

**FEDERAL COURT  
SIMPLIFIED ACTION**

**BETWEEN:**

**EDGAR SCHMIDT**

Plaintiff

- and -

**ATTORNEY GENERAL OF CANADA**

Defendant

**AFFIDAVIT OF JOHN A. STILBORN**

I, John A. Stilborn, of the City of Ottawa, in the Province of Ontario, **SOLEMNLY AFFIRM AND SAY:**

1. I have been retained by the Defendant to provide the Court with an overview of the institutional context within which section 4.1 of the *Department of Justice Act* and section 3 of the *Canadian Bill of Rights* operate. My report outlines the principles of parliamentary accountability and responsible government and how these principles are reflected within Parliament. This includes the practice and procedure relating to scrutiny and review of legislative proposals and government policy. My report explains current practices as well as procedures employed in Parliament to translate those concepts, embedded within Canada's Constitution, into a daily reality.

2. I attach my report as Exhibit "A" to this affidavit.

3. I enclose, as Exhibit "B" to this affidavit, a copy of my curriculum vitae.

4. As Principal Analyst with the Parliamentary Information and research Service of the Library of Parliament of Canada, I provided research and analytical assistance to parliamentary committees of the Senate and the House of Commons for over 23 years. In that capacity, I served as Research Director to

the Special Joint Committee on the Amending Process (1991) and to the Senate Special Committee on Senate reform (2006) as well as the parliamentary institutions specialist on the team supporting the Special Joint Committee for a Renewed Canada (1992).

### **1. Facts and Assumptions on Which the Opinions in the Report are Based**

5. The central assumption I made is that the procedural sources listed in Exhibit "A" provide an accurate and complete description of the mechanisms and procedures reviewed.

6. These sources can be assumed to be reliable because, from my daily observation of, and experience with, parliamentary processes, they state the rules and precedents employed by the two Houses in determining appropriate conduct. The procedural sources are not merely third party descriptions but rather the immediate basis for the procedural mechanisms and capacities of Parliament.

### **2. Summary of the Opinions Expressed**

7. Exhibit "A" provides a descriptive overview rather than a statement of opinion.

8. However, Exhibit "A" establishes that Parliament possesses an extensive array of procedural mechanisms, capacities and resources enabling it to scrutinize legislation and hold governments accountable for legislative initiatives. Outside the legislative process, Parliament's broader accountability functions and role as a catalyst for democratic engagement provide it with additional leverage in holding governments accountable for legislation.

### **3. The reasons for Each Opinion Expressed**

9. See Exhibit "A".

**4. Literature or Other Materials Specifically Relied on in Support of the Opinions**

10. See Exhibit "A".

**5. Summary of the Methodology Used**

11. Exhibit "A" is based on research I have conducted from the parliamentary authorities established by the *Constitution Act, 1867* and the processes and mechanisms defined in the *Rules of the Senate of Canada* and the *Standing Orders of the House of Commons*, supplemented by precedents and interpretations contained in procedural documents and reference sources developed by the two Houses. Amplification or clarification is based on the work of reputed legislative scholars, as indicated in the footnotes.

**6. Necessary Caveats or Qualifications Necessary to Render Report Complete and Accurate**

12. None.

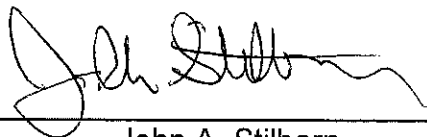
**7. Relationship to Party or Subject Matter of Proposed Evidence that Might Affect Expert's Overriding Duty to the Court**

13. None.

SOLEMNLY AFFIRMED before me at )  
the City of Ottawa, in the judicial district )  
of Ottawa-Carleton, in the province of )  
Ontario, this 20<sup>th</sup> day of May, 2015 )

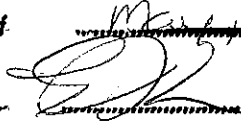


Commissioner for Taking Affidavits in  
the Province of Ontario



John A. Stilborn

**EXHIBIT "A" TO THE AFFIDAVIT OF  
John A. Stilborn, Ph. D., sworn May 20, 2015**

This is Exhibit A referred to in the  
affidavit of John A. Stilborn  
sworn before me, this 20th  
day of May, 2015  
  
A COMMISSIONER FOR TAKING AFFIDAVITS

**The Parliamentary Capacity for Legislative Scrutiny and  
Accountability**

John A. Stilborn, Ph.D.  
Principal Analyst (retired)  
Parliamentary Information and Research Service  
Library of Parliament

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## MANDATE AND ISSUES

I have been asked to prepare an expert opinion in connection with the case of *Schmidt v AGC* being heard by the Federal Court of Canada. The purpose of the opinion is to provide the Court with an overview of the institutional context in which s.4.1 of the *Department of Justice Act* operates. For this purpose, the opinion outlines the principles of parliamentary accountability and responsible government and how these principles are reflected within parliamentary institutions in Canada.

In this opinion I outline the principles and powers underlying Canada's version of the Westminster model of parliamentary government, and provide a detailed overview of the mechanisms and capacities that have been established by Parliament in order to enable it to hold the executive accountable. Since the case before the Court relates specifically to ministerial accountability concerning the compliance of proposed legislation with the *Charter of Rights and Freedoms* and *Canadian Bill of Rights*, central attention is given to the legislative scrutiny and accountability capacities of Parliament.

## EXECUTIVE SUMMARY

This paper surveys the principles and powers underlying Canada's version of the Westminster model of parliamentary government, and reviews the mechanisms and capacities enabling Parliament to hold the executive accountable. Detailed attention is given to mechanisms and procedures involved in legislative scrutiny and review.

Part I of the paper, entitled *Institutional Overview*, outlines the powers of Parliament and their origins in the lengthy evolution of the Westminster-model parliament in England and United Kingdom, and more recently the development of Canada's system of parliamentary government. Parliament now possesses three central accountability capacities: scrutiny and approval of revenue-raising and spending measures; scrutiny and approval of legislation, and (with responsible government) the capacity to determine the life of a government.

Part II, entitled *Processes and Mechanisms – the Legislative Process*, provides a detailed review of the centrally important parliamentary capacities for legislative scrutiny and ensuring government accountability for legislative proposals. These include examination following First Reading, debate at Second Reading, Report Stage and Third Reading in both the Senate and House of Commons, and clause-by-clause examination by committee in both Houses that may involve extended consultation of constitutional authorities and other expert witnesses.

Part III, entitled *Processes and Mechanisms – Outside the Legislative Process*, provides a more summary review of the accountability opportunities provided to parliamentarians during the non-legislative activities of the House of Commons. Accountability moments associated with petitions, statements by members, oral questions, written questions, special debates and financial accountability procedures, dilatory motions, private member's business and other procedural opportunities are not directly related to legislation, but may be used in a variety of ways to bolster the capacity of Parliament to ensure executive accountability for legislative initiatives. Equivalents to a number of these procedures in the Senate are also briefly noted.



Part IV, entitled *Professional Support for the Legislative Process*, portrays the technical advisory and analytical assistance available to parliamentarians in support of their participation in the legislative process. In addition to the experts who may appear before parliamentary committees or assist individual parliamentarians, the Law Clerk and General Counsel for, respectively, the Senate and the House of Commons are available to provide legislative and constitutional advice, and legal researchers and subject specialists in the Library of Parliament are available both to parliamentary committees and individual parliamentarians.

Part V, provides a brief concluding comment, noting that Parliament's fundamental role as a representative institution ties its effectiveness closely to public attention and democratic engagement.

The paper provides a descriptive overview rather than a statement of opinion. However, the overview establishes that Parliament possesses an extensive array of procedural mechanisms, capacities and resources enabling it to scrutinize legislation and hold governments accountable for legislative initiatives. Outside the legislative process, Parliament's broader accountability functions and role as a catalyst for democratic engagement provide it with additional leverage in holding governments accountable for legislation.

## METHODOLOGICAL INTRODUCTION

The overview Parliament's legislative scrutiny and accountability capacities provided in this paper is based on the parliamentary authorities established by the *Constitution Act, 1867* and the processes and mechanisms defined in the *Rules of the Senate of Canada* and the *Standing Orders of the House of Commons*, supplemented by precedents and interpretations contained in procedural documents and reference sources developed by the two Houses.<sup>1</sup> Amplification or clarification is based on the work of reputed legislative scholars, as indicated in the footnotes.

The central assumption made is that the procedural sources provide an accurate and complete description of the mechanisms and procedures reviewed. These sources can be assumed to be reliable because they state the rules and precedents employed by the two Houses in determining appropriate conduct (i.e. they are not merely third party descriptions but rather the immediate basis for the procedural mechanisms and capacities of Parliament).

