

# Canadian Parliamentary

Review



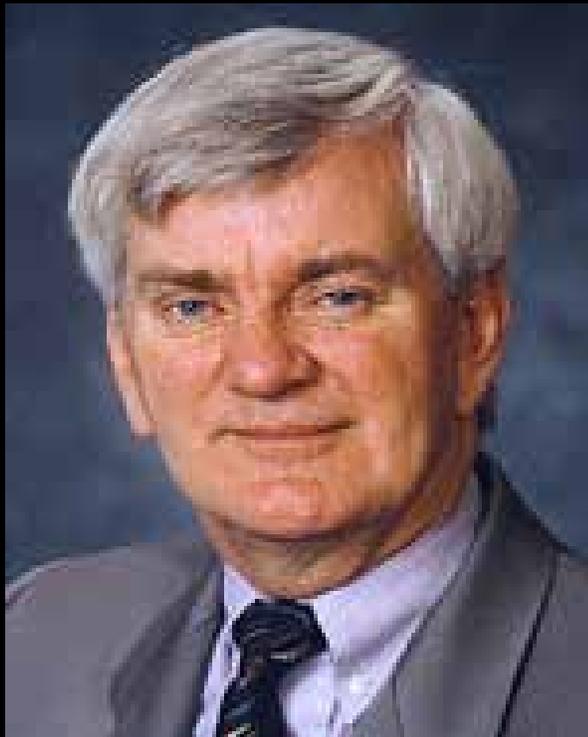
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***Unparliamentary  
Language***

*Volume 45, No. 4*

# *Parliamentary Relatives: Dale Lovick and Jan Pullinger*



Dale Lovick



Jan Pullinger

Dale Lovick and Jan Pullinger married while both were serving as Members of the Legislative Assembly of British Columbia. Lovick was first elected in the 1986 provincial general election and Pullinger was elected in a 1989 by-election. They both represented the electoral district of Nanaimo on Vancouver Island until 1991, when multi-Member electoral districts were eliminated in B.C. From 1991, Lovick continued to represent the electoral district of Nanaimo while Pullinger represented the neighbouring electoral district of Cowichan-Ladysmith. They both served as MLAs until the dissolution of the 36th Parliament in 2001.

Lovick and Pullinger are believed to be the first – and to date, only – couple to serve concurrently in

the B.C. Cabinet. Shortly after their appointment to Cabinet in 1998, they were interviewed separately by a Times Colonist journalist. Lovick is quoted as saying, “We do have a life beyond our work. We have a wonderful relationship firing on all 12 cylinders. But it would be foolish, and I think dangerous for any relationship, to say you will never talk about work. Obviously, you do, but you don’t let it become the principal point of your lives.” Pullinger confirmed that they try to keep their personal lives private, noting, “We work very hard at being treated as individuals. Neither one of us is an adjunct to the other. We are each here under our own merit.”

Artour Sogomonian  
Clerk Assistant, Parliamentary Services

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

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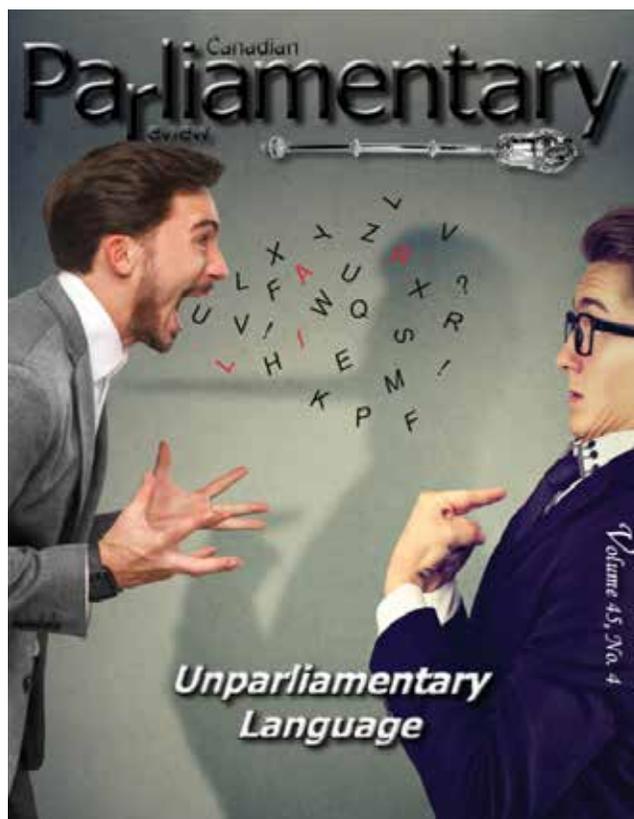
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# *The National Assembly's Citizen Round Table: A Tool for Boosting Citizen Participation in Parliamentary Proceedings and Activities*

The Citizen Round Table was an innovative consultation on ways to facilitate Quebecers' participation in parliamentary proceedings and activities. Tying directly into the parliamentary reform launched during the 42nd Legislature, the Citizen Round Table was designed to inform parliamentary thought on mechanisms for public participation at the National Assembly, both current mechanisms and those desired by the public. In this article, the author outlines how the Citizen Round Table was formed, some of the suggestions that arose from it, and how the National Assembly has already been responsive to implementing some of its recommendations. This article is an expanded version of the text "The National Assembly of Québec's Citizen Round Table: Boosting Quebecers' Participation in Parliamentary Proceedings and Activities", which appeared in *The Parliamentarian: Canada Profile*, 2022: Issue Two Supplement, pp. 10–12.

## **François Paradis**

**O**ur system of parliamentary democracy is based on representing our constituents and expressing their hopes and concerns. That is one of our principal roles when we are elected, alongside our role as legislators.

Our citizens' confidence in us cannot rely solely on the possibility of them having their say at an election every four years. Transparency and openness are principles that are vital to remaining in constant touch with the population and to enabling real dialogue. The various mechanisms of public participation therefore have a role to play in informing us and providing input to our work as parliamentarians.

Public expectations towards all levels of government have much changed in recent years. We see a desire among our fellow citizens to participate more, to express themselves and to have exchanges with decision makers. Elected officials and Parliament have a role to play in implementing conditions that encourage such citizen participation.



**François Paradis**

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*François Paradis was President of the National Assembly of Québec from 2018-2022.*

As the President of the National Assembly, it has been my privilege to direct a Parliament that is mindful of maintaining this connection to the public. Having a Parliament that is open to the public tops our list of general policies, and our actions are a testament to our commitment in this regard.

Even though the National Assembly is an instantly recognizable landmark at the very heart of the city of Québec, the public still has to make it its own.

Ever since the visitor pavilion opened in 2019, the National Assembly has been finding new ways to bring Quebecers closer to their institutions. This new, decidedly modern pavilion has led to a whole new visitor experience.

Our spaces are now home to a myriad of different activities for the public. Concerts, conferences, screenings, exhibitions and interactive workshops breathe new life into the parliamentary routine, and help people discover our emblematic institution. The National Assembly is now a partner in its community, available to everyone, and becoming a place everyone wants to see and experience!

This concern for inclusion and openness has also filtered into parliamentary activities and proceedings. The Assembly carries traditions that are hundreds of years old, but it is also aware of how important it is to adapt to its time.

At a time when disinformation is casting doubt on the legitimacy of democratic institutions, parliamentarians are asking how to modernize their practices. The parliamentary reform process undertaken during the 42<sup>nd</sup> Legislature is intended not only to make parliamentary proceedings more effective, but also to meet the public's expectations.

This is why the Assembly recently held focus groups to gain a better understanding of people's democratic needs and aspirations — so that the knowledge gleaned could be incorporated into reflection on the ongoing evolution of Québec parliamentarianism. The Citizen Round Table was one of the inclusive undertakings designed to bring Parliament closer to the people by starting a dialogue.

### **The Citizen Round Table: an innovation**

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The Citizen Round Table was an innovative consultation on ways to facilitate Quebecers'

participation in parliamentary proceedings and activities. Tying directly into the parliamentary reform launched during the 42<sup>nd</sup> Legislature, the Citizen Round Table was designed to inform parliamentary thought on mechanisms for public participation at the National Assembly, both current mechanisms and those desired by the public.

In our view, citizen participation has many dimensions and is not limited to public consultations. We seek to approach it from a broad perspective.

It begins with education, the cornerstone of citizen empowerment prior to any effective involvement. And education does not apply only to young people. It must be made available to citizens of all ages and aim to further understanding of our institutions, how they work and their importance in our society.

Another condition essential to full participation lies in access to parliamentary information. Here, the media plays a crucial role in informing the public. As an institution, however, we must stand out as an essential, reliable and accessible source of information on all the activities that take place within our walls.

Lastly, our reflection extends to the occasions when the population makes its voice heard and participates directly in our work through petitions, comments, responses to online consultations, submissions of briefs, testimony in committee, and more.

It is important to note that this consultation process was unprecedented for our institution. It was the first time in its history that our Parliament had used focus groups in a public consultation to gain a better understanding of people's different experiences and worries as citizens.

Although our institution often comes under scrutiny, both from the media and the public, we rarely have the opportunity to be involved in a two-way discussion with the population as part of a structured process.

By establishing the Citizen Round Table, the National Assembly embraced the challenge of opening itself up to criticism and questioning its own practices.

It was also counting on the analysis to spur improvements and help it evolve.

The consultation had many objectives:

- To better grasp and gain a deeper understanding of the points of view, perceptions and needs of those wishing to follow proceedings at the National Assembly;
- To identify the main obstacles to public participation in parliamentary proceedings and activities; and
- To gather ideas and proposals so that they could be integrated into MNAs' reflections on parliamentary reform.

### **The Citizen Round Table: meaningful participation**

In order to gauge the public mood and ensure the focus groups would be representative of Québec's diversity, the National Assembly launched a public call for applications, which ran from April 19 to May 19, 2021. The intention was not to hear from the largest possible number of people, nor to paint a statistically representative picture, but rather to take a deep dive and make room for all voices in our society.

Several means were used to reach the greatest number of people possible. A special page on the National Assembly's website promoted the Citizen Round Table. Ads also appeared in traditional and digital media, and on social networks (Facebook, Twitter, Instagram).

Dozens of groups representing different citizen profiles were approached to encourage their interest in the consultation process: women, men, members of LGBTQ+ communities, various age groups, Indigenous groups, representatives from ethnocultural communities, people living with a disability, people living in each of the administrative regions, etc.

I also got involved by participating in a promotional video shown on our various platforms. I gave interviews with different media outlets in order to raise the initiative's profile. My fellow MNAs were invited to share the call for applications in their ridings.

The National Assembly received 347 applications, of which 330 met the eligibility criteria. We were glad to see that the people who applied were representative of the diversity of Québec's population.

For the National Assembly, the call for applications was a success! Our inclusiveness and representativeness strategies had borne fruit. The positive response showed us that we were on the right track.

From this pool of candidates, 56 were selected through a draw designed to produce a representative sample based on variables such as gender (male, female, non-binary), age, Indigenous identity, ethnocultural diversity, linguistic diversity (French, English, other mother tongue) and regional diversity across Québec.

This first experience also allowed us to take on board lessons for the future. We had to deal with some last-minute withdrawals, which is normal, although they did have an impact on the representation of certain groups for which we had few representatives in the first place — Indigenous representatives in particular.

This strengthened our determination to redouble efforts to reach out to all groups in society in order to include them in our institutions.

### **The Citizen Round Table: rich, wide-ranging exchanges**

Due to the global pandemic, the Citizen Round Table and focus groups were held virtually in June 2021.

Participants were divided into seven groups, each of which met once for two and a half hours. These meetings were held either during the day or in the evening, so that everyone could take part.

Out of a concern for representativeness and inclusiveness, the groups were formed in accordance with specific profiles. For example, English speakers, people with disabilities and people living in different regions of Québec were placed in three distinct groups to expedite crucial discussion.

Each focus group was moderated by a member of the National Assembly staff. All of the participants gave voice to the perceptions, experiences and obstacles standing in the way of their participation at the National Assembly. They proposed concrete ways of improving existing consultation mechanisms, as well as new methods.

The exchanges focused on the dissemination of information and communication with MNAs, petitions, public consultations and other initiatives regarding public participation. In order to facilitate discussion while maximizing the possibilities for analyzing the results, semi-structured interviews were supported by a detailed interview grid.

The National Assembly also made a commitment to protecting participants' anonymity. We were hoping people would speak freely, and we encouraged them to do so. The content of the remarks confirms that the exchanges were unfiltered, which makes them even more meaningful. Raw material made available in this way provides better foundations to guide our thought.

In addition, the participants were unanimously enthusiastic about this type of consultation process. The post-consultation survey found a very high rate of satisfaction. In fact, many people called on the Assembly to repeat the exercise on a regular basis.

### **The Citizen Round Table: an invaluable aid**

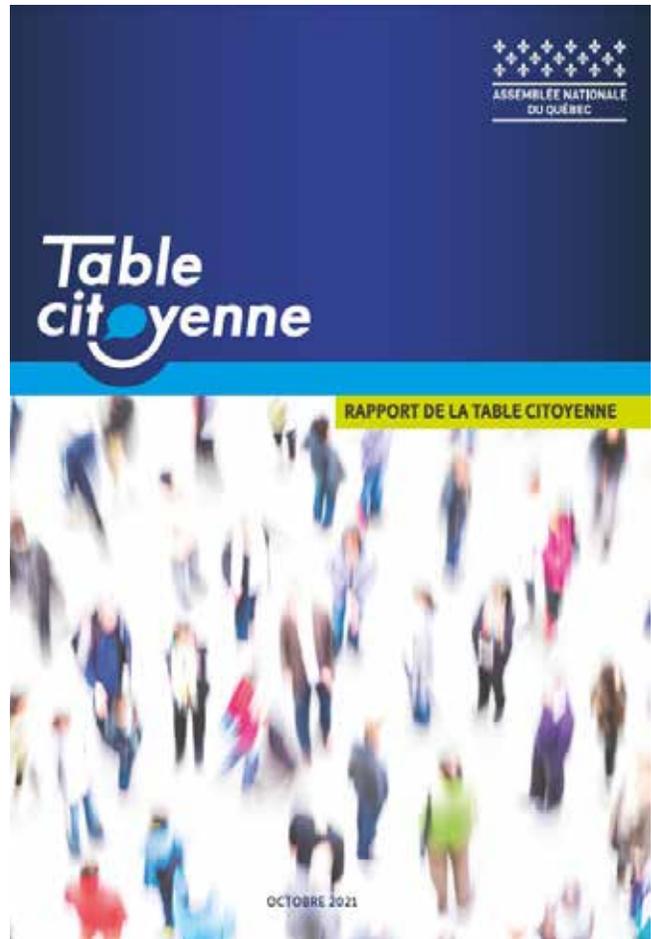
Once the focus groups were over, the National Assembly continued the work. A working group made up of administrative staff from various directorates at the Assembly compiled the responses. It took note of the participants' suggestions and followed up on their top suggestion, namely the drawing up of a detailed report, which is available online.

The report, which was tabled in the National Assembly in October 2021, contains 96 courses of action. In a demonstration of the strong commitment to put the report to good use, it was made public the same day on our official publications page. The report can be accessed—in English and in French—on our website:

- French: <http://www.assnat.qc.ca/fr/publications/fiche-rapport-table-citoyenne.html>
- English: <http://www.assnat.qc.ca/en/publications/fiche-rapport-table-citoyenne.html>

The participants' remarks were most instructive for the National Assembly. For instance, members of the focus groups told us they were impressed and surprised by the amount of information and the quality of the educational content that our Parliament publishes. Nonetheless, most were unaware of the resources before taking part in the Citizen Round Table.

Their conclusion was that the general public is insufficiently informed about, and all too often disinterested in, what goes on inside its Parliament. In their opinion, this information should be made more widely available and aimed at a broader public of all ages. Activities for young people were equally well-suited and interesting to adults.



Means of informing and communicating with the public are constantly changing. The participants mentioned the obstacles they had encountered in their search for information. They expressed a desire for that information to be more available to all, regardless of a person's mother tongue, and especially to people with disabilities.

The participants stressed the importance of writing content in plainer language. The information that the Assembly makes available is not easy to understand for the uninitiated. The specialized language, density of information and complexity of the rules and procedures can seem unclear and impossible to grasp.

Finally, several pointed out the need for the Assembly to vary its means of communication and to adopt tools and publication strategies that correspond to current realities. Participants mentioned smartphone applications, customizable alerts to follow proceedings, podcasts and a greater presence on social media, among other approaches.

As institutions that carry on long-held traditions, our parliaments have a long way to go if they are to catch up with today's innovators and the latest communication trends. Far from being a lost cause, this is a way to ensure that everyone has access to quality, understandable information at the right time. This capacity is key to the relationship of trust we enjoy with the population as a whole. Without this essential link, our transparency efforts are destined to be limited to a small circle of insiders. Echo chambers and disinformation will continue to thrive.

Several British-style parliaments are pondering how to modernize the petitioning process, a matter that is also of concern to us at the National Assembly.

The people we met in our focus groups made us aware of their expectations and made a number of suggestions. Petitioners attach importance to the act of petitioning. They see it as an accessible way to contribute to democratic life and to intervene as individuals in order to draw the attention of parliamentarians to issues. Citizens support causes that are close to their hearts and that reflect their values, concerns and beliefs. In that respect, they value this form of involvement, putting greater value on it than on surveys and other anonymous means of expression.

It must be remembered that petitions are not the prerogative of parliaments. The spread of electronic platforms has brought with it a certain confusion, since not all petitions are considered "in order" by the National Assembly and the criteria and procedures that must be followed for a petition to be in order are not well known.

We will have to consider our role as parliamentarians in the process. The people we heard from expect that the concerns they have relayed to us via petitions be reflected in our work. But as things stand, it is rare for a committee to examine a petition for consideration at the National Assembly. In fact, that is something of a euphemism: no petitions were examined in committee during the 42<sup>nd</sup> Legislature. Proposal papers for reform, including the one that I had the opportunity to put forward, address this problem directly.

Several ideas are on the table. Among the elements examined, we proposed creating a petition committee whose sole function would be to examine the petitions presented to the National Assembly. This was based on the finding that parliamentary committees at the National Assembly are already very busy with their

legislative activities. A specialized committee and the adoption of criteria leading to the examination of petitions appear to be ways of enhancing the practice of petitioning.

Citizen participation also comes to life in other existing mechanisms. This is true of participation in the public consultations held at the National Assembly, be that within the framework of consideration of a bill or mandates adopted on the initiative of a committee. For example, over the course of the 42<sup>nd</sup> Legislature, MNAs set up two select committees on issues that were both sensitive and important to Quebecers: the sexual exploitation of minors and the evolution of the *Act respecting end-of-life care*. It goes without saying that it is vital to actively consult the public, experts and groups concerned when dealing with such delicate matters.

We must, however, give thought to the mechanisms we make available to the public to participate in public consultations. The exercise can be daunting for members of the public or group representatives. Citizen Round Table exchanges made us aware of a desire to learn how to participate in these forums, which includes having the necessary information and resources to prepare testimony and draft a brief.

Information and communications technologies provide us with opportunities to help the public feel engaged by our work. From the outset, the possibility of using videoconferencing facilitates the participation of people from remote regions or who face other constraints. This practice, which quickly became a matter of course during the pandemic, remains useful in certain contexts, though it is no replacement for the richness of exchanges in person.

New avenues for consulting citizens stood out over and above the usual public hearings. Some of the people we heard from at the Citizen Round Table believed they did not have sufficient opportunity to express themselves through the traditional mechanisms. And most people invited to parliamentary committee meetings are indeed experts or groups from civil society. General consultations are rare.

After the Citizen Round Table report was published, a follow-up committee made up of administrative employees at the National Assembly was created to examine the feasibility of engaging on the courses of action suggested by the participants. The changes in question would involve many different directorates, and several suggestions would require parliamentary

reform. However, in a number of cases, the administration has the latitude and required expertise to bring about improvements.

This step also allowed the administrative teams to take stock of all the mechanisms in place and to gather complementary ideas from administrative staff. By the end of the exercise, a number of existing practices will be able to be reviewed in the short term. In the longer term, the Citizen Round Table constitutes an important contribution to the review of our strategic plan for 2023–2027. The findings from this consultation will be incorporated into institutional planning.

### **Citizen Round Table: focused on the future**

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A consultation process like the National Assembly's Citizen Round Table can be an inspiration to any institution or administration that aspires to greater openness and inclusion in order to reflect the reality of the population it serves. Drawing on this initiative from the National Assembly is a means of pursuing the ongoing democratic process, a process designed to ensure that the voices of those who compose our society can always be heard.

Over the course of discussions with the participants, we noted that we already offer a number of hands-on ways for Quebecers to get involved: a busy lineup of citizen events, pioneering educational programs, an impressive and valuable Library. Our National Assembly is open and accessible to the public. The people we met acknowledged those qualities, but

noted that our initiatives are not well known and do not reach a sufficiently broad segment of society, in all its diversity.

We strive to foster a genuine dialogue with the public and to maintain confidence in our democratic institutions. No matter their age, anyone can learn more about parliamentary institutions and become involved in grassroots democracy. Although parliaments are not solely responsible for citizenship and democracy outreach, as the seat of parliamentary democracy we are unquestionably well placed to play a key role in that regard. It is important that we reach out to the public and develop proactive approaches.

I have full confidence that the Citizen Round Table will lead to positive outcomes for all Quebecers and for the public participation mechanisms at the National Assembly.

Some of the courses of action have already led to changes in our public participation practices and tools. Others will have effects in the medium or long term, depending on the priorities identified by MNAs. This initiative has been an undeniable success, and it has opened up new avenues for consulting citizens and continuing to improve democratic practices.

As the President of the National Assembly, it makes me proud to see that our institution is more alive, open and relevant than ever. Thanks to initiatives like the Citizen Round Table, the National Assembly will be able to keep pace with the challenges of our time.

# *“Are You Calling Me a Liar?”: Reflections on Unparliamentary Language at the Legislative Assembly of Alberta and Beyond*

Dealing with unparliamentary language in an appropriate manner is an important way for the Speaker to maintain order, decorum, and civil discourse in the chamber. In this article, the author uses his point of view as Speaker of the Legislative Assembly of Alberta to offer observations of how current and past presiding officers in Alberta, and elsewhere, have engaged in this process. He evaluates how a Speaker must strike a balance between permitting freedom of speech while also respecting the dignity of members and the assembly. He concludes by stressing the importance of context in communications in the chamber as opposed to rigid adherence in prohibiting certain words or phrases.

**Hon. Nathan Cooper**

Maintaining order and decorum has been a vitally important endeavour in the parliamentary world for a very long time. While speeches can become impassioned and the atmosphere within parliamentary chambers heated, rules have been in place for centuries to ensure that a civil discourse among members prevails. It is the Speaker, along with the other presiding officers, who is responsible for enforcing these long-standing rules.

This article examines recent use of unparliamentary language at the Legislative Assembly of Alberta in the context of adhering to the longstanding principles of maintaining order, decorum, and civil discourse in our Chamber. From my point of view as Speaker of the Assembly, I will offer some observations on what the rule against unparliamentary language is, discuss how it is applied in Alberta, and relate some recent examples to illustrate the process. In addition, this article addresses the key questions of how unparliamentary language is currently being enforced and whether this approach remains relevant in modern legislatures.



**Hon. Nathan Cooper**

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*Hon. Nathan Cooper is Speaker of the Legislative Assembly of Alberta.*

Does this ancient prohibition need to be changed or should it be business as usual?

The use of unparliamentary language is certainly not new. A procedural guide from the late 1500s warns that “no reviling or nipping wordes must be used. For then all the house will crie, it is against the order.”<sup>1</sup> Another procedural manual from the mid-17<sup>th</sup> century explained that the Speaker was empowered to interrupt and admonish Members of Parliament for using “a range of evil words.”<sup>2</sup> In more recent times, Sir Thomas Erskine May, former Clerk of the United Kingdom House of Commons (1871-1886), authored a definitive procedural work, first published in 1844 and now in its 25<sup>th</sup> edition (2019), which offers on the matter simply that “good temper and moderation are the characteristics of parliamentary language.”<sup>3</sup>

Parliaments into the 20<sup>th</sup> and 21<sup>st</sup> centuries have carried on the prohibition against the use of unparliamentary language. Unparliamentary language has been defined in the leading procedural text for Canadian assemblies, *House of Commons Procedure and Practice*, 3rd edition, as follows:

The proceedings of the House are based on a long-standing tradition of respect for the integrity of all Members. Thus, the use of offensive, provocative or threatening language in the House is strictly forbidden. Personal attacks, insults and obscenities are not in order.<sup>4</sup>

This definition captures the sub-categories of unparliamentary language, which include a prohibition against offensive or disorderly words; personal reflections, including a prohibition against imputations of improper motives (e.g., allegations of corruption); and accusations of lying, which Speakers have consistently ruled out of order in Westminster parliaments for centuries.<sup>5</sup>

Although there is much more to say about the impact of accusations and imputations of lying and deceit, it’s best to begin by examining the interplay between parliamentary language and another vitally important parliamentary principle – in fact a parliamentary privilege – freedom of speech.

