Commonwealth Parliamentary Association

**48th Canadian Regional Conference
Regina, Saskatchewan**

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Report by
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Member for the Agricultural Region
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Setting the Scene

In attending the Saskatchewan CPA conference, I joined the ranks of many Australian Members of Parliament who have travelled to Canada for such conferences for more than a century.

It would have been an exceedingly long parliamentary absence for the representatives from the six Australian colonies who braved long sea journeys to attend the Colonial Conference in Ottawa in 1894. Protective tariffs were a hot and divisive topic, and around this time Canada appointed its first Trade Commissioner to Australia. Nevertheless, trade relations remained a rocky issue. To this day, Western Australian farmers still compete with Canada in markets such as canola.

As a Member for the Agricultural Region and a third generation farmer, the Saskatchewan conference held a special interest as it is a prairie province, growing 45% of Canada's grain. It is therefore no surprise that sheafs of wheat are depicted on their coat of arms. Beef, forestry, fishing, mining, oil and natural gas also contribute to Saskatchewan's economy.

Grain growers in that region have to contend with temperatures ranging from 45°C (the hottest ever recorded in Canada) to -56°C (the coldest recorded). There is some respite from the warm Chinook winds which blows in from the west, bringing mild periods of winter weather. The sparse and remote prairie lands, the extreme weather, the diverse ethnicity and the proximity to the USA (which in 1867 posed a significant territorial threat to Canada) have helped form the provincial temperament.

One of two landlocked provinces in Canada, Saskatchewan is named after the Saskatchewan River whose name is derived from the Cree term for "swift flowing river".

The name Canada is derived from the Iroquoian word meaning "village" or "settlement". Indigenous people - formerly spoken of as Indians and Eskimos, and still referred to as such in the Canadian Constitution - are now referred to as First Nations. In 2008 a formal apology was offered to First Nation people forcibly put into residential care.

The Westminster System in Canada

Although Canada and Australia both have parliaments based on the Westminster System, there has been a different evolution in Canada due to the French/British influence and the protestant/catholic influence. This caused some early uprisings in Canada. Indeed, one of Australia's earliest links with Canada was when Canadian rebels were deported to our shores during the colonial period. Of these, 154 Upper Canada state prisoners were sent to Tasmania, and 58 French Canadians were sentenced to transportation to New South Wales. They later became free citizens.

Established under the *British North America Act* (now known as the *Constitution Act 1867*), Canada is divided into provinces (from their origins as a French colony) and also has territories. Legal recognition of the autonomy of Canada and other Dominions was not granted until 1931 when the British Parliament passed the Statute of Westminster.

All the provincial parliaments are now unicameral and preside over electoral districts known as 'ridings'. Unlike Australia, the Canadian Senate is appointed by the Governor-General under the advice of the Prime Minister. The 105 Senate seats are distributed between the *regions* of the country, not the *provinces*. Senate Members serve until they are 75 years of age. The House of Commons is elected in single-member 'ridings' on a first past the post system. The apportionment of seats is based on population and revised after every five-year census. Residual powers remain in the hands of the federal government.

The Canadian judicial system is based on British common law and Britain's Judicial Committee of the Privy Council continued to make the final decision on criminal appeals until 1933 and on civil appeals until 1949. In Quebec a French-style civil code based on the *Custom of Paris* applies.

Despite our maternalistic imperial connections, Canada and Australia have sometimes been squabbling siblings. Apart from trade competition, there were differences as to whether there should be an Imperial War Policy (where decisions were made centrally), or whether

commonwealth nations should have an independent right to make their own wartime policies and troop commitments.

In 1982 – almost a century after the Ottawa Colonial Conference - Canada and Australia agreed to create a Senior Officials Committee to oversee their relationship. Even then there were differences in multilateral trade and Pacific security.

Given this background in unilateral relations, I believe seminars such as the CPA conference can help build another bridge of understanding between our two countries with their shared birthright. The friendly arms of the Saskatchewan Parliamentary staff reached across the ocean to my office with cheery emails and a disarmingly country-style frankness – and that is how I found them *in person* when I arrived.