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<sup>1</sup> These sources will be cited below with titles abbreviated as follows:

- **SO:** House of Commons, *Standing Orders of the House of Commons*, January 2014: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?sbdid=7C730F1D-E10B-4DFC-863A-83E7E1A6940E&sbdidx=1&Language=E&Mode=1>.
- **SO Annotated:** House of Commons, *Annotated Standing Orders of the House of Commons*, 2005 (Second Edition): [http://www.parl.gc.ca/About/House/ASOII/00\\_ASOII\\_Cover-e.html](http://www.parl.gc.ca/About/House/ASOII/00_ASOII_Cover-e.html)
- **O'Brien and Bosc:** Audrey O'Brien and Marc Bosc, eds., *House of Commons Procedure and Practice*, Second Edition, 2009: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?sbdid=7C730F1D-E10B-4DFC-863A-83E7E1A6940E&sbdidx=1&Language=E&Mode=1>.
- **Compendium:** House of Commons, Compendium (Procedure Online): [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_a\\_index-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_a_index-e.htm)
- **Rules:** Senate of Canada, *Rules of the Senate of Canada*, Sept. 2012 (Updated Feb. 12, 2014): [http://www.parl.gc.ca/About/Senate/Rules/senrules\\_00-e.htm](http://www.parl.gc.ca/About/Senate/Rules/senrules_00-e.htm)
- **Companion:** Senate of Canada, *Companion to the Rules of the Senate of Canada*, Second Edition, Nov. 2013: <http://www.parl.gc.ca/About/Senate/Rules/pdf/Companion-Rules-Senate-2nd-Nov13-e.pdf>.

Parts II and III of this paper rely extensively on these documents, which are the definitive information sources concerning procedure in the two Houses. Where appropriate for accuracy, the paper closely summarizes, paraphrases or reproduces language from these sources and provides specific references in footnotes.

## I. INSTITUTIONAL OVERVIEW

### An evolving Parliament

Parliamentary government in Canada reflects the adoption in 1867 of a "...Constitution similar in Principle to that of the United Kingdom."<sup>2</sup> Canada's Parliament, like that of the U.K., consists of the Queen and two legislative chambers, the central elements of the Westminster-model Parliament as it developed over the course of centuries in the U.K.<sup>3</sup>

In England, the modern Westminster model of parliament emerged gradually from the medieval assemblies convened by absolute monarchs primarily for the purpose of hearing grievances and raising revenues. Watershed developments in the evolution of modern parliamentary institutions were the Magna Carta in 1215 (initial, and temporary, right of consent to royal levies) to the Bill of Rights of 1689 (Crown has no authority to suspend laws duly passed by Parliament or raise funds without the authorization of Parliament).<sup>4</sup> As growing costs of military campaigns and an expanding court exceeded the private resources of absolute monarchs, they were driven to summon Parliament for purposes of revenue-raising in addition to the consultative and High Court functions that had been performed by Parliament's medieval predecessors. The financial leverage of the barons who composed the early parliamentary bodies, supplemented by that of the commoners who were progressively included, gave Parliament the capacity to obtain royal acceptance, in successive stages, of the principle that government (initially taxation) required the consent of the governed. As well, the importance of Parliament as a legitimizer of the Crown

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<sup>2</sup> Preamble, Constitution Act, 1867, 30 & 31 Victoria, c. 3 (U.K.) in Canada, Department of Justice, *A Consolidation of The Constitution Acts 1867 to 1982*, Minister of Supply and Services, 1989, p. 1.

<sup>3</sup> S. 17 of the *Constitution Act, 1867* specifies the components of the Parliament of Canada.

<sup>4</sup> See Forces, Craig and Alan Freeman, *The Laws of Government*, Irwin Law, Toronto, 2005, p 22.

emerged as a second source of its importance, notably upon the accession by William of Orange, a foreign king summoned by Parliament to resolve the problem of succession and thus dependant, politically, on parliamentary support.<sup>5</sup>

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A bill must be passed by both the Senate and House of Commons in identical form in order to become law. The modern legislative consent authority of Parliament has deep historical roots, dating back to at least the 1400's when petitions providing the basis for statutes were submitted by Parliament in the course of granting supply (funding) to the King, and when King Henry VI accepted the principle that bills granted in response to requests from the Commons should not be altered without Parliament's consent.<sup>6</sup>

The acceptance of the principle of responsible government in the mid-nineteenth century continued the pattern of accommodation by the Crown. In the United Kingdom, it was accelerated by pressures in the assembly in the wake of the broadening of the franchise in the Reform Act of 1832, but the practice of drawing important ministers from the Commons had arisen by gradual degrees and responsible government was thus an incremental extension of the consent principle already accepted concerning legislation and taxation.<sup>7</sup> Ministers who sat in the House of Commons were directly accountable to the House for the actions of their governments, including legislative and financial initiatives. The central responsible government convention, according to which governments themselves must command the "confidence" (consent) of the House, reflected in its approval for individual measures central to a government's agenda, arose naturally as a consequence of the presence of ministries in Parliament.

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<sup>5</sup> Harvey J. and L. Bather, *The British Constitution*, Third Ed., MacMillan, St. Martins Press, London, 1972, p. 21 ff.

<sup>6</sup> Bosc and O'Brien: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?Language=E&Mode=1&sbdid=DA2AC62F-BB39-4E5F-9F7D-90BA3496D0A6&sbspid=78B3C2EB-0124-40AE-87F7-687DFE010823#A18A4A05-B821-4A29-A12A-F030132B89FB>

<sup>7</sup> Philip Norton, *The Commons in Perspective*, Martin Robertson and Co. Ltd., Oxford, 1981, p 13 ff.

In the Canadian colonies, responsible government was achieved more abruptly, in 1848 and 1849, in response to the rebellions of 1837 and 1838. Although its achievement was preceded by principled advocacy both in the colonies and by British reformers, the Durham Report makes it clear that the legitimacy crisis in the colonies and the capacity of the elected assembly to enable or disable the Crown by supporting or opposing its measures were of fundamental importance.<sup>8</sup> Thus, in Canada as in Great Britain, responsible government came as an extension of the consent principle, reflecting the recognition by the Crown of the representation and legitimation functions of (especially) the elected House of Commons.

### **Principles and Powers**

The emergence of modern parliamentary institutions reflects their practical success in asserting concrete powers (financial, political) in their relationship with the Crown. However, the assertion of these powers required the articulation of principles that have taken on a life of their own as the constitutional principles underlying parliamentary government.

#### **1. Parliamentary Supremacy**

The Bill of Rights, 1689, made Parliament the source of all power, subjecting the Crown to the consent principle for both revenue-raising and spending (legislation), which implies that actions undertaken by the executive branch of government must flow from statutory authority granted by Parliament. With respect to Parliament's relation to the Courts, the Bill of Rights also provided that the Courts had no authority to constrain "the freedom of speech and debates or proceedings in Parliament."<sup>9</sup> Parliament is thus the master of its own affairs. It has the autonomous authority to assert by statute specific freedoms and prerogatives it deems necessary for the conduct of unimpeded debate and to establish procedures to govern the performance of its central consent roles.<sup>10</sup> A corollary of the supremacy principle is that no Parliament can bind a subsequent Parliament; each is unconstrained within its jurisdiction.

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<sup>8</sup> Gordon T. Stewart, *The Origins of Canadian Politics – A Comparative Approach*, University of British Columbia Press, Vancouver, 1986, p. 15 ff.

<sup>9</sup> Cited in Force and Freeman, p. 22.

<sup>10</sup> S. 18 of the *Constitution Act, 1867* provides that Canada's Parliament may define in legislation the privileges, immunities and powers of Canada's Senate and House of Commons (as long as they do not exceed those of the U.K. legislative Houses).

## 2. Representative Government

The elected House of Commons enables parliamentary government to be described as representative government. Parliament's representation function emerged as participation was broadened beyond the medieval barons and bishops who had, in effect, represented themselves in what was originally a single legislative House. Its representational function is now the central source of the authority of the House of Commons and, in a more limited sense reflecting the protection of regional interests, that of the Senate. The status of the House of Commons as the source of Parliament's representational authority reflects the distinctive legitimacy (and capacity to legitimize governments) possessed by an assembly composed of individual representatives chosen by the small communities of electors intimately familiar with their representatives, and the exclusive representational franchise possessed by an assembly composed of individuals who physically transported into Parliament representational knowledge that was not otherwise available to the Crown. With the broadening of the franchise, Parliament's status as a representational body has been strengthened by broadened political participation. At the same time, however, the emergence of political parties has been accompanied by a more complex relationship between electors and individual representatives, as the representatives have come to serve as proxies for political parties and leaders. However, the House of Commons continues to be seen as Canada's central representative institution. In the words of political scientist David E. Smith: "The House is a representative body, the only one that can claim to speak on behalf of all Canadians."<sup>11</sup>

## 3. Responsible Government

The third defining feature of the modern Westminster Parliament is the principle of responsible government. This principle extends the principle of parliamentary consent to the composition and persistence of the government itself. Prime Ministers are selected on the basis of their ability to command the support, or the "confidence," of the House, and only on the basis of continuing consent can a government continue to govern.

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<sup>11</sup> David E. Smith, *The People's House of Commons – Theories of Democracy in Contention*, University of Toronto Press, 2007, p. 4.