### **Freedom of Speech**

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The right to freedom of speech in the parliamentary context was codified in the 1689 *Bill of Rights*, which provides that “the freedom of speech and debates or proceedings in Parliament ought not to be impeached

or questioned in any court or place outside of Parliament.”<sup>6</sup> It is important to note, however, that freedom of speech is not absolute. First of all, it does not cover everything that is said by parliamentarians or said within the parliamentary precincts. Instead, freedom of speech extends only to the business that is being transacted or which is ordered to come before parliament. Within this context, a member may state what they think fit in debate, in the words of *Erskine May*, “however offensive it may be to the feelings, or injurious to the character, of individuals” because the “Member is protected by parliamentary privilege from any action of defamation ...”<sup>7</sup> But even within this narrowed context, freedom of speech is limited in that it is subject to the rules of debate. While a Member is free to make statements of their choosing, they may not engage in unparliamentary language in doing so.

It is the role of the Speaker to ensure a balance is struck between the two principles. Indeed, I find that when listening to the debate and assessing whether use of words and phrases in the Legislative Assembly of Alberta might be unparliamentary, I also consider the counterbalancing factor of free speech. I am acutely aware that there must be a balance between this fundamental right of the freedom of speech and the responsibility of members to use language that befits the office and complies with parliamentary rules and practices. The presiding officer must therefore judge whether the language used is intemperate, apt to cause disorder and therefore unparliamentary, or if a member is exercising their right to free speech.

### **Importance of Context and the Use of Lists**

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In assessing whether language is unparliamentary, Speakers are also guided by the context in which the word or phrase is used. Appreciating the context allows the presiding officer to understand the intent behind the use of such language, at whom it is directed, the tone, and perhaps even the nuances that underpin the remarks.

As an example, the term “water witch” was used in 2004 in the Assembly. Here is the exchange which occurred during Question Period, and which gave rise to a point of order:

Member: “My next question is directed to the Minister of the Environment. How many applications to divert fresh water from an aquifer within a coal bed methane seam are currently before Alberta Environment?”



**Speaker Cooper addresses MLAs during a budget debate.**

Minister of Environment: "... Now, in my constituency, Mr. Speaker, we have people we call water witches, that can test for water, and it appears that the member opposite might be considered one. I don't know."<sup>8</sup>

In its most common definition within the North American context, according to the *Oxford English Dictionary*, the term means one who searches for water using a divining rod. However, the term has an older meaning: "a witch who inhabits or is associated with water."<sup>9</sup> The Speaker of the day, knowing both of the word's connotations, mused in his ruling that "I wonder if the term 'water witch' would have been used if the poser of the question had been male. On that point I am going to rule that this is an actual point of order. I am going to ask the hon. Minister of Environment to withdraw his comment."<sup>10</sup> The Minister complied.

The importance of context is also exemplified in members' references to foreign leaders. Members have

been admonished in the past for disparaging foreign leaders, such as the Ayatollah Khomeini and Margaret Thatcher. However, while these individuals and their exploits may live on in historical terms, their status as leaders was finite as is the basis for ruling disparaging references to them out of order.<sup>11</sup> Similarly, "fat wingless ducks" was used in 1971 to denigrate a Government and a political party for not getting its policies off the ground (or maybe, better put, off the water?).<sup>12</sup> Use of this phrase today in the Chamber might raise curious eyebrows, but its unparliamentary nature would be judged according to the new context in which it is used.

Clearly, unparliamentary language is context-driven and sensitive to changing times. It is, therefore, difficult to codify over the long term. *House of Commons Procedure and Practice*, 3<sup>rd</sup> edition, describes the difficulty of codifying unparliamentary language best:

In dealing with unparliamentary language, the Speaker takes into account the tone, manner and intention of the Member speaking, the person to whom the words at issue were directed, the degree of provocation, and most important, whether or not the remarks created disorder in the Chamber. Thus, language deemed unparliamentary one day may not necessarily be deemed unparliamentary on another day. The codification of unparliamentary language has proven impractical as it is the context in which words or phrases are used that the Chair must consider when deciding whether or not they should be withdrawn.<sup>13</sup>

It is for this reason that in Alberta presiding officers no longer rely on a list of unparliamentary terms. The list of unparliamentary terms was abandoned in 2012.

### **The Problem of Lying**

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Without a doubt the most vexatious of all unparliamentary terminology are all the words associated with, and ways to express, “lying.” As noted, the prohibition against the accusation that a member is lying is not something that is new. Over the years, into recent past, accusations of lying have been a staple of Speakers’ interventions and points of order throughout the Westminster world. In fact, in Alberta, of the total of 508 presiding officer rulings that have occurred during the 30<sup>th</sup> Legislature (2019-current), approximately 9.5 per cent of them have been about unparliamentary language. More tellingly, of the total rulings on unparliamentary language, 72 per cent have to do with lying or associated words.

Members in Alberta and elsewhere have been creative in the ways that they have expressed this sentiment without often actually uttering the words “lie”, “liar”, “lying”, and the like. Of course, there are the more obvious euphemisms such as “bovine excrement”<sup>14</sup> and “making things up.”<sup>15</sup> But then there are the more creative ways to express the concept, including the “Member is not encumbered with the truth”<sup>16</sup> or the “Premier’s casual relationship with the truth.”<sup>17</sup>

During the fall 2021 sitting of the Assembly I encountered perhaps the most creative means to get this point across. On November 3, 2021, during Question Period, a Member rose to ask a series of questions on a bill concerning Alberta’s trail system and its maintenance. After asking his lead-off question,

the Member responded to the Premier’s response and stated, in his first supplementary question:

As per usual, the Premier is making things up out of whole cloth, because it’s not in the bill, nor is it in the environment minister’s budget ...<sup>18</sup>

This prompted the Deputy Government House Leader to raise a point of order. The point of order revolved around the phrase “making things up out of whole cloth”. Since points of order raised during Question Period are not dealt with until after the Daily Routine is complete, I had a chance to learn more about the idiom “out of whole cloth.” Not being familiar with the expression, after some quick research, I discovered what it meant and made the following ruling:

The Deputy Government House Leader said that the member said “was making things up” although he failed to acknowledge that he went on to say “out of whole cloth,” as has been identified by the Opposition House Leader.

Now, I certainly disagree with her [Opposition House Leader] on her assessment of that particular idiom because I happen to know that it means to fabricate something entirely fictional or utterly false, not based on a reality at all, which sounds a lot like a lie to me. While I do appreciate the hon. member’s efforts to turn a phrase, as they say, you certainly can’t do indirectly what you can’t do directly. So, I think it’s best if the member withdraws and apologizes, and we all move on with our day.<sup>19</sup>

So the ruling was made, the offending individual was admonished, and members in the Chamber that day all had a bit of a laugh.

A much more serious incident of the use of this sort of unparliamentary language took place a few short months later, in March 2022. In this instance, an Independent Member was tabling documents. In Alberta, members are allowed to make voluntary tablings under the item of business Tabling Returns and Reports in the Daily Routine. In a description of one of the Member’s tablings, the Member stated that on Monday the Minister of Environment and Parks “again tried to dupe the House by accusing me of wanting the Leader of the Opposition in cabinet.”<sup>20</sup> As the Member was tabling and describing his documents, the Minister of Environment and Parks became animated and started to heckle, responding to the language used by the Member, to which I responded in turn:

Order. If the Minister of Environment and Parks wants to call a point of order, he's welcome to rise to his feet. Using language that's unparliamentary, including an F-bomb directed at the Speaker, is wildly inappropriate. If you don't like his remarks, call a point of order.<sup>21</sup>

The Minister did raise a point of order, on which I ruled after admonishing him again for his own outburst of unparliamentary language:

Specifically referring to a member of the Assembly as misleading the Assembly is a point of order. I have provided significant swath for members to say that the Government or the opposition has misled, but you cannot say that the member misled the Assembly. For that you will apologize and withdraw.<sup>22</sup>

These two incidents display the range of issues that arise when dealing with unparliamentary language. Intimating that a member was lying, though a serious breach of the rules, was dealt with expeditiously one day. Conversely, in another scenario when a member was accused of lying or misleading the Assembly, it caused grave disorder and cast a pall over the proceedings.

Whatever the outcome, I have discovered that an effective way to deal with this sort of unparliamentary language is to adopt a progressive and incremental approach to curtailing its use. The approach is basic, measured, and I am sure familiar to other presiding officers. It is to intervene and provide caution initially on milder infractions, but, as use of the offending language becomes more frequent or more severe, then more decisive interventions on the part of the presiding officer are employed, possibly extending all the way to the outright prohibition against the use of the offensive term. The following ruling illustrates this approach:

#### **Speaker's Ruling Parliamentary Language**

**The Speaker:** I might just say that over the last couple of weeks I have made significant comment around the use of the word "lying." While I've said that provided we're not speaking about individuals, it is permissible but perhaps not profitable. If this type of language persists from both sides of the House, the Speaker may take additional steps to ban the use of such words. This is certainly my strongest statement on the use of this type of unparliamentary language.

I hope that we can heed the advice and not take additional steps that would require a more interventionist approach from the Speaker.<sup>23</sup>

Although the incremental approach does not always stop the use of unparliamentary language outright, it is helpful in that it reminds members that questioning a member's integrity and honesty is a serious matter.. Also, this approach helps to "reset" the Assembly by not only reminding members of the rules and the seriousness of contravening the rules, but also by settling them down and generally re-establishing a mood of order and decorum in the Chamber.

#### **Does the necessity of maintaining order and decorum hinder the communication of the message?**

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There is a final issue worth considering on the matter of unparliamentary language and particularly the accusation of lying. Does the strict adherence to enforcing the rule limit a member's ability to freely articulate their point of view on policies and other important matters?

There seem to be two lines of thought on the question. The first, explained above, is the traditional school, which holds that the prohibition against unparliamentary language ought to be maintained since the rule is essential to the maintenance of order, decorum and the proper functioning of parliament. All members should be treated as honourable individuals, and there should be respect for the integrity and honesty of the entire assembly. Furthermore, rigorously enforcing the rule is necessary to rein in raucous and contentious exchanges that can lead to grave disorder, an example of which took place recently at the Legislative Assembly of Alberta.

The other line of thought advocates for a re-examination of the rule. In focusing on the language that is used, as opposed to the substance of the commentary, one could very well miss the message a Member is trying to communicate.

John Bercow, former Speaker of the House of Commons at Westminster, has called for reform of the "ancient rule" that prevents parliamentarians from accusing colleagues of misleading the House. In an interview with *The Times* on July 26, 2021, former Speaker Bercow argued that parliamentary rules should be changed in this regard even if it means that Members of Parliament accuse one another of lying in the Chamber. He added that it is "bad and dangerous for democracy" that members are barred from levelling

allegations of dishonesty at other members. Bercow writes that “[t]he glaring weakness of the system is that someone lying to tens of millions of citizens knows he or she is protected by an ancient rule. They face no sanction.” By contrast, and ironically, a member “with the guts to tell the truth is judged to be in disgrace.”<sup>24</sup>

Closer to home another example of this viewpoint comes from the Legislative Assembly of Manitoba, involving a question posed by Nahanni Fontaine, the Opposition House Leader, during Question Period on March 10, 2021. Fontaine pointed out in her question regarding the recent death of an Indigenous woman that no members of the Government caucus contacted the woman’s family to offer condolences. She added that it indicates “[t]hey don’t give a crap about Indigenous women and girls in this province.”<sup>25</sup> The Speaker asked Fontaine to withdraw the comment and apologize, but she refused upon repeated requests, resulting in her ejection from the Chamber.

Fontaine later said about the incident that she was on the verge of uttering an expletive but checked herself because she was in the Chamber and used the word “crap” instead. She claimed that the Assembly appeared more alarmed over a word than the issue she raised and that she did not regret using the language she chose. “For the house to be more concerned and outraged over a word rather than the crisis — rather than the slaughter — of Indigenous women and girls and the two-spirited, there was no way I could reclaim that word because there’s a crisis,” said Fontaine. For the Assembly to be “more concerned about the word than the crisis is unacceptable.”<sup>26</sup>

So, after contemplating these differing viewpoints, further questions arise. Is the longstanding rule against unparliamentary language still relevant or does it need to be revisited and possibly modified to enable elected officials to express themselves unfettered? Are the interests of citizens best served by allowing members to call each other out for lying with impunity? For some, these are appealing or at least necessary modifications to the parliamentary rules. For others, the principle that all members are to be considered – and, indeed, behave as – honourable must be maintained. Practically speaking, unparliamentary language is already a staple of Speakers’ interventions and rulings, especially in terms of the use of “lie” and its variants. Does it serve the best interests of parliament to allow free speech to reign supreme on these matters? And what of the impact on order and decorum? Would assemblies adapt, or would chambers see accusations of uttering falsehoods become commonplace, possibly inflaming

debate or at least resulting in a tit-for-tat duel among members for the moral high ground?

It may very well be that I have ended this piece asking more questions than I have answered. I do not have any special insight to offer on what the future holds. Though, in conclusion, I will say that Speakers would be well advised to keep informed about the evolution of the “ancient rule” and to understand its impact both within and outside the chamber.

Language evolves; idioms change. Just as importantly, the context in which a word or expression is articulated can provide vital information as to its meaning and intent. Speakers must continue to consider the tone and intent of the member, the person to whom the words are directed, whether and to what extent the language is provocative, and, ultimately but very importantly, whether the remarks create disorder in the chamber.<sup>27</sup>

Indeed, as Bosc and Gagnon note in the simplest of terms, what is unparliamentary one day may not be unparliamentary on another day.

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# *Parliamentary Diplomacy in an Era of Uncertainty: Toward a Paradigm Shift in the Parliament of Canada's International Missions*

The COVID-19 pandemic forced a temporary shift in the Parliament of Canada's diplomatic engagement, with international activities taking place virtually. However, there is reason to believe that the post-pandemic world will be different in many ways and that adaptation will be necessary. This article discusses factors that may impact Parliament's future international missions, explores aspects that support these activities, and proposes reviewing them strategically to better guide international missions in a different and uncertain environment.

**David-Andrés Novoa**

## **A different environment**

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The Parliament of Canada's current diplomatic engagement generally has three unofficial goals: "exchanging ideas and best practices; helping to inform collective policy and action; and promoting democratic values and Canadian interests."<sup>1</sup> Among the main tools for achieving these goals are Canadian parliamentarians' international missions, which often take the form of bilateral visits or participation in conferences.

These missions developed during a favourable era of globalization starting in the 1990s. At that time, building relationships with other international actors was easier because the rise of democracy seemed to be irreversible. Trade liberalization also contributed to the increase in international interactions, as finding new market opportunities was a priority for many governments. Sustained economic growth in many parts of the world likely resulted in more generous parliamentary budgets for diplomacy as well.

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In recent years, however, the context has changed. Global democratic decline, deep economic disparities and growing geopolitical instability have made the international environment more complex. The pandemic has served as a catalyst to accentuate these trends. At the national level, the decline in voter turnout reflects a certain apathy toward democratic institutions.

There are five factors emerging from this new context that could have an impact on planning and conducting the Parliament of Canada's international missions.

## **Factors that could have an impact on international missions**

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### *Democratic recession*

Freedom House's 2022 report paints a disturbing picture of the state of democracy around the world. It argues that the world is facing a "Global Expansion of Authoritarian Regimes" as an increasing number of countries are experiencing a decline in democracy and the institutions that support it, for the 16<sup>th</sup> consecutive year.<sup>2</sup> This climate is conducive to authoritarian regimes building alliances and becoming increasingly willing to flout the principles of international law, as evidenced by Russia's invasion of Ukraine. As a result, there are likely to be a dwindling number of fully democratic counterparts who Canadian parliamentarians can interact with.

### *Foreign interference*

Threats to democracy are not limited to fragile states. A 2021 Canadian Security Intelligence Service (CSIS) report explains how foreign states conduct interference activities in Canada to further their strategic interests.<sup>3</sup> Their targets include Canadian voters, the media, officials, and parliamentarians, all in an effort to undermine trust in democracy and disrupt the rules-based global order. It is clear that Canada is facing a potential democratic erosion. Therefore, it will no longer be just a matter of promoting democracy, but also of defending it.

### *Proactive disclosure*

Bill C-58 (42nd Parliament, 1st Session)<sup>4</sup> introduced proactive disclosure measures in the Parliament of Canada. As a result, new and more detailed reports on travel and hospitality expenses related to parliamentary diplomacy activities must be published. In this case, the report will disclose the travel, accommodation, per diem and other expenses incurred by each participant, including speakers, parliamentarians, and staff.<sup>5</sup> Although reports were already published by Parliament for these missions, practices varied by activity and amounts were approved by category (transportation, accommodation, etc.), not by individual. This increased transparency is beneficial, but it could be used to criticize any international activity that is perceived as futile.

### *Budget cuts*

The global health emergency has had a negative impact on public finances around the world. In Canada, this has resulted in an increased federal deficit because of reduced revenues and government measures to support the economy.<sup>6</sup> While this situation was temporary, the impact will be felt for many years to come. In fact, a Conference Board of Canada report predicts that the budget will not be balanced until 2040.<sup>7</sup> Combined with an aging population and the provinces' requests for financial assistance, there is reason to believe that future governments will exercise strict control over finances. This is likely to affect the funds allocated to the Parliament of Canada and, by extension, the amount of money parliamentarians allocate to parliamentary diplomacy. Since the situation is similar abroad, it may limit the ability of parliaments to host delegations or international parliamentary activities.

### *Virtual diplomacy*

The pandemic has made tools such as videoconferencing indispensable for carrying on Canadian parliamentarians' international engagements. While this may have been considered a temporary and less effective alternative to face-to-face meetings, there is reason to believe that virtual meetings are a new tool in the parliamentary diplomacy arsenal. According to the *Report to Canadians 2022*, Canadian parliamentarians took part in over 290 virtual events between April 1, 2021, and March 31, 2022.<sup>8</sup> It would not make sense to set aside the experience acquired through the intensive use of this new format because of the many benefits it brings. It will therefore be necessary to incorporate and master virtual meetings in order to remain engaged in the international parliamentary scene.

All of these factors suggest that the environment in which external parliamentary diplomacy will take place is one of change and instability. Consequently, the Parliament of Canada should consider adapting to this environment in order to remain relevant internationally. To do so, it should maximize and redefine the role of resources for international missions, while adopting a pragmatic approach that produces tangible results. This should include a strategy to review the aspects that guide and support its international missions.

### **Aspects to review as part of an international missions strategy**

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#### *Goals*

Since the Parliament of Canada has very broad goals, it would benefit from establishing specific key topics, under these goals, that serve its immediate interests. This would provide more information, over a given period, about the challenges and best practices of other parliaments. In light of threats to democracy and the growing use of virtual meetings, here are some topics that might be useful to Canadian parliamentarians.

#### *Security of parliamentarians*

In recent years, Canadian politicians have faced growing threats and intimidation. What used to be limited to harassment on social networks now sometimes manifests itself as physical attacks. In the

United Kingdom, for example, two parliamentarians have been murdered in the last six years.<sup>9</sup> What concrete steps are other countries taking to protect parliamentarians while guaranteeing their access to constituents? This is a topical concern because it was one of the key issues at the G7 Speakers' Conference in 2021.<sup>10</sup>

#### *Foreign interference*

The 2021 CSIS report lists the ways in which foreign actors can influence political decisions or the outcome of an election in Canada.<sup>11</sup> A concrete example of the latter was the apparent targeting of some ridings by outside influence operations during the 2021 election campaign.<sup>12</sup> What forms does interference take in other countries?<sup>13</sup> What steps are parliaments taking to educate parliamentarians and their officials? Should security clearances be considered for the Parliament of Canada? A better understanding of this phenomenon, based on the experiences of other parliaments, would help to combat it and limit its impact.

#### *Telework for parliamentarians*

The pandemic forced the adoption of telework to enable parliamentarians to continue their deliberations. In addition, with the creation of an application that allows MPs to vote remotely,<sup>14</sup> the stage is set for parliamentarians to fundamentally change the way Parliament works. While there are advantages, such as better work-family balance, greater presence in ridings and a Parliament that is more accessible to people with disabilities, there are also disadvantages. Some suggest that it does not allow parliamentarians to ensure proper government oversight.<sup>15</sup> In addition, there is a risk that virtual technology will deprive parliamentarians of different perspectives, particularly because of the lack of interaction with parliamentarians from other parties or groups. This could contribute to increased political polarization. In short, a number of parliaments will have to explore these issues, and it would be interesting to take stock of these experiences in order to help parliamentarians make a more permanent decision.<sup>16</sup>

These three suggested topics address concrete and immediate needs. Of course, there are many others that would be worth exploring. Such an exercise could help refine the Parliament of Canada's parliamentary diplomacy goals.

#### *The roles of parliamentary officials*

It is worth reviewing the roles and mandates of officials so that they can better support international activities. There are some options to empower them.

##### *In-house strategic expertise*

Currently, parliamentary officials provide administrative, logistical and targeted research support, through the Library of Parliament, to international parliamentary missions. With regard to advice on international relations, Global Affairs Canada assumes this role by providing documents and briefings. While this input is very useful, parliamentary considerations are often given less prominence, if not lacking entirely, since this department serves the government's interests first and foremost. Therefore, it would be useful to have a permanent group within Parliament to provide strategic recommendations on international parliamentary considerations. This would give Parliament more independence with respect to international issues.

##### *An international network of parliamentary officials*

The Parliament of Canada could promote the creation of a new international network of likeminded parliamentary officials to address the rise of authoritarianism. Unlike existing networks,<sup>17</sup> this proposed network should consist of officials directly involved in their parliaments' international relations and should meet regularly. The G7 would be a prime candidate, as it includes countries with a strong commitment to democracy. Such a group could address issues of common interest to better identify international challenges and coordinate actions. For example, parliamentary officials could hold preliminary discussions about statements to be issued at international parliamentary conferences in order to establish common positions, as some countries are increasingly trying to incorporate language that undermines international norms and put the governments' interests ahead of those of individuals.<sup>18</sup> Countering such an erosion of international principles and, by extension, democracy, requires coordinated action by parliamentarians through interparliamentary administrative coordination.

##### *The format of missions*

Given the vast experience acquired through virtual meetings during the pandemic, they are not

likely to disappear anytime soon. As for face-to-face international missions, they will undoubtedly remain, but there will have to be increasingly compelling reasons to justify them. Therefore, parliamentary missions should now be either virtual or face-to-face. To determine the preferred format for each activity, Parliament should assess some of the factors favouring these types of meetings.

#### *Factors favouring face-to-face meetings*

Large gatherings of parliamentarians, such as international conferences and annual general meetings of international parliamentary associations, should remain face-to-face. These activities allow parliamentarians and officials to interact with numerous interlocutors other than parliamentarians, such as NGOs, representatives of civil society and experts. In addition, they enable consensus-building on the margins of these meetings, particularly when it comes to negotiating declarations. They also help promote the goals of Canadian parliamentary diplomacy through impromptu bilateral meetings.

Another factor should be the nature of the topics to be discussed. For example, if the discussions involve sensitive issues, such as parliamentary security or outside interference, it may be worth considering face-to-face meetings to build trust in order to explore these issues further. This is especially true when the goal is to establish lasting alliances or cooperation networks.

Lastly, the interlocutors' commitment to democracy is becoming an increasingly important consideration. A visit to a country where there are no democratic interlocutors could lead to discussions marked by doublespeak. Moreover, such an activity could be perceived as lending implicit Canadian support to these regimes. In the future, international parliamentary missions to non-democratic regimes will be increasingly difficult to justify to Canadians. Therefore, more emphasis should be placed on face-to-face meetings with parliaments that want to strengthen democracy, both at home and abroad.

#### *Factors favouring virtual meetings*

The use of technology would provide access to perspectives from hard-to-reach actors. For example, even in non-democratic regimes, there will always be democrats worth listening to. This is where virtual diplomacy can build bridges simply and effectively. Canadian parliamentarians could hold discussions

with leaders of civil society or the opposition, in camera if necessary, in order to obtain accurate information about a country's political situation. Virtual site visits could also be considered,<sup>19</sup> such as to Canadian development projects in remote areas, to simplify the logistics of such travel.

