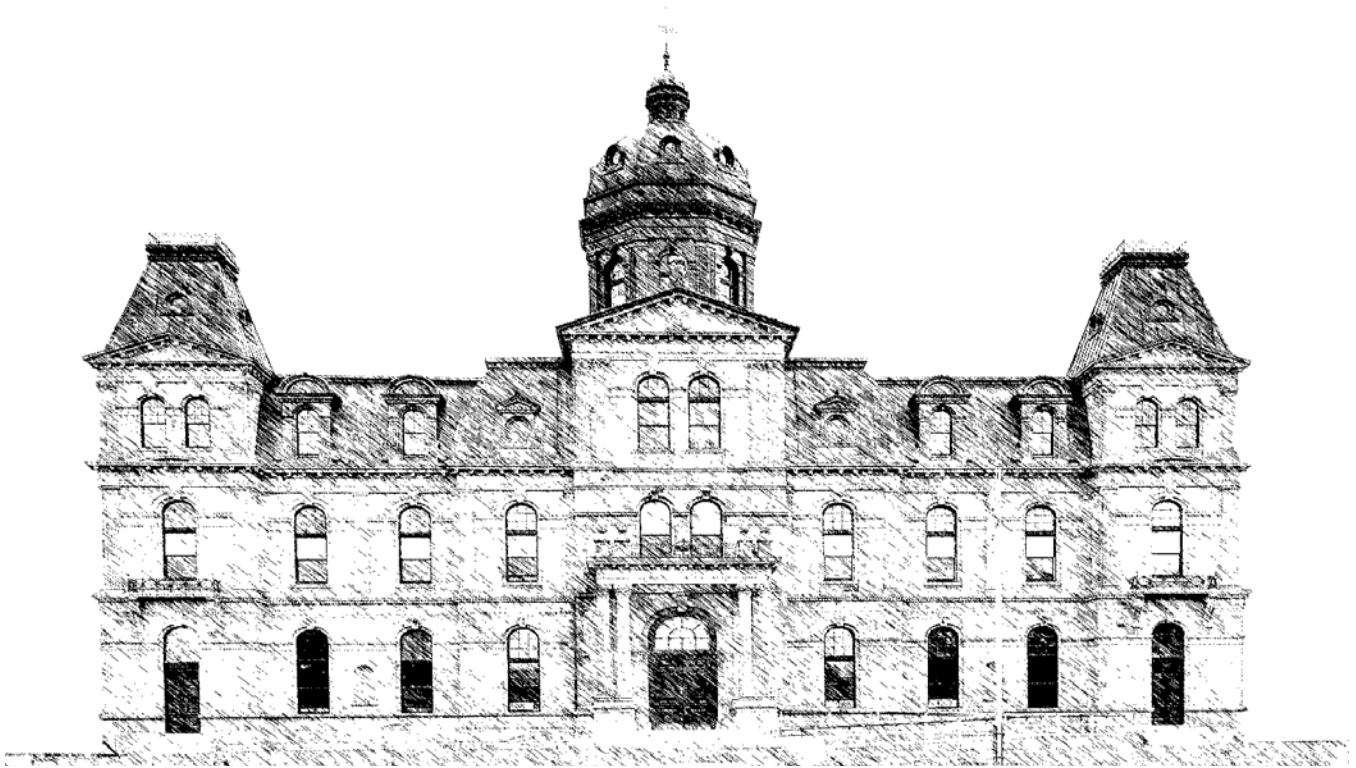
Russell, Meg. "Parliaments and COVID-19: principles and practice; challenges and opportunities." Constitution Unit 6p., December 9, 2020.

- In the UK and around the world parliaments have had to adjust their practices to the unexpected new environment of COVID-19. This has brought major challenges but, some suggest, also opportunities in terms of suggesting future means for parliaments to adapt. This post starts from the core principles of parliamentary functioning, briefly reviews practice under COVID-19, and considers the primary opportunities and challenges presented...

Russell, Meg, Gover, Daniel. "Taking back control: why the House of Commons should govern its own time." Constitution Unit 78p: January 2021.

- The House of Commons is the senior chamber in the UK's sovereign parliament, to which the executive is accountable. Yet MPs have surprisingly little control over what the Commons can discuss, and when...this report addresses why MPs lack control of their own institution, what problems this causes and, crucially, what should be done.





## New Brunswick

### First Session of the 60<sup>th</sup> Legislature and Throne Speech

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Lieutenant-Governor **Brenda Murphy** opened the First Session of the 60<sup>th</sup> Legislature on November 17, 2020, with the delivery of the Speech from the Throne. The speech focused on Premier **Blaine Higgs'** government's plan to build upon the progress made in six priority areas: energizing the private sector; creating vibrant and sustainable communities; delivering dependable public health care; creating a world-class education system; ensuring government is affordable, responsive and high-performing; and protecting the environment.

Initiatives outlined in the throne speech included: increase private sector investment; diversify and grow exports from the current three per cent of companies in New Brunswick to closer to the national average of five per cent; increase immigration and repatriation to grow the population base by attracting 10,000 people per year by 2027; work with local governments on areas identified as priorities for municipal reform; work with the national housing strategy to ensure affordable housing solutions; reduce wait times for hip and knee replacement surgeries; build a five-year action plan on mental health and addictions; develop

a strategy to combat youth vaping; ensure every child has the opportunity to learn both official languages; expand the availability and quality of Indigenous courses within provincial schools; move government services online where applicable to reduce costs and increase flexibility; assist New Brunswick businesses to do more business with the provincial government through the procurement strategy and action plan; allow for the regulation of greenhouse gas emissions for New Brunswick's large emitters; encourage expanded glass recycling; and phase-in a ban on single-use plastic bags.

### Reply to the Throne Speech

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On November 19, Official Opposition Leader **Roger Melanson** gave his reply to the Speech from the Throne. Mr. Melanson welcomed some of the measures outlined in the speech, but he also indicated that certain measures seemed inadequate or insufficient and, overall, the speech was too vague. He criticized the Premier for focusing too much on cutting government services and expenditures with the goal of balancing the budget, which, in his opinion, negatively affected the economy. He also criticized the decision to cancel infrastructure projects proposed by the former Liberal government, resulting in millions of federal dollars being left on the table. Mr. Melanson noted the rising unemployment rate in the province and urged the government to offer more financial assistance to

businesses during the pandemic. He was also skeptical of the planned consultation process on health care and surmised that the government had already decided on certain reforms.

## Capital Budget

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The 2021-22 Capital Budget was tabled by Finance and Treasury Board Minister **Ernie Steeves** on December 15 and totalled \$673.4 million. Specifically, the government will invest \$128.2 million in health care infrastructure. Of this total, \$83.9 million will be for the continuation of renovations, additions and other improvements around the province, and \$44.3 million will be for capital improvements and equipment. The government will also invest \$72.6 million in K-12 infrastructure. The capital budget includes \$307.7 million for the maintenance and improvement of highways, roads and bridges. An additional \$62.2 million will be invested in the maintenance and improvement of government buildings and other infrastructure, including renovations to the building that houses Legislative Hansard staff, the press gallery, government private Members and their staff, and the Members and staff of the Green Party and People's Alliance caucuses.

## Legislation

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Thirty-one bills were introduced during the fall session. Legislation introduced included:

Bill 2 – *An Act to Amend the Climate Change Act* – introduced by Environment and Climate Change Minister **Gary Crossman**, allows for the transition from the federal backstop plan to a provincial output-based pricing system for large industrial emitters of greenhouse gases. Under the new provincial system, large industrial emitters will be required to reduce their greenhouse gas emissions intensity by 10 per cent by 2030.

Bill 9 – *Gunshot and Stab Wound Mandatory Reporting Act* – introduced by Attorney General and Justice and Public Safety Minister **Hugh (Ted) Flemming**, makes it mandatory for hospitals to report gunshot and stab wounds to the police.

Bill 11 – *An Act to Amend the Queen's Counsel and Precedence Act* – introduced by Minister Flemming, automatically revokes an appointment as Her Majesty's Counsel if the person appointed is disbarred in accordance with the *Law Society Act, 1996*.

Bill 16 – *An Act to Amend the Elections Act* – introduced by **Keith Chiasson**, requires that when a seat becomes vacant in the Legislative Assembly, the date of the writ shall not be more than six months from the date of the vacancy.

Bill 18 – *An Act to Amend The Residential Tenancies Act* – introduced by Green Party Leader **David Coon**, places restrictions on a landlord's ability to implement rent increases.

Bill 21 – *An Act to Amend the Industrial Relations Act* – introduced by Post-Secondary Education, Training and Labour Minister **Trevor Holder**, specifies the process and requires arbitrators to consider specific criteria when rendering a decision that involves a local government and police officers and firefighters as employees.

Bill 23 – *An Act to Amend the Municipal Elections Act* – introduced by Local Government and Local Governance Reform Minister **Daniel Allain**, authorizes the municipal electoral officer to impose restrictions or take any measures considered necessary or advisable to protect the health and safety of both election officials and the public during an election period.

## Committee Activity

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On December 4, the Standing Committee on Economic Policy held the first virtual hybrid meeting of a committee in the history of the Legislative Assembly. Six Members of the committee attended the meeting in-person, while the remaining five Members participated virtually via Zoom, as did the Minister defending the Bills under consideration.

## Retirement and Appointment of Clerk

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On October 26, **Donald J. Forestell** informed the Speaker of the Legislative Assembly of his decision to retire as Clerk of the Legislative Assembly effective November 13. Mr. Forestell began his career at the Legislative Assembly in 1993 as Clerk Assistant. He was appointed Clerk of the Legislative Assembly by resolution of the House in 2012.

On December 18, based on the recommendation of the Legislative Administration Committee, **Shayne Davies**, the Deputy Clerk and Acting Clerk at the time, was appointed Clerk of the Legislative Assembly by resolution of the House. Mr. Davies began his career at the Legislative Assembly in 2000 as a Committee Clerk.

## Adjournment

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The House adjourned on December 18 and is scheduled to resume sitting on February 12, 2021. The standings in the House are 27 Progressive Conservatives, 17 Liberals, 3 Greens and 2 People's Alliance.

**John-Patrick McCleave**

Clerk Assistant and Committee Clerk



## Alberta

### Fall Sitting, 2<sup>nd</sup> Session of the 30<sup>th</sup> Legislature

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Following an extended spring sitting that ended in July and a special sitting on August 27, 2020, the fall sitting began on October 20, 2020, a week earlier than originally indicated on the sessional calendar, and the Assembly continued to sit later than scheduled in December, adjourning on December 8, 2020. Just prior to adjournment Speaker **Nathan Cooper** noted that the Assembly had set several new records, stating:

Today marks the 78th sitting day of the session, including a rare sitting day in August. No other province or territory has sat as often. The next-closest will be Quebec, which has not yet sat 60 days this session. The Assembly sat for over 560 hours. This breaks the record from 1994 of 434 hours under then Premier Klein and Speaker Schumacher. In addition, we have had a record-breaking 20 sittings past midnight.

The session saw the introduction of 15 government Bills, all of which have received Royal Assent, and seven Private Members' Public Bills, one of which

has received Royal Assent. A Private Bill, introduced in the spring, also received Royal Assent. Bills that received Royal Assent following consideration during the fall session include:

Bill 33, *Alberta Investment Attraction Act*, which establishes the arms-length Invest Alberta Corporation, which is mandated to increase investor confidence in industries such as energy and agriculture and to pursue investment opportunities in industries, including technology and financial services;

Bill 36, *Geothermal Resource Development Act*, which outlines rules and processes for responsible development of the industry and establishes the government's authority to collect royalties and other revenues;

Bill 43, *Financing Alberta's Strategic Transportation Act*, which permits the government to fund infrastructure projects through the collection of tolls;

Bill 47, *Ensuring Safety and Cutting Red Tape Act, 2020*, which amends several pieces of legislation to update language and definitions, clarify serious incident reporting requirements and dangerous work refusals, limit presumptive coverage for psychological injuries to first responders, remove requirements for reinstating injured workers, and cost of living increases to lost wages benefits are now set by the Worker's Compensation Board instead of being tied to the Alberta consumer price index; and

Bill 204, *Voluntary Blood Donations Repeal Act*, which repeals the 2017 ban on compensation for donors of blood and blood products including plasma.

### Changes to the Standing Orders

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On October 21, 2020, changes were made to the Standing Orders through Government Motion 40. Some of the changes, such as reduced quorum requirements, from 20 to 12 Members, are temporary and intended to ensure that the Assembly can continue to function in an appropriate manner during the pandemic. Another temporary amendment permits the Speaker, in consultation with the Government House Leader and the Leader of the Official Opposition, to extend a period of adjournment beyond the originally specified date and time. Other amendments to the Standing Orders are permanent, such as holding morning sittings only on the passage of motion to provide for them.

## Committee Business

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The Select Special Democratic Accountability Committee completed its review of potential citizens' initiatives and recall legislation, reporting to the Assembly on November 16, 2020. The report included 17 recommendations regarding potential legislative changes concerning citizens' initiatives and 16 recommendations regarding recall legislation. In November, the Committee also received stakeholder and public presentations as part of its review of the *Election Act* and the *Election Finances and Contributions Disclosure Act*. The Committee completed its deliberations regarding these Acts on December 15, 2020, and will report its recommendations in early 2021.

On October 29, 2020, the Standing Committee on the Alberta Heritage Savings Trust Fund held its annual public meeting with Albertans to discuss the Fund's investment activities and performance. As in 2019, the event was live-streamed on the Assembly's Facebook and Twitter accounts; however, this year the Committee added a phone-in option in order to increase engagement options for Albertans, especially considering the COVID-19 pandemic. Throughout the meeting approximately 20 questions from e-mail and social media, three in-person questions and several questions from telephone participants were addressed.

The Standing Committee on Resource Stewardship is continuing its review of the *Public Interest Disclosure (Whistleblower Protection) Act*. Having received a technical briefing from the Public Interest Commissioner, the Committee agreed to accept written submissions from the public and stakeholders until November 30, 2020. The Committee is scheduled to meet again on January 13, 2021.

On November 25, 2020, the October 2020 Evaluation Summary Report of the Office of the Advocate for Persons with Disabilities was referred to the Standing Committee on Families and Communities for review. In 2017, the *Advocate for Persons with Disabilities Act* established the role of the Advocate and directs the Advocate to "prepare a report evaluating the effectiveness of this Act that includes any amendments and recommendations relating to persons with disabilities that the Advocate considers appropriate" that will be referred to a committee of the Legislative Assembly. One week later, on December 2, 2020, the 2019-2020 Annual Report of the Office of the Child and Youth Advocate was referred to the Standing

Committee on Legislative Offices for review. Both Committees have up to 90 days to complete their reviews and report to the Assembly.

During the fall sitting, the Standing Committee on Private Bills and Private Members' Public Bills completed its consideration of one Private Bill and three Private Members' Public Bills. The Committee recommended that Bill Pr1, *The Sisters of the Precious Blood of Edmonton Repeal Act*, proceed. The Assembly concurred with the Committee's recommendation and the Bill proceeded to Second Reading and ultimately received Royal Assent. The Committee has also recommended that Bill 205, *Genocide Remembrance, Condemnation and Prevention Month Act*, and Bill 207, *Reservists' Recognition Day Act*, proceed to Second Reading. The Committee also recommended that Bill 206, *Property Rights Statutes Amendment Act, 2020*, sponsored by **Drew Barnes**, proceed to Second Reading. However, because the Ethics Commissioner had indicated that Mr. Barnes could have a potential conflict of interest regarding the Bill, the Committee further recommended that Mr. Barnes seek the consent of the Assembly to change the sponsorship of the Bill. The Assembly concurred with the report of the Committee and, on November 23, 2020, Mr. Barnes requested and received the unanimous consent of the Assembly to transfer the sponsorship of Bill 206 to **Michaela Glasgo**. The Assembly has not completed its consideration of any of these Private Members' Public Bills. During the final week of the sitting an additional four Bills were referred to the Committee for consideration:

- Bill 208, *Alberta Investment Management Corporation Amendment Act, 2020*;
- Bill 209, *Cost of Public Services Transparency Act*;
- Bill 211, *Municipal Government (Firearms) Amendment Act, 2020*; and
- Bill 212, *Official Sport of Alberta Act*.