Responsible government and the confidence convention required a series of implementation conventions that have come to be seen as components of responsible government itself. Governments must meet the House within a reasonable length of time following an election, so that confidence in either the sitting government or an alternative can be ascertained. The composition of the cabinet (including members from outside the House or of other political parties) is the prerogative of the prime minister, subject to the maintenance of the support of the House. Formal confidence votes are now taken as definitive expressions of the will of the House, but measures deemed by a government to be central to its legislative program (including revenue-raising and spending measures) are also confidence measures. Following defeat on a confidence measure, a prime minister must either resign (opening the door to a successor government) or request that the House be dissolved for an election.<sup>12</sup>

#### 4. Substantive Powers

The three consent authorities whose emergence is traced in Part I of this paper comprise the three substantive powers of Parliament. No taxation or spending measure can be implemented without the authorization of Parliament, and Parliament has the authority to approve, reduce or reject (but not increase) spending proposals placed before it by the Crown. No bill can become law unless it is approved in final form by both the Senate and the House of Commons. A government cannot continue to govern without the continuing support, or confidence of the House. Each of these powers is of potential application to the scrutiny of legislation and to holding the government accountable for legislative initiatives and proposals, although the legislative consent power is the central one.

Most obviously, the legislative power makes the passage of legislation conditional on Parliament's satisfaction that adequate scrutiny has occurred. Parliament's retention of final authority concerning revenue-raising and spending measures provides a second approval point, in the event that a bill requires the authorization of revenues. Finally, the responsible government convention enables Parliament to reconsider support for a sitting government and potentially withdraw it, should dissatisfaction persist after the review of a government bill.

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<sup>12</sup> Andrew Heard, *Canadian Constitutional Conventions – The Marriage of Law and Politics*, Oxford University Press, Toronto, 1991, p. 18 and pp. 31-37 and 68.

## 5. Protecting Parliament

In order to be able to perform its three fundamental consent roles, Parliament needs to be able to engage in unimpeded debate and deliberation, free from outside interference and supported by information and other assistance as required.

Parliament has exercised the authority conferred by S. 18 of the Constitution Act to legislate rules for the purpose of enabling its central debate and deliberation functions. The Parliament Act defines the privileges and immunities (or special rules) that Parliament has deemed required for this purpose by providing Canada's Parliament and individual parliamentarians with the protections asserted by their counter-parts in the U.K.<sup>13</sup> The rules of parliamentary privilege define special entitlements applying in some cases to the institution of Parliament and in others to individual parliamentarians. In addition to specific privileges, Parliament has defined a more open-ended class of protections termed "contempts of Parliament," which comprise proscribed behaviors, in some cases applying broadly to citizens and in others to parliamentarians themselves, which Parliament has authorized itself to sanction.

Among the key rights defined for individual parliamentarians by parliamentary privilege are freedom of speech within the legislative chamber (i.e. no legal consequences such as defamation suits); freedom from arrest in civil matters; exemption from jury duty and from being subpoenaed to attend court as a witness; and freedom from obstruction, intimidation or molestation.<sup>14</sup>

Collective rights exercised by Parliament itself are: exclusive control over its own proceedings (debates, records, internal procedures); the power to exclude strangers (from either the chamber or committees); the power to punish breaches of privilege or contempts of Parliament, including the power to expel members guilty of disgraceful conduct; the right to provide for its constitution

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<sup>13</sup> See *The Parliament of Canada Act*, R.S.C., 1985, c. P-1.

<sup>14</sup> O'Brien and Bosc: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?sbid=ABBC077A-6DD8-4FBE-A29A-3F73554E63AA&sbid=3027CC67-388E-4958-860C-C03FD3182BE3&Language=E&Mode=1>



and maintain the attendance and service of members; the right to initiate inquiries; and the right to publish papers.<sup>15</sup>

In addition to the privileges that have been defined in the course of Parliament's evolution, Parliament reserves the right to proscribe any act or an omission that interferes with the operation of the House or a Member, or is deemed to threaten to do so. While this class of offences is by definition open-ended, permitting Parliament to respond to new ways of obstructing or impeding its work, a 1999 report by a British parliamentary committee enumerated a series of recognized contempts that are broadly applicable to Westminster-model parliaments. The following are of particular relevance to the capacity of Parliament to scrutinize legislation and hold governments accountable for legislative activities:

- interrupting or disturbing the proceedings of, or engaging in other misconduct in the presence of, the House or a committee;
- deliberately attempting to mislead the House or a committee (by way of statement, evidence, or petition);
- deliberately altering, suppressing, concealing or destroying a paper required to be produced for the House or a committee;
- without reasonable excuse, failing to attend before the House or a committee after being summoned to do so;
- without reasonable excuse, refusing to answer a question or provide information or produce papers formally required by the House or a committee; and
- intimidating, preventing or hindering a witness from giving evidence or giving evidence in full to the House or a committee.<sup>16</sup>

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<sup>15</sup> O'Brien and Bosc: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?sbdid=ABBC077A-6DD8-4FBE-A29A-3F73554E63AA&sbpid=9686D5B2-9075-4451-8082-1446F8BE3C5E&Language=E&Mode=1>

<sup>16</sup> Ibid., same page.

## II. PROCESSES AND MECHANISMS - THE LEGISLATIVE PROCESS

### OVERVIEW OF THE STANDARD LEGISLATIVE PROCESS

Exercising their authority to establish internal procedures, the Senate and House of Commons have established multiple stages of debate and review that must be completed by any bill in order to obtain the parliamentary consent that is a prerequisite for Royal Assent by the Governor General and coming into force as law.

In the course of becoming law, each bill receives scrutiny and debate at the ten standard legislative steps summarized below.<sup>17</sup> With the exception of money bills, bills may be introduced in either the Senate or the House of Commons, but ultimately all bills must receive approval in identical form, in each House, according to the following steps:

#### House of Commons

- (1) First Reading: The bill is introduced following notice, making its content available to parliamentarians and the broader public for examination.
- (2) Second Reading: The principle of the bill is debated (essentially, should the proposed initiative be taken, or not). Following approval by the House, the bill is referred to a committee for detailed study.
- (3) Committee Review: The bill receives detailed scrutiny, involving the hearing of expert witnesses or others as required by the committee. All bills receive clause-by-clause examination and approval, and are reported back to the House of Commons with any amendments adopted by the committee.
- (4) Report Stage: The version of the bill approved by the committee is debated, along with further amendments proposed by individual Members of the House.

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<sup>17</sup> The summary does not reflect infrequent or disused variations unless they are relevant to the Parliament's scrutiny and accountability roles that are the subject of this paper. Examples would be the consideration of legislation by a legislative chamber constituted as a committee of the whole, possible in either the Senate or the House, or a minister's request that a committee prepare a bill according to instructions adopted by the House of Commons, available in the House. It should also be noted, that each House is the master of its affairs and is thus able to adopt ad hoc procedures at will.

- (5) Third Reading: The final form of the bill, as established by report stage debate, is debated.

## **Senate**

- (6) First Reading: The bill is introduced (notice is not required), formally placing it before the Senate for consideration.
- (7) Second Reading: The principle of the bill is debated, as in the House of Commons, following which the bill is normally referred to a committee for more detailed study.
- (8) Committee Review: The committee studies the bill and, following clause-by-clause examination and vote, reports it back to the Senate.
- (9) Report Stage: In the Senate, a report stage debate only occurs if the committee has proposed amendments; otherwise committee reports on bills are deemed adopted automatically.
- (10) Third Reading: The bill, including Senate committee amendments where these have been proposed, is debated a third time. This debate focusses on final form, although amendments to clauses of the bill can also be moved and debated at this stage.

Royal Assent: If the bill originated in the Senate and has been passed, it is then sent to the House of Commons where it follows steps (1) to (5). If the bill originated in the House of Commons and has been passed by both chambers in the same form, it is presented for Royal Assent.

## **SCRUTINY AND ACCOUNTABILITY OPPORTUNITIES AT THE LEGISLATIVE STAGES**

The scrutiny and approval of bills is a central task of Canada's Westminster-model Parliament, reflecting the legislative consent role developed as this model emerged in the U.K. The legislative process takes up a major portion of Parliament's time and, in combination, the various legislative stages provide extensive opportunities for the scrutiny and analysis of legislation, both with respect to general purposes and merit as public policy, and with respect to technical adequacy. In turn, the scrutiny of government bills provides a substantive basis for holding governments accountable for their legislative priorities and initiatives.

## **1. Introduction and First Reading**

### **a. House of Commons<sup>18</sup>**

The introduction of any public bill in the House of Commons requires 48 hours' written notice. The day after it appears on the *Notice Paper*, the title of the bill will appear in the *Order Paper* for introduction in the House. The title will remain on the *Order Paper* until the day when the Member or Minister decides to introduce the bill. This procedure provides an alert that a bill will soon become available for examination.

Once the notice period has passed, the Member or Minister tables the text of his or her bill during Routine Proceedings in the House. A designated interval in the Routine Proceedings, entitled "Statements by Ministers, provides a Minister with the opportunity to provide the House with a brief explanatory summary of the bill.

### **b. Senate<sup>19</sup>**

The introduction of a bill in the Senate does not require prior written notice, reflecting the reality that most government bills will have come to the attention of Senators as a result of being considered in the House. Otherwise, the introduction procedure is similar.