Virtual meetings also facilitate greater participation in international activities. It allows for much greater involvement from parliamentarians and increased knowledge-sharing. All this while saving time and money. There is even reason to believe that some of these virtual activities could be open to the public, drawing back the curtain to reveal an aspect of parliamentarians' work that is not very well valued and sometimes even criticized.

Virtual meetings are environmentally friendly because they cut down on air travel, a major source of greenhouse gas emissions. In a world where governments are developing initiatives to fight climate change, parliamentarians will increasingly be called upon to set an example by limiting air travel. In this respect, videoconferencing offers a greener alternative.

#### **Conclusion**

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Some pundits believe that the 2020s will be an era of "predictable unpredictability" where the old institutions and attitudes that brought stability in the old world look ill-prepared for the new.<sup>20</sup> This could be true for the Parliament of Canada's international missions if adaptive measures are not taken. Therefore, a paradigm shift in interparliamentary relations is necessary. A strategy to review the aspects that support Canadian parliamentary diplomacy would allow international missions to remain relevant in this new environment.

Tapping into the pool of diversity within the Parliament of Canada to ensure that this strategy reflects the values and interests of parliamentarians would be essential. In addition, a formal discussion between parliamentarians and the numerous actors who support Parliament's international relations would be beneficial. For example, this could be done by consulting with Global Affairs Canada to develop a strategy that complements Canada's international goals but puts the Canadian Parliament's interests and priorities first. Distinct but aligned goals could be set.

The strategy should seek to reinvigorate the mandate of international missions in two main ways.

The first would be by establishing formal goals for parliamentary diplomacy. In particular, Parliament should aim to engage on issues related to protecting democracy in Canada and abroad. One goal could be “to promote and *defend* democratic values.” This is not meant to be alarmist, but rather realistic. Second, missions should have a tangible impact. For example, parliamentarians should make recommendations in the reports prepared after each international mission. This would allow delegations to influence future parliamentary priorities and activities.

Allocating human resources to analyze these recommendations and coordinate the strategy is vital. This would require officials with international expertise, who are aware of interparliamentary issues and look after the Parliament of Canada’s interests. Building ongoing relationships with parliamentary officials in other countries is key because collective action at the international level will have a greater impact than individual efforts. In addition, with more minority governments, these officials would provide strategic stability across parliaments. This stability is vital because international issues often require longterm efforts. Expertise, collaboration, and continuity are assets that would provide better strategic support to parliamentarians in a new world of interparliamentary relations.

Establishing guidelines to determine when missions should prioritize virtual or face-to-face meetings would institutionalize this new duality of parliamentary diplomacy. This means that Parliament should ensure that there are sufficient resources so that videoconferences can be used for international activities, without compromising resources already allocated to other parliamentary areas. And with the arrival of new generations of tech-savvy parliamentarians, it is even more important for Parliament to realize that virtual technology consolidation is real.

This article has touched on only one of the many aspects of parliamentary diplomacy within the Parliament of Canada. To fully adapt, a parliamentary diplomacy strategy for all of Parliament’s international activities should be considered, as the Italian Chamber of Deputies has done.<sup>21</sup> This would include the coordination of foreign missions headed by parliamentary committees, visits by incoming delegations, courtesy calls by speakers, and conferences held in Canada, among other things. This more holistic approach is well worth exploring in this era of uncertainty.

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- 21 David Beetham, "Parliament and Democracy in the Twenty-First Century – A Guide to Good Practice," Geneva, Inter-Parliamentary Union, 2006, p. 174. "The Italian Chamber of Deputies has a separate Committee for Parliamentary Diplomacy, which is 'responsible for harmonizing the international activities of permanent committees and parliamentary delegations to international assemblies as well as the activities of bilateral cooperation groups and other organs of the Chamber.'" [http://archive.ipu.org/PDF/publications/democracy\\_en.pdf](http://archive.ipu.org/PDF/publications/democracy_en.pdf)

# *Pinpointing Parliament: Supreme Court Citation of Parliamentary Evidence, 2010-2020*

The legislative and judicial branches of government are closely linked. Legislation that is passed by parliament becomes the very laws the judiciary must interpret as it rules on criminal and civil matters. But how often does Canada's highest court cite parliamentary debates and documents in its decisions? In this article, the author examines a 10-year period of Supreme Court of Canada (SCC) decisions that cite at least one parliamentary document. Of the 720 SCC judgments from this period, 96 cited a parliamentary document (13.33 per cent). He provides a discussion of which types of documents are cited and also notes the complexities when counting citations and understanding how they might have been used by judges. He concludes with questions for future researchers to consider.

**Charlie Feldman**

## **Introduction**

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How often does the Supreme Court of Canada (SCC) cite parliamentary debates and documents? Do certain parliamentary publications attract more judicial attention than others? This particular intersection between the legal and judicial branches appears largely unexplored, though studying judicial citation – and what is viewed as “authority”<sup>1</sup> – remains as important as ever. Indeed, just this past fall the *Alberta Law Review* published a work entitled “The Most-Cited Law Review Articles of All Time by The Supreme Court of Canada”.<sup>2</sup>

Legal citation has a long history,<sup>3</sup> and law is said to be the “birthplace of citation study”.<sup>4</sup> That said, legal citation practice is not without its critiques<sup>5</sup> – including those particular to the Canadian context<sup>6</sup> – and citation study has its challenges.<sup>7</sup> Nonetheless, judicial citation practices can and should be examined. And, they may be the subject of quite legitimate critique – a matter vividly illustrated in recent scholarship about judicial citation of Wikipedia pages.<sup>8</sup> Faults, failures, or foibles of citations (and the study of them) aside,

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*Charlie Feldman is President of the Canadian Study of Parliament Group. The views herein are not those of any employer. He would like to thank more people than space permits for their assistance and comments.*

understanding how courts decide cases – as viewed through their citations – warrants consideration.

This research finds the average annual percentage of SCC decisions citing parliamentary documents increased from 2010-2020.

If this trend continues, it will become increasingly important to pay attention to what parliamentary evidence is being cited to monitor shifts in court behaviour (or, potentially, changes in parliamentary practices as reflected in court decisions).

This article begins with a historical note regarding Hansard use by courts. Next, the methodology is presented in two parts – the first describing parliamentary evidence and the second detailing how citations were identified. Finally, it presents analysis and findings alongside questions for future research and a short conclusion.

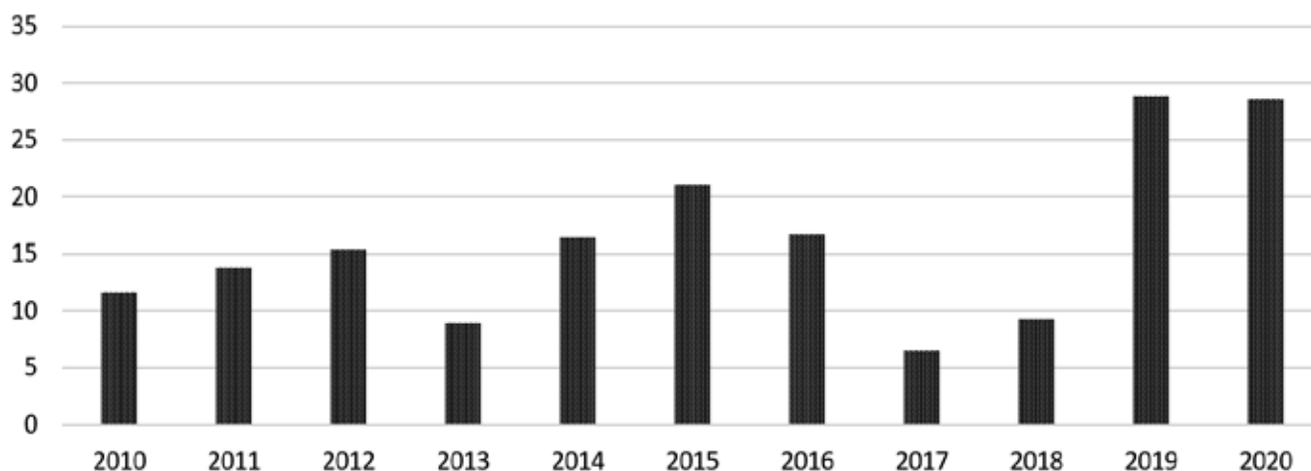
## **Historical Note**

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Hansard and other parliamentary documents were inadmissible evidence in judicial proceedings until fairly recently.<sup>9</sup> Though the precise origin of this practice in English law is contested,<sup>10</sup> scholars agree that Hansard was generally excluded by Canadian courts until the 1970s.<sup>11</sup> Expanded Hansard use by the Court has generated limited legal academic interest,<sup>12</sup> mostly focused on questions of statutory interpretation.

Figure 1: Annual SCC Parliamentary Document Citation Percent (2010-2020)

### SCC Decisions Citing One or More Parliamentary Documents (Annual %)



Generally speaking, parliamentary evidence was not viewed as reliable in part because debates tell of the “views and understanding of certain participants in the legislative process” rather than “the views and understandings of Parliament itself”.<sup>13</sup> In relaxing its approach to the admissibility of parliamentary evidence, the SCC has explained: “Although the frailties of Hansard evidence are many, this Court has recognized that it can play a limited role in the interpretation of legislation”.<sup>14</sup>

An early parliamentary perspective on this question may surprise those who cling to the traditional exclusionary position. One of only a few individuals to serve both in parliament and on the Supreme Court of Canada, Charles Fitzpatrick (who served as Solicitor-General and later SCC Chief Justice 1906-1918) is reported to have said in the House of Commons in 1899 that:

We make laws here, and naturally our intention and our desire must be that the laws we make should be thoroughly understood, especially by the judges who are called upon to administer the laws and by the lawyers who take part in their administration.

If we want the laws which are passed here to be properly understood, it seems to me of the first importance that the reasons and explanations

given in this House when the Bills are introduced and discussed on both sides should be accessible to those who are called upon to administer the laws.<sup>15</sup>

While this sentiment might be read narrowly in its framing of the issue as being ‘accessibility,’ presumably Fitzpatrick intended for judges not merely to have access to Hansard but also to make use of it. In that regard, it is important to consider that the accessibility of parliamentary documents has only increased with time, particularly in recent years as a result of digitization projects for historical parliamentary records.<sup>16</sup> At the same time, judicial attitudes toward the admissibility of parliamentary evidence have evolved.<sup>17</sup>

Whether parliamentarians view themselves as “speaking to the court” is beyond the scope of this work. Hansard contains expressions from parliamentarians such as “I hope that, if judges read what the politicians and lawmakers have said while studying a bill, they will understand”,<sup>18</sup> indicating a desire for Courts to read their remarks. The corollary appears in critiques for Courts ignoring Parliament: “Had that judge read the debates in Hansard he would surely have come to another conclusion”.<sup>19</sup> Certainly, one can query whether judges and parliamentarians have shared expectations of how they engage with one another.

For their part, parliamentarians have offered perspectives on what the court sees of Parliament. In 2010, a senator declared in the Upper House that “What they say in the Senate is often quoted in our courts”, and “What they say in the House of Commons is never quoted; but what we say in the Senate is often quoted”.<sup>20</sup> In 1983, an MP – and tax lawyer by trade – offered a similar view, expressed in the Commons as an undisputed fact: “We know the courts pay absolutely no attention to what is said in this House, either by Members of the Opposition or by Members of the Government.”<sup>21</sup>

Perhaps these views could be statistically supported at one time; however, this research paints a very different picture of contemporary court practice. For example, of the 221 parliamentary documents cited by the SCC between 2010-2020 (inclusive), over two-thirds were from the House of Commons. As indicated in Figure 1 above, the Court routinely looks to parliamentary evidence and the exclusionary era is clearly behind us. But, what parliamentary evidence is the Court citing and how can this be measured?

### **Methodology Part I: Defining Parliamentary Evidence**

This article will use “parliamentary evidence” to refer to written records<sup>22</sup> of discussions in, and decisions taken by, the Senate and House of Commons or a parliamentary committee.<sup>23</sup> It includes – by extension – documents published by decisions or practices of either House (including sessional papers) but it does not include bills.

In a broad sense, the goal is to capture documents that are subject to parliamentary privilege. Legislative texts are certainly looked at by Courts, though there are other challenges and questions with respect to Court references to legislation – particularly when it is under consideration by Parliament and not enacted.<sup>24</sup> However, the focus of this particular inquiry is not on legislation but on parliamentary evidence, much of which is wrapped up with the consideration of legislation.

For purposes of this work, parliamentary evidence refers specifically to:

1. Transcripts of Debates from the Senate or House of Commons (known as “Hansard”, published as the “Debates”)
2. Transcripts from committees of the Senate or House of Commons – or of both Houses (published as “Evidence” or “Proceedings”)

3. Records of decisions from the Senate or House of Commons (published as the “Journals”)
4. Records of minutes from committee meetings (published as “Minutes”)
5. Sessional Papers (broadly, documents tabled in the Senate or House of Commons)
6. Committee reports (traditionally these were printed in the Journals, but are now often recorded as sessional papers)
7. Compilations or restatements of any elements of the above from a parliamentary source (except for procedural manuals).<sup>25</sup>

Item seven contemplates previous publications of the Senate and House of Commons such as *Votes and Proceedings* (a House of Commons publication from 1868-1994) and *Minutes of the Proceedings of the Senate* (published 1868-1996).<sup>26</sup> It also captures committee Evidence and Minutes that are cited to a bound volume with a title starting “Minutes of Proceedings and Evidence” followed by the name of the committee. Simply put, the goal is to capture every publication – other than legislation – of the Senate, House of Commons, or a joint committee of both Houses, regardless of what it may have been termed at the time.

Additionally, item seven captures the Rules of the Senate, Standing Orders of the House of Commons, the “Status of House Business” and “Progress of Legislation” documents, as well as the Order Paper and Notice Paper. None of these appear to have been cited by the Court in the last 15 years, though it is perhaps worth noting that several Supreme Court of Canada cases mention (without citation) that a particular bill “died on the Order Paper”.

Of note, publications written by the staff of the Library of Parliament – such as legislative summaries and background papers – are also excluded, though these have been cited by the SCC on several occasions.<sup>27</sup> As well, items from officers and agents of Parliament are excluded, except if cited in a parliamentary document.<sup>28</sup>

Importantly, the same parliamentary evidence might be found in multiple places – for example, minutes from a committee meeting might be found on their own online, found as part of a published volume of Minutes of Proceedings and Evidence, or included in a committee’s report that itself is tabled as a sessional paper. This research follows the Court’s lead, even if the document could be cited in a different source.

## Methodology Part II: Identifying SCC Citations

Researching court citations for this work began with cataloguing every entry from the SCC’s website listed under “Supreme Court Judgments” for 2010-2020 inclusive. Information was collected for each case and whether any parliamentary documents appeared among the Court’s listing of “Authors Cited”.

Using the Court’s own “Authors Cited” lists resolves counting conundrums that would otherwise exist given certain SCC practice inconsistencies. For example, all Hansards for a session may be bound into one work and thus could be cited to one source with many page pinpoints. However, each sitting day could be cited separately as it results in a distinct document. In almost all instances, the Court uses a unique citation for each parliamentary sitting day. But, where multiple days are cited to a single work by the Court, this work will treat it as one entry to follow the Court’s lead.

There is significant frailty to this approach; the “Authors Cited” section does not provide a complete representation of SCC reference to parliamentary materials. Indeed, there may be in-text references to parliamentary actions or documents that are not

accompanied by an explicit citation from the Court. Further, as one legal scholar observed in the context of the Australian High Court: “There is a big difference between what the court reads and is possibly influenced by, and what the court deigns to cite”.<sup>29</sup>

No literature could be found explaining why the Court chooses to reference materials without providing a citation.<sup>30</sup> Further, there is no accounting for an instance where a citation is to something that could also be cited to a parliamentary document.<sup>31</sup>

Detailed analysis of each parliamentary document cited listed under “Authors Cited” proved challenging given the way in which materials are sometimes presented by the Court, reflective of broader challenges with parliamentary citation styles.<sup>32</sup>

For example, the 2021 case *R. v. Khill*, 2021 SCC 37 includes the following entries under “Authors Cited”:

Canada. House of Commons. Minutes of Proceedings and Evidence of the Standing Committee on Justice and Human Rights, No. 25, 1st Sess., 41st Parl., March 8, 2012.

**Table 1: SCC Parliamentary Document Citation (2010-2020): Overview**

Year	SCC Judgments	Judgments Citing a Parliamentary Document	Other Judgements	% citing a Parliamentary Document	Number of Parliamentary Documents Cited (Total)
2010	67	7	60	10.45	22
2011	65	8	57	12.31	8
2012	76	10	66	13.16	20
2013	73	6	67	8.22	6
2014	78	11	67	14.10	30
2015	69	12	57	17.39	49
2016	56	8	48	14.29	17
2017	65	4	61	6.15	6
2018	59	5	54	8.47	6
2019	67	15	52	22.39	24
2020	45	10	35	22.22	33
TOTAL	720	96	624	13.33	221
<b>AVERAGE (annual)</b>	<b>65.45</b>	<b>8.72</b>	<b>56.72</b>	<b>13.56</b>	<b>20.09</b>

Canada. House of Commons. Standing Committee on Justice and Human Rights. Evidence, No. 18, 1st Sess., 41st Parl., February 7, 2012, pp. 2, 9.

Based on the judgment's use of them, the first and second reference are both to the same type of document – committee evidence (a transcript) – from the same committee, one month apart. These documents are available online (perhaps the source of the second reference) but have been printed into a larger collection whose title (“Minutes of Proceeding and Evidence”) seems reflected in the first citation.

From the first citation alone, it's impossible to discern whether the minutes of the meeting or the evidence (testimony) is being cited. The absence of page pinpoints also means that the text of the judgment must be used more extensively in conjunction with the citation to identify if the whole document is relevant or only a portion (e.g., certain interventions, a record that is 'minutes' or a record that is 'evidence').

Keeping this in mind, consider the paragraph of the judgment that references the document:

At third reading, the Parliamentary Secretary to the Minister of Justice explained that the jurisprudence under the old regime would continue to be relevant, but also stated that the changes to the law of self-defence are “fundamental in that they completely replace the existing legal provisions with new and simpler ones” (House of Commons Debates, vol. 146, No. 109, at p. 7064 (Robert Goguen)). Further, the question of whether “role in the incident” represented too great a departure from the previous law was addressed at second reading and in committee (House of Commons Debates, vol. 146, No. 58, at p. 3841 (Hon. Irwin Cotler)); see also House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Justice and Human Rights, No. 25, 1st Sess., 41st Parl., March 8, 2012). Concerns about the breadth of the phrase were before Parliament, but it chose not to act on them.<sup>33</sup>

While the individual speakers for the citations to House of Commons Debates are mentioned (note that the parliament and session indications are not included), this is not the case for the committee document referenced. The meeting in question lasted

just over two hours and is indicated on the House of Commons website as having 324 interventions from 12 committee members and 32 interventions from two technical witnesses who were present from the Department of Justice. Notably, the phrase mentioned in the paragraph – “role in the incident” – does not appear anywhere in the transcript.

Similarly, the phrase does not appear in the minutes of that meeting. This constellation of information does not allow one to confirm with certainty what the court is citing. In a case such as this, the phrasing of “addressed [...] in committee” is being interpreted as referring to the discussions of the committee as recorded in its evidence rather than the minutes.

### **General Findings: Parliamentary Citations**

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Table 1 provides information on parliamentary document citations by the SCC for the years 2010-2020. Where rounding occurs, averages and per cent are shown to two decimal places.

Of the 720 SCC judgments from this period, 96 cited a parliamentary document (13.33 per cent). In total, there were 221 parliamentary document citations. In a given year, between 6.15 and 22.39 per cent of judgments cited a parliamentary document, with an average of 13.56 parliamentary document citations annually.

#### *Chamber of Origin*

Figure 2 (below) depicts the bicameral breakdown of parliamentary documents cited by the SCC between 2010-2020 inclusive:

As noted in the introduction, the vast majority of parliamentary documents cited from the SCC originated in the House of Commons (75.57 per cent) compared to the Senate (21.72 per cent). Joint committees account for the remainder (2.71 per cent).

#### *Type of Document*

Excluding joint committee documents and any document type cited fewer than three times,<sup>34</sup> the largest portion of the citations to parliamentary documents were chamber debates followed by committee evidence. While documents from the House of Commons are cited more often than their Senate counterparts for transcripts, Senate committee reports are cited nearly on par with House committee reports.

Figure 2: Percentage of Parliamentary Documents Cited by the SCC by Chamber of Origin (2010-2020)

### Percentage of Parliamentary Documents Cited by the SCC by Chamber of Origin (2010-2020)

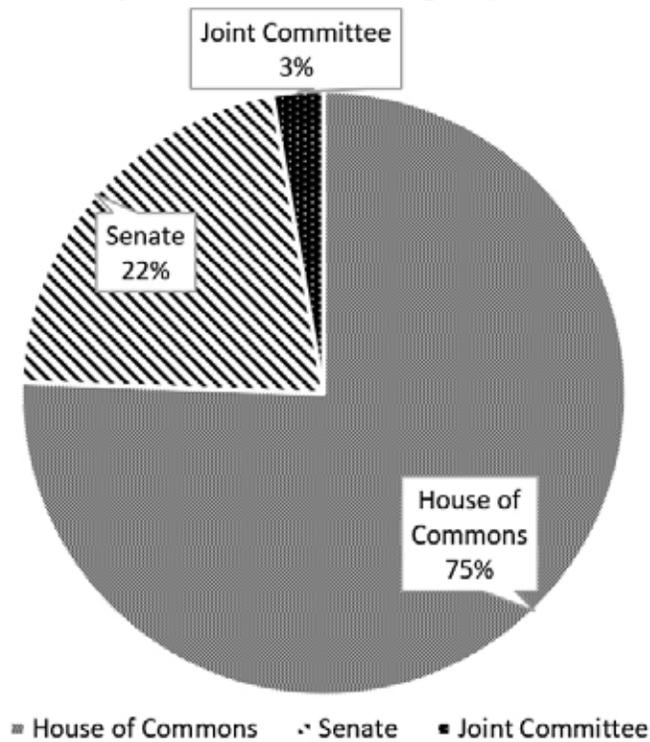
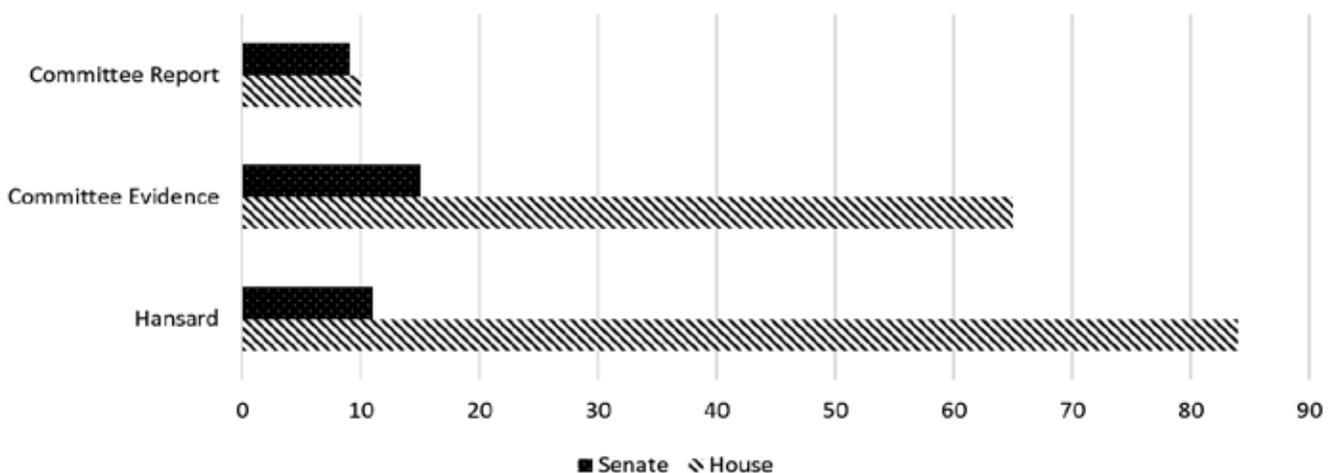


Figure 3: Primary Parliamentary Documents Cited by the SCC 2010-2020 by Chamber of Origin

### Number of Primary Parliamentary Documents Cited by the SCC (2010-2020)



It should be recalled that the same document may be cited by more than one judgment, though this appears exceedingly rare for anything other than a committee report. The most cited committee report (mentioned in six judgments in this period) is “Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies’ Creditors Arrangement Act”, a study completed by the Senate’s Banking, Trade and Commerce committee in 2003.