On November 30, 2020, the Special Standing Committee on Members' Services met to review and approve the parameters for preparing the 2021-22 budget estimates for the Legislative Assembly Office. The Committee also struck a subcommittee to review the guidelines for caucus and Member expenditures and related Members' Services Committee Orders. The five-Member subcommittee has five months to complete its review and report its recommendations to the Committee.

**Jody Rempel**  
Committee Clerk





## British Columbia

### General Election

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A provincial general election was held in British Columbia on October 24, 2020, a year earlier than the anticipated October 2021 fixed election date as provided by the provincial *Constitution Act*. Overall voter turn-out was 52.4 per cent, with over 1.9 million British Columbians voting, including a record 724,279 requests for vote-by-mail packages compared to 11,268 requests received during the 2017 provincial general election. Party standings at dissolution of the 41<sup>st</sup> Parliament were: 41 BC New Democratic Party (BC NDP), 41 BC Liberal Party, 2 BC Green Party, 2 Independent Members, and 1 seat vacant. Party standings following the provincial general election were: 57 BC NDP, 28 BC Liberal Party, and 2 BC Green Party. The BC NDP received the largest vote share ever for the party, at 47.7 per cent along with the highest number of seats ever won by the party.

### Member Orientation

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The 2020 provincial general election resulted in the election of 28 new Members. The publicly accessible Members' Guide to Policy and Resources website was updated to provide information for new, returning and non-returning Members on topics ranging from the role and responsibilities of a Member, transition provisions, legislative and constituency office operations, Assembly services, administration, financial policies, travel guidelines, and remuneration and benefits.

Due to the COVID-19 pandemic health and travel restrictions, the usual oath ceremonies were adapted. The two Vancouver Island-based Members of the BC Green Party Caucus were sworn in on November 23 in a small in-person ceremony, while virtual ceremonies

were held for Members of the BC NDP Caucus on November 24, and on November 27 for Members of the BC Liberal Party Caucus.

The Legislative Assembly is also offering a series of virtual orientation sessions for Members. Initial sessions covered remuneration and benefits for Members; constituency assistant recruitment, hiring and onboarding; constituency office leases and set-up; constituency office management and financial operations; travel provisions; information technology; records and information management; Assembly services and supports for Members; and House business and procedure, including information on hybrid House proceedings.

### New Cabinet

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On November 26, Her Honour the Honourable **Janet Austin**, Lieutenant Governor, presided over the virtual swearing-in ceremony for the Executive Council. The new Cabinet includes 20 Ministers and four Ministers of State—two more Ministers of State than were in the Ministry prior to dissolution of the 41<sup>st</sup> Parliament. Along with Premier **John Horgan**, the new provincial Cabinet includes 12 women and 12 men. Seven ministers retained their portfolios and four newly-elected Members were appointed to ministerial roles. Another 13 NDP Members, including nine new ones, were appointed as Parliamentary Secretaries.

### Resignation of Leader of the Official Opposition

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The Leader of the Official Opposition, **Andrew Wilkinson**, who was re-elected as the Member for Vancouver-Quilchena, announced following the provincial general election on October 26 that he would step down as leader of the BC Liberal Party but would continue on an interim basis until a new leader was selected. On November 21, Mr. Wilkinson further announced that he would no longer be staying on until a new leader was selected and was stepping down as Leader of the Official Opposition. The BC Liberal Party Caucus selected **Shirley Bond** as its interim Leader of the Official Opposition on November 23. A date has not yet been set for a leadership race.

### First Session of the 42<sup>nd</sup> Parliament

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The 42<sup>nd</sup> Parliament opened on December 7, 2020. The first item of business was the election of the Speaker, a post to which **Raj Chouhan** was acclaimed. Speaker Chouhan, BC NDP Member for Burnaby-Edmonds, was first elected in 2005 and is the first

person of South Asian heritage to serve as Speaker in any Canadian parliament. **Spencer Chandra Herbert**, BC NDP Member for Vancouver-West End and former Deputy Chair of the Committee of the Whole, was appointed Deputy Speaker. **Norm Letnick**, BC Liberal Party Member for Kelowna-Lake Country was appointed Assistant Deputy Speaker, and **Ronna-Rae Leonard**, BC NDP Member for Courtney-Comox, was appointed as the Deputy Chair of the Committee of the Whole.

The Speech from the Throne opening the first session of the 42<sup>nd</sup> Parliament delivered by the Lieutenant Governor, focused on COVID-19 pandemic support programs and policies and the economic recovery plan. The government also committed to funding for transportation infrastructure as well as school boards, health authorities and child care providers to stimulate economic recovery.

Following the Speech from the Throne, the Legislative Assembly adopted a Sessional Order establishing procedural measures to facilitate hybrid proceedings of the Legislative Assembly which built upon the sessional procedures previously adopted to facilitate the recent hybrid sittings in the summer of 2020. Members who were not present in the Legislative Chamber on Monday morning and at the start of the afternoon proceedings were able to observe via Zoom and were unable to participate until after the Sessional Order was adopted. The measures for the hybrid proceedings once again received all-party support, as did measures for the hybrid summer sitting period of the previous Parliament.

## Legislation

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During the short winter sitting period, two bills were adopted. Bill 3, *Finance Statutes Amendment Act, 2020* adjusts the deadline for presenting the annual budget and estimates to April 30 if an election is conducted in the preceding fiscal year and provides interim funding if a Supply Act is not passed before the end of the fiscal year. The bill also sets out the rules for home owner grant applications for the 2020 and 2021 tax years.

In addition to the *Finance Statutes Amendment Act, 2020*, which received Royal Assent on December 17, 2020, the government introduced Supplementary Estimates for the Legislative Assembly's consideration. The enabling Supply Act allocates up to \$2 billion in expenditures. The supplementary funding was requested to cover the BC Recovery Benefit, a one-time

direct deposit payment for eligible families, single parents and individuals. The legislated allocation also covers a reduced, three-month extension to the provincial supplement for people receiving income and disability assistance and the employment incentive tax credit which encourages employers to create new jobs or increase payroll for existing low- or medium-income employees.

Following approval of the Supplementary Estimates, the Legislature also adopted the legislation required to authorize the necessary spending with the *Supply Act 2020-21 (Supplementary Estimates No. 3)* passing through all three stages of consideration during the final sitting day on December 17.

## Parliamentary Committees

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Pursuant to Standing Order provisions, the Legislative Assembly appointed its ten select standing committees on December 8, 2020, and the Special Committee of Selection tasked with determining the membership of the select standing committees.

During the brief winter sitting period, the Legislative Assembly activated three select standing committees and three special committees.

The Select Standing Committee on Finance and Government Services will undertake its usual work including province-wide public consultations pursuant to the *Budget Transparency and Accountability Act* (S.B.C. 2000, c. 23), to review and recommend statutory offices' budgets, and to appoint an auditor to audit the Auditor General as per section 23(2) of the *Auditor General Act* (S.B.C. 2003, c. 2).

The Select Standing Committee on Public Accounts was authorized to review and report to the Legislative Assembly on the audit reports of the Auditor General of British Columbia, providing a public forum for the scrutiny of the economy, effectiveness and efficiency of government organizations.

The Select Standing Committee on Children and Youth was appointed to foster greater awareness and understanding among legislators and the public of the BC child welfare system, including the specific needs of Indigenous children, youth, families and communities.

A Special Committee was appointed, in accordance with section 59 of the *Personal Information Protection Act* (S.B.C. 2003, c. 63), to review that Act which

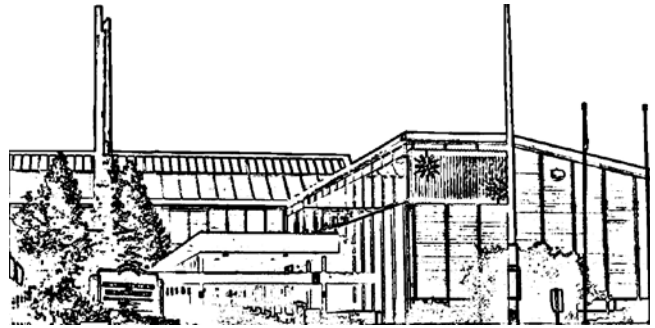
governs how private sector organizations can collect, use, and disclose personal information. A similar committee had been struck in the 41<sup>st</sup> Parliament but was unable to complete its work prior to dissolution. The terms of reference allow for any information or evidence previously under consideration by the Special Committee appointed on February 8, 2020, to be reviewed by the new Special Committee.

The Legislative Assembly also appointed the Special Committee on Reforming the *Police Act* on December 9, 2020. Similar to the Special Committee to Review the *Personal Information Protection Act*, a Special Committee had begun work on the same mandate before the dissolution of the previous Parliament, and the Special Committee was authorized to consider information or evidence previously under consideration by that committee, per the terms of reference. The Special Committee is authorized to examine and make recommendations to the Legislative Assembly on: reforms related to the modernization and sustainability of policing under the *Police Act* (R.S.B.C. 1996, c. 367); the role of police with respect to complex social issues including mental health and wellness, addictions and harm reduction; the scope of systemic racism within BC's police agencies; and whether there are measures necessary to ensure a modernized *Police Act* is consistent with the United Nations Declaration on the Rights of Indigenous Peoples (2007). The Special Committee is required to report to the Legislative Assembly by October 8, 2021.

On December 14, 2020, a Special Committee to Review the *Freedom of Information and Privacy Protection Act* (R.S.B.C. 1996, c. 165) was appointed in accordance with section 80 of that *Act* which requires a review of the *Act* by a parliamentary committee every six years. The Special Committee must submit a report with any recommendations within one year.

The Legislative Assembly Management Committee, chaired by Speaker Chouhan, met for the first time in the new Parliament on December 21, 2020, to establish its subcommittee and working group structure and consider the funding of unanticipated expenses during the provincial general election period, which, as noted above, was held one year earlier than previously scheduled. The Legislative Assembly Management Committee is expected to meet frequently in the year ahead to continue its work relating to ongoing administrative reforms.

**Natalie Beaton**  
Committee Researcher



## Yukon

### 2020 Fall Sitting

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The Third Session of the 34<sup>th</sup> Legislative Assembly reconvened on October 1 and concluded on December 22. The 45-day Sitting was the longest, essentially uninterrupted (no recess weeks) Sitting since 1993. As well, by order of the House, the Assembly sat on Friday, December 4 – the first non-ceremonial Friday sitting in 40 years – rather than sitting on Thursday, November 12.

As noted in the preceding legislative report, on the first day of the 2020 Fall Sitting, the House adopted three sessional orders related to COVID-19 that had effect for the duration of the Sitting (Motions No. 213, 214, and 215).

The first sessional order provided for any Member unable to attend sittings of the House in-person “due to COVID-19 symptoms, illness or protocols” to participate by teleconference. Unlike video conference, the ability to teleconference into Chamber proceedings was already in place, though it had never been used during a sitting of the Legislative Assembly. The second sessional order established a procedure for registering and recording pairs, with the pairing arrangements applying to all divisions held in the House on a given day. The third sessional order empowered the Government House Leader, acting together with at least one of the other House Leaders, to “request that the Legislative Assembly meet virtually by video conference, with all the Members of the Legislative Assembly being able to participate remotely,” if the Assembly stood adjourned for an indefinite period of time. Of these three sessional orders, only the one concerning pairing arrangements was used during the 2020 Fall Sitting (on three sitting days).

## Bills

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By the conclusion of the Sitting, all government bills (including four bills that had only passed first reading during the abbreviated Spring Sitting) had been assented to by Yukon's Commissioner, **Angélique Bernard**:

- Bill No. 9, *Sexual Orientation and Gender Identity Protection Act* – **Jeanie McLean**
- Bill No. 10, *Act to Amend the Employment Standards Act (2020)* – **John Streicker**
- Bill No. 11, *Act to Amend the Land Titles Act, 2015* – **Tracy-Anne McPhee**
- Bill No. 12, *Act to Amend the Wills Act (2020)* – Ms. McPhee
- Bill No. 13, *Act to Amend the Elections Act (2020)* – **Sandy Silver**
- Bill No. 14, *Act to Amend the Environment Act (2020)* – **Pauline Frost**
- Bill No. 15, *Corporate Statutes Amendment Act (2020)* – Mr. Streicker
- Bill No. 16, *Act of 2020 to Amend the Condominium Act, 2015* – Ms. McPhee
- Bill No. 17, *Enduring Powers of Attorney and Related Amendments Act (2020)* – Ms. McPhee
- Bill No. 204, *Fourth Appropriation Act 2019-20* – Mr. Silver
- Bill No. 205, *Second Appropriation Act 2020-21* – Mr. Silver

The *Act to Amend the Elections Act (2020)* provides that general elections will be held on the first Monday in November every four years beginning in 2025, though the Commissioner's power to order the Chief Electoral Officer to issue a writ of election at the Commissioner's direction is preserved.

Two private members' bills received first reading during the 2020 Fall Sitting. On November 30, **Brad Cathers** (Lake Laberge) introduced Bill No. 302, *Act to Amend the Civil Emergency Measures Act*, and on December 21, Bill No. 203, *Act to Amend the Taxpayer Protection Act (2020)*.

## Motion supporting extension of state of emergency

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On December 4, Mr. Streicker, Minister of Community Services, moved Motion No. 359:

"THAT it is the opinion of this House that the current state of emergency, established under the *Civil Emergency Measures Act* and expiring on December 8, 2020, should be extended." An

amendment having been moved by the Official Opposition and negated, the main motion carried, 15 yea, nil nay.

## Special Committee on Civil Emergency Legislation

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In the context of COVID-19, the *Civil Emergency Measure Act* ("CEMA") – which has not changed significantly since the 1980s – has assumed greater prominence, and its provisions renewed attention. On October 1, Mr. Streicker gave notice of Motion No. 212, which sought to establish a Special Committee on Civil Emergency Legislation. The motion empowered the special committee to hold public hearings to receive Yukoners' views, and tasked the committee with identifying options to modernize CEMA and recommending potential amendments to the act.

On October 6, a point of order was raised by Mr. Cathers regarding the orderliness of calling Motion No. 212 for debate, on the grounds that the motion concerned matters that were sub judice: "...litigation that is directed against the Minister of Community Services by name and this government would, if successful in the Yukon Supreme Court, overturn parts of the *Civil Emergency Measures Act* itself as being unconstitutional..." In ruling that there was no point of order and that debate on the motion could proceed, Speaker **Nils Clarke** cited the third edition of *House of Commons Procedure and Practice*: "The [sub judice] convention does not apply to legislation or to the legislative process as the right of Parliament to legislate may not be limited..."

Debate on the motion, which named Mr. Streicker as the committee's convenor, took place on October 6 and December 8. Over the course of the debate, the Official Opposition and the Third Party moved amendments, which were negated, seeking to alter the proposed membership of the committee by replacing the minister (who has responsibility for CEMA) with a private member from the government caucus. During the debate, the government cited examples from a prior Legislative Assembly of select committees that were chaired by the Minister responsible for the respective legislation, and noted that at the time the motions seeking to establish those committees were debated, the respective Minister's membership on the proposed committee had not elicited negative comment.

The main motion carried on December 8, with the division on Motion No. 212 running along party lines (the government in favour, the opposition parties opposed).

As the convenor of the newly-struck special committee, Mr. Streicker called the organizational meeting for January 8. At that meeting, the committee's representative from the Third Party, **Liz Hanson** (Whitehorse Centre), was elected Chair. As provided for in the motion establishing the committee, the Chair will have a deliberative vote on all matters before the committee. The other member of the all-party committee is Mr. Cathers, who was elected Vice-Chair.

Per the order of the House establishing the committee, the special committee must report on its findings and recommendations by August 31, 2021.

### **Appearance of witnesses**

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The Fall Sitting saw witnesses from an unusually high number of organizations called before Committee of the Whole (COW) to answer questions regarding matters in their bailiwick.