The Saskatchewan Parliament
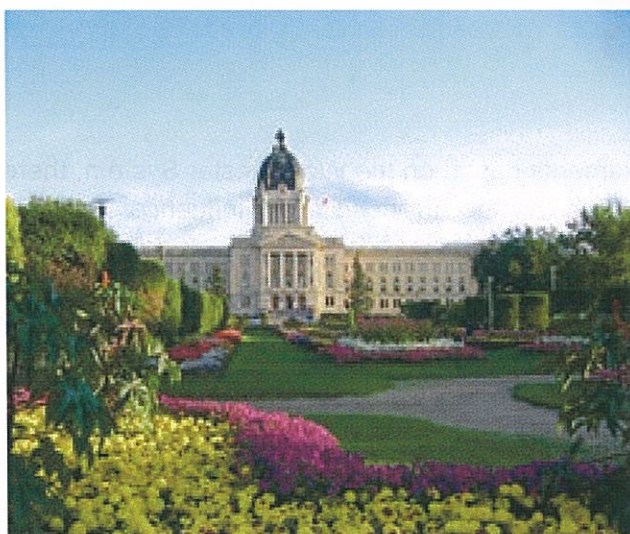
Saskatchewan has a unicameral legislature with a lieutenant-governor and a premier. Provincial politics are dominated by the New Democrats and the Saskatchewan Party who currently form their parliament. Other parties such as the Green Party, Liberal Party and the Progressive Conservative Party fielded candidates, but did not win any seats. After 16 years of New Democratic governments, the 2007 provincial election was won by the Saskatchewan Party, and Brad Wall now serves as Premier.

Whilst the exterior of the Saskatchewan parliament shares some familiar colonial design aspects with the WA Parliament, my comfort-zone was soon tested with the need to *parlez francais* to understand the Quebec Members of Parliament who jealously guard their right to exercise their French language. Monarchs, Governors General and Prime Ministers are expected to be conversant in both English and French, and political parties prefer bilingual candidates. I had to rely on translations through earphones. This also made the work of Saskatchewan's Hansard team more complex and contributed to a delay in post-conference provision of speeches.

The Conference

As Saskatchewan was unable to provide Hansard records of the conference at the time of writing this report, these notes have been prepared as a general overview. Copies of recorded speeches will be provided as an addendum if and when they become available.

I regret to report that Australia was one of only three countries represented from outside Canada, the others being Sri Lanka and Kiribati. With a total of only five expatriate Members at the Conference, this may well have influenced the session topics.

1st Business Session

Topic: Women, Islam and International Law:
Within the context of the elimination of all forms
of discrimination against women.

Presenter: Ms Nicole Emeers MP (Quebec)
Chair: Ms Nadine Wilson MLA (Saskatchewan)

It seems incredible that many people still believe in 'honour killings' in modern times, but 5000 women have been victims since 1997 and many examples were given. The killings are usually a decision by a family, or sometimes a village. Ms Emeers expressed the view that these are cultural rather than religious practices - but they may also be the interpretation of the religion, especially by men. In her view (and mine) these should be seen as criminal acts. However, because of tradition those who are brought to justice are usually treated lightly.

A group fighting this crime is proposing legislation for a criminal code. Other points raised included education programs for men, culturally appropriate procedures and provision of government-funded programs.

One delegate felt that these killings should not be automatically linked to Islam as many of these practices are undertaken in different countries. She also raised the issue of Sharia Law and expressed the view that it should not be permitted in Canada.

2nd Business Session

Topic: Legislative Public Outreach Programmes

Presenter: Hon Paul Delorey, Speaker (Northwest Territories)
Chair: Mr Greg Brkich MLA (Saskatchewan)
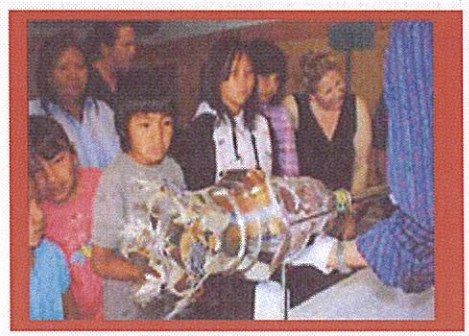
Mace Tours

Self-Guided Tours

Broadcasting Services

Elders Parliament

Delegates were invited to consider ways in which to connect to their constituents, and especially with younger generations. Women comprise only 13 of the 58 Members of Parliament in Saskatchewan, and there is a need to encourage more to participate.