### **c. Scrutiny and Accountability at the First Reading Stage**

The introduction of a bill in either House is the moment when the text of a bill becomes available for scrutiny. Bills are not debated at this time. Following tabling in the chamber, the bill is distributed and made available on the parliamentary website, thus becoming generally available for examination. The existence of standardized introduction procedures in each House, at a set time on the daily schedule, ensures that parliamentarians become aware of legislative initiatives in advance of the later stages of substantive consideration.

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<sup>18</sup> See Compendium: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_g\\_legislativeprocess-e.htm#2b](http://www.parl.gc.ca/About/House/Compendium/web-content/c_g_legislativeprocess-e.htm#2b); SO 68-74.

<sup>19</sup> Companion, p. 204.

## **2. Second Reading and Referral to Committee**

### **a. The House of Commons<sup>20</sup>**

Second Reading debate provides the House an opportunity for relatively wide-ranging debate on the general scope of a bill, focussing on the purposes and priorities reflected in it and its merit as public policy. Since debate at this stage refers to the principle of the bill, the text of the bill may not be amended before referral to a committee.

There are, however, three permitted types of amendment to the motion for Second Reading. Motion for second reading may be amended. These are:

- Postponement of debate for three or six months (known as a “hoist amendment”);
- That second reading not be given for a specified reason (known as a “reasoned amendment”); or
- That the subject matter of the bill be referred to a committee.

At the Second Reading stage, speeches by the Prime Minister and the Leader of the Official Opposition are not subject to time limits. Other Members may speak for up to 20 minutes followed by a 10 minute period for questions and comments during the initial round of speeches and the first five hours of debate that follow. Following this, debate may continue with 10 minute limits on speeches, and 5 minute limits on questions and comments.

### **b. The Senate<sup>21</sup>**

Second Reading debate in the Senate performs broadly the same functions as in the House of Commons, enabling consideration of the scope and intent of a bill. As well, the three possible amendments established in traditional parliamentary procedure are options in the Senate. In general, debate in the Senate is somewhat more informal. The Government and Opposition Leader have unlimited time for initial Second Reading speeches, and the sponsor of a bill and the

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<sup>20</sup> Compendium: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_g\\_legislativeprocess-e.htm#2b](http://www.parl.gc.ca/About/House/Compendium/web-content/c_g_legislativeprocess-e.htm#2b).

<sup>21</sup> Rules, 6(3).

speaker immediately following have up to 45 minutes, with other speeches being limited to 15 minutes.

### **c. Scrutiny and Accountability at the Second Reading Stage**

Second Reading debate in both the Senate and the House of Commons provides an open-ended forum for debate concerning a bill, subject only to general rules of relevance. In the House, the presence of the sponsoring minister or designate provides the House with an opportunity to ensure direct accountability for a legislative initiative, and especially in the House Second Reading debate is also an important catalyst for public attention and discussion, and political feedback from outside Parliament to a government.

While hoist amendments have rarely been passed in modern times, they provide opposition political parties with a means of prolonging debate, since the motion to postpone debate is, itself, a debateable motion and takes precedence over Second Reading debate.<sup>22</sup> Similarly, under majority government conditions, reasoned amendments are useful primarily as a means for opposition Members to express opposition to a bill during regular Second Reading debate.<sup>23</sup>

While referral of the subject matter of a bill to committee remains an option in the Senate, it has been superseded by changes to the Standing Orders in the House that define similar options. Standing Order 73(1) was added to the Standing Orders of the House in 1994. Standing Order 73(1) provides that a minister may move the referral of a bill to a committee before Second Reading. This option is available only to the government and enables committees to be used more flexibly, since referral before Second Reading enables a committee to go beyond clause-by-clause review and consider broader changes to a bill. This procedure has been used with varying frequency since 1994, with upwards of a dozen bills following this path in several

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<sup>22</sup> O'Brien and Bosc: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?Language=E&Mode=1&sbdid=DA2AC62F-BB39-4E5F-9F7D-90BA3496D0A6&sbspid=9315B6D6-6BEE-4823-9723-425A74F9E290#CCD123BD-2206-4E6A-B8F9-DB789E31EF7F>

<sup>23</sup> O'Brien and Bosc note that, to date, the House has never passed a reasoned amendment motion: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?sbdid=DA2AC62F-BB39-4E5F-9F7D-90BA3496D0A6&sbspid=9315B6D6-6BEE-4823-9723-425A74F9E290&Language=E&Mode=1>

parliamentary sessions.<sup>24</sup> Furthermore (although it is of minimal relevance to legislative scrutiny or holding a government accountable), Standing Order 68(5) enables a minister to provide a committee with instructions to develop a bill (a procedure with similarities to the referral of subject matter to a committee by the House).<sup>25</sup>

### **3. The Committee Stage**

In both the Senate and the House of Commons, committees are the central mechanisms enabling the detailed scrutiny and analysis of bills, and also serve as important forums in which the sponsoring minister or officials can be examined concerning technical matters.

#### **a. The House<sup>26</sup>**

The modern standing committee structure of the House was created through successive procedural reforms between 1968 and 1985, and committees now serve as the central parliamentary mechanism for legislative scrutiny. These reforms created two types of committee, either of which may be employed in the examination of a bill. Standing committees are established with subject area mandates and exist indefinitely, while legislative committees are temporary ad hoc committees established for the purpose of examining an individual bill. While legislation was normally routed a legislative committee in the late 1980's and 1990's, problems of schedule conflict and excessive demands on members of the smaller political parties after 1993 have led this mechanism to be used less frequently, although it still remains as possible mechanism.

The Standing Orders explicitly delegate to committees a range of powers grounded in parliamentary privilege. In examining a bill, a committee may send for officials of government departments, agencies and Crown corporations and other persons whom the committee deems

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<sup>24</sup> SO Annotated, re Standing Order 73(1).

<sup>25</sup> O'Brien and Bosc: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?Language=E&Mode=1&sbdid=DA2AC62F-BB39-4E5F-9F7D-90BA3496D0A6&sbpid=1E3A6719-B291-4B7D-B13B-52819E50CE14#8FE8E769-BF69-473F-BB5E-0C30F25E6C0B>

<sup>26</sup> Companion: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_powerscommittees-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_powerscommittees-e.htm).

competent in technical matters. While witnesses normally appear on a voluntary basis, and committees rely upon expert advice freely given, a committee may summon witnesses who fail to appear. It may also order the production of papers and records, sit while the House is sitting, sit while the House stands adjourned, and print papers and evidence. There is no limit on the types of papers likely to be requested; the only prerequisite is that the papers exist—in hard copy or electronic format—and that they are located in Canada. Committees do not have the authority to publish failures to appear or provide documents, but may report such matters to the House, which has the authority to enforce concerning violations of privilege or contempts.<sup>27</sup>

The role of the committee to which a bill is referred is to review the text of the bill and approve or modify it. It is at this stage that witnesses may be invited to appear before the committee to provide expertise, present their views and respond to members' questions. A committee to which a bill is referred may choose to hold public hearings, and determine the list of witnesses and hearing schedule to be employed. It may also elect to call upon the services of the research officers of the Library of Parliament, or to retain any other specialist it deems necessary to assist it in its work (see Part IV, below).

Before proceeding with clause-by-clause examination of the bill, the Chair of the committee calls Clause 1 (normally) for debate to permit general discussion of the bill and questioning of witnesses, if any are appearing. Ordinarily the first witness to appear before the committee is either the sponsor of the bill, the Minister responsible for it or the Minister's Parliamentary Secretary. Other witnesses may then be invited to appear and provide advice relating to the bill. Subject experts or representatives of organizations potentially affected by the legislative measure are often among those invited to appear. At this stage, discussion is relatively wide-ranging, and relates both to the general principle and to the details of the bill.

Once the witnesses have been heard, the committee proceeds to study the bill clause-by-clause and, at its discretion, word by word. The Minister responsible, or the Minister's Parliamentary Secretary, may again address the committee at this stage, and departmental officials will also make themselves available to provide explanations of complex or technical aspects of the

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<sup>27</sup> Companion: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_powerscommittees-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_powerscommittees-e.htm).



legislative proposal. Each member of a committee may speak as often as he or she wishes, subject only to the provisions of any motions governing the rotation of speakers or the length of speeches previously adopted by the committee or (concerning some matters) the House.

During clause-by-clause examination, a committee member may ask questions about provisions in the clause or may debate any part of a clause, even if he or she has no amendments to propose. It is during clause-by-clause examination, also, that committee members may propose amendments to the bill. Each clause is considered separately and either adopted, amended or negatived. Once all the parts of the bill have been considered and the votes on individual clauses completed, the committee votes on the bill as a whole. The bill is then reported back to the House, where it is tabled for subsequent debate.