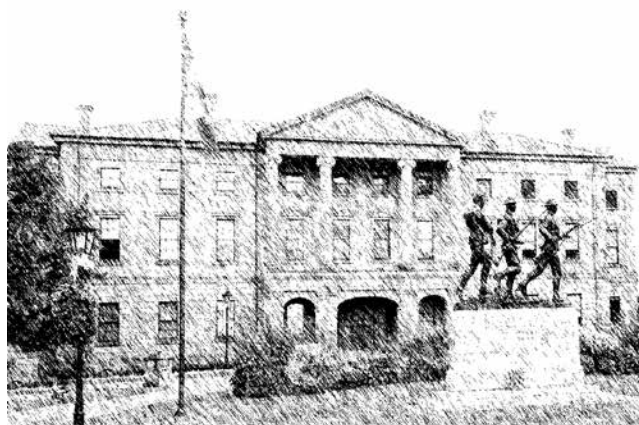
Due to physical distancing requirements in place in the Chamber to mitigate the spread of COVID-19, the number of witnesses that could appear before the committee at any one time was limited to two. Given pandemic-related travel considerations and self-isolation requirements, one set of witnesses located outside Yukon appeared before COW by teleconference.

On October 19, the House carried Motion No. 257 as amended, providing for the chair and a member of the panel of experts that the government had tasked with reviewing the territory's healthcare system, to answer questions about the panel's report, *Putting People First – The final report of the comprehensive review of Yukon's health and social programs and services*. These were the witnesses who later that day, in a first for the Legislative Assembly, appeared before COW by teleconference.

Over the course of the remainder of the Fall Sitting, other witnesses appeared in Committee of the Whole through the adoption of motions in the committee (COW Motions No. 4-8). The Committee questioned witnesses from the Yukon Workers' Compensation Health and Safety Board, the Yukon Hospital Corporation, Yukon University, and the Yukon Development Corporation and the Yukon Energy Corporation. Finally, on December 17, **Brendan Hanley**, Yukon's Chief Medical Officer of Health, appeared as a witness before the committee to answer questions from Members regarding the pandemic.

**Linda Kolody**

Deputy Clerk, Yukon Legislative Assembly



## **Prince Edward Island**

### **1st Session, Sixty-sixth General Assembly**

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The First Session of the Sixty-sixth General Assembly resumed on November 12, 2020, and adjourned to the call of the Speaker on December 4, for a fall sitting totalling 14 days. The First Session began in June 2019, and now totals 71 sitting days.

### **New Member of the Legislative Assembly**

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Progressive Conservative Party candidate **Zack Bell** was elected to represent District 10, Charlottetown-Winsloe, in a by-election on November 2, 2020. The by-election was held as a result of the resignation of former member **Robert Mitchell** in September 2020. Mr. Bell was sworn in and took his seat in the House on November 18, 2020. Prior to politics, Mr. Bell worked in journalism and sales, and he is a minor hockey volunteer and Sunday School teacher. The House now consists of 14 Progressive Conservative Party members, eight Green Party members, and five Liberal Party members.

### **Capital Budget**

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A \$196 million Capital Budget was tabled in the Assembly on November 20, 2020. The department with the highest capital spending planned for 2021-2022 is Transportation, Infrastructure and Energy, at just over \$74 million. The majority of this spending is devoted to improvements to highways and bridges. Health PEI and the Department of Education and Lifelong Learning, at over \$28 million each, have the next highest capital budgets for the year. The 2021-2022 capital budget forms the highest single year of

spending in the 2021-2026 five-year capital plan, which totals \$748 million.

### **Bills Reviewed**

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Thirty-six bills were passed during the fall sitting. Of these, 29 originated from Government, mostly to amend existing legislation. However, there were notable substantive bills. Bill 46, the *Forest Fire Protection Act*, overhauls the provincial burning permit system, increases fines for individuals and corporations at fault for causing forest fires, and aligns PEI's legislation in this area with the other Atlantic Provinces. Bill 73, *Health Dental Services Cost Assistance Act*, provides a new legislative framework to facilitate new health and dental services programs in which Government is the payer of last resort, which is intended to expand access to persons with low incomes. Bill 75, *Opioid Damages and Health Care Costs Recovery Act*, enables Government to recover the cost of health care and social services related to the opioid crisis by establishing a statutory tort upon which Government may sue opioid-related companies. Bill 57, *Children's Law Act*, modernizes family law in various ways as it relates to private law matters between parents, with a focus on the best interests of the child as the paramount consideration for the courts.

Private members' bill 125 establishes a new *Legislative Assembly Act*. Among other changes, the new *Act* builds upon the former *Act* by defining the Legislative Assembly precinct, establishing legislative security officers as peace officers and empowering them in various ways, and removing stipulations on severance pay for members so that they may instead be determined by the Indemnities and Allowances Commission. Bill 127, *Net-Zero Carbon Act*, defines sustainable prosperity; sets it as the long-term objective of the province; and requires Government to create awareness of it, create conditions necessary for it to occur, and take action aligned with the principles that support it. The bill puts in legislation the goal of provincial carbon neutrality by 2040, which Government had previously announced as a target. It requires the Minister responsible for the *Act* to report annually on climate change risks and progress toward targets, and establishes a committee to advise the Minister on various matters respecting climate change. Other private members' bills passed in the fall sitting added protections to animals and livestock, and established March 21<sup>st</sup> as Down Syndrome Awareness Day and the last Friday in January as Winter Wellness Day in the public school system.

### **Committee Activities and Reports**

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Despite the COVID-19 pandemic, 2020 was a very busy year for the five standing and three special committees of the Legislative Assembly. One hundred and twenty-two meetings were held, which is believed to be a record. The fall sitting included several significant reports by standing and special committees.

The Special Committee on Government Records Retention was established in the Spring 2020 sitting to examine issues related to the deletion of Government records raised in an order of the Information and Privacy Commissioner, and issue a report with recommendations on electronic records and security within six months. The committee met 14 times over the summer and fall, and heard from experts in records management and information technology, current and former Government employees, and current and former Information and Privacy Commissioners and Auditors General. In its final report the committee put forward eight recommendations, addressing matters such as improving uptake of basic records management training for Government employees; adding a legislated "duty to document" for Government decisions; developing policies on active dissemination/routine disclosure and vital records; and developing a new three-year records information management strategy.

The Special Committee on Poverty in PEI finished the work it had been mandated to do by the House in the Spring 2019 sitting, which involved establishing clear definitions and measures of poverty, defining a living wage for PEI, and making fully costed recommendations regarding the creation of a basic income guarantee pilot program. The committee met with individuals, community groups, Government officials, and subject-matter experts, and contracted an expert in basic income to assist with the design and costing of a basic income guarantee pilot project and a full program. In its interim report of July 2020, the committee recommended that Government adopt the "market-based measure" as its official measure of poverty when making changes to legislation, regulations and policy. In its final report, delivered during the Fall sitting, the committee recommended the Charlottetown Living Wage 2020, as established by the Canadian Centre for Policy Alternatives, be used and suggested Government should research ways of applying the living wage in other areas of the province. For a basic income guarantee, the committee put forward recommendations for a full program that

would be dependent on support of the Government of Canada, and for a pilot program in case federal support is not provided. In both cases, the committee recommended that the basic income guarantee be set at as a fixed percentage of the most current market-based measure threshold, and be available to all Islanders over 18. The committee made other recommendations on matters such as negotiations with the federal government, the eventual elimination of the social assistance program – but not other programs that support persons with low incomes – in favour of a full basic income guarantee program, and selection mechanisms for participants in a pilot program.

The Standing Committee on Natural Resources and Environmental Sustainability issued a report covering its activities for the past year. Many of its meetings focused on PEI's as-yet unproclaimed *Water Act*, its regulations, and the moratorium on high capacity wells in agriculture. The committee recommended that the Act be proclaimed immediately, and the moratorium be extended to all types of high capacity wells except those meant to serve residential areas, until research is available upon which to make evidence-based decisions.

In response to the COVID-19 pandemic, the House passed a motion during the Spring 2020 sitting calling on the Standing Committee on Rules, Regulations, Private Bills and Privileges to make recommendations on rule changes necessary to facilitate virtual proceedings. The committee issued its report during the fall, recommending first that all efforts to hold in-person proceedings be exhausted before resorting to virtual hybrid proceedings (a mixture of members present in the Chamber and members participating remotely via video conference). The committee put forward a new chapter to be added to the Rule book to adapt various rules and procedures in case virtual proceedings are invoked by the Speaker. The new chapter addresses matters such as participating remotely and counting toward quorum, tabling documents electronically, changes to Committee of the Whole, changes to recorded divisions, and other adjustments. Rule changes to allow for virtual hybrid proceedings for committees were also developed. The rule changes are to come into effect on January 1, 2021, and are to be reviewed annually by the committee. The committee also tabled an additional report on rule changes to the Order of Business following the Ordinary Daily Routine, which were necessitated by a previous change to the hours of sitting that will take effect in 2021.

The standing committees on Health and Social Development, Education and Economic Growth, and Public Accounts all provided reports updating the House on their activities. The Health and Social Development committee also issued a report recommending appointments to the PEI Human Rights Commission, in line with its responsibilities under the PEI *Human Rights Act*. The Special Committee on Climate Change issued an interim report as it continues its work toward making recommendations on how PEI should reduce its greenhouse gas emissions in order to reach its 2030 target.

All the committee reports referenced above were adopted by the House.

**Ryan Reddin**

Clerk Assistant – Research and Committees



## Manitoba

### **3<sup>rd</sup> Session of the 42<sup>nd</sup> Legislature – Resumption of Virtual Sitings**

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The 3<sup>rd</sup> Session of the 42<sup>nd</sup> Legislature resumed on November 17, 2020, and sat until December 3, 2020, a period in which the Assembly had regular daily sittings incorporating hybrid virtual technology for MLA participation. Prior to resumption, as mentioned in the last submission, the House began a new session on October 7, 2020 with the Speech from the Throne. The House also sat until the wee hours of the morning on November 6, 2020, to complete certain financial business in accordance with rule requirements of the Sessional Calendar. The House passed all Budget related documents on that day including *The Loan Act, 2020*, *The Appropriations Act, 2020* and *The Budget Implementation & Tax Statutes Amendment Act, 2020* (BITSA).

The Opposition side of the House took issue with the omnibus nature of the latter Bill, opposing a number of its provisions, and as a result the House had numerous recorded votes and did not adjourn until 3:49 a.m. One major provision of BITSA that the Opposition objected to was the power of the cabinet to impose a 2.9-per-cent Manitoba Hydro increase, without the historic oversight and public hearings normally conducted by the Public Utilities Board. Another contentious item was the prohibition barring foster children, who were disproportionately of First Nations origin, from seeking redress for more than \$338 million redirected from the federal Children's Special Allowances program for foster children into provincial general revenues since 2005.

In the first week of November, the Assembly adopted a new seating plan, further reducing the number of Members in the House to 25 per cent to reflect the entire province moving to Code Red status. The fourth row of seats, previously set up to accommodate better physical distancing of Members when the Chamber seating was previously reduced to 50 per cent capacity, was removed, and of the 57 MLAs, those present in the Chamber were reduced to 10 Government Members, five Official Opposition Members and one Independent Liberal. Fortunately, as mentioned in the last submission, the increased number of Members that now had to participate virtually did not prove to be an encumbrance for Assembly staff. The Assembly team was fully prepared as it had already established procedures to allow for smooth operations such as sending PDFs to MLAs of Bill Motions, Petitions and other House documents enabling them to move and respond to such items both within the Chamber and virtually.

This latter part of the Fall Session did mark however even more innovations as the House also considered Estimates under Orders of the Day with all three sections of Supply sitting simultaneously in separate rooms, allowing all Members to participate virtually in whichever room they chose, something that had never before been done in a Canadian legislature. In addition, the method for recorded votes in a Committee of the Whole was adapted so that the Clerk would no longer count Members by number but instead follow the same procedure created for House votes. Members in the Chamber are still counted by row initially, and then Virtual Members are called alphabetically after which they indicate either "I vote Aye" or "I vote Nay", with the Clerk orally confirming their vote.

On December 3, 2020, the last scheduled House sitting day of the calendar year, all parties agreed to extend the Sessional Order passed on October 7, 2020, detailed in the previous submission, from December 3, 2020 to June 1, 2021. The Sessional Order was also amended prior to that date on November 19, 2020, replacing section 35 with the following provision:

### **Presentations to Standing Committees**

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**35 (a)** All public presentations to Bills at Standing Committees will take place remotely, with presenters appearing either virtually or by telephone.

**(b)** When appearing before a Standing Committee, representatives of a Crown Corporation or an Office of the Assembly may participate in the meeting either in person or virtually.

December 3, 2020, concluded with Royal Assent being granted to five Private Members' Bills as well as four Government Bills. The Private Members' Bills were entitled:

- *Bill No. 208 – The Wildlife Amendment Act (Protecting Property from Water and Wildlife Damage)* allows a municipality, local government district or incorporated community to authorize a person to destroy a beaver lodge or beaver dam, or to remove an obstruction to water flow caused by an accumulation of debris, if it adversely affects local water flow or land use.
- *Bill No. 211 – The Employment Standards Code Amendment Act (Unpaid Leave for Reservists)* permits a member of the Reserves to take an unpaid leave of absence from their employment for active duty or training.
- *Bill No. 218 – The Somali Heritage Week Act* proclaims June 25 to July 1 in each year as Somali Heritage Week.
- *Bill No. 300 – The United Church of Canada Amendment Act* amends *The United Church of Canada Act* to reflect changes to the church's governance structure.
- *Bill No. 301 – The Winnipeg Humane Society Foundation Incorporation Amendment Act* amends *The Winnipeg Humane Society Foundation Incorporation Act* to reflect a change in composition of the Foundation Board's structure and removes the requirement to use trust companies to invest.



The Government Bills passed were:

- *Bill No. 4 – The Retail Business Hours of Operation Act (Various Acts Amended or Repealed)* which gives local governments authority over retail business hours and days of operation to allow for Sunday and holiday shopping while still allowing employees the right to refuse to work on Sundays.
- *Bill No. 7 – The Planning Amendment Act* amends *The Planning Act* to provide that the council of the City of Brandon is the approving authority for the subdivision of land in Brandon.
- *Bill No. 9 – The Opioid Damages and Health Care Costs Recovery Act* provides a direct and distinct cause of action against manufacturers and wholesalers of opioid products to recover the cost of health care benefits caused or contributed to by an opioid-related wrong.
- *Bill No. 42 – The Remote Witnessing and Commissioning Act (Various Acts Amended)* enables the use of videoconferencing or similar technology when commissioning an oath or affirmation or when witnessing a will, power of attorney, land titles document or health care directive.