As well, it should be noted that the same document can be cited in more than one set of reasons within a judgment. A shining example is from just beyond the study period: *R. v. Chouhan*, 2021 SCC 26. *Chouhan* has five sets of reasons. A single page of Hansard is cited in four of those reasons; eight different paragraphs of the judgement cite the same page of Hansard.<sup>35</sup>

#### Document Year

Though more recent parliamentary documents were cited in greater numbers than historical documents, the Court cited parliamentary evidence from throughout Canada’s history in decisions rendered between 2010 and 2020 (inclusive). (See Figure 4 below).

### Challenges and Critiques

#### Missing Citations

The focus of this work is SCC citation of parliamentary evidence. Yet, there are instances where

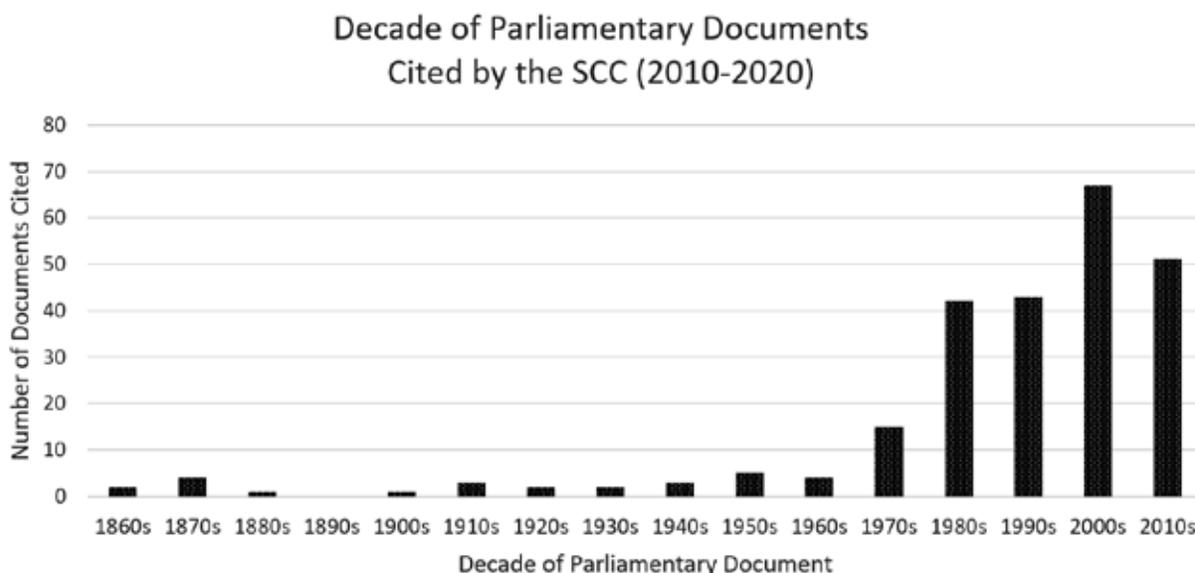
parliamentary evidence appears to be consulted without an associated SCC citation. In one particular instance, the parliamentary ‘fact’ referenced coupled with the lack of explicit citation raises questions and concerns about the Court’s use of parliamentary evidence.

In *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, the Court’s majority writes that “On March 1, 1871, Parliament passed an Order in Council declaring that all Métis had a right to a share in the 1.4 million acres promised in s. 31 of the *Manitoba Act*”.<sup>36</sup> The problem? Parliament does not pass an Order in Council; these are passed by the Governor in Council. Further, there is no mention of this order in any of the parliamentary records for March 1, 1871.

Whether this sentence is an error of the Court or a mistake in a source relied on by the Court is a mystery from looking at the judgment alone: The Court’s statement contains no citation. Further, the Court does not include the Order in Council under the ‘Statutes and Regulations Cited’ for the case, nor does it include any parliamentary documents under the decision’s ‘Authors Cited’ listing.

Research reveals that an Order in Council on this subject dated March 1, 1871, was made by the Governor in Council.<sup>37</sup> The House of Commons – not to be conflated with Parliament<sup>38</sup> – was informed the next day by its Speaker and this is recorded in the Journals of the House of Commons. The House considered the order (and related questions) on April 6, 1871, (as reflected in the Debates), and the

Figure 4: Parliamentary Documents Cited by the SCC 2010-2020 by Chamber of Origin



Order itself was published as a sessional paper the following year.<sup>39</sup> As reflected in that sessional paper, the Order begins “The Governor General transmits, for the information of the House of Commons the accompanying Order in Council and Memorandum establishing [...] Regulations respecting the Public Lands in the Province of Manitoba.”

In sum, the correct information could have been found by verifying one of three sources of parliamentary evidence: The Journals, the Debates, and a sessional paper. It is unclear from the reasons alone – given the lack of citation – whether the Court consulted any of these or whether it was led astray by one or more of the parties or perhaps one of the courts below. Moreover, the error could also have been avoided by examining the Order in Council itself. This is to set aside the broader question of why the Court would not know that an Order in Council is not a parliamentary instrument.

While mistakes happen (and can happen to anyone), written reasons (and citations) do not exist in a vacuum. As expressed by scholars studying citation practices before Australia’s High Court:

Written reasons, together with citation to authority, provides the best record we have of the thought process underpinning how judges decided a case. When these reasons and the authorities that are cited are examined for an appellate court over a considerable period of time, this exercise can provide insights not only into the major influences on the evolution of the common law in a given country, but also into trends in what the judges consider to be legitimate legal reasoning.<sup>40</sup>

Examining citations also affords an understanding of whether a particular court is aware of certain sources and able to pinpoint particular types of information or analysis.

#### *Use of Early Materials*

Citations to parliamentary evidence may be misleading as to whether the source is truly of parliamentary province. Consider the citation in *Caron v. Alberta*, 2015 SCC 56 to the following:

Canada. House of Commons. House of Commons Debates, 1st Sess., 1st Parl., December 4, 5, 6, 9 and 11, 1867, pp. 181, 183, 194- 96, 200, 203, 205, 208, 222- 25, 244, 254.

Setting aside the multiple days issue raised earlier in the work (that is, whether this should be treated as a citation to one document or five given that Hansard is a distinct document each sitting day), this citation is to early parliamentary evidence. The problem? While it appears to be a traditional Hansard citation, there was no official authorized reporting of the House of Commons in 1867. In fact, Parliament decided explicitly not to have word-for-word reporting in the early years to save costs.<sup>41</sup>

In Parliament’s earliest days, newspapers reported on the debates in Parliament. Many years later, a project was undertaken to compile these clippings into reconstituted debates.<sup>42</sup> As explained by one of the leading scholars in this area:

The newspaper reports were not verbatim accounts but usually comprised about a third of what was said in the chambers. Reporters were responsible for compressing the material they took down; who could be sure they did this fairly? Even Prime Minister Macdonald who was, on the whole, happy with the newspaper reports, occasionally worried about distortions they might contain. Quebec members complained that the English-speaking reporters would not (or could not) report their speeches given in French.<sup>43</sup>

Unfortunately, the Court’s specific reference to this document leaves the impression that it is a verbatim record of Parliament:

The Minister’s understanding of “legal rights” was shared by other members of Parliament: see e.g. Debates, December 4, 5, 6, 9 and 11, 1867, at pp. 181, 183, 194-96, 200, 203, 205, 208, 222-25, 244 and 254.

The Court does not appear to acknowledge that it is referring to – and citing – a well-curated collection of newspaper reports about the debates in the House, some of which may not have been reflective of what was being said in one language. This is particularly concerning given that *Caron* itself was concerned with language rights.

#### *Parliamentary Provenance*

It is sometimes unclear whether the Court is always fully aware that it is citing a parliamentary document. The *Caron* decision also includes citations to the following two items:

Canada. Sessional Papers, vol. V, 3rd Sess., 1st Parl., 1870, No. 12.

Canada. Select Committee on the Causes of the Difficulties in the North- West Territory in 1869- 70. Report of the Select Committee on the Causes of the Difficulties in the North- West Territory in 1869- 70. Ottawa: I. B. Taylor, 1874.

Regarding the first, the text contains multiple references to these “Sessional Papers” but no explicit acknowledgement that they were documents tabled in the House of Commons and published under parliamentary practices.

Similarly, the “Select Committee” was a committee of the House of Commons and its report is found in the Journals of the House of Commons for the 3rd Parliament, 1st Session (Vol. 8). The textual reference to this citation in the judgment does not give a sense of whether the Court was aware of it being a parliamentary document.

It could be that the appearance of an external printer’s mark on the cover and reflected in the citation (I. B. Taylor) may be slightly to blame for any confusion as to its provenance. Isaac Boulton Taylor was the printer contracted in the early years by Parliament; his billing practices led to scandal and an eventual lawsuit.<sup>44</sup>

As a question of future research design, should one count an item that is treated as a parliamentary document when it is not truly one? Should one count a parliamentary document that is treated as though it is from some other source?

Though the *Caron* case is raised here for the questions above, it also contains one particularly notable parliamentary document reference: a single-language version citation. That is, the English version of the reasons state in paragraph 11 that in “the *Journaux de la Chambre des communes de la Puissance du Canada* the phrase ‘legal rights’ is translated as ‘droits acquis.’” In no other case did it appear that only one language version of a parliamentary document was being cited by the Court.<sup>45</sup>

#### *Reference Cases*

As a question for future scholarship in this area, it is unclear whether reference judgments should be considered alongside judgments in traditional litigation. To begin, references do not necessarily

arrive at the Court with the extensive evidentiary record as a case heard initially by a court of first instance and considered by a court of appeal. A reference means that the SCC does not necessarily benefit from the reasons of lower courts,<sup>46</sup> including those in respect of parliamentary documents. Finally, the questions the government puts to the Court in the reference may require referring to parliamentary documents in ways that might not arise in traditional litigation.<sup>47</sup>

For its part, the *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17 is a reference from the Governor in Council concerning the constitutionality of a Senate public bill and is believed to be the first Governor in Council reference in history regarding a non-government federal bill; it is unique for that reason alone. As it relates to the data, this one case is responsible for more than double the number of citations to Senate documents than any other case. Extraordinarily, it cites 17 parliamentary documents whereas the average judgment citing any parliamentary document cites 2.2 parliamentary documents

Had litigation about this legislation come to the court in the usual course, the judgment’s use of parliamentary documents may very well have been different. For this work, this case is included in the analysis. However, it may be that reference cases (which are atypical) should be treated separately in future consideration of court citations to parliamentary evidence.

#### *The Most-Cited Award*

As research for this article progressed, many inquiring minds wanted to know who was the most cited parliamentarian and which debates were most cited. Answering this with quantitative certainty is impossible, particularly as some citations do not indicate which speaker on the page is the one whose remarks were being considered. As well, classifying speakers becomes problematic when roles change over time – for example, the Postmaster General of Canada was a position before it became the Minister responsible for Canada Post Corporation, which in some recent ministries has been the Minister of Public Works and Government Services or Minister for Transport. The identification in Hansard may not always be helpful for identifying the capacity in which one speaks at a given moment – for example, Thomas Crerer was an MP who served as three different ministers simultaneously.<sup>48</sup>

All that considered, as an anecdotal observation (nonetheless informed by the data collected): Where a single speaker can be identified, it is most often a Minister. Of Ministers, those associated with a Justice portfolio are most cited (whether to Minister of Justice, Attorney General, or Solicitor General). The same holds for when parliamentary secretaries are cited – in most cases it is a parliamentary secretary to a Justice role. Generally, the speeches being cited by these actors are their second reading speeches but quantifying interventions would be misleading given changing parliamentary practices over time, particularly as it relates to the use of committee of the whole in the House of Commons.

When parliamentary actors who are not Ministers or Parliamentary Secretaries are cited, it is most often the sponsor of a bill whose remarks are being considered. In committees, both departmental and non-departmental witnesses are cited at similar rates.

### **Questions for Future Research**

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This article focuses solely on questions of citation: *What* does the court cite? *How often* is it citing parliamentary materials? Though important, the connected questions of *why* the court turns to parliamentary materials and *whether it should* cite them were beyond the scope of this particular work.

Much more research and writing are needed in this field. The aim of this article is simply to provide a framework for analysis and to document current practices. It offers an open invitation to others to contribute to our collective understanding of the impact of Parliament's work on the SCC's consideration of the matters before it. To that end, here are some proposed questions for future research.

*How does the SCC use the parliamentary documents it cites?*

This question has innumerable sub-questions. For example, does the SCC use parliamentary sources in conjunction with other sources for particular points or does it rely entirely on parliamentary documents for some matters? Are documents used for legislative intent/legislative history purposes or are certain documents (such as committee reports) used primarily to establish social or historical facts? In what circumstances are external witnesses cited? And, would a parliamentary document be the only way to obtain that information?

*Do parliamentarians believe that they are "speaking to the Courts"?*

The perspectives of parliamentarians – particularly those sponsoring government legislation – would be useful to survey. Are there particular contexts in which parliamentarians seek to attract the court's attention? If so, how do they signal this intention? The corollary research would be to establish whether parliamentarians read judicial decisions and interpret the Courts as speaking to them in some contexts.

*What can be said (if anything) of the parliamentary documents that the court references but does not cite?*

As an illustration, *R v. Poulin* (2019 SCC 47) notes that "The House of Commons debates from 1980 to 1983 similarly do not reflect any consideration of this question" (para 79). The only parliamentary document cited in the case is a joint committee transcript. Is this an indication that the Court is actively conducting extensive searches of Hansard in other cases? Should the Court disclose when it has done so and not found any relevant materials? Should there be an expectation that the Court is aware of and has canvassed the parliamentary record?

*What explains the differences between Senate and House citation frequency?*

Do the statistics reflect bicameral preferences on the part of the SCC or can differences in chamber and committee citations be explained by other factors such as the relative number of sitting days or hours of debate? Does one chamber produce more committee reports than the other? Is there anything about how studies are conducted in one House or the other to which the difference in Court approach can be attributed?

*Do the cases themselves reveal anything about the Court's attitudes toward parliamentary document use?*

Do certain judges appear more likely to cite parliamentary documents? How do the various reasons in a single judgment engage with one another on Hansard matters? For example, one dissent noted that "This portion of the Hansard record weakens the majority's conclusion".<sup>49</sup> What is the Court saying (if anything) about the *use* of Hansard generally as opposed to focusing on the specific parliamentary record in a case?

*Does the Court treat parliamentary documents and evidence in the same way as lower courts in the same matter?*

To illustrate the question: The SCC in *Carter v. Canada (Attorney General)*, 2015 SCC 5 writes that “Between 1991 and 2010, the House of Commons and its committees debated no less than six private member’s bills seeking to decriminalize assisted suicide. None was passed.” The British Columbia Court of Appeal decision being appealed to the SCC makes no reference to these PMBs. However, the Supreme Court of British Columbia writes “Since 1991, nine private member’s bills have been introduced in the House of Commons seeking to amend the Criminal Code to decriminalize assisted suicide or euthanasia”.<sup>50</sup> Whether the Court treats parliamentary evidence the same way as other courts in the same litigation may provide insight into strategies that could be effective on appeal.

*How does the number of citations to parliamentary documents compare to the overall citation rate?*

The research showed the per cent of cases each year citing a parliamentary document increasing on average; however, are the number of citations overall increasing such that only limited inferences can be drawn from more frequent parliamentary citation? Are other types of citations expanding at similar rates? Can factors beyond evidence admissibility be identified to explain the increase in citations to parliamentary documents?

*Why do particular speakers attract citation?*

Is there a connection between the Court’s typical case makeup and the Justice portfolio such as to explain citation preferences to Justice-associated actors in Parliament? More research would be needed to determine if other factors are instead at play. Are cases involving federal criminal law, for example, more likely to see the Court cite a Minister’s speech than, say, cases involving federal environmental statutes? More broadly, are the expressions of legally-trained parliamentarians cited more often than those without a legal background?

*How do judges understand and view parliamentary documents?*

Do judges and law clerks receive training on locating parliamentary sources? Do they find debates useful? Some judicial commentary on this point has been

found<sup>51</sup> but further research could be undertaken to establish judicial perspectives of the use and utility of parliamentary documents. Do the justices of the SCC cite different parliamentary documents (or use them in a different way) from other judicial actors?

While the foregoing items were presented to offer research directions, there is also a suggestion for a path to be avoided. Bibliometric analysis of court citations to parliamentary documents should not be used in some way to measure parliamentary performance akin to how bibliometrics are often used in the academic context to measure scholarly impact.<sup>52</sup>

## Conclusion

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As noted at the outset, the annual per cent of SCC cases citing parliamentary materials appears to be on the increase. What will the future hold? Trends and practices in this area will be important to monitor in the years to come for both legal and political science scholars, and the future research directions in this area are seemingly limitless. Why is the Court increasingly turning to the parliamentary record? Is parliamentary evidence guiding the court in a novel way? Should parliamentarians prepare their remarks with a judicial audience in mind? Only time may reveal the answers to these significant and weighty questions at the intersection of our branches of government.

## Notes

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- 1 Peter J McCormick, “Judicial Citation, the Supreme Court of Canada, and the Lower Courts: The Case of Alberta”, 1996 34-4 Alberta Law Review 871. See also Peter J McCormick, “Second Thoughts: Supreme Court Citation of Dissents & Separate Concurrences, 1949-1996”, 2002 81-2 Canadian Bar Review 369. John Henry Merryman, “The Authority of Authority: What the California Supreme Court Cited in 1950” Stanford Law Review, vol. 6, no. 4, 1954, pp. 613-73.
- 2 Yan Campagnolo and Camille Andrzejewski, (2022) 60:1.
- 3 R. Shapiro, “Origins of bibliometrics, citation indexing and citation analysis: The neglected legal literature”, JASIS 43 (1992) 337-339.
- 4 Shapiro, F. R. (1992). Origins of bibliometrics, citation indexing, and citation analysis: The neglected legal literature. Journal of the American Society for Information Science, 43(5), 337-339.
- 5 Christopher A. Cotropia; Lee Petherbridge, “Gender Disparity in Law Review Citation Rates,” William & Mary Law Review 59, no. 3 (February 2018): 771-812.
- 6 Danielle Lussier and Steven Stechly, “Other Materials” - Traitorous Love and Decolonizing the Canadian Guide to Uniform Legal Citation, 2022 53-2 Ottawa Law Review 301.

- 7 Mary Whisner, "My Year of Citation Studies", Part 1, 110 *Law Libr. J.* 167 (2018)
- 8 Peoples, Lee F. "The citation of Wikipedia in judicial opinions" *Yale Journal of Law & Technology*, vol. 12, annual 2009, pp. 1. Jodi L. Wilson, "Proceed With Extreme Caution: Citation to Wikipedia in Light of Contributor Demographics and Content Policies", 16 *Vanderbilt Journal of Entertainment and Technology Law* 857 (2020)
- 9 Graham Steele. (2017). Who Speaks for Parliament?: Hansard, the Courts and Legislative Intent. *Canadian Parliamentary Review*, 40(1), 6–10. Magyar, J. J. (2021). The slow death of a dogma? The prohibition of legislative history in the 20th century. *Common Law World Review*, 50(2–3), 120–154.
- 10 Magyar, J. J. (2020). Debunking *Millar v. Taylor*: The History of the Prohibition of Legislative History. *Statute Law Review*, 41(1), 32–58.
- 11 There are, of course, exceptions. See John J. Magyar, "Hansard as an Aid to Statutory Interpretation in Canadian Courts from 1999 to 2010" LLM Thesis, University of Western Ontario (2011) at FN 111. Online: Magyar, John James, Hansard as an Aid to Statutory Interpretation in Canadian Courts from 1999 to 2010 (August 30, 2011). Available on SSRN: <https://ssrn.com/abstract=2233370> or <http://dx.doi.org/10.2139/ssrn.2233370>
- 12 Beaulac, S. (1998). Parliamentary Debates in Statutory Interpretation: A Question of Admissibility or of Weight? *McGill Law Journal = Revue de Droit de McGill*, 43, 287–324.
- 13 Ruth Sullivan, "Construction of Statutes" (Irwin Law, 2016, 3rd Ed), page 262.
- 14 *Rizzo & Rizzo Shoes Ltd.* (rd) [1998] 1 SCR 27 at 35.
- 15 Debates of the House of Commons, June 21, 1899, 8th Parl, 4th Sess, Vol XLIX at 5470
- 16 See Beelen, K., Thijm, T. A., Cochrane, C., Halvemaan, K., Hirst, G., Kimmins, M., Lijbrink, S., Marx, M., Naderi, N., Rheault, L., Polyanovsky, R., & Whyte, T. (2017). Digitization of the Canadian Parliamentary Debates. *Canadian Journal of Political Science/Revue Canadienne de Science Politique*, 50(3), 849–864.
- 17 See discussion in *R. v. Morgentaler*, [1993] 3 S.C.R. 463.
- 18 Evidence, Standing Committee on Justice and Human Rights, 44-1, No. 66, 25 March 2013.
- 19 Debates of the House of Commons (Hansard), 37-2, No. 120, 16 September 2003.
- 20 Debates of the Senate (Hansard), 3rd Session, 40th Parliament, Volume 147, Issue 77, 13 December 2010.
- 21 House of Commons Debates, 32nd Parliament, 1st Session, Vol. 20, March 3, 1983 at p 32431.
- 22 In theory, video or audio recordings of parliamentary activities could be used by the Court but it does not appear that this has ever happened.
- 23 Committee of the Senate, House of Commons, or of both Houses.
- 24 Practices surrounding Court mentions of bills that did not become law is something canvassed in part in Feldman, C. (2021). (Examen judiciaire des dispositions en cours de révision par le législateur. *Revue générale de droit*, 51, 15–46.)
- 25 Various editions of the classic House of Commons Procedure and Practice have been cited by the SCC (e.g., 2018 SCC 26 at 18). For purposes of this work, it is being excluded though it is certainly an extremely important document in the parliamentary context.
- 26 According to the Library of Parliament catalogue and with great appreciation for the assistance of the Library of Parliament for assistance in identifying types of parliamentary documents.
- 27 See e.g., *Hinse v. Canada (Attorney General)*, 2015 SCC 35, [2015] 2 S.C.R. 621
- 28 For example, an Auditor General's report on its own can be cited to the Office of the Auditor General. However, if the report is tabled in parliament and cited by the Court to that sessional paper, it will count as a cited parliamentary document for this work.
- 29 Esau, A. J. (2014). Measuring Judicial Performance, Power, and Precedent: Some Reflections on the Empirical Studies of Peter McCormick on the Occasion of His Retirement. *Manitoba Law Journal*, 38(1), 191 at 210.
- 30 For general discussion of the importance of reference and citation in the legal context, see Jeffrey Barnes, "Cite Seeing: Citation in Legal Writing" 16 *Law Context: A Socio-Legal J.* 144 (1998-1999)
- 31 For example, a copy of the Convention on the Rights of Persons with Disabilities was tabled as part of Sessional Paper No. 8532-402-57 but in *Ward v. Quebec (Commission des droits de la personne et des droits de la jeunesse)*, 2021 SCC 43 the Court (quite understandably) cites to the treaty as part of the Canada Treaty Series.
- 32 As a present to the punctilious pendants and to provide further fodder for fans of the abstruse and arcane, it is noted that during this period the Canadian Guide to Uniform Legal Citation (McGill Guide) was modified (in the 9th Edition) to provide revised citation styles for parliamentary sources. The Court appears yet to embrace the simplified and improved citation style for parliamentary sources. One notable improvement is that for most types of sources, the relative location of the parliament and session number is consistent whereas in prior editions for bills the McGill Guide style was to put the parliament and then the session number but for citations to parliamentary debates the order was reversed such that the session appeared first.
- 33 *R. v. Khill*, 2021 SCC 37 at 110.
- 34 In the period observed there was one reference each to a Senate sessional paper, a House of Commons sessional paper, a record of House of Commons committee minutes, House of Commons Journals and an edition of the Votes and Proceedings of the House of Commons. There were three citations to Journals of the Senate.