#### **b. The Senate<sup>28</sup>**

Legislative review by committees of the Senate is broadly replicative of that in the House, involving both general examination and, normally, clause-by-clause review that consists of the separate consideration and voting upon each clause of a bill. However, Senate procedures are generally somewhat more flexible than those of the House (Rule 12-20(3), for example, permits committees to dispense with clause-by-clause examination of a bill under some circumstances). Rule 12-23, provides that a committee may recommend to the Senate that it not proceed with a bill, and in such a case must state its reasons (in contrast to the preclusion of narrative comments in House reports on bills).<sup>29</sup> Perhaps most importantly, Senate committees may attach observations or comments to reports on bills for consideration by the government.<sup>30</sup> As well, Senate committees are widely portrayed as less partisan in culture than their House counterparts, and the absence of constituency duties and other demands is often claimed to permit a more leisurely consideration of bills.<sup>31</sup>

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<sup>28</sup> See Companion, p. 325 ff. Also C.E.S. Franks, "The Canadian Senate in Modern Times," in Serge Joyal, ed., *Protecting Canadian Democracy: The Senate You Never Knew*, McGill-Queens University Press, Montreal & Kingston, 2003, pp. 152-187.

<sup>29</sup> Companion, Rule 12-23.

<sup>30</sup> Companion, p. 405.

<sup>31</sup> Companion, p. 327.

Structurally, there are several noteworthy differences between Senate committee hearings and those of the House. The Rules do not require that every bill be referred to a committee, and the option of referral to committee of the whole remains available (and more practical than in the House, since the Senate is a smaller chamber). Also, the Rules entitle any senator, irrespective of membership, to attend and participate in the proceedings of any committee (with the exception of voting).<sup>32</sup>

Furthermore, although its use has not been frequent in recent years, the *Rules of the Senate* provide for a procedure known as pre-study whereby the subject matter of a bill that has been introduced in the House of Commons, but has not yet been sent to the Senate, is referred to a Senate standing committee. This expands the period of time during which the Senate can consider a bill, and has sometimes been employed in response to anticipated congestion when large numbers of bills remain before the House of Commons late in a parliamentary session.<sup>33</sup>

### **c. Scrutiny and Accountability at the Committee Stage**

Committees are employed for the detailed examination of legislation in both the Senate and the House of Commons because this work benefits from the sustained attention of a limited number of people working under conditions of relative procedural flexibility that the committee environment can provide. The committee stage provides general ministerial accountability, when a bill is presented and explained to committee members; technical accountability, when departmental officials respond to technical questions; and meaningful scrutiny, when members engage the substance of the bill and then proceed with clause-by-clause review. In addition, the authority of the committee to select expert witnesses and schedule hearings enables committee deliberations to be informed by specialized knowledge and advice additional to that available from departmental officials and committee research and procedural staff.

The extensiveness of committee hearings on bills varies widely, depending on a range of considerations including the substantive content of a bill and political factors. Both the Senate and the House of Commons provide many illustrations of the potential scope of hearings.

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<sup>32</sup> Companion, Rule 12-14.

<sup>33</sup> Compendium: [http://www.parl.gc.ca/About/House/Compendium/Web-Content/c\\_g\\_legislativeprocess-e.htm#2h](http://www.parl.gc.ca/About/House/Compendium/Web-Content/c_g_legislativeprocess-e.htm#2h)

An illustration of the potential extensiveness of Senate studies of legislation occurred in June 2006, when Bill C-2 (the Federal Accountability Act) arrived in the Senate. The Senate's Committee on Legal and Constitutional Affairs examined the bill, holding over 100 hours of meetings and hearing 168 witnesses. Based on witnesses' testimony, the committee proposed an unprecedented 156 amendments to the bill. After lengthy back-and-forth between the Senate and the House of Commons, the bill finally passed with roughly 90 Senate amendments (most of which originated from the committee study).<sup>34</sup>

Similarly, a 2001 report of the House of Commons Standing Committee on Health (which examined a bill referred by the Minister and therefore was able to include information on its hearings in a narrative report) provides an example of extensive study of a bill by a House committee. The appendices to the report list 110 witnesses who appeared before the committee over a period of six months and provide a lengthy list of written submissions also considered by the committee.<sup>35</sup>

#### **4. Report Stage**

##### **a. The House of Commons<sup>36</sup>**

Following committee review, each bill is reported back to the House and debated in the chamber at what is known as report stage. This debate provides Members, particularly those who were not members of the committee, with the opportunity to propose motions to amend the text of the bill. Written notice is required and debate focuses on the amendments and not on the bill as a whole.

In order to prevent report stage from merely becoming a repetition of committee stage, the Speaker is authorized to select and group amendments for debate, and reject amendments already

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<sup>34</sup> Parliament of Canada website, *The Senate Today – Making Canada's Laws*: <http://www.parl.gc.ca/About/Senate/Today/laws-e.html#amender>.

<sup>35</sup> House of Commons, Standing Committee on Health, *Assisted Human Reproduction: Building Families*, December 2001: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=1032041&Language=E&Mode=1&Parl=37&Ses=1&File=5>.

<sup>36</sup> Bosc and O'Brien: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?sbdid=DA2AC62F-BB39-4E5F-9F7D-90BA3496D0A6&sbid=9315B6D6-6BEE-4823-9723-425A74F9E290&Language=E&Mode=1>

considered in committee. Report stage debate then addresses proposed amendments, if any. Either way, the debate concludes with a motion to approve the bill which is voted upon immediately, without amendment or debate.

#### **b. The Senate**

Report Stage debate in the Senate only occurs if a committee that has examined a bill is proposing amendments. In cases where a committee has adopted a bill without amendments, the report is deemed adopted and the bill goes immediately to Third Reading. Reports containing amendments are debated in the Senate, adopted or rejected by vote and, where adopted, provide amendments for consideration at Third Reading. Amendments to the report may also be proposed. The unrestricted opportunity for non-members to propose amendments that exists in the House is provided by other means, since senators who are not committee members may attend and participate in committee hearings, and so have the opportunity to provide input at the committee stage.

#### **c. Scrutiny and Accountability at Report Stage**

Although there are procedural differences between the Senate and House of Commons at report stage, this stage of debate makes broadly the same contribution to scrutiny and accountability in both Houses. During this phase, committee recommendations are placed before the chamber and explained. The Chamber participates in the scrutiny of a bill undertaken by a committee by examining its report in the course of debate. In the House, a minister sponsoring a bill has the opportunity to participate in debate, responding both to committee recommendations and comments from other members. In the Senate, the Government House Leader or a designate performs a similar role a committee's decision to propose amendments results in debate, and all senators have an opportunity to participate.

### **5. Third Reading and Adoption**

Third Reading is the final stage of legislative debate in each chamber, and normally focusses on any minor changes to the final form of a bill that have not been addressed at the previous stages.

### **a. The House of Commons<sup>37</sup>**

Debate at this stage of the legislative process focuses on the final form of the bill, as well as providing a final opportunity for reconsideration. The amendments that are admissible at this stage are similar to those at second reading stage, including hoist and reasoned amendments. An amendment to recommit the bill to a committee with instructions to reconsider certain clauses is also acceptable.

### **b. The Senate<sup>38</sup>**

Third Reading debate in the Senate performs the same functions as that in the House, as well as reflecting the somewhat different procedures for debate at committee report stage. In the Senate, amendments proposed by a committee whose report has been adopted by the House will normally be voted at Third Reading and, as well, Rule 10-5 provides that any amendment previously adopted may be reconsidered prior to the Third Reading vote. Senate Third Reading debate thus has the potential to involve more activity than its House of Commons counterpart.

### **c. Scrutiny and Accountability at Third Reading Stage**

Reflecting its role as the final stage of parliamentary debate, Third Reading stage functions primarily as an opportunity for minor technical amendments. However, procedurally, it does provide both Senators and members of the House with a further opportunity for changes of mind, or for amendments based on information not available during the previous stages of debate.

## **6. Reconciliation (If Needed) and Royal Assent<sup>39</sup>**

As noted above, legislation can only be signed into law when it has been passed in identical form in both the Senate and House of Commons. Amendments by either House following passage of a bill by the other therefore trigger a further series of steps in which the two versions of bill must

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<sup>37</sup> Compendium: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_3readadoptionbills-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_3readadoptionbills-e.htm).

<sup>38</sup> Companion, p. 215 ff.

<sup>39</sup> Compendium: [http://www.parl.gc.ca/About/House/Compendium/Web-Content/c\\_g\\_legislativeprocess-e.htm#2h](http://www.parl.gc.ca/About/House/Compendium/Web-Content/c_g_legislativeprocess-e.htm#2h)

be reconciled. In most cases, this phase involved the reconsideration of a bill by the House of Commons following amendment by the Senate, and will involve a further cycle of attention by the sponsoring minister followed by consideration in the House. In modern times, Senate amendments most frequently involve corrections to drafting errors or improvements to administrative aspects, and the House normally accepts such amendments. In principle, however, disagreement between the Houses could open the door to protracted reconsideration and debate.

Once the bill has been passed in identical form by both Houses of Parliament, the Governor General provides Royal Assent in the name of the Queen.<sup>40</sup> Given the principles of democracy and constitutional monarchy that have come to govern practice in Canada and other Westminster-model parliamentary systems, the Royal Assent stage of the legislative process in Canada does not normally involve either further scrutiny or governmental accountability. It remains a symbolic moment signifying the participation of the Queen (represented by the Governor General) as the third component of Parliament, along with the two legislative Houses.