### **The ever changing future**

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The last day of the Fall Session also included the Speaker marking the historic accomplishments of all the Assembly staff who made these past sittings possible by recognizing them individually by name and identifying their contributions to the entire process. Even though the Pandemic had a major impact on the dates and times the Legislature could meet, the hard work and superb skills of many Assembly staff amazingly resulted in the House experiencing 57 sitting days in the calendar year 2020 in spite of the COVID 19 pandemic. An excerpt from the Speaker's statement is included below:

*I would like to take a few moments now to thank and celebrate the incredible team who worked tirelessly over the Summer and Fall, and every day this session, to allow the Legislative Assembly of Manitoba to continue meeting during the Pandemic by enabling the option to meet in this hybrid virtual setting.*

*Adapting to this hybrid virtual model, with all of its inherent quirks and modifications to existing practices, has been a huge cultural shift for a 150-year-old institution, especially one that is not known for accepting rapid change easily. There were some technical glitches here and there, but no more than the average Zoom meeting. Thank you all for your perseverance and for the appreciation you have shown for our efforts.*

*As I told you all on October 8th of this year when we held our first sitting in this manner, virtual sittings of the House are complicated operations. There are many moving parts to this endeavour, and our staff devoted many months of intense effort to make this process work as well as it has.*

*As a result of that hard work the Legislative Assembly of Manitoba now has the ability to continue to meet despite the many necessary restrictions and limitations on life during the COVID-19 pandemic. By providing this service to Manitoba's 57 MLAs, and therefore allowing the citizens of Manitoba to stay in touch with their Legislature, this team has served our province very well and for that we should all be truly grateful.*

*In addition to all of the technical requirements which make all of this possible, we also had to consider all of the procedural implications of such a change in our processes. This detailed examination of our Rules and procedures happened in parallel to the technical process and took almost as long to perfect. The culmination of these efforts manifested in the Sessional Order passed by this House on October 7th. This step was a crucial part of making these sittings work.*

*You may not know that through this achievement the Legislative Assembly of Manitoba is leading the country in the depth and breadth of what we have accomplished here. So far this year, the House of Commons, the Senate, as well as the BC and Newfoundland and Labrador Legislatures have all employed similar hybrid virtual models to conduct their House sittings, and we benefited from their experiences as we planned our infrastructure.*

*However, Manitoba is the only jurisdiction in Canada to have successfully conducted three hybrid virtual sittings, from three different rooms, simultaneously. This incredible accomplishment occurred last month when we considered departmental estimates in the Committee of Supply.*

*Just as these hybrid virtual sittings are far more complicated than a simple Zoom call, conducting three hybrid virtual sittings at the same time is exponentially more complicated and difficult. Yet we did it, and we will do it again as required.*

*I can tell you that once this session ends our team will not be resting on their laurels. Rather, they will continue to improve on the infrastructure which makes this all possible. When the House meets again in 2021 you will see some improvements, and the team will again ensure that we continue to put our best foot forward.*

## Standing Committees

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Since the last submission, the Standing Committee on Social and Economic Development met on December 3, 2020 to consider the Annual Reports of the Manitoba Poverty Reduction and Social Inclusion Strategy for the fiscal years ending 2018 to 2020. The Standing Committee on Legislative Affairs met on December 7, 2020 to consider the Annual Report of Elections Manitoba as well as a proposal from the Chief Electoral Officer to modify the voting process entitled “Vote Anywhere in your Electoral Division on Election Day,” however did not reach a decision on the proposal. In addition, the Standing Committee on Legislative Affairs met on Monday, January 11, 2021, to consider the Annual Report of the Manitoba Advocate for Children and Youth for the fiscal year ending March 31, 2020.

## Public Accounts significant step forward.

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October 14, 2020, marked a significant step for the Standing Committee on Public Accounts (PAC) as during the meeting that considered reports on the Operations of the Office of the Auditor General, PAC also passed a motion to request “Action Plans” and “Progress Reports” from Government Departments or Crown Corporations concerning reports tabled by the Auditor General on their respective entities. These action plans and progress reports will facilitate future PAC meetings to allow for a more complete and thorough examination of the reports issued by the Auditor General. The Public Accounts Clerk has already sent out a few emails to Departments seeking a response within 90 days of their respective report being tabled or as soon as reasonably possible. The Departments are requested to complete a template with the plan to address the recommendations contained in the listed report. Below is a copy of the motion passed at the meeting:

THAT the Standing Committee on Public Accounts adopt the following protocols, which shall remain in effect until the end of the 42nd Legislature:

1. Within 48 hours of a new report by the Office of the Auditor General being tabled by the Speaker, whether during session or intersessionally, the Chairperson and Vice-Chairperson are to send a joint letter requesting an Action Plan regarding the implementation of the Auditor’s recommendations to the Department, Crown Corporation or Other Entity that is the subject of

the Report. A deadline of 90 days from the date of the letter will be allowed for a response.

2. Progress Reports, seeking information regarding the status of the implementation of the Auditor’s recommendations, may be requested from any Department, Crown Corporation or Other Entity which is the subject of a report by the Office of the Auditor General, by either of the following means:

- a. The Chairperson and Vice-Chairperson may request a Progress Report by joint letter, or
- b. With unanimous consent, the Standing Committee on Public Accounts may ask the Chairperson and Vice-Chairperson to request a Progress Report by joint letter.

A deadline of 28 days from the date of the letter will be allowed for a response.

**Greg Recksiedler**  
Research Officer/Clerk Assistant



## Newfoundland and Labrador

The first session of the 49<sup>th</sup> General Assembly continued in the autumn of 2020. The House sat for four days in September and passed additional interim supply (the *Interim Supply Act, 2020, No. 4*). The Budget was delivered on September 30, 2020, and the House met to consider estimates and related measures until Royal Assent was granted on November 5, 2020. On December 10, 2020, and December 14, 2020, the House met again to consider a Bill relating to the unlocking of pension funds. The House then adjourned to the call of the chair.

## COVID-19 Considerations

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The initial sitting after the implementation of public health measures on March 26, 2020, was conducted with a quorum of 10 Members in the Chamber, three Table Officers and the Sergeant-At-Arms. The public galleries were closed and tours were suspended.

When the House met again in May and June, September to November and in December, various physical arrangements/accommodations were made to the Chamber. At times, Members were seated in the public gallery and the Speaker's galleries. These changes were authorized by resolution of the House. After collaboration with public health officials, and with many iterations, all 40 Members and four Table Officers can now be accommodated on the floor of the Chamber with physical distancing measures in place. These arrangements have been approved by the Chief Medical Officer of Health.

Other public health measures required by the Speaker are as follows:

- Non-medical masks are worn by Members and House officials when moving about the Chamber. Masks are not required while Members are seated or when they are speaking in debate.
- All Members are required to speak from a seated position on the advice of the Chief Medical Officer of Health. Members first stand to be recognized by the Speaker and once recognized, immediately sit down and speak while seated.
- Members are encouraged to keep debate volume at a normal conversational level and use their microphones as much as possible.
- No pages or commissioners are present in order to minimize the number of people in the Chamber. The public gallery and Speaker's galleries remain closed, and tours are suspended. The scum area has been modified to allow for safe physical distancing.

## Matters of interest:

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**Commissioner for Legislative Standards:** The Commissioner has issued a report under subsection 42(2) of the *House of Assembly Act* ("the Act") respecting the compliance of the MHA for Humber-Bay of Islands with the financial disclosure requirements of the Act. The Commissioner found that the Member refused to provide information required to prepare the Member's public disclosure statement, resulting in a violation of the Act, the Code of Conduct for Members, and

the Member's Oath of Office. The Commissioner recommended that the Member be suspended from the House of Assembly in accordance with paragraph 45(c) of the Act until he complies with the requirements of the Act. The Report has not yet been considered by the House.

**Interim Supply:** Interim Supply Bills are rarely amended in this jurisdiction, and only one Bill is normally required. In 2020, there have been four Interim Supply Bills, and two of those Bills have had numerous amendments moved and passed.

On March 11, 2020, the House passed Bill 26, the *Interim Supply Act, 2020 No. 2*, which, as introduced, would have provided sufficient funding for Government needs for six months rather than the traditional three. On motion of the Third Party, the Bill was amended and sub-amended to reduce the amount proposed and to provide for an amount sufficient for three months' supply only.

On September 17, 2020, the House passed Bill 40, the *Interim Supply Act, 2020 No. 4*, which, as introduced, would have provided sufficient funding for Government for an additional three months. On motion of the Official Opposition, the Bill was amended to reduce the amount proposed and to provide for an amount sufficient for two months' supply.

**Points of Privilege and the *sub judice* convention:** In September, a Member raised a point of privilege relating to a report by the Commissioner for Legislative Standards in 2018. The commissioner made a recommendation and the matter was decided upon by the House at that time. The Speaker took the point of privilege under consideration but before the Speaker could rule on the matter, the Member commenced legal action on the same issue. The action names the former Speaker of the House, the Commissioner for Legislative Standards, a sitting Member and a former Member. The Speaker has ruled that the matter is now *sub judice*, therefore no ruling will be made on whether the point of privilege is *prima facie* at this time. The Member subsequently raised a second point of privilege with respect to the same subject matter. The Speaker has not ruled on it for similar reasons.

## Highlights: Standing and Select Committees

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**Standing Orders Committee:** The Standing Orders Committee has been very active in 2020. In September, the House adopted the following changes recommended by the committee:

The Standing Orders have been amended to remove the requirement to stand while speaking. This would accommodate the current public health recommendation for Members to speak from a seated position, but it would also allow for a circumstance where a Member may be unable to ‘rise in their place to speak’.

The requirement to be ‘uncovered’ has also been removed from the Standing Orders to accommodate Members who may wear head coverings for religious, cultural or medical reasons.

The prohibition on “strangers” in the House of Assembly was clarified to confirm that a stranger does not include an infant who is in the care of the infant’s parent. Since this change was enacted, the first infant has been present for proceedings in the House. Baby Alexander (MHA **Sarah Stoodley**) has even been referenced in Hansard!

The Standing Orders have been amended to codify debatable and non-debatable motions. Previously, the Standing Orders of the House of Assembly specified only if motions were *not* debatable, while debatable motions were not codified.

Standing Order 46 previously provided that the Premier had additional time in certain circumstances, and that time could not be delegated. Standing Order 46 was very narrow in its expression and only gave those specific rights to the Premier. At the time, the Premier of Newfoundland and Labrador was not an elected Member. The House amended the applicable Standing Order to include a more general reference for parliamentary purposes. The reference is now to “the Leader of the Government in the House”.

The Standing Orders have been amended to provide for the possibility of hybrid virtual proceedings in both the House of Assembly and its committees.

### Select Committees

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Two select committees have been struck in 2020 which may be of interest:

The Select Committee of Rules and Procedures Governing Virtual Proceedings of the House of Assembly reported in June 2020. The Committee was tasked with determining the manner in which the House may conduct virtual proceedings during the COVID-19 pandemic such that Members can continue to fulfill their parliamentary duties as legislators and

provide for accountability should travel restrictions, health vulnerability, or physical distancing requirements prevent in-person sittings. The measures apply to meetings of other Committees of the House and the Management Commission. As Members can be safely accommodated in accordance with public health requirements, the House has continued to meet in person. However, committees have been meeting via the Webex virtual platform almost exclusively since the adoption of the select committee report.

The Select Committee on Democratic Reform has been very active since it was established by resolution in March 2020. The Committee meets virtually and is pursuing its mandate as established in the resolution. It is required to report on its progress before the end of the Winter-Spring Sitting, 2021.

### New Premier

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On February 17, 2020, then-Premier **Dwight Ball** announced his intention to step down as leader of the Liberal Party. **Andrew Furey** was chosen as leader of the Liberal party on August 3, 2020, and sworn in as Premier of Newfoundland and Labrador on August 19, 2020. On September 7, 2020, the former Premier resigned as the MHA for Humber-Gros Morne. A by-election was held for the district on October 6, 2020, and was won by Premier Furey. Premier Furey was sworn in as a MHA on October 22, 2020.

Under the *House of Assembly Act*, if there is a change in Premier before the end of the third year following the most recent general election, a general election must be called no later than 12 months after the new Premier was sworn in.

As the most recent provincial general election was held on May 16, 2019, a general election must be called on or before August 21, 2021.

### Staffing News

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After a long career with the House of Assembly of Newfoundland and Labrador, **Elizabeth Murphy**, Clerk Assistant, recently retired. Ms. Murphy was appointed Clerk Assistant and Clerk of Committees in 1980 and she has served in that capacity since that time. From the 38th General Assembly through to the current 49th General Assembly, Ms. Murphy worked with more than 250 Members, 13 Speakers and four Clerks. She has been a tireless professional, wise advisor, helpful co-worker and a good friend to many. She has also been a respected colleague, mentor and

friend to many Clerks in provincial and territorial legislatures, the House of Commons and the Senate as well as other Commonwealth jurisdictions. We are grateful for her dedication and service, and wish her the best in her well-deserved retirement.

**Kim Hawley George**

Clerk Assistant (A) and Law Clerk



## Ontario

### Fall Sitting

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On December 8, 2020, the House adjourned for the winter recess and is scheduled to resume on February 16, 2021. The busy fall sitting saw the reappointment of three parliamentary officers, Standing Order amendments, consideration of the provincial budget and Royal Assent being granted to eight government bills, five private members' bills and 15 private bills.

### Parliamentary Officers

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On November 24, 2020, Government House Leader **Paul Calandra** moved a motion requesting that a humble Address be presented to the Lieutenant Governor in Council requesting the reappointment of **David Williams** as Chief Medical Officer of Health for the Province of Ontario, as provided in Section 81 (1.1) of the *Health Protection and Promotion Act*, for a fixed term commencing February 16, 2021 until September 1, 2021. The Official Opposition moved an amendment which sought to appoint an all-party Committee of the Legislature to review the proposed reappointment. After nearly nine hours of debate, closure was moved and carried on division on November 26, 2020; and the main motion carried on division the same day. On December 7, 2020, the Deputy Speaker announced the tabling of the Order in Council dated December 3, 2020 reappointing Dr. Williams.

On November 30, 2020 the House ordered that, in accordance with subsections 2 (2) and 3 (2) of the *Ombudsman Act, R.S.O. 1990, c. O.6*, **Paul Dubé** be reappointed Ombudsman of Ontario. He was sworn in as Ontario's seventh Ombudsman on April 1, 2016, and was extended for a further term of five years, commencing on April 1, 2021.

Also on November 30, 2020, the House ordered that, in accordance with subsections 23 (2) and 23.1 (2) of the *Members' Integrity Act, 1994, S.O. 1994, c. 38*, **J. David Wake** be reappointed Integrity Commissioner of Ontario. His first appointment began on February 1, 2016 and was extended for a further term of five years commencing on February 1, 2021.

### Standing Order Amendments

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On October 20, 2020, the Government House Leader, Mr. Calandra, moved a motion to amend the Standing Orders which was adopted unanimously. The changes now in effect stipulate that where the Standing Orders refer to the delivery of copies of bills, ministerial statements, or compendiums of background information to Opposition Members or Parties, this requirement may be satisfied by delivery by electronic means. Another provisional amendment to Standing Order 36(b) authorized any minister or parliamentary assistant to reply to an adjournment debate in the place of the minister that the notice indicated. Previously only the minister who answered the original question or their parliamentary assistant could participate in the adjournment debate.

### Ontario's Budget

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Minister of Finance **Rod Phillips** presented the 2020 Budget and Budget papers on November 5, 2020. The first reading and introduction of the budget bill, Bill 229, *An Act to implement Budget measures and to enact, amend and repeal various statutes* followed immediately after.

The motion that the House approves in general the Budgetary Policy of the Government, seconded by Premier **Doug Ford**, was debated for eight hours over the course of four sessional days until the question was put. The motion carried on division on November 26, 2020.

Bill 229 was time allocated and passed second reading on November 23, 2020. Following public hearings and clause by clause consideration in the Standing Committee on Finance and Economic Affairs

the bill was reported back as amended on December 7, 2020. The bill passed third reading on December 8, 2020, and was granted Royal Assent the same day.

### Take-Note Debates

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Two take-note debates have been held since the new Standing Order 47 came into force in early October. The procedure allows Ministers, in consultation with the House Leaders of the recognized parties, to place substantive motions on the *Orders and Notices Paper* identifying specific issues to be debated. During debate, Members may only speak once and for no longer than 10 minutes each. After no more than four hours the Speaker shall interrupt the proceedings and declare the debate concluded.

The first take-note debate was held on October 21, 2020. MPP **Andrea Khanjin** moved that the House take note of the ongoing situation in Nagorno-Karabakh. The second was held on November 4, 2020, Solicitor General **Sylvia Jones** moved that the House take note of the Report on Ontario's Provincial Emergency from March 17, 2020, to July 24, 2020.

### Afghanistan Memorial

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On November 11, 2020, a monument was unveiled on the south grounds of Queen's Park to honour the Canadian soldiers who served during the mission in Afghanistan - Canada's largest military deployment since the Second World War. The memorial features military scenes etched in granite and a bronze component in a folded and ribbon-like form, which symbolizes the first Canadian involvement during 9/11, beginning with supporting those who were stranded at Canadian airports after the World Trade Center attacks, and the unfolding of events in the years since. When viewed from its north side, the Memorial's top-line recalls the silhouette of the mountains east of Panjwai, Afghanistan, which Canadian soldiers saw as the backdrop from the Forward Operating Base at Masum Ghar. When viewed from the south, the tallest element creates a frame with the edge of the bronze end wall of the Ontario Veterans' Memorial. When looked at together, these two tall framing elements evoke the forms of the World Trade Center twin towers. The Memorial also includes a stone from an Inukshuk dedicated to the fallen soldiers - it was erected by Canadian soldiers at Kandahar Airfield in Afghanistan.