- 35 Canada. House of Commons. House of Commons Debates, vol. 148, No. 300, 1st Sess., 42nd Parl., May 24, 2018, p. 19605 is cited in paragraphs 26, 27, 106, 108, 156, 162, 163 and 287 of *R. v. Chouhan*, 2021 SCC 26.
- 36 2013 SCC 14 at 33.
- 37 Order in Council 1871-0708.
- 38 Section 17 of the Constitution Act, 1867: "There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons."
- 39 Sessional Paper No 20 in Sessional Papers, 1st Parliament, 4th Session, Vol V.
- 40 Smyth, R., & Nielsen, I. (2019). The Citation Practices of the High Court of Australia, 1905–2015. *Federal Law Review*, 47(4), 655–695.
- 41 See Library of Parliament online: [https://bdp.parl.ca/sites/PublicWebsite/default/en\\_CA/HistoricalInformation/TheScrapbookDebatesoftheParliamentofCanada\\_fr?](https://bdp.parl.ca/sites/PublicWebsite/default/en_CA/HistoricalInformation/TheScrapbookDebatesoftheParliamentofCanada_fr?)
- 42 For detailed discussion see David Farr. (1992). "Reconstituting the Early Debates of the Parliament of Canada." *Canadian Parliamentary Review*, 15(1), 26–32.
- 43 *Ibid.*
- 44 Hana K. Aach. "Impressions: Stories of the Nation's Printer, Early Years to 1900". Ottawa: Canadian Government Publishing Centre, Supply and Services Canada, 1990.
- 45 The English document title is the Journals of the House of Commons of the Dominion of Canada.
- 46 A reference before the Court may be an appeal of a provincial court reference, as is the case for the Reference re Genetic Non-Discrimination Act, which began as a reference in Quebec (In the matter of the: Reference of the Government of Quebec concerning the constitutionality of the Genetic Non-Discrimination Act enacted by Sections 1 to 7 of the Act to prohibit and prevent genetic discrimination, 2018 QCCA 219). Even still, this means the SCC has one judgment of a lower court before it and not two as it would typically in a matter that went through the traditional litigation process.
- 47 A notable example here is a provincial reference that Alberta's government sent to its provincial Court of Appeal that asked it to apply facts to a proposed ways and means motion that was then before the House of Commons. Alberta Order in Council No. 1079/80.
- 48 He served as Minister of Immigration and Colonization, Minister of Mines, and Minister of the Interior and Superintendent-General of Indian Affairs from October 1935 to November 1936.
- 49 2016 SCC 29 at 124.
- 50 *Carter v. Canada (Attorney General)*, 2012 BCSC 886 at 109.
- 51 "I do not mean by these comments to be in any way disrespectful of members of Parliament or of politicians generally. However, in my view, when one reads the Parliamentary Debates, one can discern the biases of the speaker, including biases dependent upon whether the speaker is a member of Government or of the Opposition. This, in my view, is doubtless one of the several reasons for judicial decisions which allow for the admissibility of such debates into evidence at trial, but caution as to the degree of weight to be given to such debates." *Manitoba Metis Federation Inc. et al. v. Attorney General of Canada et al.*, 2007 MBQB 293 at 22.
- 52 See Rafael Ball, "An Introduction to Bibliometrics: New Development and Trends" Chandos Publishing (2018) Chapters 1 and 2.

# Parliamentary Book Shelf: Reviews

**When Bad States Win: Rethinking Counterinsurgency Strategy**

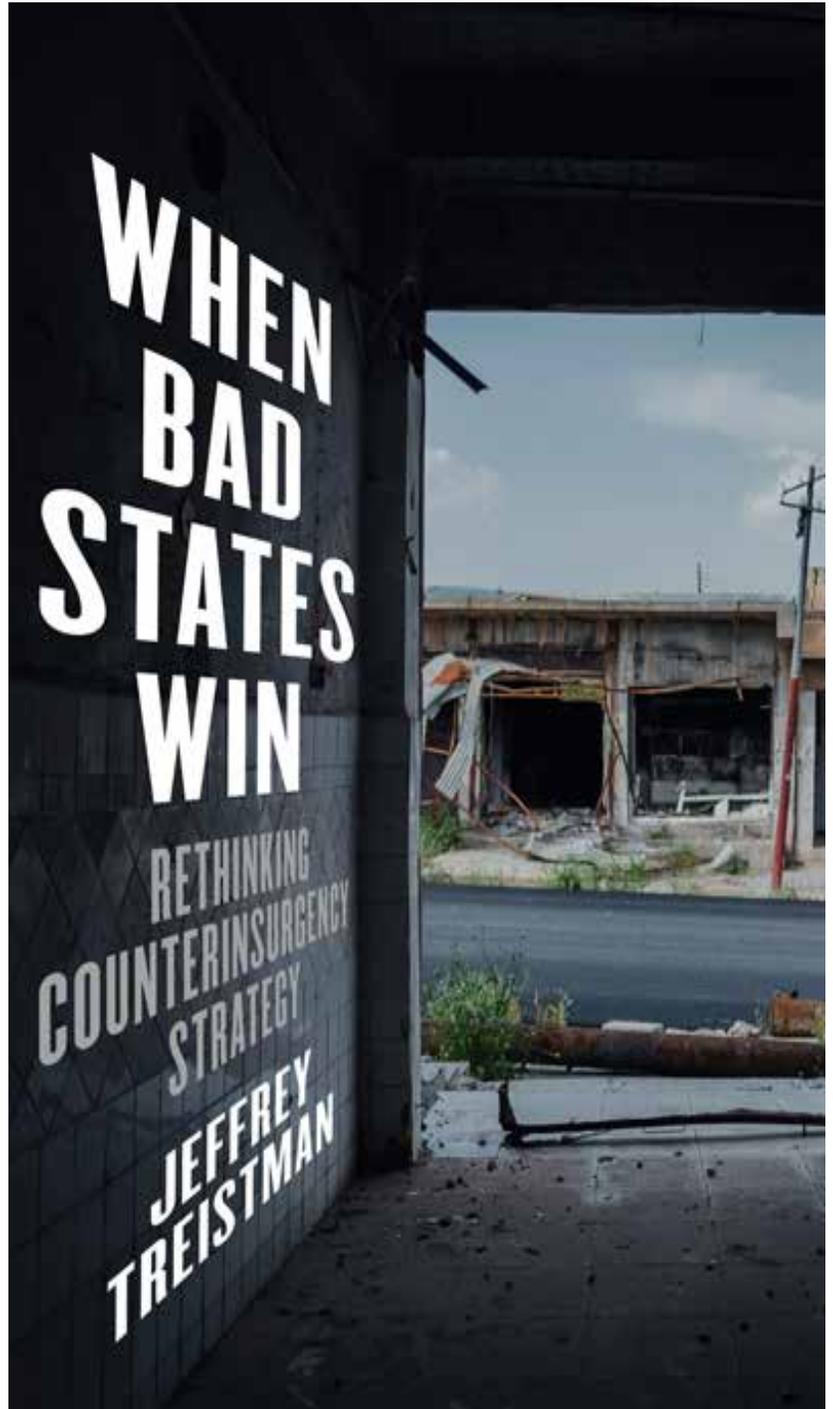
Jeffrey Treistman

McGill-Queen's University Press, 2022, 232 pages

In his book, *When Bad States Win: Rethinking Counterinsurgency Strategy*, Jeffrey Treistman explores different political strategies against insurgencies and recommends alternative political actions to combat oppressive regimes. Readers are engaged to refine their understanding of how states defeat insurgencies and what measures can effectively combat authoritarian governments. Treistman is currently an Assistant Professor of National Security at the University of New Haven's Henry C. Lee College of Criminal Justice and Forensic Sciences. A portion of his book also references his past experience as a Policy Advisor for the Department of State in Iraq.

His main arguments centre on rejecting conventional democratic approaches toward combating oppressive governments. Although liberal democratic strategies are typically at the forefront of most political conversations, the author suggests more effective methods for defeating bad states.

The author's research follows a mixed-methods approach and presents quantitative and qualitative analyses. With extensive methodological investigation and descriptive interpretation, the author describes his step-by-step process with specificity and conceptually defines his variables so readers might better understand his findings. His explanation of the use of barbarism includes different oppressive and violent tactics, such as sexual violence and torture. The complexity of other terms, such as war and rebellion, are discussed in political contexts. Readers have a clear and concise description of each variable, which refines the final analytical interpretations.



A notable point to gather from the book is how to define our understanding of effective strategies to combat and defeat oppressive states and defend human rights. The author establishes fundamental components of a successful or failed insurgency. Much of this information reveals itself when the author comparatively describes different political events to test his theory. For example, he contrasts Nicaraguan and Sri Lankan counterinsurgency responses, where an emphasis is placed on the need for strong military forces to defeat a rebellion. In fact, the book centres its argument on the necessity for an oppressive state to use brutal or violent retaliations in order to defeat uprisings.

Using meticulously assembled data, the book answers unsettled questions about authoritarianism and identifies factors that support oppressive states.

Treistman's work differentiates itself from other forms of political thought by dismantling common assumptions about democracy and offering technical recommendations to defeat bad governments. More so, the research provokes the reader to rethink typical strategies for combating dictatorships.

Alternatively, readers can interpret the book as a warning of the potential rise of authoritarian regimes as democratic states decline. Democratic practices and ideologies are at the heart of his discussion. Treistman encourages us to employ this information to better protect human rights when creating and modifying national and international security policy.

**Tiana Nowzari**

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Toronto Metropolitan University

## *New and Notable Titles*

A selection of recent publications relating to parliamentary studies prepared with the assistance of the Library of Parliament (September 2022 – November 2022).

Bhattacharya, Caroline, Gavin Hart, Sean Haughey Holden, Stephen Bates, Alexandra Meakin. "Introduction - The past, present and future of parliamentary and legislative studies." *Parliamentary Affairs* 75 (4): 697-98, October 2022.

- This special section emanates from the roundtable on the past, present and future of parliamentary and legislative studies, held as part of the PSA Parliaments specialist group's 2020 annual conference.

Bochel, Catherine. "Procedural justice: New approaches to Parliament's engagement with the public?" *Parliamentary Affairs* 75 (4): 919-38, October 2022.

- This article utilises the idea of procedural justice ('fair processes') as a tool for analysing the ways in which Parliament engages with the public. It concludes that the engagement work of individual services in Parliament often reflects such ideas, and suggests that procedural justice could have value in bringing new insights to the work of Parliament in this area.

Brock, Kathy. "Executive-parliamentary relations in Canada: Moving forward from the pandemic." *Canadian Public Administration / Administration publique du Canada* 65 (3): 497-515, September/septembre 2022.

- The pandemic caused governments worldwide to respond quickly to a greater array of health, economic and social issues in a more concentrated time span than previously. The Canadian public sector had developed many of the tools needed to act with agility to support the government agenda response to these challenges. With the consent of political parties, Parliament modified its operations and passed empowering legislation to provide the executive branch with sweeping powers to act. In this turbulent time, government accountability was delayed but never forgotten as a series of conversations with senior public servants revealed. This article delves into those reflections on the first year of the pandemic to discern how government operations changed and how both Parliament and the public sector can adapt to ensure that government can act effectively and efficiently but be held accountable for its decisions as it addresses more complex policy challenges in future.

Campagnolo, Yan. "Why Québec politicians must swear an oath to the King — even if they don't want to." *The Conversation*: 4p, 19 October 2022.

- The leader of the Parti Québécois, Paul St-Pierre Plamondon, sparked controversy by stating that he will not swear an oath of allegiance to King Charles, as required by the *Constitution Act, 1867*, before taking his seat in the Québec National Assembly. The two other elected members of his

party took the same position. Québec Solidaire followed, with the 11 elected members of their party also refusing to swear an oath to the King. In the wake of this controversy, a number of constitutional experts made comments suggesting that it was possible to refuse taking the oath. They proposed various interpretations and solutions that would, in their view, enable the PQ leader to sit as a Member of the National Assembly (MNA) without swearing allegiance to the King. As a constitutional scholar, I do not share this view.

McCallion, Elizabeth. "From private influence to public amendment? the Senate's amendment rate in the 41st, 42nd and 43rd Canadian Parliaments." *Canadian Journal of Political Science/Revue canadienne de science politique* 55 (3): 583-99, September/septembre 2022.

- Recent reforms to the Canadian Senate removed senators from the Liberal Party caucus and changed the appointment process to be more nonpartisan. This article asks: to what extent did the reforms affect legislative oversight in the Senate? By studying the Senate's legislative amendments, I find that the reformed Senate is more willing to amend bills than it was previously. The reforms led to sharp increases in the Senate's amendment rate, the number of amendments moved and the percentage of successful motions in amendment. In interviews, senators revealed that they see oversight differently following the reforms. Senators no longer have opportunities to advise the government in caucus, so they have begun using amendments to exercise oversight. This article concludes that the reforms shifted senators' understanding of their function of oversight, leading to a higher amendment rate and increased visible scrutiny of government by the Senate.

McKevitt, Dawn. "The role of Attorney General and Minister of Justice; the perspective of an informed citizen." *Journal of Parliamentary and Political Law / Revue de droit parlementaire et politique* 16 (3): 703-, September/septembre 2022.

- The position of Minister of Justice and Attorney General is one of the most unique roles held by a member of Parliament in Canada...a daunting responsibility such as this requires a deep understanding of the duties and responsibilities of the position by all those that are involved in government. Without a thorough common understanding, there exists great risk of a breach of the rules governing the conduct of the Attorney General and Minister of Justice, including those with respect to prosecutorial independence and confidentiality.

Turk, James L. "The public nature of ministerial tasks: mandate letters before the Supreme Court of Canada." *Journal of Parliamentary and Political Law / Revue de droit parlementaire et politique* 16 (3): 601-, September/septembre 2022.

- Cabinet secrecy, one of the significant limits on open and transparent government, will be before the Supreme Court in its coming term. The Court has granted leave to the Ontario Government to appeal an order that it release Premier Ford's 2018 ministerial mandate letters...The Ontario Cabinet Office's refusal to release the mandate letters was surprising because, in recent years, previous Ontario governments had made ministerial letters available to the public as have nine of the 13 other federal, provincial, and territorial governments in Canada. At the heart of the case is the issue whether the protection of cabinet deliberations should be narrowly understood or should be a black hole that takes in anything coming near to cabinet.

# *The Canadian Scene*

## **New President of the National Assembly**

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Montarville MNA **Nathalie Roy** was acclaimed as the new President of the National Assembly on November 30, 2022. Replacing outgoing President **François Paradis**, Ms. Roy becomes only the second woman to serve in the position in nearly 230 years of parliamentarianism.

Ms. Roy attended Université de Sherbrooke, where she obtained a multidisciplinary certificate in 1984 and a bachelor's degree in law in 1988. She was called to the Barreau du Québec in 1990 and practiced as a lawyer in the Lamarre, Laporte et Darveau firm.

After more than two decades working in radio and television as a host, journalist, anchor, news editor, editor-in-chief and producer, Ms. Roy returned to private practice of law for two years, from 2010 to 2012, as a lawyer specializing in penal and criminal law, before entering politics on the advice of her colleague, **Jean Lapierre**.

Following her election in 2012 as an MNA under the Coalition avenir Québec (CAQ) banner, Ms. Roy served in several shadow Cabinet and parliamentary committee roles. When the CAQ formed the government in 2018, she was appointed Minister of Culture and Communications and Minister Responsible for the French Language.

Addressing MNAs for the first time as President, she said, "I will be the defender of your rights and privileges, and I will exercise this function with all



**Nathalie Roy**

the passion that you know me for. I will also be the protector of the institution . . . with its traditions, its laws and its jurisprudence.

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Sandra Barnes, Secretary

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Glen Rutland, Secretary (Acting)

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\*As of December 31, 2022

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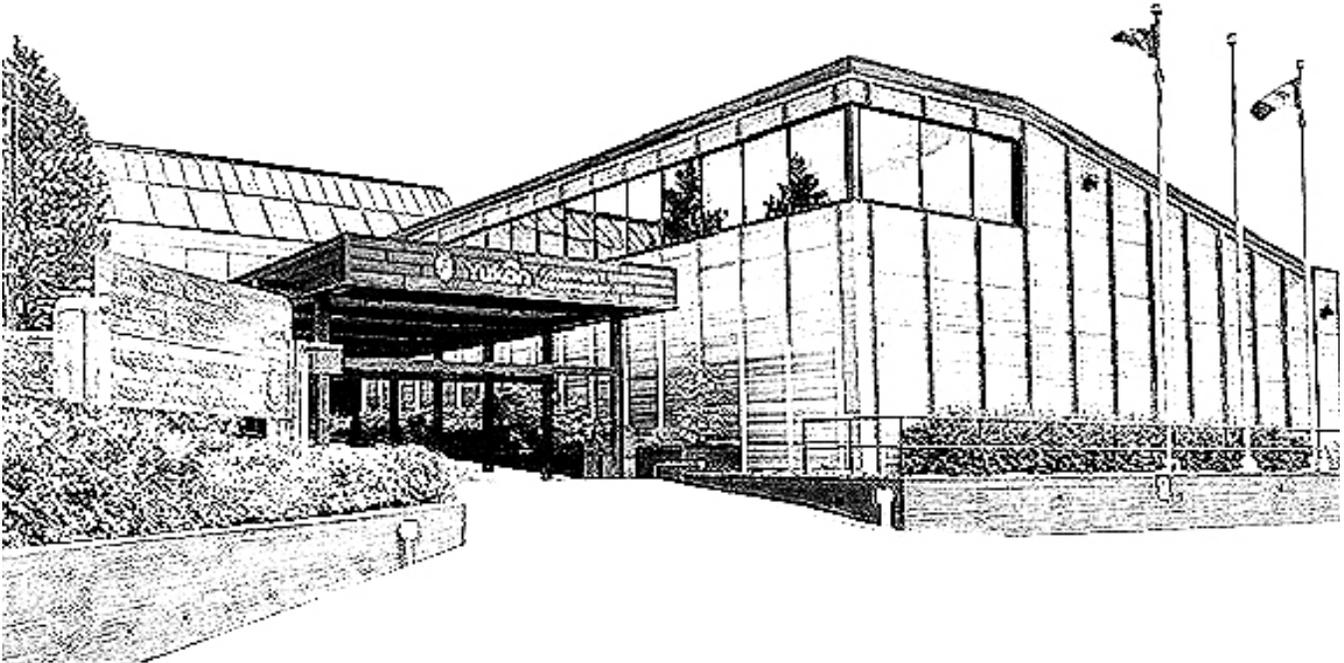
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## Yukon

### 2022 Fall Sitting

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The 2022 Fall Sitting of the First Session of the 35<sup>th</sup> Yukon Legislative Assembly began on October 6, and is expected to conclude on November 24, 2022, after 28 sitting days.

### Premier stepping down

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On September 9, Premier **Sandy Silver** announced that he will step aside as Premier once a Yukon Liberal Party successor has been named. Mr. Silver indicated that he will continue to serve as the Member for Klondike during this Assembly, but will not stand for re-election in the next territorial general election. Premier Silver, who was first elected as an MLA in the 2011 territorial general election, was first sworn in as Premier in December 2016. The Yukon Liberal Party as of this writing has not announced when the Leadership convention will take place.

### Ombudsman appointed

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On October 11, 2022, the Legislative Assembly unanimously adopted a motion recommending, pursuant to sections 2 and 3 of the *Ombudsman Act*, that the Commissioner in Executive Council appoint **Jason Pedlar** as the next Ombudsman of Yukon for a five-year period, effective October 14.

On October 14, Mr. Pedlar was sworn in as Yukon's Ombudsman by Clerk **Dan Cable** in a ceremony held in the Chamber. The territory's Ombudsman also serves as the Information and Privacy Commissioner, and the Public Service Disclosure Commissioner.

A July 13 news release from the Assembly's all-party Members' Services Board announced that the Board would be recommending Mr. Pedlar's appointment as the next Ombudsman, and that the then-Ombudsman, **Diane McLeod-McKay**, would be leaving her position on July 29 in order to become the Information and Privacy Commissioner of Alberta. In July of 2021, Mr. Pedlar had been appointed as Yukon's first Deputy Ombudsman.

### Conflict of Interest Commissioner reappointed

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On October 11, the Legislative Assembly unanimously passed a motion to reappoint the Conflict of Interest Commissioner, **David Phillip Jones**, for a three-year period, effective November 1. The Order of the House reappointing Mr. Jones was made pursuant to section 18 of the *Conflict of Interest (Members and Ministers) Act*.

Mr. Jones was first appointed as Yukon's Conflict of Interest Commissioner in 2002, for a three-year term. The House has since reappointed him for seven successive three-year terms – in 2005, 2008, 2011, 2014, 2017, 2019, and 2022.

## Government bills introduced

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Pursuant to Standing Order 74, the following government bills were introduced by the fifth sitting day – October 17 – the deadline for the introduction of government legislation to be dealt with during a given Sitting:

- Bill No. 16, *Second Act to amend the Legal Profession Act, 2017 (2022)* – **Tracy-Anne McPhee**
- Bill No. 17, *Clean Energy Act* – **John Streicker**
- Bill No. 18, *Midwifery Integration Amendments Act (2022)* – Ms. McPhee
- Bill No. 19, *Technical Amendments Act (2022)* – Ms. McPhee
- Bill No. 20, *Animal Protection and Control Act* – **Nils Clarke**
- Bill No. 21, *Carbon Price Rebate Amendments Act (2022)* – Premier Silver
- Bill No. 206, *Second Appropriation Act 2022-23* – Premier Silver

## Private Members' Bills introduced

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As of the time of writing, during the 2022 Fall Sitting the following private members' bills have been introduced:

- Bill No. 305, *National Day for Truth and Reconciliation Act* – **Annie Blake**, MLA for Vuntut Gwitchin
- Bill No. 306, *Act to Amend the Oil and Gas Act (2022)* – **Kate White**, Leader of the Third Party

## Public Accounts Committee report

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On September 26, the Standing Committee on Public Accounts (PAC) released a follow-up report

on progress made by the Department of Education on implementing recommendations made by the Office of the Auditor General of Canada (OAG) in the OAG's June 2019 report on kindergarten through grade 12 education in Yukon. PAC's report was tabled on the first day of the 2022 Fall Sitting by **Currie Dixon**, the Leader of the Official Opposition, in his role as Chair of the committee. In May 2020, during the preceding (34<sup>th</sup>) Legislative Assembly, PAC had issued a report endorsing the OAG's recommendations.

## Territorial Administration Building renamed "the Jim Smith Building"

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On August 10, the building formerly known as the Yukon Government Administration Building, in which the Legislative Assembly Chamber is situated, was renamed the Jim Smith Building, in honour of the former member of the Yukon Territorial Council (the precursor to the Legislative Assembly) and former Commissioner. **Jim Smith**, who had been elected to the Territorial Council in 1958 as the member for Whitehorse West, did not stand for re-election in the 1961 territorial general election.

In 1966, Smith was appointed as the Commissioner of Yukon, a role in which he served until 1976. Yukon achieved responsible government in 1979; before that time, the powers of the Commissioner were far greater, with the Commissioner serving as the head of the territorial government. Smith, who passed away in 2017, stepped down as Commissioner shortly after the opening in 1976 of the building that now bears his name.

**Linda Kolody**  
Deputy Clerk



**The newly renamed Jim Smith Building is home to Yukon's Legislative Assembly Chamber.**



## Alberta

### Passing of Her Majesty Queen Elizabeth II

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Following the passing of Her Majesty Queen **Elizabeth II** on September 8 the Legislative Assembly of Alberta convened a special sitting on September 15 to honour her legacy. Paying homage to her 70 years of public service, Speaker **Nathan M. Cooper** referred to Her Majesty as an “emblem of public devotion.” Following the Speaker’s statement, the Government House leader requested and received the unanimous consent of the Assembly to dispense with the balance of the Daily Routine and proceed directly to Government Motion 32, which proposed that a humble address be presented to His Majesty King **Charles III**, expressing both the ongoing loyalty of the Assembly to the monarchy and its deep sorrow regarding the passing of Her Majesty. The speeches that followed included heartfelt statements with personal anecdotes from both Premier Jason Kenney and Rachel Notley, Leader of His Majesty’s Loyal Opposition. Other Members contributed to the debate, adding their own stories of personal connection to the Queen, acknowledging her concern for members of the Armed Forces and their families, the unique example she set as a female head of state, her compassion for others, commitment to promoting charitable causes, and steadfast public service.

The passing of the Queen was also acknowledged by declaring September 19 as a day of mourning in the province of Alberta. That morning a memorial ceremony for Her late Majesty was held on the front steps of the Legislature Building. Attended by the Lieutenant Governor, the Premier, Members, staff, and the public, the ceremony began with a smudging and blessing delivered by Elder **Bert Auger**. Musical accompaniment throughout the event was provided by Pipe Major **James Perry**, the Royal Canadian Artillery Band under the direction of Captain **Curtis Bain**, and

members of Edmonton’s Greenwood Singers under the direction of **Robert de Frece**. An honour song was performed by **Lloyd Cardinal**, and the 41 Canadian Brigade Group closed the ceremony with a 96-gun salute.

### Cabinet and Caucus Changes

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On August 5, **Doug Schweitzer** stepped down from his position as Minister of Jobs, Economy and Innovation, and less than a month later, on August 31, he resigned as the Member for Calgary-Elbow. His Cabinet successor, **Tanya Fir**, took on the portfolio on August 26. She will also maintain her previous portfolio as Associate Minister of Red Tape Reduction. The seat for Calgary-Elbow will remain vacant until filled through a by-election or during the anticipated general election in May of 2023. Following Hon. Mr. Schweitzer’s resignation the composition of the Assembly is 60 United Conservative Party members, 23 New Democratic Party members, three independent Members, and one vacant seat.