### III. OUTSIDE THE LEGISLATIVE PROCESS

Parliament engages in a range of activities outside the legislative process that broadly reflect its role as an accountability institution. In most cases, they contribute to the performance of the financial accountability role anchored in Parliament's consent authority concerning revenue-raising and spending measures, or the confidence chamber role. While the primary focus of these activities lies outside the normal legislative process, they provide important support for Parliament's legislative scrutiny and accountability capacities. Historically, as has been seen, the financial consent authority provided the leverage for the acquisition of the legislative consent authority, and the principle of responsible government provided an important basis for ensuring government responsiveness in both financial and legislative activity. Procedurally, they continue to provide tools that are available to Parliament to support the activities of legislative scrutiny and accountability.

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<sup>40</sup> S. 55 of the *Constitution Act, 1867* provides the formal basis for this authority, asserting the prerogative to declare assent, withhold assent, or reserve the bill for consideration by the Queen.

## 1. Petitions

O'Brien and Bosc describe a petition as a "respectful request that the House, the government, a Minister or a Member take, or refrain from taking, some sort of action, called the "remedy", in response to an alleged grievance.<sup>41</sup> In addition to stating a problem or grievance the petition must specify an action sought, and may also call for the expenditure of public funds. Petitions are presented during a 15-minute interval entitled "Tabling of Documents" during Routine Proceedings in the parliamentary day, and the member presenting a petition is entitled to provide a brief statement of its content.

While most petitions serve to bring the attention of Parliament and the government to a problem or grievance affecting a single individual or group, their modern use frequently involves the organized mobilization of opinion by a community or advocacy group. Petitions therefore provide a means of placing before Parliament concerns held by members of the public or experts relating to the need for a legislative initiative, the content of a bill before Parliament, or the impact of legislation already in effect. Petitions require a written response from the government within 45 days, and failures to respond are referred to the appropriate standing committee for consideration. Petitions thus provide Parliament with an accountability tool that could be deployed from outside the legislative process, serving to publicize concerns and encourage government responsiveness.

## 2. Statements by Members

On each sitting day, a 15-minute period during Routine Proceedings is allotted to statements by Members. Members who are not Ministers, when recognized by the Speaker, are permitted to address the House for up to one minute on virtually any matter of international, national, provincial or local concern. Statements often refer to constituency events or other local matters, but are subject to few restrictions (for example: a ruling of a court cannot be denounced, the

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<sup>41</sup> O'Brien and Bosc: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?Language=E&Mode=1&sbdid=AF057BD0-F018-4FB4-BD75-4A2200729F05&sbpid=736EC534-8243-484C-A0C1-D4594B2DCA17#710313FA-50AD-4CDD-B4FB-5541ED995728>

actions of the Senate cannot be criticized, and attacks on character or offensive language are broadly precluded).<sup>42</sup>

Although the Statements by Members period is not an element in the formal legislative process, like petitions it provides individual Members with an additional opportunity to voice concerns about the need for a legislative initiative, echo concerns being expressed about a bill (although verbatim remarks are not permitted), or publicize impacts of legislation already in force. While ministers are not required to respond directly to statements by members, they provide a flexible mechanism for drawing the attention of the House to concerns, publicizing issues and increasing the political pressure on ministers to respond.

### **3. Oral Questions**

The Oral Question Period, occupying 45 minutes of each sitting day of the House of Commons, enables Members to seek information and hold the Government accountable for its priorities and actions. A question asked by a Member must be brief, seek information, and direct the question to an important matter of some urgency that is within the administrative responsibility of the Government or of the Minister addressed. Questions and responses are each limited to 35 seconds.<sup>43</sup>

In modern times, and especially since the televising of House proceedings began in 1977, Question Period has become an increasingly open forum in which questions of every description can be asked, often without regard to formal requirements such as urgency. However, the somewhat anarchic atmosphere that prevails during Question Period is offset by its effectiveness in garnering public and media attention, which contributes centrally to its effectiveness as a political accountability mechanism. Although it is outside the formal legislative process (and the Standing Orders preclude questions involving legal opinions), questions on legislation or on subjects that are before committees are directed to the Ministry and are normally permitted as long as the questioning neither interferes with the committees' work nor anticipates a report of a

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<sup>42</sup> Compendium: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_statementsmembers-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_statementsmembers-e.htm)

<sup>43</sup> Compendium: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_questionperiod-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_questionperiod-e.htm).



committee. Oral Question Period is thus a central accountability mechanism, although the time constraints make political accountability more central to its proceedings than substantive information.

In response to a question, a Minister may provide an answer, defer an answer, explain briefly why an answer cannot be provided at that time, or avoid responding. However, a Member who is not satisfied with the answer to an oral question may pursue the matter at greater length during the Adjournment Proceedings, a short question and answer period held at the end of each sitting day, except Fridays.

#### 4. Written Questions

A question relating to "public affairs" and requiring a lengthy, detailed or technical response may be submitted as a written question, with 48 hours' notice.<sup>44</sup> Each Member is permitted to have a maximum of four questions on the *Order Paper* at any one time and is entitled to request a response within 45 calendar days. The Member may also request oral answers in the House to up to three of his or her questions. If a question is not answered within the required time, the failure of the Government to do so is automatically referred to a standing committee for investigation. Alternatively, the matter may be taken up by the Member on the floor of the House during Adjournment Proceedings.

Responses to written questions are provided during Routine Proceedings. When "Questions on the *Order Paper*" is called, a Parliamentary Secretary stands and indicates the question(s) to which the Government will respond on that day. The text of the full response is published in the *Debates* or, for oral responses, the Parliamentary Secretary may read the reply. Lengthy or complex responses may be provided in the form of a sessional paper (Parliamentary Return) tabled in the House.

The written question procedure provides Members with an important means of obtaining substantive information. The volume of written questions has grown steadily over the years. During 2013-14, the Privy Council Office, which coordinates the preparation of departmental

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<sup>44</sup> SO 39(1).

responses to written questions, provided 3,604 Parliamentary Returns.<sup>45</sup> The scrutiny and accountability importance of written questions is comparable to that of oral questions, with the difference that written responses are provided away from the highly public environment of the oral question period, and are also by their nature more significant as information sources than as occasions for political accountability. A response to a written question could assist a Member either in building the case for a legislative initiative, examining an initiative before the House, or assessing the impact of legislation that has come into force.

### **5. Special Debates and Financial Accountability Moments**

The Standing Orders of the House of Commons contain provisions relating to various debates for distinctive purposes, and subject to tailored rules. These debates have limited direct application to the scrutiny of legislation, but do provide singular accountability moments when concerns about the legislative priorities of a government, and in some cases individual legislative initiatives, may be raised and a minister's response obtained.

Likewise, the spending plans of the government are placed before the House for scrutiny and concurrence each year following the presentation of a budget. Since these are deemed to be confidence measures, they provide a basis for the assertion of Parliament's accountability role, and discussion with ministers or their delegates frequently ranges beyond the substance of the spending estimates and plans.

#### **Throne Speech Debate:<sup>46</sup>**

At the beginning of each parliamentary session, the Governor General reads a speech providing the government's assessment of the state of the nation and setting out its policy priorities and legislative agenda. This is followed by six days of wide-ranging debate. At its conclusion, a vote is taken that establishes the confidence of the House in the government. While this debate

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<sup>45</sup> Privy Council Office, Departmental Performance Report 2013-14: <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=dpr-rmr/2013-2014/index-eng.htm#a12>

<sup>46</sup> Compendium: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_speechthrone-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_speechthrone-e.htm)

precedes the presentation of specific legislative initiatives to the House and is therefore not an occasion for legislative scrutiny, it does provide parliamentarians with an opportunity to comment on past legislative initiatives and their future implications, or raise general concerns relating to legislative strategies.

### **Budget Debates:<sup>47</sup>**

Budget speeches provide Parliament with government's assessment of the state of the nation's finances and financial plans, and are followed by wide-ranging debate and a vote that has the status of a confidence vote. While this process does not contribute directly to the scrutiny of ordinary legislation, it does provide Parliament with an opportunity to hold a government accountable for its overall performance (including legislative initiatives).

### **Concurrence in the Departmental Estimates:<sup>48</sup>**

Reflecting the budgetary consent authority of Parliament, the annual spending estimates of departments are tabled before the House following the presentation of the budget each year, and supplementary estimates are presented later in the year to enable the adjustment of spending authorities to evolving needs. The estimates are referred to the standing committees, which normally schedule meetings with ministers or their designates that enable parliamentarians to hold them accountable for spending plans. In practice, these discussions frequently go beyond the substance of the estimates, and may provide an opportunity for the communication of concerns about individual legislative initiatives in a public forum.

### **Emergency Debates<sup>49</sup>**

These can be initiated at the conclusion of routine House business, for the purpose of debating a "specific and important matter requiring urgent attention." They are thus of limited application

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<sup>47</sup> Compendium: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_budgetspeech-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_budgetspeech-e.htm)

<sup>48</sup> Compendium: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_businesssupply-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_businesssupply-e.htm)

<sup>49</sup> O'Brien and Bosc: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?Language=E&Mode=1&sbid=A3B3E81E-7578-4C09-899E-D64180EBA3A6&sbpid=15C489AF-FB86-48E7-8ED0-952D1359C7DD>

to the scrutiny of legislation or legislative accountability, unless a legislative issue could be claimed to be a national emergency.