Outreach programs at the Northwest Territories Parliament include:

Mace Tours	Youth Parliament (most provinces)
Guided Tours	Elders Parliament (inaugurated May 2010)
Self-Guided Tours	Kindergarten Christmas Trees
Television Broadcasting (limited)	Language Translation Service

Self-guided tours are considered to be more accommodating for visitors who can progress at their own speed though all public areas of the Northwest Territories Legislature and enjoy commentary in any of the Territories' eleven official languages – and Japanese. Mention was made of the need for Canadian parliaments to accommodate two languages – French and English – and to provide interpreters and Hansard translation services. Television Broadcasting (LATV) completed testing in 2008, reaches 31/33 communities in the Northwest Territories in

the 11 official languages of the area. Not all Canadian Parliaments offer this facility due to a limited interest from some broadcasting bodies.

3rd Business Session

Topic: The Right to Die

Presenter: Ms Fatima Houda-Pepin MNA (Quebec)
Chair: Mr Warren McCall MLA (Saskatchewan)

I advised the delegates that this session was of particular interest given that the Legislative Council in the Western Australian Parliament was due to debate a Private Member's Bill, the *Voluntary Euthanasia Bill 2010*. In the interim between the Saskatchewan Conference and the writing of this report, that Bill was defeated.

Ms Houda-Pepin advised that the current Criminal Code in Quebec states that euthanasia is a crime. The motivation for the issue to be reconsidered in Quebec included a view that: attitudes have changed; people live longer but suffer longer; and there is pressure on parliamentarians to legislate.

A Quebec delegate believed they are only looking at this issue because it is the will of the people. In Quebec 70 per cent of the population agree with euthanasia, and 77 per cent agree that assisted suicides should be legal.

A Commission of Inquiry heard from thirty 'experts' on this matter and will be travelling around the Province to obtain submissions.

Some of the views expressed during the Business Session included:

- How do you define 'dying with dignity'?
- 'Euthanasia' is someone else causing death – 'assisted suicide' is someone else helping the individual to commit suicide
- Patients cannot be forced to receive health care
- Human life is sacred and should be preserved
- There is a need to protect doctors
- It could contravene the Hippocratic Oath
- How would the person die?
- There is a need to improve palliative care
- There are legal and ethical complexities
- A dire health situation could improve
- People have a right to self determination, especially those without family support

A delegate from Nunavut (the largest and newest federal territory of Canada, which includes most of the Canadian Arctic Archipelago and has a population of around 39,500 people, mostly

Inuit) said his people have practiced euthanasia in the past but he now believes there are better alternatives.

4th Business Session

**Topic: Challenges of Order and Decorum
in the Ontario House**

Presenters: Hon Steve Peters, Speaker (Ontario)
Ms Deborah Deller, Clerk (Ontario)
Chair: Mr Trent Wotherspoon MLA (Saskatchewan)

Speaking on the challenges of the role, Ontario Speaker Hon Steve Peters stressed the need for respect to be shown in the House as the public perception of politicians is 'what they see'.

He provided an example of an unruly Opposition Member in 2009 during Members' Statements. Standing Orders allowed the Speaker to suspend the Member for the remainder of the sitting, but the Member refused to leave. After repeated refusals to obey the Speaker, and despite the intervention of the Opposition Leader, the Member persisted and the Speaker eventually ordered the lights switched off and left the chamber.

On next sitting day, the same unruly Opposition Member was joined by some disruptive supporters, the Premier was called a liar, and they endeavoured to occupy seats on the Opposition front bench rather than their rightful seats. They ignored the Speaker's call for them to return to their own seats. In order not to inflame the situation, and to avoid media headlines unbecoming to Parliament, the Speaker chose not to use force. By this time the whole matter

had taken 40 hours to resolve and although the Members apologised they were nevertheless suspended for the next sitting. Public reaction was in favour of the Speaker's decision not to use force. Ironically, the Opposition's public approval rating increased because they were seen to be taking the Government to task on a bill that was not popular.