### Committee Business

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On September 29, the Standing Committee on Legislative Offices met to conduct its annual compensation review of the Officers of the Legislature. The Committee discontinued the compensation strategy adopted in 2008, which included lump-sum payments for long service but was rarely implemented due to salary freezes in the public service. The Committee has now adopted a strategy through which the compensation for Officers of the Legislature will be aligned with what is available to senior officials in the Alberta public service.

The Select Special Ombudsman and Public Interest Commissioner Search Committee has conducted a national advertising campaign, inviting applications for the Ombudsman and Public Interest Commissioner roles. The application period closed on July 25, and the Committee is considering the applications received.

The Assembly has tasked the Standing Committee on Privileges and Elections, Standing Orders and Printing with conducting a review of the amendments to the Standing Orders that took effect in October 2021 related to interventions. As part of its review the Committee conducted an online survey, available to all MLAs, to collect input on the new process. After discussing the matter on September 13, the Committee recommended that the current rules governing interventions remain unchanged.

On May 25, 2022, the Legislative Assembly deemed the Standing Committee on Alberta's Economic Future to be the special committee of the Assembly for the purpose of conducting a comprehensive review of the *Personal Information Protection Act* pursuant to section 63 of the *Act*. In accordance with the *Act* the Committee must report to the Assembly within 18 months after beginning its review, including any amendments to the *Act* the Committee may recommend. The Committee began its review of the *Act* on September 27 and requested a technical briefing on the *Act* from the office of the Information and Privacy Commissioner and Service Alberta.

The Standing Committee on the Alberta Heritage Savings Trust Fund met on September 27 to receive the 2022-23 Alberta Heritage Savings Trust Fund First Quarter Report. The Committee heard presentations from officials from Treasury Board and Finance and representatives from the Alberta Investment Management Corporation regarding the fund's performance. The Committee will hold its annual public meeting on the evening of October 27.

#### **Assemblée parlementaire de la Francophonie (APF)**

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The Legislative Assembly of Alberta was pleased to host the 37<sup>th</sup> conference of the American region APF from July 18 to 21. The theme of this year's conference was *A Celebration of Francophone Culture*. Hosted in person for the first time since the pandemic, the conference was attended by 36 delegates from eight Canadian jurisdictions. Representatives from Louisiana and Haiti were also invited to participate virtually.

#### **Alberta Day**

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After being announced by Premier Kenney in July, the first celebration of Alberta Day was held on September 1, marking the day the *Alberta Act* took effect and the province took its place within Confederation. To begin the new annual tradition, the Government hosted celebrations in Edmonton and Calgary and supported special events in other communities throughout the province.

**Jody Rempel**  
Committee Clerk



## **British Columbia**

### **Observance of Day of Mourning for Her Late Majesty Queen Elizabeth II**

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On Monday, September 19, 2022, Lieutenant Governor **Janet Austin** and Premier **John Horgan** took part in a ceremonial procession for Her Late Majesty Queen **Elizabeth II**. The procession began on the grounds of the Legislative Precinct and ended at Victoria's Christ Church Cathedral where a commemorative service was attended by several Members of the Legislative Assembly, including Speaker **Raj Chouhan**, and other dignitaries. Following consultation with the Legislative Assembly Management Committee, the day was treated as a holiday for all employer-employee groups within the Legislative Assembly as a sign of respect for the late Sovereign and in alignment with the decision made by the Government of Canada and the Government of British Columbia to observe a national day of mourning.

During the official mourning period for Her Late Majesty Queen Elizabeth II, a book of condolences was available to be signed in the Hall of Honour in the Parliament Buildings.

### **Fall Sitting Period**

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The House is expected to resume on October 3, 2022 for a six-week fall sitting period. The Sessional Order adopted on February 8, 2022 enabling the continuation of hybrid proceedings remains in effect.

### **Party Standings**

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As noted in the previous issue, BC Liberal Party Member **Stephanie Cadieux** resigned her Surrey South seat on April 28 to take on a new role as Canada's

first Chief Accessibility Officer. BC Liberal candidate **Elenore Sturko** was elected in the subsequent by-election held on September 10, 2022. Ms. Sturko is expected to be sworn in as a Member on October 3, 2022.

On August 18, 2022, **John Rustad** was removed from the BC Liberal Caucus by **Kevin Falcon**, Leader of the Official Opposition. Mr. Rustad is currently sitting as an Independent Member.

As of October 3, 2022, current party standings in British Columbia are 57 BC NDP, 27 BC Liberal Party, 2 BC Green Party and 1 Independent.

### **BC NDP Leadership**

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On June 28, 2022, Premier Horgan announced that he will step down as Premier following the selection of a new leader of the BC NDP. In a statement, the Premier referenced the recent cancer treatments he underwent and noted that he is unsure his energy levels will be sufficient to continue in the role. He also stated his intention to continue as the Member for Langford-Juan de Fuca until the next provincial general election.

On July 16, 2022, the BC NDP announced details of the leadership election process, including that voting will begin on November 13, 2022 with the new leader to be announced on December 3, 2022. **David Eby** announced his resignation as Attorney General and Minister Responsible for Housing on July 19, 2022 to focus on his leadership bid. **Murray Rankin** was appointed Attorney General and Minister Responsible for Housing effective August 2, 2022. His designation as Minister of Indigenous Relations and Reconciliation also continues.

### **Parliamentary Committees**

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The Select Standing Committee on Finance and Government Services released its report on the Budget 2023 Consultation on August 11, 2022. The Committee held its public consultation between May 30, 2022 and June 24, 2022 during which time it heard 306 presentations, and received 372 written submissions and 861 survey responses. Throughout the consultation, British Columbians identified many key priorities and concerns, including climate change mitigation and resiliency, access to health care, and the need to address the rising cost of living. Committee Members reflected on this input in making their 216 recommendations for the next provincial budget.

### **Conflict of Interest Commissioner Opinion**

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On June 28, 2022, BC Liberal Member **Lorne Doerkson** wrote to the Conflict of Interest Commissioner about a potential conflict of interest on the part of the Minister of Land, Water and Resource Stewardship, **Josie Osborne**, arising from her husband's financial dealings with MakeWay Charitable Society and the government's Healthy Watersheds Initiative grant in 2022 of \$15 million to MakeWay Foundation. On August 30, 2022, the Commissioner released an opinion that the Minister did not contravene the *Members' Conflict of Interest Act* as alleged by Mr. Doerkson. The opinion also stated that the Commissioner does not have jurisdiction to investigate "potential" conflicts of interest or to investigate a matter based on suspicion alone. The Commissioner explained that a Member of the Legislative Assembly is entitled to seek their opinion regarding the conduct of another Member, but only by providing reasonable and probable grounds to believe that another Member is in contravention of the Act, and by setting out the grounds for the belief and the nature of the contravention alleged, pursuant to s. 19(1) of the Act.

### **Reconciliation**

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On June 29, 2022, the Legislative Assembly Management Committee agreed to recognize September 30, 2022 as a workplace day of commemoration to coincide with the National Day for Truth and Reconciliation. As such, the day was treated as a statutory holiday. Several learning and commemoration events for the Legislative Assembly community were held during the week of September 26 including an Art of Reconciliation Exhibit, which was on display in the Hall of Honour, and a presentation on Indigenous reactions to the Truth and Reconciliation Commission's report and opinions on the position of Indigenous peoples in Canadian society, expressed by Indigenous scholars and writers. The front entrance and fountains were illuminated in orange the evening of September 30, and as in 2021, the Survivors' flag was raised on the Legislative Precinct as another expression of remembrance.

The Legislative Assembly Administration released a reconciliation discussion paper titled *Paddling Together: Setting a Reconciliation Course for the Legislative Assembly Administration* in August 2022. The paper was prepared by the Reconciliation Working Group, a cross-departmental team of Legislative Assembly Administration employees, in collaboration with an Indigenous leader, **Kim Baird**, and drafted with input

from Indigenous partners. *Paddling Together* addresses the Legislative Assembly's history as a colonial institution and how it has impacted Indigenous peoples. It also outlines reconciliation work to date, sets out key actions and next steps, as well as roles and responsibilities. The Legislative Assembly of British Columbia is the first Canadian parliamentary jurisdiction to issue such a paper.

### Passing of Former Clerk of the Legislative Assembly of BC

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On August 30, 2022, **E. George MacMinn** passed away at the age of 92. Mr. MacMinn was appointed as a Table Officer in the position of Clerk Assistant in 1958 and was appointed as Clerk of the Legislative Assembly in 1993. He authored the first four editions of the Legislative Assembly's procedural authority, *Parliamentary Practice in British Columbia*, originally published in 1981. Mr. MacMinn was awarded the Order of British Columbia in 2005 for his outstanding achievements and commitment to public service throughout his professional career in law and at the Legislative Assembly. With over 50 years of service, he was the longest serving Table Officer in the Commonwealth at the time of his retirement in 2011.

**Katey Stickle**

Committee Research Analyst



## Manitoba

### 4<sup>th</sup> Session of the 42<sup>nd</sup> Legislature

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The Fourth Session of the 42<sup>nd</sup> Legislature resumed with new Rule changes taking effect on September 28, 2022 (as discussed in the previous submission). The Session is scheduled to end on November 3, 2022. The

Session began with the Speaker tabling the resignation of the former Minister **Scott Fielding** as the MLA for Kirkfield Park followed by the introduction of newly elected MLA for Thompson **Eric Redhead**. The first day of Session ushered in a new era in the Assembly, as due to rule changes MLAs are now able to wear Indigenous, traditional and cultural attire without requiring permission beforehand. Attire worn on this day included a ribbon skirt, a ribbon shirt, an Indian "Kurta Pajama" dress, a traditional Ukrainian shirt and a traditional African shirt.

The House also expressed its condolences on the first day regarding the passing of Her Majesty Queen **Elizabeth II**. The condolences were led by Premier **Heather Stefanson**, followed by the Leader of the Official Opposition **Wab Kinew** and **Dougald Lamont**, the Independent MLA for St. Boniface and Leader of the Manitoba Liberal Party. During the period of mourning, prior to Session resuming, a Memorial Service for Her Late Majesty was held at St John's Cathedral, all flags on provincial buildings were lowered to half mast, black ribbons were placed on flags and portraits, the Centennial Flame was lit on Memorial Avenue and projections were placed upon the City Fountain and Central Tower of the Legislative Building. In addition, Books of Condolence were made available for those in the Legislative Building and the general public to sign.

These Fall Sittings will see the completion of the Estimates process in the Committee of Supply as well as the completion of Government Designated Bills. The House is required to complete consideration of five Designated Bills, detailed in the Autumn edition of the *CPR*, selected by the Official Opposition in the Spring for further consideration in the Fall. The House completed Second Reading of Designated Bills on September 29, 2022. At the time of this submission, Committee consideration must be completed by October 25, while Concurrence and Third Reading must be then completed by November 3, 2022, with the five Designated Bills receiving Royal Assent before the House rises that day.

### New Member for Thompson

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On June 7, 2022, citizens of the constituency of Thompson elected Mr. Redhead, of Manitoba's New Democratic Party, as their MLA. He filled a seat left vacant due to the tragic passing of **Danielle Adams** in a highway accident in December, 2021, just a couple of years into her first term. Mr. Redhead is a former Chief of Shamattawa First Nation.

## New Advocate for Children and Youth

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**Sherry Gott** was confirmed as the new Advocate for Children and Youth by a formal resolution passed on September 29, 2022, on the same day the main Committee reported to the House. This was the first appointment under Bill 26 – *The Officers of the Assembly Act (Various Acts Amended)* that was adopted in June. The Standing Committee of Legislative Affairs was tasked with managing the hiring process and, following an open competition and consideration of applicants, it adopted the recommendation of the Sub-Committee that Ms. Gott be appointed. The main Committee met on November 19, 2021 and again on June 22, 2022 after the Sub-Committee had completed its review of potential applicants.

## Standing Committees

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Since the last submission, the Public Accounts Committee (PAC) met on May 25 to consider the Public Accounts and again on June 1 to consider the Auditor General Reports on Vital Statistics and Physician Billings. In addition to the Standing Committee meetings regarding the hiring of the new Advocate for Children and Youth, on August 9, the Standing Committee of Legislative Affairs met to consider and accept the Report and Recommendations of the Judicial Compensation Committee.

## Swearing in of new Lieutenant Governor

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The Legislative Assembly agreed to not sit on October 24, 2022 in order to accommodate the swearing in of the new Lieutenant Governor, **Anita Neville**. Ms. Neville succeeds **Janice C. Filmon**, who held the office since June 19, 2015. Ms. Neville has a long history of public service, representing Manitobans and the constituency of Winnipeg South Centre in the House of Commons from 2000 to 2011. She has sat on various committees and served as the parliamentary secretary to the Minister of Canadian Heritage and the Minister responsible for the Status of Women during her time in office. Prior to entering public life, she worked as an economic development consultant and served for many years as Chair of the Winnipeg School Division Board. The oath of office will be administered by Chief Justice **Richard Chartier** and conducted in the presence of the outgoing Lieutenant Governor, the Premier and Members of the Cabinet, Members of the Legislative Assembly, representatives of the judiciary and the Armed Forces, along with invited guests.

**Greg Recksiedler**  
Research Officer/Clerk Assistant



## Nova Scotia

This legislative report canvasses the Spring 2022 Sitting, the unexpected Summer 2022 Sitting, and highlights recent events outside of the legislative chamber.

### Spring 2022 Sitting

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The Sixty-Fourth General Assembly met for its first Spring sitting from March 24 to April 22, and sat for 19 meetings. Of those 19 meetings, 11 extended beyond the House's ordinary hours. The latest meeting was April 20, when the House rose at four minutes past midnight. The longest meeting was April 22, when the House adjourned the Spring Sitting at the end of a 13.5-hour day. At 10:30p.m., the Lieutenant Governor assented to 31 bills. Twenty-eight were Government Bills, two were Private and Local Bills, and one was a Private Members' Bill.

### First Budget of the Sixty-Fourth General Assembly

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True to tradition, the Budget Address pre-empted the Daily Routine on Budget Day, March 29. The Minister of Finance and Deputy Premier (Inverness) introduced his first budget, entitled *Solutions for Healthcare, Solutions for Nova Scotia*. For the 2022-2023 fiscal year, the estimates projected a deficit of \$506.2 million and a revenue of \$12.7 billion.

Across the aisle, the Member for Bedford Basin responded to the Budget as the Official Opposition's Finance Critic, while the Member for Halifax Citadel-Sable Island spoke as the New Democratic Party's Finance Critic. During the 40 hours permitted for examination of estimates before the Committee of the Whole House on Supply, the Ministers responsible for the following five departments appeared: 1. Health and

Wellness (Antigonish); 2. Seniors and Long-Term Care (Eastern Passage); 3. Municipal Affairs and Housing (Kings North); 4. Community Services (Pictou West); and 5. Public Works (Queens).

## Noteworthy Procedure and Legislation

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### *Conversion into Hybrid Proceedings*

In the early days of the Spring sitting, positive COVID-19 test results from individuals present in Province House were reported. To stem the proliferation of COVID-19, the House implemented additional health and safety measures on top of the pre-existing masking requirement. Prime among these measures was Resolution No. 192, which the Government House Leader (Queen's) introduced on April 5. Resolution No. 192 proposed to convert the House's proceedings into a hybrid format. With the House's unanimous consent to waive the two-day Notice period, Resolution No. 192 passed that same day, without debate. The series of rule waivers and suspensions entailed by Resolution No. 192 also necessitated a Speaker's Directive to institute the consequential operational changes, and to facilitate virtual access for Members off-site (64th Leg, 1st Sess, 5 April 2022 at 1902 (Kim Masland, PC)). After a brief recess, the House reconvened in hybrid format. Resolution No. 192 remained in effect for the duration of the Spring sitting only.

### *Unanimous Consent to Pass Bill 105 In A Single Day*

In the span of a few minutes, support from all parties and the Independent Member enabled Bill 105, *Protecting Access to Health Services Act (amended)* to be introduced, bypass Law Amendments Committee, read for a second time, bypass Committee of the Whole House on Bills, read for a third time, and then passed.

Bill 105 expands the 50-metre safe-access zone previously created by the *Protecting Access to Health Services Act*. That *Act* was passed during the previous Fall Sitting to insulate healthcare facilities, providers, and patients from obstruction, intimidation, harassment, and fear. Prohibitions on protests, interference, besetting, and harassment are backed by a maximum penalty of \$5,000 fine or 6 months imprisonment for first-time individual offenders, and a maximum \$25,000 fine for first-time corporate offenders. The new amendments from the Spring bring executive health officials and the private residences of all healthcare providers within the *Act's* safe-access zone.

### *Private Members Bill Passed*

Fifty-seven Private Members Bills were introduced during the Spring Sitting: 15 from the Liberal Party Caucus, 35 from the New Democratic Party Caucus, and 7 from the Independent Member. (Interestingly, Nova Scotia's rules for Private Members Bills are unique among Canadian legislatures. The *Rules and Forms of Procedure* prescribe no limit on how many Bills any individual Private Member may introduce; nor is there any prescribed limit on the total number of Private Members Bills that may be introduced on any given day or across the entire Session.)

The first Private Members Bill passed during the Sixty-Fourth General Assembly is Bill 94, *Ukrainian Famine and Genocide (Holodomor) Memorial Day Act*, which was introduced during the previous Fall Sitting (Hammonds Plains-Lucasville). As conveyed by its title, the *Act* denounces the Holodomor famine, which occurred in Soviet Ukraine during 1932-1933, as a Genocide. The *Act* declares the fourth Saturday in November to be henceforth observed as Ukrainian Famine and Genocide (Holodomor) Memorial Day.

Ordinarily, Private Member's Bills introduced by Opposition Members are called and debated on Wednesdays, pursuant to the House's Rules for Opposition Members' Business. Practically, the successful passage of a Private Members' Bills in a majority Government depends upon the Government House Leader calling the Private Members' Bill during Government Business. For two recent examples of Private Members' Bills passed, see: Bill 38, *Pregnancy and Infant Loss Awareness Act*, 63rd Leg, 1st Sess, Nova Scotia, 2017 (Royal Assent); Bill 71, *An Act to Amend Chapter 61 of the Acts of 2012, An Act to Amend Chapter 1 (1992 Supplement) of the Revised Statutes, 1989, the House of Assembly Act* 61st Leg, 5th Sess, Nova Scotia, 2013 (Royal Assent).

### *All-Party Committee Builds from Private Members Bill*

Procedurally, Bill 96, *Dismantling Racism and Hate Act* is noteworthy in two respects. First, Bill 96 builds from the framework proposed by the identically-titled Bill 12, a Private Members' Bill introduced in the Fall Sitting (Preston). Second, Bill 12's framework was built upon during the interval between the Fall and Spring sittings by an all-party committee. The meetings and community consultations that culminated into Bill 96 are not, however, part of the legislative record because the all-party committee was not an official legislative committee struck under the legislative authority of the

House.

Substantively, Bill 96 aims to achieve equity among marginalized and racialized communities. Towards that aim, the Bill mandates the Government to create a strategy to address systemic hate, inequity, and racism within the Province by July 31, 2023. The Minister responsible for the Office of Equity and Anti-Racism Initiatives is required to create a community network for engaging with marginalized and racialized communities and to establish standards for collecting and using data to identify, monitor, and address hate, inequity, and racism. The Minister is also obligated to report progress on the *Act's* implementation annually to the House.

#### *Motion to Recommit*

Bill 120, *the Involuntary Psychiatric Treatment Act (amended)* was the subject of the first motion to recommit pursuant to Rule 51 in over 20 years (Halifax Citadel-Sable Island). The last time a Member attempted to discharge a Public Bill from the Order Paper to recommit it to an earlier stage of the legislative process, the Speaker ruled the motion out of order (58th Leg, 2nd Sess, 26 June 2001, at 5801 (**Murray Scott**)). When the question to recommit was put on a recorded division, it was negatived 28-22.

Bill 120 alters both the purpose and administration of the existing statutory framework for involuntary hospitalization. Among the major changes are requiring the *Act* to be interpreted and applied in a manner consistent with Canada's international obligations towards persons with disabilities; new standards for taking individuals into custody for examination and for admission; greater discretion to the review board; and provisions for community treatment orders.

#### *Committee of the Whole House on Bills*

The following Public Bills are also noteworthy because, along with Bills 96 and 120, they were the subject of motions to amend during Committee of the Whole House on Bills:

- Bill 102, *Wildlife Act (amended)*: empowers the creation of regulatory offences for feeding wildlife
- Bill 118, *Personal Health Information Act (amended)*: provides discretion to custodians of health records to conduct audits and requires substitute-decision makers to prove they are acting in an individual's best interest
- Bill 134, *An Act to Amend the Motor Vehicle Act*: regulates the use of electric kick-scooters

- Bill 145, *Electricity Act (amended)*: changes the net metering program for electricity and simplifies programs for green and solar energy
- Bill 149, *Financial Measures Act (2022)*: implements the tax measures and programs in the annual budget. Although Bill 149 passed with a controversial measure for non-resident property tax intact; it was later announced that the tax would not be implemented.

#### **Summer 2022 Sitting**

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In July, the House was unexpectedly recalled pursuant to Rule 3(5) for a special sitting. Rule 3(5) empowers dispensing with the ordinary 30 days' notice for a sitting, where it is in the public interest for the House to meet.

Since its creation in 1987, Rule 3(5) has only been invoked in four other recorded instances: once during the Sixty-First General Assembly, twice during the Sixty-Second General Assembly, and once during the Sixty-Third General Assembly. All four precedents involved the labour relations context. In this instance, Rule 3(5) was invoked to reverse binding, retroactive changes to Members' and Ministers' remuneration.

#### *Reversal of Independent Remuneration Panel*

As required by s. 45A(1) of the *House of Assembly Act*, an Independent Panel was appointed following the General Election to review the annual remuneration paid to Members, Ministers, the Speaker, Deputy Speaker, Premier, and party leaders. After consulting the public, Members, and economists, the three-Member Remuneration Panel delivered their report on July 15, 2022. The Panel unanimously decided that Members' base pay would be re-aligned in proportion with the civil service's pay raises. A majority of the Panel also decided to reduce the salaries for the roles of Premier and Minister without Portfolio. The Remuneration Panel's full Report is available online. The Panel also made non-binding recommendations intended to promote diversity and inclusion in the House.

In reply to the Panel's Report, Bill 185, *House of Assembly Act (amended)* was introduced on July 26, 2022, the first day of the special Summer Sitting. Bill 185 proposed to nullify the Panel's binding decisions. Notwithstanding that nullification, Bill 185 also proposed to reduce the salary for the role of Premier by the amount stipulated by the Panel's majority. During

Committee of the Whole House on Bills, suggested amendments that would have effectuated the two of the Panel's non-binding recommendations were defeated: 1. to establish a childcare fund for members with parenting responsibilities; and 2. to re-visit the *House of Assembly Act's* provision for Mi'kmaw representative. Bill 185 passed on August 2, the fifth and final day of the special Summer sitting.

### *Emergency Debates*

Opposition Members prevailed upon the unexpected Summer Sitting to bring three motions pursuant to Rule 43 for emergency debates. Over the five-day special sitting, two of the three motions succeeded.

On July 26, the House debated the cost-of-living crisis (Motion by the Leader of the Official Opposition (Yarmouth)). On July 27, the House debated delays in hospital emergency rooms (Motion by the House Leader for the NDP (Dartmouth North)). The third motion to debate the climate crisis (Motion by the House Leader for the NDP (Dartmouth North)) was rejected because there were already numerous Bills on the Order Paper available to debate the topic. The test pursuant to Rule 43 requires the Speaker to rule that the proposed topic 1. falls within the scope of the Government's administrative responsibilities or is capable of Ministerial action; and 2. is unlikely to be debated by the House through other means within in a reasonable time.

### **Events**

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#### *Commemoration of First Female African Nova Scotian Elected to the House of Assembly*

Prior to the Spring Sitting, Province House commemorated the historic significance of the first female African Nova Scotian to sit in the House of Assembly. On February 22, the portrait of **Yvonne Atwell**, who was elected to represent Preston in 1998, was officially installed at Province House during a special unveiling ceremony.

As the Speaker remarked, honouring Ms. Atwell's achievement for women of colour and for democracy was "particularly significant during African Heritage Month--a time to educate ourselves and reflect upon and celebrate the significant contributions of African Nova Scotians to the province."