### **Take-Note Debates<sup>50</sup>**

These provide a minister with the opportunity to consult the House on some aspect of government policy. The debate must be scheduled at least 48 hours in advance and can only be initiated on the request of a minister. Such a debate could be relevant to a legislative development such as a Court decision relating to constitutionality, but should be seen as a consultative interlude rather than an occasion of parliamentary legislative scrutiny or government accountability. This procedural option does, however, raise the possibility that a parliamentarian could call upon a minister to use it, in effect challenging a minister to consult the House.

## **6. Dilatory Motions and Miscellaneous Options Including Private Members' Business**

Parliamentary procedure is a complex set of formal rules and precedents reflecting individual rulings by Speakers and accumulated practice within other Westminster-model Parliaments. In the past, skillful use of procedural opportunities has provided parliamentarians with a range of opportunities to express concerns about legislative initiatives or other initiatives of a government (or failures of a government to act). In extreme cases, House proceedings have been brought to a halt for days or even weeks by filibusters. Over the years, however, procedures have gradually been tightened in order to limit the degree to which government business could be blocked by parliamentary stalemates.<sup>51</sup>

However, various procedural options remain for the expression by individual parliamentarians of views about the conduct of government, including legislative conduct. Like the more formal opportunities reviewed elsewhere in this section, these opportunities do not provide occasions for direct impact on the legislative process, but they may foster public awareness and increase the political incentives for government responsiveness. For example, points of order have

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<sup>50</sup> O'Brien and Bosc: <http://www.parl.gc.ca/Procedure-Book-Livre/Document.aspx?sbdid=A3B3E81E-7578-4C09-899E-D64180EBA3A6&sbpid=7B46FDDA-0381-4510-88BA>

<sup>51</sup> C.E.S. Franks, *The Parliament of Canada*, University of Toronto, Toronto, pp. 124 ff.

precedence over other business, and can be raised at any moment during proceeding. This enables them to be used for the purposes of bringing at least a temporary halt to parliamentary business. Dilatory motions, including motions to proceed to the Orders of the Day, to adjourn the House, and to adjourn an individual debate, are a class of motion that supersede other motions and can thus be used to express unhappiness with a government by causing delay, although the delay arises only from the need to vote upon them since they are not debateable.<sup>52</sup> House procedure also provides for a range of other types of motion, including both substantive motions that are themselves amendable (and in general may provide opportunities for delay as well as placing a substantive argument before the House), and procedural motions that serve primarily to affect the course of House business.<sup>53</sup>

Since 1991, Private Members' Business provides an hour each sitting day for the disposition of a range of initiatives from private Members. Private Members' bills are the most widely known item of Private Members' Business, but are by definition not occasions for the scrutiny of government legislation. More relevant to Parliament's scrutiny and accountability capacities are Private Members motions, which can be used to place a wide range of issues before the House, and are formatted either as orders or resolutions. Motions that the House make a declaration of opinion or purpose, but that do not order a specific course of action, are framed as resolutions. A resolution could, for example, call on the government to initiate a certain measure or adopt a certain strategy relating to a legislative measure.<sup>54</sup> Among the examples of private members' resolutions provided by O'Brien and Bosc are proposed constitutional amendments, foreign policy initiatives, economic assistance and medical health initiatives. While a government is not bound by the adoption of a resolution, since it merely states the opinion of the House, a

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<sup>52</sup> *Compendium*: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_dilatorymotions-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_dilatorymotions-e.htm)

<sup>53</sup> *Compendium*: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_typesmotions-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_typesmotions-e.htm)

<sup>54</sup> . Other motions, giving direction to a House committee or officer for example, are framed as Orders of the House and become directive once adopted.

resolution may receive up to two hours of debate once it is placed on the Order Paper, and provides an accountability occasion on which ministers may be challenged to respond.<sup>55</sup>

## 7. A Note on the Senate

A number of the non-legislative procedures of the House are replicated in the Senate, although often with significant variations in procedural detail. The central contrast between the Senate and the House of Commons, however, derives from the level of public attention achieved, and consequent political impact. Events in the House such as the Oral Question Period are important catalysts for public and media attention, while comparable events in the Senate achieve minimal visibility outside the Senate chamber. As a result, Senate proceedings outside the legislative process have limited importance as accountability moments that might induce a government to modify legislative priorities or an individual bill, and serve primarily to enrich debate inside the Senate and, potentially, as catalysts for informal influence on a government.

Illustrating the Senate's replication (with procedural differences) of many of the non-legislative procedures of the House are:

- Oral Questions: this period lasts for only 30 minutes per day and is not televised, with questions being posed to the Government House Leader, ministers (if any) in the Senate, and committee chairs;
- Written Questions: similar to House procedures, except for the absence of a requirement for government response within a specified time period;
- Emergency debates: restricted (as in the House) to genuine national emergencies;
- Petitions: similar to the House, but not subject to pre-tabling requirements, and petitions tabled in the Senate do not require a government response within a specified time-period.<sup>56</sup>

Other accountability moments in the House are not replicated, such as the Throne Speech debate, budget debate and take-note debates. As well, reflecting the primacy of the elected House in

<sup>55</sup> O'Brien and Bosc: <http://www.parl.gc.ca/procedure-book-livre/document.aspx?sbdid=dfc709e5-ed90-48e5-b7ec-02e6d98bf07b&sbspidx=4>

<sup>56</sup> See *Companion*, respectively pages 72, 77, 175 and 247.

financial matters, their salience within the Senate is relatively limited. The government's annual spending estimates are tabled in the House and referred as a group to the Standing Senate Committee on Finance, which normally provides a general report to the Senate.

A distinctive Senate procedure is the inquiry, which may be initiated by any Senator and is "a procedure used for the purpose of drawing the attention of the Senate, through debate, to a particular matter."<sup>57</sup> No decision or vote is taken by the Senate on an inquiry. It is a frequently used feature of Senate procedure that enables an issue to receive priority attention by the chamber, and relevant information and analysis to be shared in debate. Constitutional issues such as Senate reform have been placed before the Senate in inquiries, and an inquiry could contribute to discussion of issues raised by a bill before the House of Commons, but the direct employment in the scrutiny and review of legislation is precluded by Rule 5(2), which provides that inquiries shall not relate to any bill or other matter that is before the Senate.<sup>58</sup>

#### **IV. PROFESSIONAL SUPPORT FOR THE LEGISLATIVE PROCESS**

##### **1. House of Commons Law Clerk and General Counsel**

The House of Commons Law Clerk and General Counsel provides advice on legal issues and matters of parliamentary law, as well as constitutional matters to individual Members of Parliament as well as parliamentary committees, the House and House administration. For the purpose of obtaining specialized legal opinions on matters such as the constitutionality of a bill, the Office of the Law Clerk may engage the services of specialists under contract. As well, officials in the Office of the law clerk provide legislative drafting services to committee

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<sup>57</sup> *Companion*, p. 97.

<sup>58</sup> *Companion*, p. 97.

members who wish to move amendments to a bill.<sup>59</sup> In 2013-14, the office had an FTE (approximate full-time employees) of 32.<sup>60</sup>

## **2. The Senate Law Clerk and General Counsel**

The Senate Law Clerk and General Counsel is the chief legal adviser to the Senate, serving as parliamentary legal counsel, legislative drafter, corporate counsel and law clerk. As Parliamentary Counsel, the Law Clerk provides legal opinions to the Senate, its committees, and senators on constitutional questions, on matters of parliamentary law, privilege and practice, and on other aspects of law. As Legislative Drafter, the Law Clerk advises senators on the form and substance of Government bills and proposed amendments. On request, the Law Clerk also drafts private senators' public bills, private bills, notices of motion, motions, notices of inquiry, amendments to bills, and amendments to the Rules of the Senate. In addition, the Law Clerk performs a range of corporate counsel and administrative functions.<sup>61</sup>

## **3. Library of Parliament**

In addition to providing comprehensive library services (books, electronic media, databases) and a specialized collection of government documents, the Library of Parliament provides parliamentarians with research and analytical support through its Parliamentary Information and Research Service. Lawyers and legal researchers in the Law and Government Division provide summaries of bills tabled by the government (21 summaries during 2013-14), explaining the intent of the proposed legislation and its interaction with existing laws.<sup>62</sup> The Information and Research Service group consists, in addition, of research librarians, economists, scientists and political and social scientists who provide personalized, confidential briefings, and provide

<sup>59</sup> O'Brien and Bosc: <http://www.parl.gc.ca/procedure-book-livre/document.aspx?language=e&mode=1&sbid=6843b975-9c65-4a9b-a5cc-657aa88fa7ef>

<sup>60</sup> House of Commons, *Report to Canadians 2014*:

[http://www.parl.gc.ca/About/House/ReportToCanadians/2014/rtc2014\\_06-e.html](http://www.parl.gc.ca/About/House/ReportToCanadians/2014/rtc2014_06-e.html)