### Government Bills

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Bill 202, *An Act to continue the Soldiers' Aid Commission* was introduced on September 16, 2020, by **Todd Smith**, the Minister of Children, Community and Social Services. The bill passed third reading on November 3, 2020 and was granted royal assent on November 12, 2020.

Bill 207, *An Act to amend the Children's Law Reform Act, the Courts of Justice Act, the Family Law Act and other Acts respecting various family law matters* was introduced on September 24, 2020, by Attorney General **Doug Downey**. The bill passed third reading on November 16, 2020 and was granted royal assent on November 20, 2020.

Bill 213, *An Act to reduce burdens on people and businesses by enacting, amending and repealing various Acts and revoking a regulation* was introduced on October 6, 2020, by the Associate Minister of Small Business and Red Tape Reduction, **Prabmeet Singh Sarkaria**. The bill was time allocated, passed third reading on December 7, 2020, and was granted royal assent on December 8, 2020.

Bill 215, *An Act to amend various statutes with respect to the economic recovery of Ontario and to make other amendments* was introduced on October 7, 2020 Mr. Sarkaria. The bill passed third reading on November 26, 2020 and was granted royal assent on November 30, 2020.

Bill 218, *An Act to enact the Supporting Ontario's Recovery Act, 2020 respecting certain proceedings relating to the coronavirus (COVID-19), to amend the Municipal Elections Act, 1996 and to revoke a regulation* was introduced on October 20, 2020, by Mr. Downey. The bill was time allocated, passed third reading on November 3, 2020 and was granted royal assent on November 12, 2020.

Bill 222, *An Act to amend various Acts in respect of transportation-related matters* was introduced on October 22, 2020, by the Minister of Transportation, **Caroline Mulroney**. The bill passed third reading on December 3, 2020 and was granted royal assent on December 8, 2020.

Bill 229, *An Act to implement Budget measures and to enact, amend and repeal various statutes* was introduced on November 5, 2020 by the Minister of Finance, **Rod Phillips**. The bill was time allocated, passed third reading on December 8, 2020, and was granted royal assent on December 8, 2020.

Bill 236, *An Act in respect of food and beverage delivery fees* was introduced on November 26, 2020, by Mr. Sarkaria. The bill was time allocated, passed third reading on December 1, 2020, and was granted royal assent on December 2, 2020.

### Private Members' Public Bills

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Bill 3, *An Act providing for the development of a provincial framework on palliative care* was introduced on July 18, 2018, by MPP **Sam Oosterhoff**. The bill passed third reading on December 1, 2020, and was granted royal assent on December 2, 2020.

Bill 61, *An Act to proclaim Eating Disorders Awareness Week* was introduced on November 21, 2018 by MPP **Jill Andrew**. The bill passed third reading on December 3, 2020 and was granted royal assent on December 8, 2020.

Bill 118, *An Act to amend the Occupiers' Liability Act* was introduced on May 27, 2019, by MPP **Norman Miller**. The bill passed third reading on December 3, 2020, and was granted royal assent on December 8, 2020.

Bill 201, *An Act to proclaim Magna Carta Day* was introduced on September 15, 2020, by MPP **Jane McKenna**. The bill passed third reading on November 26, 2020, and was granted royal assent on November 30, 2020.

Bill 214, *An Act to amend the Time Act and various other Acts* was introduced on October 6, 2020, by MPP **Jeremy Roberts**. The bill passed third reading on November 25, 2020, and was granted royal assent on November 30, 2020.

### Committees

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The Select Committee on Emergency Management Oversight tabled its Second Interim Report on November 19, 2020. The report contained an overview of Solicitor General **Sylvia Jones'** statements to the committee accompanied by questions raised by the committee.

The Standing Committee on Estimates considered the Ministry of Long-Term Care, the Ministry of Education, the Ministry of Natural Resources and Forestry and the Ministry of Heritage, Sport, Tourism and Cultural Industries for a total of 25 hours and 9 minutes. The completed ministries were reported to the House on November 19, 2020.

The Standing Committee on Finance and Economic Affairs met to consider Bill 229, *An Act to implement Budget measures and to enact, amend and repeal various statutes*. The Bill contained 44 Schedules and made amendments to a number of Acts. The Committee held three days of public hearings and one day of clause-by-clause consideration on the Bill.

**Isaiah Thorning**  
Committee Clerk



## Saskatchewan

### Twenty-Ninth General Election

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On October 26, 2020, Saskatchewan held its twenty-ninth general election. The Saskatchewan Party was elected for a fourth consecutive majority government, taking 48 of the 61 seats. The New Democratic Party elected 13 MLAs and will form the opposition. Seventeen new MLAs were voted into office.

The first session of the twenty-ninth legislature began on November 30, 2020, with the election of Speaker and the Speech from the Throne.

### Election of Speaker and Deputy Speaker

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The Speaker and Deputy Speaker are elected by secret ballot in Saskatchewan. Members may submit their names to be considered for the role of Speaker or Deputy Speaker. In each election, the candidate with the majority of votes assumes the respective role. Six members submitted their names for the role of Speaker:

- **Mark Docherty**, MLA for Regina Coronation Park
- **Lisa Lambert**, MLA for Saskatoon Churchill-Wildwood
- **Hugh Nerlien**, MLA for Kelvington-Wadena
- **Greg Ottenbreit**, MLA for Yorkton

- **Randy Weekes**, MLA for Biggar-Sask Valley
- **Nadine Wilson**, MLA for Saskatchewan Rivers

On the fifth ballot, the members elected **Randy Weekes** to serve as Speaker.

Ms. Wilson was the only member to submit her name for the position of Deputy Speaker. On December 1, 2020, she was declared Deputy Speaker by acclamation. **Muhammad Fiaz**, MLA for Regina Pasqua, was appointed Deputy Chair of Committees

### **Fall sitting of the First Session of the Twenty-Ninth Legislature**

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The Assembly sat for eight days and adjourned on December 10, 2020. In those eight days, the Assembly debated and voted on the amendment and main motion of the Speech from the Throne and considered supplementary estimates in Committee of Finance.

The additional funding requested by the government was largely for COVID-19 related expenses. Additional funding included money for K-12 education for masks, personal protective equipment and other COVID-19 related supplies as well as miscellaneous payments for emergency pandemic support; the establishment of a tourism sector support program; and health targeted programs including testing, contact tracing, treatment and other pandemic-related operating costs to the health system.

In addition to the supplementary estimates, 25 public bills and one private bill were introduced. Three bills received Royal Assent including an appropriation bill. Bill No. 1, *The Income Tax (Strong Recovery Home Renovation Tax Credit) Amendment Act, 2020* provides a tax initiative that allows Saskatchewan homeowners to claim a non-refundable 10.5 per cent provincial tax credit on eligible home renovation expenses undertaken on their primary residence between October 1, 2020, and December 31, 2022. This has the potential to reduce a homeowner's tax liability by up to \$2,100. Bill No. 2, *The Income Tax (Strong Recovery Small Business Tax Reduction) Amendment Act, 2020*, introduces a three-year tax reduction to the small-business tax rate. The tax initiatives proposed in Bill No. 1 and Bill No. 2 were announced during the fall 2020 election campaign.

### **Standing Committee on House Services Report**

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To ensure the safety of MLAs and the Legislative Assembly Service, the Standing Committee on House Services (HOS) met to consider and adopt a report which

identified and developed temporary modifications to the processes, practices, and standing orders in order to facilitate the start of the twenty-ninth legislature in the context of the COVID-19 pandemic.

The proposals contained in the HOS report reflected many of the modifications to rules and practices adopted during the June/July portion of the fourth session of the twenty-eighth legislature. Two significant changes were adopted in this report. Seating arrangements were revised in both the Chamber and committee room in order to accommodate more members while maintaining a high threshold of safety. HOS recommended that 50 per cent of members be permitted at one time to attend Chamber proceedings and that all committee members be permitted at one time to attend committee meetings. To accommodate more members in the Chamber, the desks were rearranged to allow physical distancing and plexiglass was installed for additional protection. To accommodate the increased spacing between desks, some government members' desks were relocated to the opposition side of the Chamber. Additionally, members were required to wear masks during proceedings, including while they were speaking.

The second significant change facilitated a new process to allow all members to safely express their vote in person during a recorded division. HOS recommended that recorded divisions be conducted in two tranches during Chamber proceedings, with each tranche alternating into the Chamber to cast their votes. This allowed for greater physical distancing between members when standing in the Chamber to express their vote. Proxy voting was retained for any member unable to cast their vote in a recorded division in the Chamber due to COVID-19; however, proxy voting was eliminated in committee proceedings, as it was no longer required with modified seating and the pre-existing capability to substitute members.

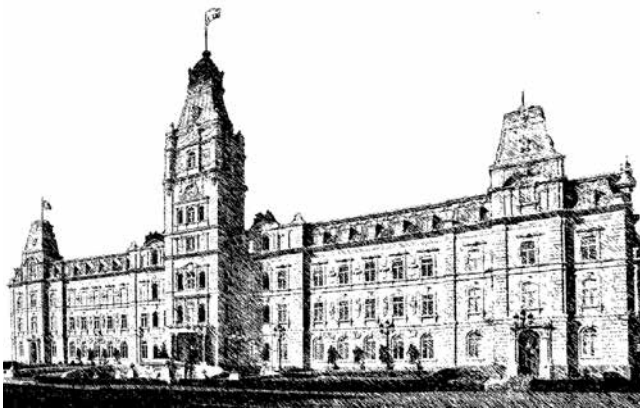
### **Member Induction and Orientation**

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New member induction and orientation was also modified to adhere to COVID-19 public health orders. The Legislative Assembly Service (LAS) shifted orientation to electronic and virtual platforms. The LAS provided self-directed learning modules with enhanced learning materials and virtual training sessions for new members and constituency assistants. The training sessions were provided over a six-week period.

**Stacey Ursulescu**  
Procedural Clerk





## Québec

### Proceedings of the National Assembly

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#### *Composition*

On October 9, 2020, Mr. **Ian Lafrenière**, Member for Vachon, was appointed Minister Responsible for Indigenous Affairs, replacing Ms. **Sylvie D'Amours**, Member for Mirabel.

On October 9, 2020, Mr. **Paul St-Pierre Plamondon** was elected Leader of the Parti québécois. The position had been vacant since October 1, 2018, when Mr. **Jean-François Lisée** resigned after being defeated in the general election. As he is not a Member, Mr. St-Pierre Plamondon does not sit in Parliament. In his absence, Mr. **Pascal Bérubé**, Member for Matane-Matapédia, continues to act as Leader of the Third Opposition Group.

On December 15, 2020, Mr. **Harold Lebel**, Member for Rimouski, was excluded from the Parti québécois caucus and now sits as an Independent Member. **Denis Tardif**, Member for Rivière-du-Loup-Témiscouata, has also been sitting as an Independent Member since December 17, 2020. Consequently, the National Assembly is now composed of 75 Coalition avenir Québec Members, 28 Liberal Party of Québec Members, 10 Québec solidaire Members, eight Parti québécois Members and four Independent Members.

#### *Terms for the continuation of Assembly proceedings*

On October 20, 2020, the parliamentarians carried a motion concerning the organization of proceedings between October 19 and December 11, 2020. Essentially, the measures designed to ensure the safety of all during

the pandemic that had been adopted at the beginning of the sessional period on September 15, 2020 were continued.

The Assembly thus sat with a reduced number of Members. Parliamentarians in the House were present according to the following distribution, for a total of 36, excluding the Chair:

- no more than 20 Members from the parliamentary group forming the Government;
- no more than 8 Members from the parliamentary group forming the Official Opposition;
- no more than 3 Members from the Second Opposition Group;
- no more than 3 Members from the Third Opposition Group;
- no more than 2 independent Members.

The above distribution was modified to allow more Members in opposition to be present in the House during Routine Proceedings, with the number of government Members being reduced to 16 to make room for two additional Members from the parliamentary group forming the Official Opposition, for a total of 10, as well as one additional Member from each of the Second and Third Opposition Groups, for a total of four Members from each group.

The parliamentarians were allowed to take the floor and to vote from seats that were not the ones they were regularly assigned.

The previously adopted procedure for recorded divisions was maintained. Under that measure, the vote of the House Leader or the Deputy House Leader of a parliamentary group or, where applicable, of another Member identified beforehand, was valid for all Members of his or her group. However, a parliamentarian was entitled to individually record a vote that differed from the vote of his or her group or to choose not to vote. In addition, if an Independent Member was absent, the Government House Leader was authorized to record the Member's vote regarding a stage in the consideration of a bill according to the instructions that the absent Member transmitted to the Government House Leader.

Two additional measures were put in place through a motion carried on October 20. Under the first measure, ministers were divided into two groups for Oral Questions and Answers, one group to participate during Tuesday and Thursday sittings, and the other during Wednesday sittings and also Friday sittings

during periods of extended hours of meeting. The second measure introduced changes to the schedule for debates upon adjournment on Thursdays, which were to be held at 1:00 p.m. rather than at 6:00 p.m., after which the usual proceedings would resume at 3:00 p.m. and continue until 6:00 p.m.

#### *Bills introduced and passed*

From October to December, 26 bills were introduced in the National Assembly, of which four were private Members' bills and six were private bills. During the same period, the Assembly passed 17 bills, of which two were private bills.

#### *Rulings from the Chair*

##### December 4, 2020 – Disclosure of the content of the report of the Select Committee on the Sexual Exploitation of Minors before its tabling

The President issued a directive on the question raised on December 3, 2020, by the House Leader of the Second Opposition Group concerning the disclosure to third parties of the content of the report of the Select Committee on the Sexual Exploitation of Minors before it was tabled in the Assembly. There was no evidence showing that the report in question had been prematurely disclosed. However, the confusion generated by this situation required a reminder of the basic principles applicable in this area.

Members must be the first to be apprised of information that is intended for them. It is not only a matter of respecting parliamentarians, but also of respecting the important duties of their office and the essential role they play in society as legislators.

Parliamentary jurisprudence has oftentimes affirmed that it is crucial for Members, and not journalists, to be informed first of the information that is intended for them. This is true for bills, reports to be tabled in the Assembly and written questions to be entered on the *Order Paper and Notices*. Journalists have no special status in this respect and therefore cannot be given documents that Members should be apprised of first.

The content of the final reports to be tabled by parliamentary committees must be disclosed first and foremost to parliamentarians, in particular, because they themselves are the main instigators.

A distinction must be made between, on the one hand, a committee's work that is conducted in public,

which can be the subject of comments at any time in the public sphere, and, on the other hand, the final report of a select committee containing specific observations, conclusions and recommendations, which reflect work conducted in working sessions. Such sessions are not public, but they are also not in-camera. The reason these deliberative meetings are private is to establish an environment in which committee members may speak openly and frankly. The Chair relies on committee members to conduct themselves in a manner that serves that purpose and asks that they measure the impact of their actions in public.

The report from the Select Committee is the product of the collective efforts of its members, and its findings wholly belong to the Committee. The Committee should be able to table its report and make its content public before media articles cover its content.

If the members of a committee agree in advance when to release the content of a report to the media, it is their collective and individual responsibility to honour that commitment. Caution should therefore be exercised, especially when a member has an important role within the committee.

If a Member speaks to the media on the very morning of a report being tabled, it could be confusing to both other Members and the public. Associating one's name with an article dealing with certain aspects of a report may create the impression, rightly or wrongly, that one may have given a journalist access to the content of a report before it was tabled in the House. For this reason, the Chair urged Members to act with caution.

##### December 10, 2020 – Directive on the disclosure of draft recommendations made to a committee carrying out an order of initiative

The President issued a directive on the question raised on December 8, 2020, by the House Leader of the Third Opposition Group concerning the disclosure of the draft recommendations made to the Committee on Health and Social Services within the framework of its order of initiative on the alarming increase in the use of psychostimulants in children and young people in connection with attention deficit hyperactivity disorder.