#### *65<sup>th</sup> Commonwealth Parliamentary Conference Hosted in Halifax*

On behalf of the CPA Canada Region, the Speaker of the House of Commons hosted the 65<sup>th</sup> Commonwealth Parliamentary Conference in Halifax from August 20-26. Although most of the conference events were held at the Convention Centre, many parliamentarians from around the world took the opportunity to tour Province House – the oldest legislative building in North America, and the home of the Nova Scotia Legislature since 1819. The CPA Executive Committee also gathered for dinner in the historic red chamber, which is where Nova Scotia's abolished unelected Legislative Council previously convened. Staff from multiple offices of the House of Assembly also volunteered as rapporteurs for eight conference workshops.

**Cara Locke**  
Assistant Clerk



## **Newfoundland and Labrador**

The Fall 2022 sitting began on October 2 when Lieutenant Governor **Judy M. Foote** prorogued the First Session of the 50<sup>th</sup> General Assembly. On October 5, the Lieutenant Governor delivered the Speech from the Throne to officially open the Second Session.

### **Highlights – Fall 2022 Sitting**

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The Second Session of the 50<sup>th</sup> General Assembly included a special two-day sitting at Colonial Building, the seat of democracy in Newfoundland and Labrador from January 28, 1850 to July 28, 1959. The Speech from the Throne on October 5, as well as routine proceedings and Government business on October 6, took place in



Collection of the House of Assembly of Newfoundland and Labrador/Maurice Fitzgerald

### **Members of the House of Assembly, 2nd Session, 50th General Assembly, October 5, 2022.**

the former Assembly Chamber. Colonial Building, which was designated a provincial historic site in 1974, was closed in recent years as it underwent restoration, but re-opened to the public in September 2022.

Throughout the history of Colonial Building as our seat of democracy, several photographs of Members, presiding officers and table officers were taken on the building's iconic front steps. To commemorate the special House sitting in 2022, a photo was once again taken on the front steps to honour this tradition.

The House resumed sitting at its current location in Confederation Building Complex on October 11.

The first three weeks of the Fall 2022 sitting were quite busy. Of the 20 bills for which notice was given up to the start of the constituency week break on October 24, one bill received royal assent, a further nine progressed past third reading and were awaiting royal assent, and 11 bills were in various other stages on the order paper. In accordance with the parliamentary calendar, the Fall 2022 sitting is scheduled to adjourn on November 10.

### **Changes in House Standings**

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The Member for Lake Melville was elected at the beginning of the 50<sup>th</sup> General Assembly as one of three unaffiliated Members at that time. On September 12, 2022, the Member for Lake Melville rejoined the Liberal caucus, having served as Member of that caucus in both the 48<sup>th</sup> and 49<sup>th</sup> General Assemblies. As a result of the change, the House standings are currently 23 Liberal, 12 Progressive Conservative, three New Democratic Party and two unaffiliated.

### **Report of the Commissioner for Legislative Standards**

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On October 12, 2022, the Speaker tabled a report of the Commissioner for Legislative Standards pursuant to subsection 44(1) of the *House of Assembly Act* regarding the Member for Grand Falls-Windsor - Buchans (*The Tibbs Report*). In accordance with statutory provisions, Members must report material changes in their financial circumstances to the information required to be disclosed to the Commissioner for Legislative Standards. Upon such a change occurring, a Member must report it to the Commissioner within 60 days to "restore the accuracy of the information

that is available to the public". Upon review, the Commissioner established that the Member in question misunderstood his disclosure obligations and failed to report a change of information within 60 days. While the facts demonstrated administrative non-compliance with the *Act*, the Commissioner for Legislative Standards did not recommend discipline given there was no private interest furthered and no evidence that the Member acted contrary to the public interest. The Commissioner's report can be viewed here: [www.assembly.nl.ca/About/ReportsPublications/#legStandards](http://www.assembly.nl.ca/About/ReportsPublications/#legStandards).

The report has not yet been dealt with by the House. The *House of Assembly Act* requires that the report be taken up and disposed of within 15 sitting days after the day on which it was tabled, or within a longer period that the House may determine, not to exceed 6 months.



**Speaker Derek Bennett attending the dedication ceremony for the caribou monument at Gallipoli, September 2022.**

## **Independent Review of a Report of a Statutory Officer**

The *House of Assembly Accountability, Integrity and Administration Act* contains public interest disclosure (whistleblower) provisions that apply to Members and employees of the Legislature, including the statutory offices. Carriage of the whistleblower provisions rests with the Citizens' Representative.

In March 2022, the Citizens' Representative submitted a report to the Speaker under these public interest disclosure provisions respecting the Chief Electoral Officer. The legislation requires that if a whistleblower report recommends corrective action, the Speaker refer it to the appropriate officials for follow-up. There were expectations in the public discourse that this report would be tabled and debated in the House of Assembly, neither of which is provided for in the statute.

Under the enabling legislation for each statutory office, the authority for appointment, suspension and dismissal of statutory officers is held by the Lieutenant-Governor in Council (LGIC) upon resolution of the House. The public interest disclosure report related to the Chief Electoral Officer was therefore referred by the Speaker to the LGIC in June 2022. Following this, the LGIC invited the House of Assembly Management Commission to make recommendations to it on the matter. The Commission recommended to the LGIC that the Chief Electoral Officer be suspended until an independent review was conducted of the public interest disclosure report by the Citizens' Representative. On June 28, the LGIC suspended the Chief Electoral Officer.

In July 2022, the Commission appointed **J. Derek Green**, former Chief Justice of Newfoundland and Labrador, to undertake the independent review of the Citizens' Representative report. Former Chief Justice Green was the sole commissioner on the Review Commission on Constituency Allowances and Related Matters of the House of Assembly in 2006-2007, which resulted in the rigorous and accountable administrative governance framework under which the Newfoundland and Labrador Legislature currently operates. The independent review consisted of an analysis of the Citizens' Representative's report based on the evidence and findings contained in it, and was not a re-investigation. The complete terms of reference can be found in the Commission's press release announcing the appointment of former Chief Justice Green: [www.gov.nl.ca/releases/2022/hoa/0713n02/](http://www.gov.nl.ca/releases/2022/hoa/0713n02/).

In accordance with the terms of reference, the Management Commission received former Chief Justice Green's review entitled, 'Fairness, Reliability and Justification: Accountability Based on Public Interest Disclosures' on September 15, 2022. After considering the submission and meeting with the former Chief Justice, the Commission accepted his findings and recommended to the LGIC that the Chief Electoral Officer be reinstated and also directed that the review be released publicly. On October 21, following issuance of the Orders in Council to revoke the suspension, the Commission announced the reinstatement of the Chief Electoral Officer and released former Chief Justice Green's findings, available here: [www.assembly.nl.ca/About/ReportsPublications/#other](http://www.assembly.nl.ca/About/ReportsPublications/#other).

### Speaker Attends Dedication Ceremony at Gallipoli for the Final Monument on the Trail of Caribou

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In September 2022, Speaker **Derek Bennett** was part of a delegation that participated in the dedication ceremony for the final caribou monument to complete what is known as "The Trail of the Caribou", marking some of the most important sites where Newfoundlanders fought and died during the First World War. The commemoration ceremony was also attended by **Lawrence MacAulay**, Minister of Veterans Affairs and Associate Minister of National Defence, Premier **Andrew Furey**, other parliamentarians, representatives of the Government of Newfoundland and Labrador, and officials from Canada and Türkiye.

Following the conclusion of the First World War, as part of an overall commemorative initiative, the Government of Newfoundland proceeded to establish caribou monuments at sites of significance for the Royal Newfoundland Regiment in northern France and Belgium. Despite previous efforts to complete "The Trail of the Caribou", a monument had not been placed at Gallipoli. The most recent efforts to complete the Trail started with a resolution passed by the Newfoundland and Labrador House of Assembly on December 7, 2017, directing the Speaker to travel to Türkiye as an emissary of the people of Newfoundland and Labrador to advance discussion towards the shared goal of establishing a bronze caribou monument commemorating the experience of the Royal Newfoundland Regiment at Gallipoli.

Further to the resolution, former Speaker **Perry Trimper** travelled to Türkiye in January 2018. The intention was to extend an invitation for a delegation to visit Newfoundland and Labrador, and to support

the conclusion of a possible agreement. The mission to Türkiye concluded with a proposal from Turkish officials to place the monument adjacent to Hill 10 Cemetery in Gallipoli National Park, site of the first fatal casualty of the Royal Newfoundland Regiment at Gallipoli on September 22, 1915.

**Bobbi Russell**  
Office of the Clerk



## Ontario

The Lieutenant Governor of Ontario convened the First Session of the 43<sup>rd</sup> Parliament on August 8, 2022. During the six weeks that followed, three Bills were passed and received Royal Assent, the House expressed its condolences on the passing of several former Members and paid tribute to Her Late Majesty, Queen **Elizabeth II**. On September 14, 2022, the House adjourned and is scheduled to resume on October 25, 2022, the day following Ontario's municipal elections.

### Commencement of the 43<sup>rd</sup> Parliament

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The First Session of the 43<sup>rd</sup> Parliament commenced with the Clerk of the Legislative Assembly of Ontario, **Todd Decker**, presiding over the election of the Speaker. Two Members were nominated to take the Chair as Speaker of the House: MPP **Nina Tangri** from the riding of Mississauga—Streetsville and MPP **Ted Arnott** from the riding of Wellington—Halton Hills. Mr. Arnott was re-elected as Speaker of the Legislative Assembly for a second consecutive term. The following day, Lieutenant Governor **Elizabeth Dowdeswell** delivered the Speech from the Throne.

### Condolences

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The House expressed its condolence on the passing of several former Members, including:

**Julia Munro**, Member for the Electoral Districts of York—Simcoe, York North and Durham—York from June 8, 1995 to June 6, 2018.

**Robert V. Callahan**, Member for the Electoral Districts of Brampton South and Brampton from May 2, 1985 to June 7, 1995.

**Mitro Makarchuk**, Member for the Electoral District of Brantford from October 17, 1967 to October 20, 1971 and September 18, 1975 to March 18, 1981.

**Carman McClelland**, Member for the Electoral District of Brampton North from September 10, 1987 to June 7, 1995.

**Ron Hansen**, Member for the Electoral District of Lincoln from September 6, 1990 to June 7, 1995.

**James Pollock**, Member for the Electoral District of Hastings—Peterborough from March 19, 1981 to September 5, 1990.

**Jim Brown**, Member for the Electoral District of Scarborough West from June 8, 1995 to June 2, 1999.

**Margaret Birch**, Member for the Electoral District of Scarborough East from October 21, 1971 to May 1, 1985.

**James A. Taylor**, Member for the Electoral District of Prince Edward—Lennox from October 21, 1971 to September 9, 1987.

### **Change in Leadership**

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Following the June provincial election, **Andrea Horwath** stepped down as leader of the New Democratic Party of Ontario (NDP). Shortly after, **Peter Tabuns**, Member for the Electoral District of Toronto—Danforth, was made interim leader of the NDP, and was recognized as the leader of the Official Opposition by the Speaker. MPP Horwath resigned her seat on August 15, 2022, triggering a vacancy in the membership of the House.

Similarly, MPP **John Fraser** assumed the role of interim leader of the Liberal Party of Ontario following the resignation of then-party leader **Steven Del Duca**.

### **Speaker's Statement on Participation of Independent Members in House Proceedings**

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For the purposes of the Standing Orders, any MPP who is not a member of a recognized party is considered

an independent Member. Ten independent Members were elected to the Legislature for the 43<sup>rd</sup> Parliament: 8 are affiliated with the Liberal Party, one with the Green Party and one without party affiliation. After considering the Standing Orders, precedents set in the 42<sup>nd</sup> Parliament, and the opportunities given to all other Members to participate in proceedings, the Speaker announced the parameters for the participation of independent Members in several House proceedings.

In line with the mathematical approach taken in the previous Parliament, it was calculated that each Member can reasonably expect to be recognized once every 8 days to ask a question during Question Period. As such, independent Members will be recognized to ask a question each day with a second question every Tuesday. Each of the 10 independent Members will be recognized a maximum of once during every 2-week period of House meetings.

For Member's Statements, each eligible Member can reasonably expect to make one statement every nine days. The Speaker will recognize one independent Member to make a statement every day, ensuring that no one Member is recognized more than once in every 10-day period.

### **Speaker's Rulings**

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Over the first few months of the new Parliament, two points of order were raised and ruled on by the Speaker.

On August 10, 2022, the Official Opposition House Leader and Member for London West (**Peggy Sattler**) raised a point of order regarding a motion providing for the appointment of Members to Standing Committees that was filed and moved by the Government. The Member asked the Speaker to provide some guidance under Standing Order 1(c), which allows for contingencies not provided for in the Standing Orders to be determined by the Speaker. The Member argued that recognized parties should have the authority to determine which of their Members are appointed to committee, and that the motion presented by the Government ignored the selections of Official Opposition. Several Members spoke to this point of order, including the Government House Leader (**Paul Calandra**) and leader of the Official Opposition. Following a brief recess, the Speaker ruled that the motion was procedurally in order and this was therefore not "a contingency not provided for in the Standing Orders".

On August 18, 2022, the Speaker ruled on a point of order raised by **John Vanthof**, the Official Opposition

Chief Whip and Member for Timiskaming–Cochrane. The Member rose regarding a motion appointing the Presiding Officers, which was filed and moved by the Government. The appointment of these Officers is governed by Standing Orders 5(a), 5(c) and 6, which assert that “up to 3 of the 5 Presiding Officers of the House shall be chosen from recognized opposition parties”. The motion before the House proposed the appointment of two Members from the Government, one Member from the Official Opposition and one independent Member.

MPP Vanthof stressed that Standing Order 6 was misapplied and failed to take into consideration the advice of the Official Opposition House Leader. On July 15, 2022, the Opposition House Leader released a letter written to the Government House Leader indicating their party’s choices for Presiding Officers. The motion before the House did not include all of the selections and instead replaced one selection with a Member from the Government party and another with an independent Member. The Member for Timiskaming-Cochrane argued that by failing to appoint all three Official Opposition selections, the motion “subverted customs and precedents that had been established in Ontario for more than 30 years”.

The Speaker ruled that the motion was in order as there was nothing in the Standing Orders to prohibit the appointment of Government and independent members. While the practice has been that the maximum number of presiding officers appointed were from among the Members of the recognized opposition parties, this practice does not take precedence over established rules in place. Furthermore, the language of the Standing Order suggests that fewer than three Officers from recognized opposition parties is acceptable.

### **Tributes to Her Late Majesty, Queen Elizabeth II**

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On September 14, 2022, the House passed a motion that an Humble Address be presented to His Majesty King **Charles III** expressing the Legislature’s condolences on the passing of Her Late Majesty, Queen **Elizabeth II**. The House also observed a moment of silence. Speaker Arnott issued a statement of condolence, and the Assembly’s website included a photo gallery of Her Majesty’s visits to Queen’s Park throughout the years. Several other matters of protocol were observed, including lowering of the flags to half-mast and adorning her Majesty’s portrait with black ribbons. Lastly, a book of condolences was made available for those who wished to extend their sympathies to the Royal Family.

### **Committee Activities**

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Since the start of the new Parliament, all eight Standing Committees have met to elect a Chair and appoint a Vice-Chair and Sub-Committee on Committee Business. Each Committee also received a closed session orientation briefing by the respective Clerk of the Committee and Research Officer.

The Standing Committee on Procedure and House Affairs met to assign government ministries and offices to the six policy-field committees: Standing Committee on Finance and Economic Affairs; Standing Committee on Heritage, Infrastructure and Cultural Policy; Standing Committee on the Interior; Standing Committee on Justice Policy; Standing Committee on Procedure and House Affairs; and Standing Committee on Social Policy. Under the Standing Orders, these committees are empowered to conduct self-initiated studies of the ministries and offices assigned to them. In addition, the Expenditure Estimates of the ministries and offices are deemed referred to the respective committees.

The Committee also met pursuant to its permanent mandate to consider the Assembly’s television broadcast system. Mr. Decker, Clerk of the Legislative Assembly, and **Michael Donofrio**, Director of Broadcast and Recording Service appeared before the Committee and provided an overview of the television broadcast system as well as a tour of its facilities.

On September 8, 2022, the Expenditure Estimates for the fiscal year ending March 31, 2023, were tabled in the House. Pursuant to Standing Order 62, the Estimates were deemed referred to the respective Standing Committees to which the ministries and offices are assigned. This will be the first time the six policy-field Committees will consider the Estimates, instead of a stand-alone Standing Committee on Estimates, as a result of Standing Order changes in the previous parliament.

The Standing Committee on Public Accounts sent a delegation consisting of a few Members and staff to the Council of Canadian Public Accounts Committees annual conference hosted in Ottawa on August 28 to 30, 2022. The Chair of the Committee in conjunction with the Auditor General provided an update on the Ontario Public Accounts Committee at this conference.

**Vanessa Kattar**  
Committee Clerk



## Saskatchewan

### Saskatoon Meewasin by-election

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On September 26, 2022, a by-election was held in the constituency of Saskatoon Meewasin to fill the seat left vacant following the resignation of former Leader of the Opposition **Ryan Meili**. Five candidates ran in the by-election on behalf of the Saskatchewan Green Party, the Buffalo Party of Saskatchewan, the Saskatchewan Party, the New Democratic Party (NDP), and the Saskatchewan Liberal Party.

**Nathaniel Teed**, the NDP candidate, won the by-election. Once Mr. Teed has been seated in the legislature, the composition of the Assembly will be 48 Saskatchewan Party members, 12 New Democratic Party members, and one independent member.

### Accession proclamation ceremony

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On September 10, 2022, the province of Saskatchewan held an accession proclamation ceremony in Regina. During the ceremony at Government House, Lieutenant Governor **Russ Mirasty**, on the formal advice of Premier **Scott Moe**, issued a statement under the Great Seal of the Province of Saskatchewan announcing the death of **Queen Elizabeth II** and the accession of **King Charles III**. The ceremony, which followed the official proclamation ceremony held in London, was similar to events held in Ottawa and across the country. The ceremony was a formal means of conveying the news that a new sovereign had taken the Throne and a symbolic reaffirmation of Saskatchewan's loyalty to the new monarch.

All three branches of government were present at the ceremony to witness the signing of the proclamation. Speaker **Randy Weekes**, Deputy Clerk **Iris Lang**, and Deputy Sergeant-at-Arms **Lyall Frederiksen** attended

on behalf of the legislative branch, with the Deputy Sergeant-at-Arms bearing the mace.

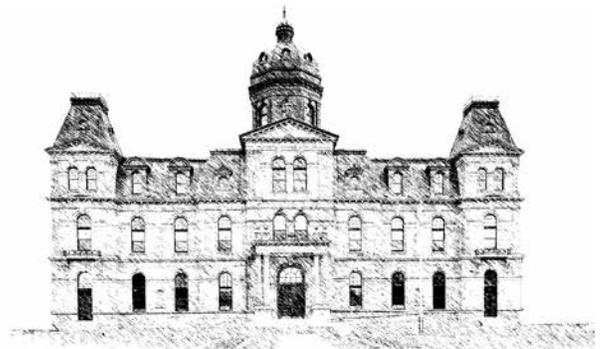
### Prorogation and the opening of a new session

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The Legislative Assembly of Saskatchewan will reconvene on October 26, 2022. The Lieutenant Governor will prorogue the second session of the twenty-ninth legislature that morning and subsequently open the third session of the twenty-ninth legislature that afternoon with the delivery of the Speech from the Throne.

Speaker Weekes has invited Indigenous leaders to host a pipe ceremony in the rotunda of the Legislative Building the morning before the opening of the new session. The annual event includes Elders, Knowledge Keepers, the Lieutenant Governor, and Members of the Legislative Assembly.

**Miranda Gudereit**  
Procedural Assistant



## New Brunswick

This report covers the period from July 6 to October 6, 2022.

### Cabinet Shuffle

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On July 15, Premier **Blaine Higgs** announced changes to cabinet. Two ministers changed portfolios. **Dorothy Shephard** moved from Health to Social Development and **Bruce Fitch** moved from Social Development to Health.

### New Leader of the Liberal Party and New Leader of the Opposition

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At its leadership convention held in Fredericton on August 6, the New Brunswick Liberal Association

elected **Susan Holt** as its new leader. The first woman to lead the provincial Liberal party, Ms. Holt is a former business leader and advisor to former Premier **Brian Gallant**. As she does not hold a seat in the Legislative Assembly, the Liberal caucus named **Robert McKee** as Leader of the Opposition. In addition, **Francine Landry** was appointed Opposition Whip and **Chuck Chiasson** was appointed Opposition Caucus Chair.

### **Resumption of the 1<sup>st</sup> Session of the 60<sup>th</sup> Legislature**

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The first session of the 60<sup>th</sup> Legislature resumed on October 4. The continuation of the session in the fall was another exceptional development during the extended first session that opened in November 2020. The House has traditionally reconvened in the fall each year solely to prorogue the current session without transacting any substantive business, followed by the opening of a new session the same day.

### **Introduction of New Members**

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When the House resumed on October 4, two new Members returned at by-elections held on June 20, **Réjean Savoie** (Miramichi Bay-Neguac) and **Mike Dawson** (Miramichi-Bay du Vin), were introduced by Premier Higgs and took their seats.

### **Demise of the Crown**

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On October 4, the House marked the passing of Her late Majesty Queen **Elizabeth II** with speeches by Premier Higgs, Opposition Leader McKee, and Green Party Leader **David Coon**. Later that day, Premier Higgs moved, seconded by Mr. McKee, a resolution for a humble address of condolence to His Majesty King **Charles III** and members of the Royal Family, which was adopted following further tributes to Her late Majesty.

### **Legislation**

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One government bill was introduced when the House resumed on October 4:

- Bill 120 - *An Act Respecting Community Funding*, introduced by Local Government and Local Governance Reform Minister **Daniel Allain**. The Bill proposes a new funding mechanism for local governments and rural districts. The existing mechanism for community funding and equalization grants provided to local governments and rural districts has been in effect since 2013. Under the proposed new mechanism,

the equalization grant would be determined by comparing the growth of each community's tax base to the growth of the provincial tax base, while the core funding grant would be phased out over five years in favour of a grant to regional service commissions.

### **Motions**

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On the same day Bill 120 was introduced, **Greg Turner** gave notice of motion, seconded by **Jeff Carr**, to allocate a maximum of 10 hours to the proceedings at all stages of the bill.

On October 6, during Opposition Members' Business, Mr. McKee, seconded by **René Legacy**, moved Motion 112 urging the Premier to establish accountability and performance measurement frameworks for the Minister of Health and prioritize improvement of health care delivery.

### **Committee Activity**

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The Standing Committee on Public Accounts, chaired by Mr. Chiasson, met for eight days in September. The Committee heard from the Departments of Education and Early Childhood Development; Environment and Local Government; Natural Resources and Energy Development; and Agriculture, Aquaculture and Fisheries; as well as several provincial agencies including New Brunswick's two health authorities. The announcement of Her late Majesty The Queen's death came during the Committee's meeting on September 8, following which the Committee adjourned for the day as a mark of respect.

The Standing Committee on Private Bills, chaired by **Ryan Cullins**, met on September 27 to resume its consideration of Bill 119, *An Act to Amend the Engineering Technology Act*.

Consideration of Bill 120, *An Act Respecting Community Funding*, began in the Standing Committee on Economic Policy chaired by Mr. Turner on October 6.

### **Review of MLA Compensation**

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On October 3, Speaker **Bill Oliver** tabled the report of the independent committee on MLA salaries and benefits. The committee, consisting of **Margaret Larlee** and **Robert Basque**, recommends increases to the annual indemnity paid to MLAs and the salaries of Ministers and parliamentary officers,

which had not increased since 2008. The committee's recommendations include that, effective April 1, 2023:

- MLAs' annual indemnity increase from \$85,000 to \$93,126;
- future increases to MLAs' annual indemnity be the same as those received by the provincial public service;
- the Premier's salary be set at \$93,126, in addition to the MLA's annual indemnity;
- constituency office allowances for MLAs be increased from \$50,000 to \$75,000, and that their assistants' salaries be increased.

The recommendations are not binding and await consideration by the House.

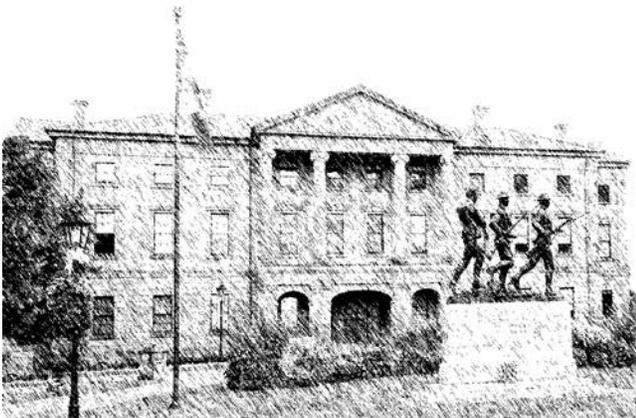
### Standings

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The standings in the House are 30 Progressive Conservatives, 16 Liberals, and three Greens.