<sup>61</sup> See ParlInfo: <http://www.parl.gc.ca/About/Senate/LeadersOfficersBiography/LawClerk-e.htm>

<sup>62</sup> Library of Parliament, *Annual Report 2013-14*:

<http://www.parl.gc.ca/About/Library/VirtualLibrary/AnnualReport/2014/ar20132014-research-e.html>



individual parliamentarians and committees with analytical and research products relating to government legislation and policy issues. The Service also provides briefing and background papers for use by all parliamentarians on its public website. Finally, PIRS analysts support the development of private member's bills by assisting in the preparation of drafting instructions for the legal drafters.<sup>63</sup>

#### **4. Supplementary Support**

Specialized legal advice is available to individual parliamentarians under contract subject to the limits of office budgets. As well, parliamentary committees have budgets for the purpose of engaging supplementary assistance in the conduct of committee studies, including specialized legal support. Finally, the Liaison Committee of Chairs, a committee composed of committee chairs, has the capacity to authorize supplementary funding for various committee purposes, including travel and specialized research.<sup>64</sup>

### **CONCLUDING NOTE: PARLIAMENT AND SOCIETY**

In addition to the parliamentary mechanisms and procedural capacities reviewed in this paper, Parliament's representational role makes it a focus for communications initiated by individuals and professional communities. Substantive concerns may be addressed to individual parliamentarians, who either communicate directly with decision-makers in government or action them within the processes and mechanisms of Parliament. Communications may also be directed to members of relevant standing committees or directly to the committees, seeking hearings and/or studies, or providing input into reviews of legislation pending or underway. While the procedural mechanisms and processes outlined above define the activities through which Parliament influences governments, in a democratic society the character and extent of public attention and engagement determines the ultimate effectiveness of Parliament.

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<sup>63</sup> See Sonia L'Heureux, "The Library of Parliament's Research Service – Adding Value for Parliamentarians," *Canadian Parliamentary Review*, 36, 4, 2013, pp. 17-19.

<sup>64</sup> See Compendium: [http://www.parl.gc.ca/About/House/Compendium/web-content/c\\_d\\_liaisoncommittee-e.htm](http://www.parl.gc.ca/About/House/Compendium/web-content/c_d_liaisoncommittee-e.htm).



**EXHIBIT "B" TO THE AFFIDAVIT OF  
John A. Stilborn, Ph. D., sworn May 20, 2015**

This is Exhibit B referred to in the  
affidavit of John A. Stilborn  
sworn before me, this 20th  
day of May, 2015

\_\_\_\_\_  
A COMMISSIONER FOR TAKING AFFIDAVITS

**RESUME**

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## **PROFILE**

**John Stilborn is a consultant, researcher, teacher, and writer specializing in Canadian governance, especially Parliament and public administration. His work reflects extensive experience as a specialist in these areas at the Parliamentary Information and Research Service, Library of Parliament and experience in the federal and Ontario public services, teaching at local universities, authorship of numerous publications, and studies at the University of Western Ontario (PhD.), Oxford University (Rhodes Scholarship) and the University of Saskatchewan.**

### **Skills and Knowledge**

- Specialized knowledge of Canadian politics, political institutions, federalism, public administration and public policy.
- Broad familiarity with parliamentary systems and the political process.
- Dynamic lecturer / communicator.
- PhD. in political philosophy (dissertation on the thought of Alexis de Tocqueville).

### **Key Achievements**

- As Principal Analyst with the Parliamentary Information and Research Service:
  - served as research director or PIRS lead for:
    - Special Joint Committee on the Amending Process (1991),
    - Special Joint Committee for a Renewed Canada (1992)
    - Senate Special Committee on Senate Reform (2006)
  - provided research papers in the areas of governance and public administration, political institutions and processes, selected public policy areas.
  - provided research, advice and parliamentary publications on a range of public administration, public policy and institutional reform issues; and
  - drafted (or co-drafted) parliamentary committee reports (including Senate reform, Governor-in-Council appointments, the constitution and the amending process, lobbying, the Pearson Airport agreement, and the Senate committee system).
- Publications include:
  - Book chapters and articles, especially on Senate reform, the House of Commons, Parliament's scrutiny of government spending, officers of Parliament,
  - Extensive publications for Parliament (institutions, public administration, federalism).

- Federal and provincial public service experience:
  - provided advice on environmental issues at Ontario Ministry of Intergovernmental Affairs,
  - Research and analysis in two federal departments.
- Ph.D. in political philosophy (dissertation on Alexis de Tocqueville) following degrees from Oxford University (Rhodes Scholarship, politics and philosophy) and the University of Saskatchewan (Summa Cum Laude, combined major in political science and English literature).

## **EMPLOYMENT EXPERIENCE**

**Principal Analyst** **1985 – 2000, 2001 - 2008 (October)**  
**Political and Social Affairs Division, Parliamentary Information and Research Service,**  
**Library of Parliament**

- As Principal Analyst, served as Acting Director (two terms) and supervised analysts / reviewed work in the areas of political institutions and processes, Canadian federalism and constitutional politics; public administration (esp. accountability and governance, government operations); public policy (democratic reform, diverse social policy).
- Led a team mandated to strengthen PIRS support for committees scrutinizing spending estimates.
- Provided research, analysis and report drafting for committee studies and the annual review of estimates (committees included Senate reform, constitutional reform, government operations).
- On secondment, provided advice on improved reporting to Parliament (Treasury Board Secretariat, 2004-2005).

**Senior Intergovernmental Specialist** **2000-2001**  
**Ministry of Intergovernmental Affairs, Government of Ontario**

- provided analysis and advice on environmental issues, coordinated ministry research team, and contributed to work on SUFA negotiations.

**Project Officer** **1984-1985**  
**Management Advisory Services, Supply and Services Canada**

- Advised a major federal department on the revision of its environmental impact assessment policy and procedures, and carried out diverse planning and operations-related research projects.

**Policy Analyst** **1982-1983**  
**Police and Security Branch, Ministry of the Solicitor General**

- Prepared ministerial and deputy-ministerial briefing notes, and assisted in the preparation of a Memorandum to Cabinet.

**Post-doctoral Research and Part-time instructor** **1980-1981**

- Continued research on the thought of Alexis de Tocqueville (Social Sciences and Humanities Research Council post-doctoral grant, 1980 – 1981).
- Taught courses in introductory political science, history of political thought (Univ. of Western Ontario, 1974 – 1979).

## RECENT PART-TIME TEACHING

- 2014, Senate Reform (Learning in Retirement), Carleton, University,
- 2011, Parliament and Politics (Learning in Retirement), Carleton University,
- 2009, Parliamentary Government in Canada (POL 4154), University of Ottawa,
- 2008 and 2004, the CF and Canadian Society (POE 206) Royal Military College,
- 2006, Canadian Public Administration (3401-A, Fall-Winter), Carleton University

## EDUCATION

Ph.D., Political Science, University of Western Ontario, 1979

B.A., Politics and Philosophy, Oxford University, 1972

B.A., (Hon.) Political Science, University of Saskatchewan, 1970

## ACADEMIC AWARDS

Social Sciences and Humanities Research Council Postdoctoral Fellowship, 1980 – 1981

Canada Council Doctoral Fellowship, 1972 – 1976

Rhodes Scholarship, 1970 – 1972

University of Saskatchewan Honours Scholarship, 1969 – 1970

## SELECTED PUBLICATIONS AND PRESENTATIONS

“The Investigative Study Role of Canada’s House Committees: Expectations Met?” *Journal of Legislative Studies*, 20, 3, September 2014.

“Reforming our thinking: the key to real parliamentary reform,” *The Hill Times*, Monday, Feb. 17, 2014.

“Funding the Officers of Parliament – Canada’s Experiment,” *Canadian Parliamentary Review*, 33, 2, Summer 2010.

“The Officers of Parliament: More Watchdogs, More Teeth, Better Governance?” Chapter 12 of Bruce Doern and Christopher Stoney, eds., *How Ottawa Spends, 2010-2011 – Recession, Realignment, and the New Deficit Era*, McGill-Queen’s University Press, Montreal & Kingston, 2010.

“Senate reform: An Impulse in Search of a Theory,” Panel Presentation, University of St. Paul, Ottawa, November 21, 2009.

“The Role of the Governor General: Time to Revisit the Visits,” *Policy Options*, 30, 7, Institute for Research on Public Policy, July-August 2009.

“Does Parliament Care? Parliamentary Committees and the Estimates,” (co-authored by John Chenier and Michael Dewing), chapter in Bruce Doern, ed., *How Ottawa Spends, 2005-2006 – Managing the Minority*, McGill-Queen’s University Press, Montreal & Kingston, 2005.

“Forty Years of Not Reforming the Senate: Taking Stock,” chapter in Serge Joyal, ed., *Protecting Canadian Democracy: the Senate You Never Knew*, McGill-Queen’s University Press, Montreal & Kingston, 2003.

**OTHER**

Languages: English, French (E – reading, C – writing, B – speaking)  
References: Available on request