Certain information must be disclosed to parliamentarians, out of deference for the important duties of the office they hold, before being disclosed to others. This includes not only bills but also reports that must be tabled in the Assembly. Some experts on parliamentary law are of the opinion that revealing

the contents of a committee report before it is tabled in the House can constitute contempt of Parliament. The importance given to the confidentiality of the work conducted in the preparation of committee reports is clear in numerous decisions rendered on the subject in many jurisdictions.

This case, however, is not about the disclosure of the final report of a committee or even that of a draft report. Rather, it is about a working document produced for the Committee's steering committee. The document compiles, by theme, the recommendations proposed by each parliamentary group.

Not all documents have a special status such that their disclosure could constitute contempt of Parliament. For example, before a bill is introduced in the Assembly, its directions and preliminary versions may be the subject of consultation and discussion. Only the communication of the text of a bill before its introduction may constitute contempt of Parliament.

In keeping with this principle, the disclosure of a working document that does not include the committee's final conclusions relating to its order of initiative, but rather a number of draft recommendations for consideration, cannot be likened to the disclosure of a draft report or to the early disclosure of the final report on the order of initiative.

Likewise, we cannot, in this case, characterize the communication as being an attempt to interfere with the Committee's work. It appears that the communication was instead geared toward assessing the feasibility of the recommendations, which does not constitute an attempt to influence the Committee's work or to impose the government department's views as to which recommendations to accept.

However, discussions that a committee has about the observations, conclusions and recommendations it may adopt at the end of an order of initiative take place in deliberative sessions that are not public. The release of confidential information can break the trust built up between committee members and adversely affect the committee's mandates. It is therefore essential to maintain a context conducive to ensuring that committees have this privileged space for discussion. This principle does not apply exclusively to parliamentarians, but also to all members of their staff, who must exercise great care when called on to assist them in parliamentary proceedings of a confidential or private nature.

One of the purposes of orders of initiative is to enhance the role of Parliament and its Members by empowering them to perform their duties more effectively and with greater autonomy vis-à-vis the Executive. For this reason, the disclosure, to employees of the Executive, of the recommendations a committee may potentially adopt with regard to an order of initiative could give the impression of the Executive having influence over a committee's final decisions with regard to its work, a situation that would compromise the principle underlying orders of initiative.

While there is no indication that there was any interference in this case, parliamentarians were urged to preserve the autonomy of committee members who take part in orders of initiative.

*The Ethics Commissioner's inquiry reports to the President of the National Assembly regarding Mr. Pierre Fitzgibbon, Minister of Economy and Innovation and Member for Terrebonne*

On November 11, 2020, in accordance with section 102 of the *Code of ethics and conduct of the Members of the National Assembly*, Mr. **Pierre Fitzgibbon**, Minister of Economy and Innovation and Member for Terrebonne, exercised his right to make a statement in the Assembly following the tabling of the Ethics Commissioner's October 28, 2020 inquiry report about him.

In that report, the Ethics Commissioner recommended that Mr. Fitzgibbon be reprimanded for having violated section 15 of the *Code of ethics and conduct of the Members of the National Assembly*. Mr. Fitzgibbon had placed himself in a situation where his private interests might impair his independence of judgment in carrying out his duties of office because of his close ties with an entrepreneur and lobbyist friend, who had privileged access to Mr. Fitzgibbon.

During the following sitting, on November 12, 2020, the Assembly adopted the report recommending a sanction on the following vote: Yeas: 120; Nays: 0; Abstentions: 1.

On December 8, 2020, Mr. Fitzgibbon, informed the President of the Assembly that he waived his right, provided under section 102 of the *Code of ethics and conduct of the Members of the National Assembly*, to reply to the Ethics Commissioner's December 6, 2020 inquiry report about him.

In that report, the Ethics Commissioner recommended that Mr. Fitzgibbon be reprimanded

for having violated sections 15, 46 and 51 of the *Code of ethics and conduct of the Members of the National Assembly*. First, the Ethics Commissioner considered that Mr. Fitzgibbon had failed to provide all the information required in his disclosure of private interests statement despite the extensions granted by the Ethics Commissioner. Second, Mr. Fitzgibbon did not ensure that the enterprises in which he held interests abstain from becoming, directly or indirectly, party to a contract with the Government or a department or public body. Third, Mr. Fitzgibbon placed himself in a situation where his private interests might impair his independence of judgment in carrying out his duties of office by instructing Investissement Québec's Vice-President for Risk Management to block a loan requested by a company in which he held interest.

During the following sitting, on December 9, 2020, the Assembly negatived the report recommending a sanction on the following vote: Yeas: 48; Nays: 72; Abstentions: 0.

#### *Debate on the economic update*

On November 12, 2020, the Minister of Finance introduced an economic update. Prior to that, in accordance with the provisions of the motion adopted by the Assembly on March 17, 2020, an in-camera meeting was held for Opposition Members. On November 24, 2020, also in compliance with those provisions, the Members held a debate, but no question was put on the update.

#### *Examination of the supplementary estimates*

On December 3, 2020, on motion without notice by the Government House Leader, the National Assembly met as a Committee of the Whole to undertake examination of the supplementary estimates for the fiscal year ending March 31, 2021. At the next sitting, on December 4, 2020, after the Committee of the Whole had completed its mandate, the Assembly passed Bill 76, *Appropriation Act No. 4, 2020–2021*.

#### *Other events*

#### *Appointment of Associate Secretary Generals*

On December 8, 2020, Mr. **François Arsenault** and Mr. **Serge Bouchard**, Director General of Parliamentary Affairs and Director General for Administration, respectively, were unanimously appointed by the

National Assembly as Associate Secretary Generals. They have the rank and privileges of assistant deputy ministers, for terms of seven years.

Mr. Arsenault is a lawyer by training and has worked at the National Assembly since 2002. He served as a director for nine years before taking on the role of Director General of Parliamentary Affairs three years ago. He served as Acting Secretary General from September 17 to October 22, 2019.

Mr. Bouchard held various positions in the public service before joining the National Assembly as Director of Human Resources in 2010. In 2014, he was appointed Director General for Administration.

#### *Adoption of a by-law to offset GHG emissions linked to parliamentary travel*

On October 8, 2020, the Office of the National Assembly adopted a by-law allowing parliamentarians to offset the greenhouse gas (GHG) emissions created when travelling back and forth between their ridings and the Parliament Building, a measure that is included in the National Assembly's 2019–2023 Sustainable Development Plan.

Under the by-law, parliamentarians may opt to offset all or part of the GHG emissions created by such travel out of their riding office operating budgets. They may also offset the GHG emissions resulting from their riding office activities, such as emissions linked to office energy consumption or resulting from their employees' business trips.

#### *Online Exhibition on the October Crisis*

To commemorate the 50-year anniversary of the October Crisis, the National Assembly Library unveiled an exhibition showcasing unpublished archives that let us dive into that era and learn more about its sociopolitical context.

#### *The Cercle des femmes parlementaires mobilizes for the Days of Action on Violence against Women*

For the Days of Action on Violence against Women, which took place from November 25 to December 6, the members of the Select Committee of the Cercle des femmes parlementaires (Circle of Women Members of the National Assembly) released a video raising awareness of domestic violence against women during the pandemic.

## Committee Proceedings

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Here are some of the highlights of the parliamentary committee proceedings held between October and December 2020.

### *COVID-19*

The special order adopted by the Assembly on September 15 providing for several changes to the usual parliamentary committee procedure was extended so that the measures would apply until the end of the fall sessional period on December 11, 2020. Among other things, the order provides for the possibility of holding a committee sitting in two rooms simultaneously (linked by videoconferencing) as well as for the possibility for certain Members of the parliamentary groups forming the Government and the Official Opposition to exercise a right to vote by proxy. That measure is planned only in rooms where the number of seats for Members is limited. Furthermore, plexiglass panels were added in certain rooms to facilitate compliance with social distancing measures.

### *Bills*

Around 20 bills crossed the parliamentary committees' worktables this fall, either for special consultations or for clause-by-clause consideration.

### *Self-initiated orders*

The Committee on Culture and Education completed the self-initiated order it had adopted on March 21, 2019 on the future of the news media, and the report was tabled in the National Assembly on December 2, 2020. In all, some 50 groups and individuals concerned by Québec media testified during public hearings within the framework of special consultations, and the Committee received 87 briefs. Its report sets out 10 observations and 20 recommendations.

The Committee on Health and Social Services (CSSS) tabled its report concerning the "alarming increase in the use of psychostimulants in children and young people in connection with attention deficit hyperactivity disorder (ADHD)" on December 4, 2020. The order, which was adopted on April 2, 2019, gave the Committee the opportunity to hear 15 experts from various fields within the framework of special consultations and public hearings. The Committee report contains conclusions and 17 recommendations.

### *Select Committee on the Sexual Exploitation of Minors*

Ms. **Lucie Lecours** (Les Plaines) became Chair of the Select Committee on the Sexual Exploitation of Minors, of which she was a member, owing to the vacancy resulting from the appointment of Mr. **Ian Lafrenière** (Vachon) as a Minister last October.

The Committee, established by the National Assembly on June 14, 2019, tabled its report on December 3, 2020. Over the course of its proceedings, the Committee received 63 briefs and heard 67 testimonies during public hearings within the framework of special consultations. Committee members held deliberative meetings for a total of 56 hours to organize the Committee's work and determine the content of its report. The steering committee met 51 times. Beginning in June 2020, a motion made it possible for the Committee to hold deliberative meetings by videoconference. The Committee's report contains 58 recommendations and the translation will be made public in January. Having carried out its mandate, the Committee is now dissolved.

### *Special orders*

On October 19, the Committee on Public Finance (CFP) met to examine the Government's budgetary policy and the state of public finances in the presence of the Minister of Finance. The meeting was held under section 292 of the Standing Orders of the National Assembly and after a preparatory deliberative meeting had been held.

On December 1, the CFP held a five-hour debate on the economic update the Government had presented on November 12. The debate, to which the Minister of Finance was invited, was in response to the special order the Assembly had adopted on March 17, 2020, before adjourning due to the pandemic.

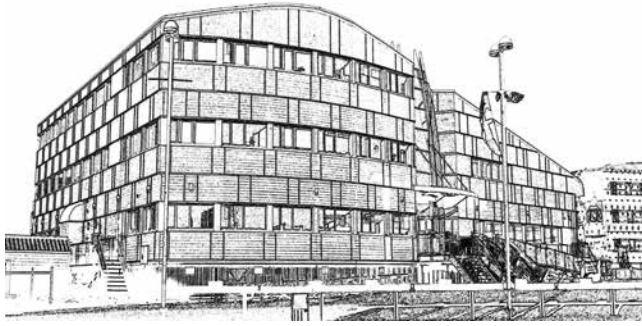
On December 9, under a motion adopted that same day by the Assembly, the Committee on Health and Social Services heard Québec's National Public Health Director, Dr. **Horacio Arruda**. For three hours, the Committee members were able to hear and question Dr. Arruda about the COVID-19 pandemic.

**David Bordeleau**

Sittings and Parliamentary Procedure Directorate

**Astrid Martin**

Parliamentary Committees Directorate



## Nunavut

### House Proceedings

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On May 1, 2020, Speaker **Paul Quassa** announced that the spring 2020 sitting of the 2<sup>nd</sup> Session of the 5<sup>th</sup> Legislative Assembly, which had been scheduled to convene on May 26, 2020, would be cancelled as a consequence of the COVID-19 pandemic.

The House subsequently sat from September 21, 2020 to September 29, 2020. Seven bills received Assent during the sitting:

- Bill 44, *Write-Off of Assets Act, 2019-2020*;
- Bill 45, *Supplementary Appropriation (Operations and Maintenance) Act, No. 4, 2019-2020*;
- Bill 46, *Supplementary Appropriation (Operations and Maintenance) Act, No. 1, 2020-2021*;
- Bill 47, *Supplementary Appropriation (Capital) Act, No. 1, 2020-2021*;
- Bill 48, *Forgiveness of Debts Act, 2020-2021*;
- Bill 49, *An Act to Amend the Labour Standards Act*; and
- Bill 50, *An Act to Amend the Liquor Act*.

During the winter 2020 sitting of the House, a motion was adopted to refer the report of the Chief Electoral Officer on the conduct of the 5<sup>th</sup> territorial general election to the Committee of the Whole for consideration. These deliberations subsequently took place during the September 29, 2020, sitting of the House. Iqaluit-Manirajak MLA **Adam Arreak Lightstone** moved a motion during the proceedings recommending that the Management and Services Board of the Legislative Assembly, in consultation with the Office of the Chief Electoral Officer, consider amendments to the *Nunavut Elections Act* concerning the disclosure of convictions under the *Criminal Code* and other statutes. The motion was adopted.

The fall 2020 sitting convened on October 21, 2020, and concluded on November 5, 2020. The proceedings of the Committee of the Whole during the fall 2020 sitting were dominated by the consideration of the government's proposed 2021-2022 capital estimates. Four bills received Assent during the fall 2020 sitting:

- Bill 25, *An Act to Amend the Education Act and the Inuit Language Protection Act*;
- Bill 35, *Medical Profession Act*;
- Bill 37, *Legislation Act*; and
- Bill 51, *Appropriation (Capital) Act, 2021-2022*.

As a consequence of the COVID-19 pandemic, a number of modifications to the Chamber have been implemented to facilitate physical distancing, including the installation of temporary Members' desks in the Visitors' Gallery, which remains closed to the public.

The winter 2021 sitting is scheduled to convene on February 22, 2021.

### Swearing-in of New Members and Appointment of New Minister

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On September 15, 2020, a televised swearing-in ceremony was held for **Calvin Pedersen** (Kugluktuk) and **Craig Simailak** (Baker Lake). The ceremony took place in the Chamber and was conducted in a physically distanced manner. Both Members had been elected by acclamation following the resignations of their predecessors earlier this year. Mr. Simailak's father, **David**, previously served as the Member for Baker Lake during the 2<sup>nd</sup> Legislative Assembly of Nunavut. Two of Mr. Pedersen's grandparents, **Lena** and **Red**, previously served as Members of the Legislative Assembly of the Northwest Territories.

On October 21, 2020, Premier **Joe Savikataaq** (Arviat South) gave notice of a motion of non-confidence in Minister **Patterk Netser** (Aivilik). Under the *Legislative Assembly and Executive Council Act*, the Premier and other members of the Executive Council "hold office during the pleasure of the Legislative Assembly." The motion was formally considered and adopted on October 23, 2020. The Nunavut Leadership Forum, which consists of all Members of the Legislative Assembly, subsequently convened on October 30, 2020. The Forum is used to conduct the selection process for the Speaker, Premier and members of the Executive Council of Nunavut. The Forum's proceedings were televised live. Three Members accepted nominations to serve on the Executive Council. After delivering

remarks, the candidates responded to questions posed by their colleagues. Pangiirtung MLA **Margaret Nakashuk** was elected after one round of balloting. A formal motion recommending her appointment was moved and adopted at the November 2, 2020, sitting of the House.

### **Appointment of New Information and Privacy Commissioner**

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On November 2, 2020, the Legislative Assembly unanimously adopted a motion to recommend the appointment of **Graham Steele** as Information and Privacy Commissioner of Nunavut. The appointment followed the retirement of his long-serving predecessor, **Elaine Keenan Bengts**. Mr. Steele has held a number of positions over the course of a 30-year career, including: Law Clerk at the Federal Court of Appeal; Chairperson of the National Administrative Law Section of the Canadian Bar Association; General Counsel of the Workers' Compensation Board of Nova Scotia; Assistant Professor of Business Law at Dalhousie University's Rowe School of Business; and Member of the Nova Scotia House of Assembly and Minister of Finance. Mr. Steele is the author of a number of articles and books, and was a 2014 Finalist for the Shaughnessy Cohen Prize for Political Writing.