**Patrick Dunn**

Law Clerk and Committee Clerk



## Prince Edward Island

### Second Session, Sixty-sixth General Assembly

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The Legislative Assembly will resume sitting on November 1, 2022. It last sat on May 6, 2022. Unless a prorogation is announced in the interim, the fall sitting will be a continuation of the Second Session of the Sixty-sixth General Assembly, which began on February 25, 2021.

### House Business

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In terms of business carried over from the spring sitting, there remain 10 Government Bills, five Private Members' Bills, and 61 Motions available for debate. Government typically presents its capital budget during the fall sitting.

### Demise of Her Majesty, Queen Elizabeth II

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Upon the news of the passing of Her Majesty, Queen **Elizabeth II** on September 8, a mourning period was observed. Outdoor flags in the legislative precinct were lowered to half-mast and black ribbon was added to portraits of Her Majesty and flags in the Assembly Chamber. The House was not sitting at the time; a Resolution of Sympathy is expected when it reconvenes. Members wore black ribbon pins during committee meetings and black arm bands at official events during the mourning period. A book of condolence was placed in the main hall of the Hon. George Coles Building for members of the public to sign. Speaker **Colin LaVie** issued a statement of condolences to the Royal Family on behalf of all Members. Government and Lieutenant Governor **Antoinette Perry** also undertook various commemorative and condolatory actions.

### Cabinet Changes

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On July 15, Premier **Dennis King** announced several changes to his Cabinet. New appointments included **Mark McLane**, the Member for Cornwall-Meadowbank, to the position of Minister of Finance in place of **Darlene Compton**, who moved to the position of Minister of Agriculture and Land, and Justice and Public Safety, while remaining Deputy Premier; and **Cory Deagle**, the Member for Montague-Kilmuir, to the position of Minister of Transportation and Infrastructure, in place of **James Aylward**. **Boyce Thompson** moved from the Agriculture and Justice portfolios to Economic Growth, Tourism and Culture in place of **Matthew MacKay**, who moved to Social Development and Housing, in place of **Brad Trivers**. Cabinet remains at 10 members.

### Post-Tropical Storm Fiona

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Post-tropical Storm Fiona caused great damage to Prince Edward Island when it passed through on September 23 and 24. Several large trees within the legislative precinct were toppled, but building damage was fortunately limited to a leak caused by blown-off roof shingles on one building. The storm caused a power outage for almost the entire Island that lasted

more than two weeks for some households, despite the presence of more than 260 electricity crews working tirelessly on restoration. Many of these crews came from other North American jurisdictions. Several committee meetings had to be cancelled in the aftermath of the storm, but these resumed on October 11.

**Ryan Reddin**

Director of Parliamentary Research



## House of Commons

This account covers the period from July to September 2022. The House adjourned on June 23, 2022 for the summer break and planned to sit again on September 19, 2022.

### Passing of Her Majesty Queen Elizabeth II

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On September 8, 2022, Her Majesty Queen **Elizabeth II** passed away. His Majesty King **Charles III** automatically became Sovereign of Canada on the passing of Queen Elizabeth II. Members of the Queen's Privy Council for Canada assembled at Rideau Hall on Saturday, September 10, to proclaim the accession of the new sovereign.

Pursuant to the *Parliament of Canada Act*, the sovereign's death does not have the effect of dissolving or proroguing Parliament. Furthermore, members of the House of Commons are not required to swear a new oath of allegiance. Provisions included in the *Interpretation Act* ensure that allegiance is automatically extended to the new sovereign.

The Speaker recalled the House of Commons on September 15 so that members could offer speeches of condolence. Accordingly, pursuant to Standing Order 28(3), the House met on September 15, 2022, at 10:00

a.m. At that time, **Mark Holland** (Ajax, LIB), Leader of the Government in the House of Commons, moved that the House set aside its usual Thursday agenda and meet on this day and on September 16, 2022, if necessary, for the sole purpose of paying tribute and making statements on the passing of Her Majesty Queen Elizabeth II and the accession to the throne of His Majesty King Charles III. The motion included provisions for a member of each recognized party and a member of the Green Party to make statements, followed by any member who wished to speak. Under the terms of the motion, the House was to adjourn to September 20, 2022, at the end of the statements, although it is deemed to have sat on September 19, for the purposes of Standing Order 28. Furthermore, the motion specified that the sittings on September 15 and 16 would not be counted for the purposes of Standing Orders 34(1), 36(8)(b), 37(3), 39(5)(b), 81(10)(c), 93(2) and 97.1, provided that answers to written questions and petitions that would otherwise be due on those days were tabled on September 20. Mr. Holland's motion was adopted by unanimous consent.

Once tributes had been made by Prime Minister **Justin Trudeau** (Papineau, LIB), Leader of the Opposition **Pierre Poilievre** (Carleton, CPC), **Yves-François Blanchet** (Beloil—Chambly, BQ), **Jagmeet Singh** (Burnaby South, NDP) and **Mike Morrice** (Kitchener Centre, GP), Mr. Holland moved that an address be presented to His Majesty the King. The motion was adopted by unanimous consent.

The House sat until the ordinary hour of adjournment on September 15, when it adjourned until 10:00 a.m. on September 16. Members continued to make statements on September 16, and at 12:17 p.m. the House adjourned until 10:00 a.m. on Tuesday, September 20, when the daily routine of business resumed.

More broadly, the Government of Canada marked the passing of Her Majesty Queen Elizabeth II with a 10-day period of mourning. During this period, the flags on all Government of Canada buildings and establishments in Canada and abroad were flown at half-mast, Centre Block was illuminated in royal blue, and the Royal Cypher was projected on the Peace Tower from dusk to dawn. A national commemorative ceremony was held at Christ Church Cathedral in Ottawa on September 19, the last day of the official mourning period. This day was designated by the Prime Minister as a one-time National Day of Mourning and a holiday for the public service of Canada, giving an opportunity to reflect on the Queen's life and commemorate her reign.

## Changes to membership

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Mr. Poilievre was elected leader of the Conservative Party of Canada on September 10, 2022. Mr. Poilievre replaced **Candice Bergen** (Portage—Lisgar, CPC) as Leader of the Official Opposition on that date. After the change in leadership, **Andrew Scheer** (Regina—Qu’Appelle, CPC) took over as Leader of the Opposition in the House of Commons from **John Brassard** (Barrie—Innisfil, CPC) and **Kerry-Anne Findlay** (South Surrey—White Rock, CPC) took over as Chief Opposition Whip from **Blaine Calkins** (Red Deer—Lacombe). Consequently, Mr. Scheer and Ms. Findlay replaced Mr. Brassard and Mr. Calkins as members of the Board of Internal Economy.

On September 13, 2022, **Alain Rayes** (Richmond—Arthabaska, IND) left the Conservative Party of Canada caucus to sit as an independent member of the House of Commons.

**Sophia Nickel**  
Table Research Branch



## The Senate

### Legislation

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On September 29, the Senate received a message from the House of Commons informing it that it had passed Bill S-206, *An Act to amend the Criminal Code (disclosure of information by jurors)*, without amendment. At the time of writing, the bill was awaiting Royal Assent.

### Chamber, Procedure and Speaker’s Rulings

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On September 20, following the summer recess, the Senate paid tribute to Her Late Majesty Queen **Elizabeth II**. On the same day, having received a

message of Address to His Majesty King **Charles III**, the Senate adopted a motion that “the Senate do agree with the House of Commons in the said Address to His Majesty the King.”

On September 22, the Senate adopted a motion to allow joint committees to meet in a hybrid format until December 22, 2022. Hybrid meetings allow senators and members of the House of Commons to take part in joint committee proceedings in person or by videoconference. The House of Commons already adopted such a motion, which is valid until the end of the current session.

### Committees

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On September 27, the Senate adopted three committee reports and requested a complete and detailed response from the government. These reports are:

- the sixth report of the Standing Senate Committee on Indigenous Peoples, entitled *Not Enough: All Words and No Action on MMIWG*, tabled in the Senate on June 22, 2022, with the Minister of Crown-Indigenous Relations being identified as the minister responsible for responding to the report;
- the seventh report of the Standing Senate Committee on Indigenous Peoples, entitled *Make it Stop! Ending the remaining discrimination in Indian registration*, deposited with the Clerk of the Senate on June 27, 2022, with the Minister of Indigenous Services being identified as the minister responsible for responding to the report, in consultation with the Minister of Crown-Indigenous Relations; and
- the fourth report of the Standing Senate Committee on Fisheries and Oceans, entitled *Peace on the Water (Advancing the Full Implementation of Mi’kmaq, Wolastoqiyik and Peskotomuhkati Rights-Based Fisheries)*, deposited with the Clerk of the Senate on July 12, 2022, with the Minister of Fisheries, Oceans and the Canadian Coast Guard being identified as the minister responsible for responding to the report.

### Senators

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**Ian Shugart** and **Flordeliz (Gigi) Osler** were appointed to the Senate on September 26, 2022. Senator Shugart was introduced in the Senate on September 29.

Senator Shugart will represent Ontario in the Senate. He started his career on Parliament Hill as a political

advisor in Joe Clark's office, and then rose through the ranks of the federal public service to become Clerk of the Privy Council and Secretary to the Cabinet. Senator Shugart's experience includes serving as deputy minister of Environment and Climate Change Canada, Employment and Social Development Canada and Global Affairs Canada. He also served on the World Health Organization's Executive Board.

Senator Osler will represent Manitoba in the Senate. She is a surgeon and assistant professor at the University of Manitoba. Senator Osler was the first woman surgeon and the first racialized woman to serve as President of the Canadian Medical Association. Senator Osler holds a medical degree from the University of Manitoba and a Graduate Certificate in Global Surgical Care from the University of British Columbia. She also completed a rhinology fellowship at St. Paul's Hospital in Vancouver. Senator Osler has been a lifelong advocate for equity, diversity and inclusion.

**François Michaud**  
Procedural Clerk



## Québec

### Proceedings of the National Assembly

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#### *Dissolution of the National Assembly*

On August 28, 2022, at the request of Premier **François Legault**, the Lieutenant-Governor dissolved the 42nd Legislature of the National Assembly. Québec voters were called to the polls on October 3, 2022, for the general election.

At the time of dissolution, the Assembly was composed of 76 Coalition avenir Québec Members, 27 Quebec Liberal Party Members, 10 Québec solidaire Members, seven Parti québécois Members

and five independent Members, including one affiliated with the Conservative Party of Québec. Thirty-five parliamentarians chose not to run again in that election.

#### *Other events*

*Appointment of the Secretary General of the National Assembly as Chair of the Association des secrétaires généraux des parlements francophones*

**Siegfried Peters**, Secretary General of the National Assembly, was elected Chair of the Association des secrétaires généraux des parlements francophones, for a two-year term, on the occasion of the Association's general assembly held from September 1 to 4, 2022. The Association's objectives include experience-sharing on matters falling within its purview, identifying the practical challenges that should be examined and dealt with as a priority, ensuring a continuing and productive conversation with the Secretariat General of the Assemblée parlementaire de la Francophonie and conveying the aspirations and interests of the Secretaries General to Francophonie organizations.

### Committee Proceedings

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#### *Impact of the dissolution of the National Assembly of Québec on parliamentary committees*

The dissolution of the National Assembly is equivalent to the civic death (or legal extinction) of the Parliament, which means that, even if the standing committees continue to exist, they are deprived of their members since Members cease to be vested with their mandate. Dissolution also puts an end to any unfinished committee orders, and any bills that were not passed become void.

#### *Tabling of the 2022 pre-election report*

Since 2015, the Minister of Finance of Québec is required to table a pre-election report on the state of public finances and on the budgetary forecasts for Québec. Furthermore, the Auditor General of Québec, who is designated by the National Assembly of Québec, must examine, in a separate report, the plausibility of the forecasts and assumptions included in the pre-election report.

In anticipation of the Québec general election to be held on October 3, 2022, both reports were sent to the President of the National Assembly of Québec on August 15, 2022. The findings of the Auditor General were also submitted to the members of the Committee

on Public Administration and the Committee on Public Finance during an informal meeting.

### ***Participation in the 2022 Annual Conference of the Canadian Council of Public Accounts Committees***

Every year, the Canadian Council of Public Accounts Committees (CCPAC) holds a conference to which are invited the legislators and staff from provincial and territorial public accounts committees. The members of the steering committee and the administrative staff (secretary and research officer) of the Committee on Public Administration usually take part in the annual conference. Presentations, roundtable discussions and other activities take place there in connection with the work of public accounts committees, parliamentary control and the monitoring of public bodies. The conference is usually held at the same time and place as the conference of the Canadian Council of Legislative Auditors (CCOLA) so that they may hold joint activities. The 2022 edition of the conference of the CCPAC and CCOLA took place from August 28 to 30, 2022, in Ottawa.

### ***Assessment of the 42nd Legislature***

The months of July to September 2022 coincided with the summer period and the launch of the general election. The latter put an end to the 42nd Legislature, which covered the period from November 27, 2018, to August 28, 2022. Here are a few highlights of the work carried out by the committees during that period:

Over the course of the 42nd Legislature, which was marked by the extraordinary context resulting from the COVID-19 pandemic and, in particular, by the adjournment of parliamentary proceedings for several weeks in 2020, the committees held 1,612 meetings in total, representing over 5,310 hours.

### ***First virtual committee meetings***

In 2020–2021, in the context of the COVID-19 pandemic, the National Assembly, for the first time in its history, held parliamentary committee meetings that were entirely in virtual form. Such meetings were also held in 2021–2022. In all, 125 committee meetings and over 312 committee meeting hours were held in that manner.

### ***Clause-by-clause consideration of public bills***

More than half of the hours spent in committee meetings were devoted to this type of order.

The committees carried out the clause-by-clause consideration of 109 public bills. Among them, the clause-by-clause consideration of Bill 59, *An Act to modernize the occupational health and safety regime*, carried out by the Committee on Labour and the Economy, is the one that required the greatest number of meetings and hours, namely 37 meetings and more than 187 hours of work.

Over 4,270 amendments and subamendments were proposed during the clause-by-clause consideration of bills in the course of the 42nd Legislature, and more than 71 per cent of them were adopted.

### ***Public consultations***

As was the case in the 41st Legislature, very few public consultations were held during the 42nd Legislature; in all, there were only two. However, more than 100 special consultations were held over the course of the past four years.

During those public consultations, committee members heard more than 1,700 witnesses, spread out over 309 meetings, and they received over 2,350 briefs.

### ***Online citizen participation***

During the 42nd Legislature, the online comments platform was reviewed to make it simpler for citizens to write comments and to improve the follow-up mechanism for parliamentarians. In total, 18,863 comments were received in connection with 123 orders and bills. That is more than twice the number of online comments received during the previous legislature.

### ***Orders of initiative***

Parliamentary committees took up five orders of initiative. For the purposes of those orders, certain committees were called on to travel outside the Parliament. This was the case, among others, for the Committee on Culture and Education, which held public consultations in Matane and Rouyn-Noranda within the framework of the order of initiative on the future of the news media. In connection with those five orders of initiative, the committees produced reports containing observations, conclusions and a total of 78 recommendations.

### ***Select committees***

Two select committees were formed during the 42nd Legislature to examine specific matters. Firstly, on

June 14, 2019, the Members of the National Assembly carried a motion to create the Select Committee on the Sexual Exploitation of Minors. The Committee's mandate was to provide a portrait of the sexual exploitation of minors in Québec, including the consequences on the transition to adulthood and any other consideration that could enlighten the members of the Committee. After having heard 67 witnesses in public hearings and received 63 briefs, the Committee tabled its report, comprising 58 recommendations, on December 3, 2020.

On March 31, 2021, a motion to create a second select committee was carried by the National Assembly. The mandate of the Select Committee on the Evolution of the Act respecting end-of-life care was to examine the issues related to extending medical aid in dying to persons who are incapable of caring for themselves and those who are suffering from mental illness. In the course of its proceedings, the Committee received 75 briefs and heard 77 witnesses in public hearings. Its report, containing 11 recommendations, was

tabled on December 8, 2021. Having completed their orders, both committees were dissolved following the tabling of their respective reports.

Finally, the National Assembly publishes every year a statistical report on the proceedings of parliamentary committees. That document establishes, among other things, an annual portrait of the number of orders, meetings and hours of proceedings carried out by all the committees, and by each of them. Of particular interest, is the evolution of the committee activities over the last decade, which is shown in the report.

The statistical reports are available at the following address: <http://www.assnat.qc.ca/en/travaux-parlementaires/commissions/index.html>

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# An Explosive Plot: Finding Dynamite at the Ontario Parliament Building

Curiosity may have killed the cat, but it saved Ontario's former parliament building. In this article, the author recounts the story of how a curious boy discovered evidence used to foil one of the most serious terrorist plots in Ontario's history.

Lucas Fisher

In 1884, the son of a caretaker at the old Provincial Parliament Building on Toronto's Front Street foiled one of the most brazen and audacious terrorist plots in the history of Ontario. This attempt, one that I suspect you may not have heard of, involved the placement of several parcels of dynamite in and around the parliament building. Were it not for the curious disposition of a young boy roaming the grounds, this dynamite could have levelled the Parliament Building, taking the lives of parliamentarians, civil servants, and innocent bystanders. Ensuing investigations uncovered an organization, based out of New York, that planned similar nefarious attacks across North America.

On April 30, 1884, Willie Kennedy, the son of a caretaker at the Provincial Parliament Building was roaming the precinct when he noticed a package protruding from a recess in one of the walls. Taken by his curiosity, the boy inspected the package which, he quickly discovered, contained two sticks of dynamite. Kennedy alerted his father and soon the entire precinct was being searched from top to bottom. The search eventually produced two more cartridges, found in a similar vent in the western portion of the building. A groundskeeper, John Simser, also came forward with what was thought to be part of a detonator. He had come across it while mowing the lawn.

Once the precinct had been deemed to be clear of hazards, authorities began their investigation of the near-deadly plot. Interviews with staff and potential witnesses determined that, due to the busy nature of the location where it was discovered, the dynamite must have been hidden no earlier than the night prior to its discovery. Further examination revealed that the dynamite had been primed and was ready to explode before it was seemingly abandoned. Experts later confirmed the packages contained more than enough explosives to easily level one wing of the Parliament Building, if not the whole structure. The western wing of the building, where the dynamite cartridges were found, was near the staircase that led to the Speaker's chambers, as well as the area of the building that was home to the Parliament's official records. Though not confirmed, both provided potential targets of the attack.

In the days and weeks following the discovery, investigators received tips regarding potential suspects and their motives. At first thought to be the work of a lone individual, rumours began to swirl of a group that was financing other similar schemes around the country. The *New York Times* reported that three men had been dispatched from a mysterious New York headquarters with \$2,500 in funding to carry out the terrorist plot. Although unconfirmed, the article claimed the newspaper had received an inside tip from someone familiar with the group. This article went on to suggest that the three men had thoroughly investigated the Parliament Building before the dynamite had been planted, and that similar trips had been made to investigate the Dominion Building in Ottawa. The *Times* referred to the terrorist group as "the Brotherhood" and noted it had members across Europe and North America that were actively opposed to European-influenced government in all forms.

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Lucas Fisher is a 2022-2023 Ontario Legislature Internship Programme participant. He completed a portion of his internship at the Canadian Parliamentary Review.

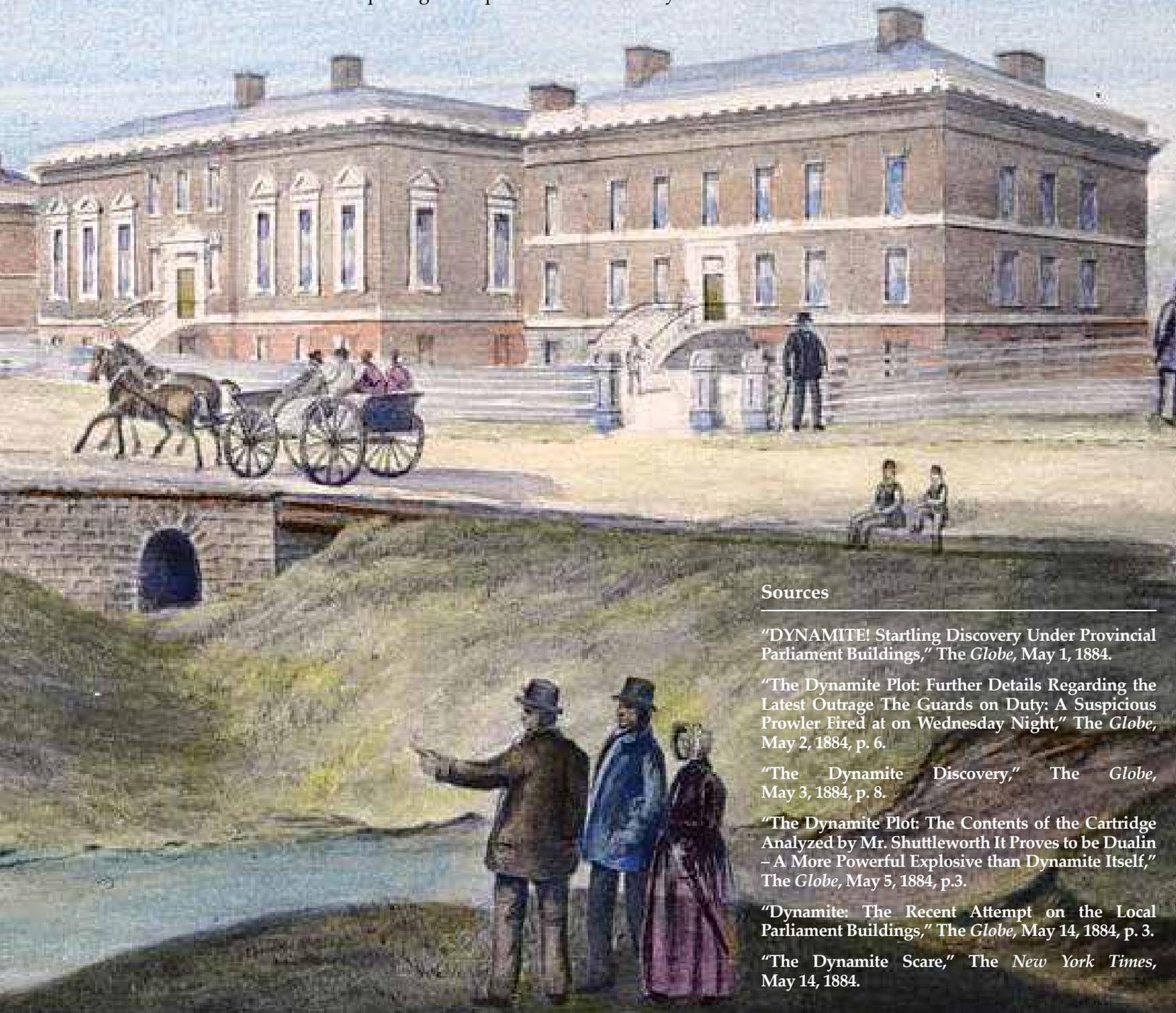


Some aspects of the *New York Times* article were later refuted, but others appeared to be corroborated when subsequent stories in the *Globe* reported similar details and other potential plots in Ottawa and the Niagara region. In a series of articles, the *Globe* reported that investigators discovered that two ventilation shafts in the Parliament Building had their metal bars cut to make space for the dynamite. Investigators suspected this had been done in the weeks or months leading up to the discovery. This finding indicated to authorities that the perpetrators had indeed spent time properly preparing for the attack.

In the wake of the discovery, MPPs and civil servants alike described a feeling of general uneasiness around the Parliament. Whether the discovery of the explosives had scared away the would-be terrorists from completing their plan was

anyone's guess and nobody knew for sure what the suspects looked like. Anxiety was heightened in the early morning hours of May 2, when a police officer stationed at the parliament building fired a gunshot at three men trespassing on the grounds. All three of the men escaped but the gunshot alerted everyone in the precinct of their presence. The officer reported the men had been sneaking around the perimeter of the building, clearly attempting to go unnoticed.

The gunshot fired in the early hours of the morning ultimately wrapped up an exciting, albeit scary week for those at the Provincial Parliament. Though the startling discovery foiled this potential disaster, had it been successful, the plot could have easily been a tragic day in Ontario's history. This explosive tale would be largely lost to history were it not for a few surviving news articles found within the Legislative Library archives.



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