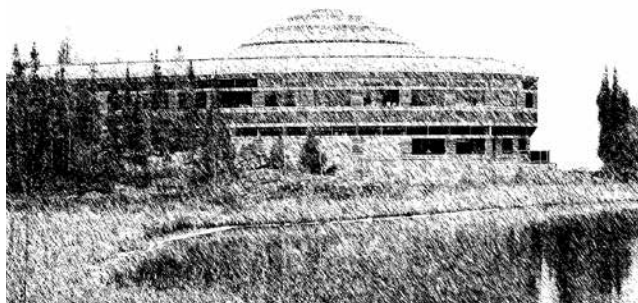
### **Order of Nunavut**

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On September 28, 2020, the Order of Nunavut Advisory Council, which is chaired by the Speaker of the Legislative Assembly, announced that the 2019 appointment to the Order would be **Peter Tapatai** of Baker Lake. Mr. Tapatai is a successful businessperson with a distinguished record of public service. Mr. Tapatai has been the recipient of numerous awards and recognitions, including the Queen Elizabeth II Diamond Jubilee medal. Mr. Tapatai is renowned for his work with the Inuit Broadcasting Corporation, including the creation of the iconic character "Super Shamou." The investiture ceremony for Mr. Tapatai will be held at a later date to be announced.

**Alex Baldwin**

Office of the Legislative Assembly of Nunavut



## **Northwest Territories**

### **Session**

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The second Session of the 19th Legislative Assembly resumed regular sittings on October 15, 2020 following a three-day emergency recall on August 24, 2020. The Assembly sat until November 5, 2020 and will be adjourned until February 3, 2021.

The primary business item for the sitting was passage of the capital budget, *Bill 22-19(2) Appropriate Act (Infrastructure Expenditures), 2021-2022*. The 2021-2022 Capital Budget was the largest ever passed by the Legislative Assembly.

The Assembly continued to operate in a modified chamber, allowing all 19 Members to safely distance themselves, respecting proper COVID-19 guidelines. Further protocols such as temperature checks, mandatory mask policies, and the electronic distribution of documents also remain in place.

On October 30, 2020, the Assembly made a number of appointments to the Statutory Officer positions; including the position of Sole Adjudicator, the Information and Privacy Commissioner, and the Executive Director of Human Rights. These appointments are on four-year terms, in accordance with the new *Legislative Assembly Officers Standardization Act*. On December 11, 2020 the Speaker also made a recommendation for the appointment of a new Official Languages Commissioner. Her appointment is expected to be confirmed by the Assembly in February 2021.

### **Legislation**

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During the October - November sitting the following bills received assent:

- 11-19(2) *Legislative Assembly Officers Standardization Act*
- 15-19(2) *Miscellaneous Statute Law Amendment Act, 2020*
- 17-19(2) *An Act to Amend the Corrections Act*
- 18-19(2) *An Act to Amend the Legal Profession Act*
- 19-19(2) *An Act to Amend the Student Financial Assistance Act*
- 21-19(2) *Supplementary Appropriation Act (Operations Expenditures), No. 2, 2020-2021*
- 22-19(2) *Appropriation Act (Infrastructure Expenditures), 2021-2022*

During this sitting the following bills received second reading, and were referred to Standing Committees for further consideration:

- 12-19(2) *An Act to Amend the Apprenticeship, Trades and Occupational Certification Act*
- 13-19(2) *An Act to Amend the Interpretation Act*
- 14-19(2) *An Act to Amend the Securities Act*
- 16-19(2) *An Act to Amend the Income Tax Act*
- 20-19(2) *An Act to Amend the Employment Standards Act*

### Standing Committees

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Standing Committees met regularly throughout the last quarter of 2020. Holding a number of public and in-camera meetings, including their first public hearing simultaneously interpreted into both French and Tlicho. Members continued to adapt to social distancing restrictions, often participating in meeting virtually.

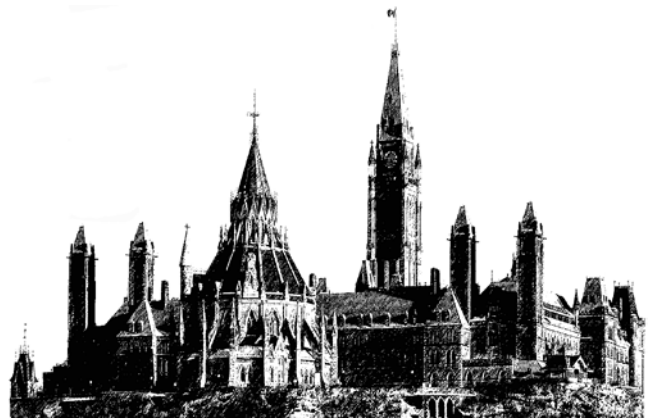
The Standing Committee on Government Operations tabled three reports during the October - November Sitting: the Report on the Review of the 2018-2019 Northwest Territories Human Rights Commission Annual Report, the Report on the Review of the 2018-2019 Annual Report of the Information and Privacy Commissioner of the Northwest Territories, and the Report on the Review of the 2017-2018 and 2018-2019 Annual Reports of the Official Languages Commissioner.

The Standing Committee on Rules and Procedures tabled its Report on Remote Sitings, in response to the *Legislative Assembly and Executive Council Act* amendments allowing the assembly the ability to conduct all or some of a session through video and teleconference. All recommendations were adopted by way of motions in the Assembly.

On November 2nd, 2020 Members passed a motion establishing the Special Committee on Reconciliation and Indigenous Affairs. This is the first special committee of the 19th Assembly and contains Regular Members, Members of Cabinet, and the Premier as a non-voting member. The Special Committee was created to further Aboriginal Rights negotiations and reconciliation as priorities of the 19th Legislative Assembly, including the resolution of these negotiations and the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

**Glen Rutland**

Deputy Clerk, House Procedure and Committees



## House of Commons

This account covers the period of October to the end of December 2020.

### Legislation

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On November 4, 2020, the Leader of the Government in the House of Commons, **Pablo Rodriguez** (Honoré-Mercier, LIB), requested and received unanimous consent for a motion to dispose of Bill C-9, *An Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)*.

As provided for in the motion, the bill was referred to and considered in Committee of the Whole on November 5. On November 6, the bill was considered at report stage, and, exceptionally as it was a Friday, a vote was held on a report stage motion, following which the bill was deemed concurred in on division at report stage and deemed read a third time and passed on division.



## Procedure / Privilege

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On October 20, 2020, the House debated a supply day opposition motion in the name of the Leader of the Opposition, **Erin O'Toole** (Durham, CPC), to create a special committee on anti-corruption. Mr. Rodriguez indicated that the House's decision on this motion would be considered a matter of confidence. In response, the House Leader of the Official Opposition, **G rard Deltell** (Louis-Saint-Laurent), proposed an amendment to change the name of the special committee (replacing "anti-corruption" with "allegations of misuse of public funds by the government") and adding a clause that "the establishment of the committee shall not, in the opinion of the House, constitute legitimate grounds for calling a general election." Neither the motion nor the amendment was adopted.

On October 28, 2020, pursuant to Standing Order 32(7), Mr. Rodriguez tabled the *Report to Parliament outlining the reasons for the prorogation of the First Session of the 43rd Parliament*. This is the first use of the Standing Order (which requires the government to table such a document within 20 sitting days of the second or subsequent session of a Parliament) since its adoption in 2017.

On November 19, 2020, pursuant to Section 28 of the Conflict of Interest Code for Members of the House of Commons, the Speaker tabled a report from the Conflict of Interest and Ethics Commissioner entitled "Maloney Report." In the report, the Commissioner concluded that **James Maloney** (Etobicoke—Lakeshore, LIB) had contravened paragraph 20(1)(i) of the Code and that no mitigation circumstances applied given the length of the delay in the member's submission of the Disclosure Report in question; therefore, the Commissioner recommended, pursuant to section 28(6) of the Code, that the House require Mr. Maloney to apologize. Shortly after the report was tabled, Mr. Maloney rose in the House to apologize, doing so on a point of order. He did not make any further intervention pursuant to section 28(9) of the code, which provides for the member who is the subject of a report to make a statement in the House within 10 sitting days of the tabling of the report. On December 11, 2020, **Michael Barrett** (Leeds—Greenville—Thousand Islands and Rideau Lakes, CPC) moved a motion for concurrence in the report of the Conflict of Interest and Ethics Commissioner. After an hour of debate, the Assistant Deputy Speaker, **Carol Hughes** (Algoma—Manitoulin—Kapuskasasing, NDP) interrupted the proceedings on the motion and indicated that debate would be rescheduled for a future sitting.

## Statements by the Speaker About Hybrid Proceedings

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The Speaker made a statement on October 19, 2020, regarding the use of videoconferencing during debates in response to several instances of members encountering technical difficulties either during or prior to their interventions related to the good functioning of their sound or video connections. He noted that if the House loses visual contact with the member prior to or during a speech, the Chair will interrupt the proceedings momentarily while the technical issue is being addressed.

At the same time, the Table will consult with the member's whip to determine if an adjustment to the rotation list is being considered. If the member is unable to start or resume the intervention quickly, debate will continue by proceeding to the next member on the rotation list, unless there is an agreement to accommodate the member having the technical trouble.

The Speaker also emphasized that the order of September 23, 2020, requires that members have their video on while participating in a recorded vote.

On December 2, 2020, the Speaker made a statement regarding the best practices with respect to videoconferencing. He reminded members that, as a result of the COVID-19 pandemic, the adoption of new technology permitted the hybrid sittings of the House; however, the sound quality of the simultaneous interpretation in both official languages was dependent upon members using House approved wired headsets, muting microphones when not in use, and performing regular connectivity and audio quality tests.

## Committees

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Since October 22, 2020, the Standing Committee on Procedure and House Affairs has been undertaking a study on the conduct of a federal election during the COVID-19 pandemic. On December 10, 2020, the Minister of Middle Class Prosperity and Associate Minister of Finance, **Mona Fortier** (Ottawa—Vanier, LIB) introduced Bill C-19, *An Act to amend the Canada Elections Act (COVID-19 response)*. The next day, the committee presented an interim report, *Protecting Public Health and Democracy During a Possible Pandemic Election*, to the House.

On October 26, 2020, the House adopted a motion instructing the Standing Committee on Health to investigate the government's response to the COVID-19 pandemic and ordering the government to produce a wide range of related documents. The government was instructed to submit the documents to the Law Clerk who will ensure personal information is removed, and the documents will then be tabled in the House by the Speaker and referred to committee.

On December 1, 2020, the Standing Committee on Health tabled a report entitled "Instructions to the Law Clerk and Parliamentary Counsel," prioritizing the vetting of documents and allowing the committee to grant one or more extensions of the deadline, on the request of the Law Clerk and Parliamentary Counsel, provided that he shall provide the committee with a weekly status report on the vetting process. The report was concurred in on December 4, 2020. On December 7, 2020, the Office of the Law Clerk received a first batch of approximately 5,000 documents (almost 27,000 pages) for review. On December 16, 2020, the Speaker tabled a portion of these documents, pursuant to the order of the House. As only a minority of the documents provided to the Office of the Law Clerk and Parliamentary Counsel were in both official languages, only those documents available bilingually were tabled.

### **Financial procedures**

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On November 30, 2020, the Deputy Prime Minister and Minister of Finance, **Chrystia Freeland** (University–Rosedale), made an economic statement, followed by statements from a member of each recognized party and a member of the Green Party.

### **Adjournment**

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On December 11, 2020, the House adjourned for the holidays, with a scheduled return date of January 25, 2020, and without adopting any new special order to allow for the continuation of hybrid or virtual proceedings of the House and its committees.

### **Other**

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On October 19, 2020, pursuant to Standing Order 52, **Gord Johns** (Courtenay—Alberni, NDP) rose to request an emergency debate on the Lobster Fishery Dispute in Nova Scotia. The Minister of Fisheries, Oceans and the Canadian Coast Guard, **Bernadette Jordan** (South Shore—St. Margarets, LIB), rose to make a request on the same subject. The Speaker

granted the request and the debate was held later in the sitting.

On October 30, 2020, during the debate on Bill C-5, *An Act to amend the Bills of Exchange Act, the Interpretation Act and the Canada Labour Code (National Day for Truth and Reconciliation)*, the Deputy Whip of the Bloc Québécois, **Marilène Gill** (Manicouagan), spoke in Innu during part of her statement.

On November 25, 2020, the Speaker informed the House that the Clerk of the House had received from the Chief Electoral Officer the certificates of the election of **Marcy Ien** (Toronto Centre, LIB) and **Ya'ara Saks** (York Centre, LIB). Ms. Ien and Ms. Saks, having taken the oath required by law, were introduced to the House by the Prime Minister and took their seats in the House.

Later that day, under the provisions of Standing Order 53.1, the House resolved itself into a Committee of the Whole to hold a take-note debate on the status of the French language in Montréal.

On November 26, the Administration published its first disclosure in compliance with Bill C-58, *An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts*. The first disclosures in compliance with the *Act* for Members, Presiding Officers and House Officers were subsequently published in December. The *Act* requires specific financial information to be published every quarter and made available to the public. This includes travel information and expenses, hospitality information and expenses, and information on contracts over \$10,000.

On December 7, 2020, the Minister for Women and Gender Equality and Rural Economic Development, **Maryam Monsef** (Peterborough—Kawartha, LIB), made a statement highlighting the 50<sup>th</sup> anniversary of the report of the Royal Commission on the Status of Women. Following Ms. Monsef's remarks, four other female members made statements on the subject: **Jag Sahota** (Calgary Skyview, CPC), **Andréanne Larouche** (Shefford, BQ), **Lindsay Mathyssen** (London—Fanshawe, NPD) and **Elizabeth May** (Saanich—Gulf Islands, GP). All Statements by Members and questions during Question Period by opposition parties were made by female members.

**Marielle Hawkes**  
Table Research Branch



## The Senate

### Legislation

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During this period, bills C-4, *An Act relating to certain measures in response to COVID-19*, C-9, *An Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)*, as well as two appropriation bills (C-16 and C-17) for the fiscal year ending March 31, 2021, were passed and received Royal Assent by written declaration.

### Chamber and Procedure

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On October 27, the Senate adopted a motion allowing hybrid sittings, with senators able to participate in sittings either from the Senate Chamber or through approved videoconference technology. Among other things, the motion addressed how votes would be conducted in this format. It also featured provisions modifying the Senate's sitting times, which took into consideration the various time zones from which senators would be participating. Senators participating remotely are able to provide documents electronically ahead of time in both languages, in which case they are

considered to have fulfilled the normal requirements relating to providing such documents. Documents deposited with the Clerk can also be provided in electronic format. The Senate held its first hybrid sitting, using Zoom and multi-factor authentication, on November 3.

On November 17, the Senate adopted another motion to give standing Senate committees the authorization to hold hybrid meetings, with senators able to participate either from the committee meeting room in the parliamentary precinct or by videoconference. The motion gives priority to committees conducting certain types of business and allows for meetings entirely by videoconference under certain conditions.

In anticipation of the expiry of these motions on December 18, the Senate, on December 17, adopted a motion to have their provisions apply from February 1 to June 23, 2021, subject to certain conditions.

On October 28, the Senate adopted a motion extending the normal duration for Senators' Statements from 15 to 18 minutes for the remainder of the current session.

## Committees of the Whole

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A Committee of the Whole on the subject matter of Bill C-4, *An Act relating to certain measures in response to COVID-19*, was held on October 1st. **Chrystia Freeland** (M.P., Deputy Prime Minister and Minister of Finance) and **Carla Qualtrough** (M.P., Minister of Employment, Workforce Development and Disability Inclusion) appeared as witnesses.

On November 17, the Senate resolved itself into a Committee of the Whole to consider the subject matter of Bill C-9, *An Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)*. Ms. Freeland (M.P., Deputy Prime Minister and Minister of Finance) appeared, once again, as a witness.

## Speaker's Rulings and Statements

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On October 29, the Speaker ruled on a question of privilege raised by Senator **Pierre Dalphond** concerning a motion proposing a sessional order regarding committee business. Senator Dalphond questioned whether the adoption of the motion would be in breach of the privilege of senators not in attendance due to the circumstances of the COVID-19 pandemic. The Speaker ruled that the prima facie merits of the question of privilege had not been established. The Speaker emphasized that "... when quorum is present, the Senate can exercise its powers".

On November 5, the Speaker ruled on a point of order raised by Senator **Yonah Martin** on the use of a mask as a prop and requested that Senator **Marilou McPhedran** replace her mask, which featured a slogan. As a result, Senator McPhedran changed her mask.

On December 9, following a reasoned amendment moved by Senator **Kim Pate** at second reading of Bill C-17, *An Act for granting to Her Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2021*, the Speaker made a statement explaining that a reasoned amendment "... allows a senator to outline the reasons for opposing second or third reading of a bill. It puts on the record a statement or explanation as to why a bill should not be proceeded with. The motion can be debated, amended and adjourned... if a reasoned amendment is adopted, the bill is defeated". The Senate rejected the reasoned amendment.

## Committees

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On October 1, the Senate adopted a motion to amend the *Rules of the Senate* and create the Standing Committee on Audit and Oversight. The committee membership is composed of three senators and two external members. The committee's mandate includes overseeing the Senate's internal and external audits. The first report of the committee was adopted on December 3. It authorizes the committee to continue to function with just the three senators who are members in order to consider issues and draft a report to the Senate recommending the nomination of external members.

On November 3, the Senate adopted the second report of the Standing Committee on Ethics and Conflict of Interest for Senators, dealing with the consideration of an inquiry report of the Senate Ethics Officer concerning Senator **Victor Oh**. The report had been presented in the Senate on June 18, 2020, during the First Session of the Forty-third Parliament, and had been placed on Orders of the Day for consideration in the current session. The report included a recommendation for the censure of the senator, which was recorded in the Journals.

The Senate adopted motions to place the following committee reports from previous sessions on the Orders of the Day: the first report of the Special Senate Committee on the Charitable Sector, entitled *Catalyst for Change: A Roadmap to a Stronger Charitable Sector*, deposited with the Clerk of the Senate on June 20, 2019, during the First Session of the Forty-second Parliament, and the fourth report of the Special Committee on the Arctic, entitled *Northern Lights: A Wake-Up Call for the Future of Canada*, tabled in the Senate on June 11, 2019, during the First Session of the Forty-second Parliament. The Senate adopted both reports and requested a government response on November 3 and 5, respectively.

The Committee of Selection presented its first and second reports nominating senators to serve on committees on November 3 and 5, and both reports were adopted on November 5. On November 19, the Senate referred a motion concerning the election of the Speaker pro tempore by secret ballot to the committee for examination and report. The committee's third report, entitled *Speaker pro tempore on an interim basis* was presented on December 9, and nominated Senator **Pierrette Ringuette** on an interim basis while the committee considers the proposal of election by secret ballot.

The Standing Senate Committee on National Finance tabled its first report entitled *Subject matter of Bill C-9, An Act to amend the Income Tax Act (Canada Emergency Rent Subsidy and Canada Emergency Wage Subsidy)* on November 17. The report was adopted on November 19. The committee also tabled its second report, entitled *The expenditures set out in the Main Estimates and the Supplementary Estimates (B) for the fiscal year ending March 31, 2021*, on December 8. The report was adopted on December 9.

### **Retiring Senators**

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Senator **Norman E. Doyle** retired from the Senate on November 10. He was appointed to the Senate on January 6, 2012, by Prime Minister **Stephen Harper** and represented the province of Newfoundland and Labrador. He sat as a member of the Conservative Party of Canada. Prior to joining the Senate, he was elected as Member for Parliament for the riding of St. John's East four times between 1997 and 2008, representing the Progressive Conservative Party and later the Conservative Party of Canada. Senator Doyle served as a member of the Standing Senate Committee on Aboriginal Peoples and the Standing Senate Committee on Agriculture and Forestry.

### **Officers**

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After 32 years at the Senate, **Catherine Piccinin**, Principal Clerk of the Chamber Operations and Procedure Office, retired on December 9 and was replaced by **Till Heyde**.

**Richard Denis**, Interim Clerk of the Senate and Clerk of the Parliaments, and Chief Legislative Services Officer, retired on December 31. During his three years with the Senate, Mr. Denis led the legislative sector during a time that saw numerous milestones in the Senate's history, notably the transition from Centre Block to the Senate of Canada Building in 2018, the first public television broadcast of a Senate sitting in 2019, and the implementation of virtual and hybrid sittings of the Senate and its committees in 2020. With Mr. Denis' departure, **Gérald Lafrenière**, Acting Director of Governance and Strategic Planning, was appointed Interim Clerk of the Senate and Clerk of the Parliaments, and Chief Legislative Services Officer. Mr. Lafrenière began his distinguished career on Parliament Hill over 25 years ago as a legal analyst at the Library of Parliament. He joined the Senate in 2004 as a Committee Clerk and has worked within various directorates in the institution, assuming roles at the Committees Directorate, International and Interparliamentary Affairs, and Governance and Strategic Planning.

**Ferda Simpson**  
Procedural Clerk

# Canadian Parliaments and the Influenza 1918-19

The COVID-19 pandemic has brought some significant changes to how parliaments in Canada, and around the world, operate – particularly as they employ new technologies to increase parliamentarians’ ability to work and meet virtually. In the face of a similar pandemic about 100 years ago, these technologies didn’t exist or were in their infancy. In this article, the author explores how Canada’s provincial legislatures and federal parliament responded to the 1918-19 Influenza and finds that many simply didn’t meet during the pandemic’s peak (or bizarrely held buffets immediately afterwards).

**Elizabeth Haig**

For all the talk of “unprecedented times,” it can sometimes be easy to forget that Canada has been through pandemics before. The 1918-19 Influenza pandemic (also known as the Spanish flu outbreak - a misnomer as the illness did not originate in Spain) devastated Canada – claiming around 50,000 Canadian lives and infecting thousands more, around 1 in 4 Canadians.<sup>1</sup> The onset of this highly contagious and deadly disease forced the closure of public spaces across the country – including bars, schools, and other non-essential public spaces.<sup>2</sup> Mask mandates were enacted and stay-at-home orders were imposed on some regions, much like today.<sup>3</sup> With limited access to telephones – and Zoom decades away – what changes did provincial and territorial legislatures and the federal Parliament adopt in order to continue working through these difficult times?

Parliamentary recesses were the most common reaction to the outbreak. The federal House of Commons rose for its summer recess on May 24, 1918, and did not sit again until February 20, 1919.<sup>4</sup> Although provincial legislature records during this period are sparse, we know that Ontario, Alberta, Quebec, and British Columbia all had similarly long recesses during the peak of the pandemic.<sup>5</sup> The first case of Spanish flu

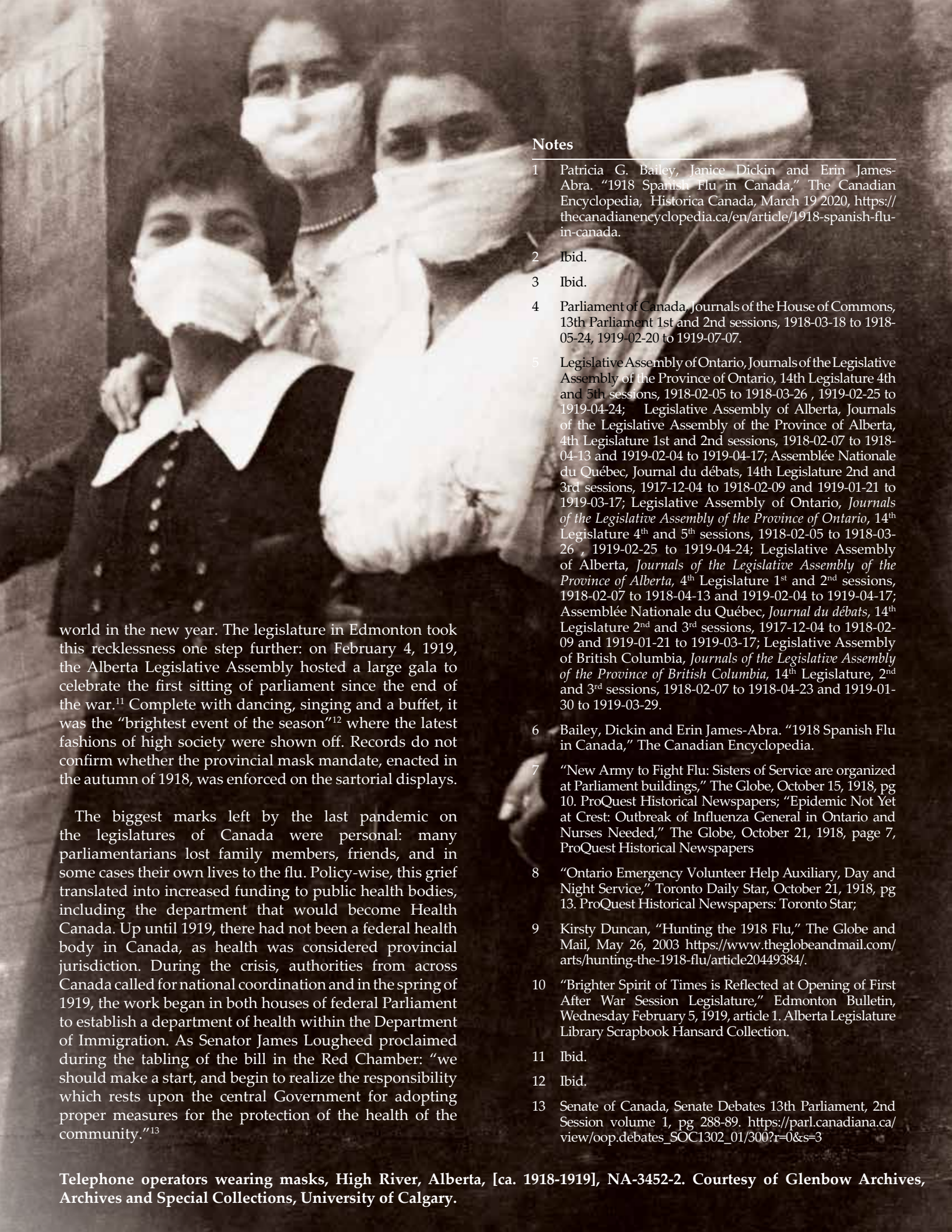
in Canada was reported in Quebec on September 8, 1918, and approximately 90 per cent of the deaths in Canada occurred between October 1918 and December 1918.<sup>6</sup>

With the politicians away, the centrally located and spacious legislatures were repurposed as medical facilities. Queen’s Park in Toronto was the home base for the city’s influenza response: a legion of doctors, nurses and volunteers known as the “Sisters of Services” first convened in October 1918 at the Ontario Legislature and dispatched medical services to the surrounding area.<sup>7</sup> For 24 hours a day, medical officials trained volunteers and tended to patients at the legislature under the direction of Dr. John McCullough, Ontario’s chief officer of health.<sup>8</sup> There are no records to determine whether Members carried on with their political duties from elsewhere during this time. However, we do know that demand for telephone installations (still a very recent invention) rose sharply that year, as shut-in citizens searched for ways to connect with family and friends.<sup>9</sup>

Upon their return to work in January or February 1919, none of the legislatures appeared to have taken any precautions to prevent the spread of the flu among parliamentarians. Instead, from Alberta to Quebec, provincial politicians packed into their respective chambers, often with spouses or other guests in tow, to listen to the Throne Speech.<sup>10</sup> There are no records in any of the provinces to suggest that distancing measures or face masks were put in place in parliaments, although the third wave of the flu was still raging across the

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*Elizabeth Haig, who is currently taking part in the Ontario Legislative Internship Programme, has a Master’s degree in European and Russian Affairs from the Munk School of Global Affairs & Public Policy, University of Toronto.*



world in the new year. The legislature in Edmonton took this recklessness one step further: on February 4, 1919, the Alberta Legislative Assembly hosted a large gala to celebrate the first sitting of parliament since the end of the war.<sup>11</sup> Complete with dancing, singing and a buffet, it was the “brightest event of the season”<sup>12</sup> where the latest fashions of high society were shown off. Records do not confirm whether the provincial mask mandate, enacted in the autumn of 1918, was enforced on the sartorial displays.

The biggest marks left by the last pandemic on the legislatures of Canada were personal: many parliamentarians lost family members, friends, and in some cases their own lives to the flu. Policy-wise, this grief translated into increased funding to public health bodies, including the department that would become Health Canada. Up until 1919, there had not been a federal health body in Canada, as health was considered provincial jurisdiction. During the crisis, authorities from across Canada called for national coordination and in the spring of 1919, the work began in both houses of federal Parliament to establish a department of health within the Department of Immigration. As Senator James Lougheed proclaimed during the tabling of the bill in the Red Chamber: “we should make a start, and begin to realize the responsibility which rests upon the central Government for adopting proper measures for the protection of the health of the community.”<sup>13</sup>

## Notes

- 1 Patricia G. Bailey, Janice Dickin and Erin James-Abra. “1918 Spanish Flu in Canada,” The Canadian Encyclopedia, Historica Canada, March 19 2020, <https://thecanadianencyclopedia.ca/en/article/1918-spanish-flu-in-canada>.
- 2 Ibid.
- 3 Ibid.
- 4 Parliament of Canada, Journals of the House of Commons, 13th Parliament 1st and 2nd sessions, 1918-03-18 to 1918-05-24, 1919-02-20 to 1919-07-07.
- 5 Legislative Assembly of Ontario, Journals of the Legislative Assembly of the Province of Ontario, 14th Legislature 4th and 5th sessions, 1918-02-05 to 1918-03-26 , 1919-02-25 to 1919-04-24; Legislative Assembly of Alberta, Journals of the Legislative Assembly of the Province of Alberta, 4th Legislature 1st and 2nd sessions, 1918-02-07 to 1918-04-13 and 1919-02-04 to 1919-04-17; Assemblée Nationale du Québec, Journal du débats, 14th Legislature 2nd and 3rd sessions, 1917-12-04 to 1918-02-09 and 1919-01-21 to 1919-03-17; Legislative Assembly of Ontario, *Journals of the Legislative Assembly of the Province of Ontario*, 14th Legislature 4th and 5th sessions, 1918-02-05 to 1918-03-26 , 1919-02-25 to 1919-04-24; Legislative Assembly of Alberta, *Journals of the Legislative Assembly of the Province of Alberta*, 4th Legislature 1st and 2nd sessions, 1918-02-07 to 1918-04-13 and 1919-02-04 to 1919-04-17; Assemblée Nationale du Québec, *Journal du débats*, 14th Legislature 2nd and 3rd sessions, 1917-12-04 to 1918-02-09 and 1919-01-21 to 1919-03-17; Legislative Assembly of British Columbia, *Journals of the Legislative Assembly of the Province of British Columbia*, 14th Legislature, 2nd and 3rd sessions, 1918-02-07 to 1918-04-23 and 1919-01-30 to 1919-03-29.
- 6 Bailey, Dickin and Erin James-Abra. “1918 Spanish Flu in Canada,” The Canadian Encyclopedia.
- 7 “New Army to Fight Flu: Sisters of Service are organized at Parliament buildings,” The Globe, October 15, 1918, pg 10. ProQuest Historical Newspapers; “Epidemic Not Yet at Crest: Outbreak of Influenza General in Ontario and Nurses Needed,” The Globe, October 21, 1918, page 7, ProQuest Historical Newspapers
- 8 “Ontario Emergency Volunteer Help Auxiliary, Day and Night Service,” Toronto Daily Star, October 21, 1918, pg 13. ProQuest Historical Newspapers: Toronto Star;
- 9 Kirsty Duncan, “Hunting the 1918 Flu,” The Globe and Mail, May 26, 2003 <https://www.theglobeandmail.com/arts/hunting-the-1918-flu/article20449384/>.
- 10 “Brighter Spirit of Times is Reflected at Opening of First After War Session Legislature,” Edmonton Bulletin, Wednesday February 5, 1919, article 1. Alberta Legislature Library Scrapbook Hansard Collection.
- 11 Ibid.
- 12 Ibid.
- 13 Senate of Canada, Senate Debates 13th Parliament, 2nd Session volume 1, pg 288-89. [https://parl.canadiana.ca/view/oop.debates\\_SOC1302\\_01/300?r=0&s=3](https://parl.canadiana.ca/view/oop.debates_SOC1302_01/300?r=0&s=3)