5th Business Session

Topic: British Columbia's Unique Initiative Process: The HST Case Study

Presenter: Mr Harry Bloy MLA (British Columbia)
Chair: Mr Kim Trew MLA (Saskatchewan)

The purpose of this session was to examine a Citizen Initiative Petition to end the Harmonized Sales Tax (HST) which harmonises the Provincial Sales Tax (PST) with the Federal Goods and Services Tax (GST).

The argument for the initiative was that such a harmonisation contravenes Section 92, Article 2, of Canada's *Constitution Act 1867* which states:

9.2 In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerate; that is to say,

2. Direct Taxation within the Province in order to enable the raising of a Revenue for Provincial Purposes.

The HST Initiative Process as outlined in the *Recall and Initiative Act* requires that *Elections BC* verifies that 10% or more of registered voters sign the initiative petition in all 85 ridings. The initiative petition and draft bill are sent for consideration to the Select Standing Committee on Legislative Initiatives which can decide on one of two options:

Option A: Table a report recommending that the draft bill be introduced to the house; or

Option B: Refer the initiative petition and draft bill to the Chief Electoral Officer for a province-wide initiative vote (which requires a 50% turnout). If the initiative vote is declared successful, the government must introduce the bill into the House.

The initiative also proposed that a Provincial Sales Tax of 7% with the same applications and exemptions as at 30 June 2010 should be reinstated as the only sales tax in British Columbia for the raising of a Revenue for Provincial Purposes, and that this Act should be effective retroactively as of 30 June 2010.

Any HST revenues owing to or received by the Provincial Government between the retroactive effective date of the Act and the actual date of Royal Assent, which are over and above the original PST amount as it would previously have been applied, would be reimbursed to all British Columbians on a per capita basis.

Discussion included whether the initiative process makes for a better and more accountable government, especially in Canada where the Premier has considerable power, and whether the 10% voting requirement was sufficient. I expressed the view that governments are elected to govern, and spoke about the WA Parliament's petition process.

6th Business Session
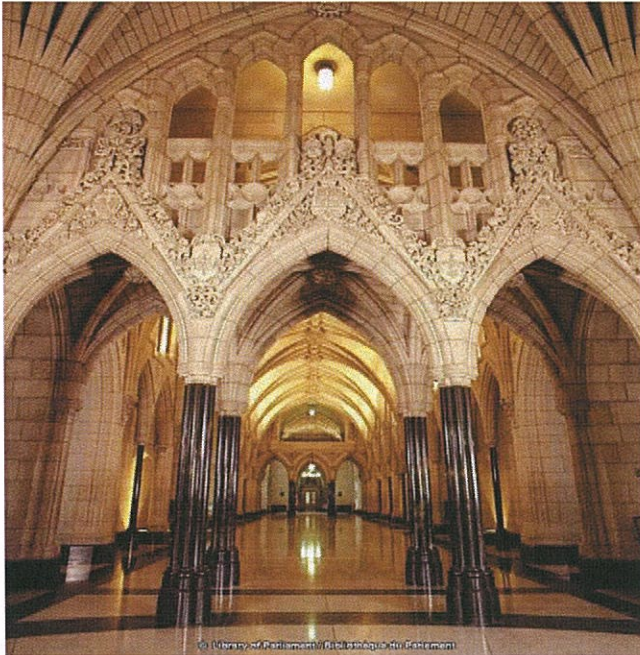
Canadian Parliament

Topic: Re-examining the Canadian Constitution

Presenter: Dr David E Smith, Professor Emeritus (University of Saskatchewan and University of Regina) and Senior Policy Fellow (Johnson Shoyama Graduate School of Public Policy)

Chair: Hon Don Toth, Speaker (Saskatchewan)

Research Background:

The constitutional history of Canada began with the 1763 Treaty of Paris in which France ceded most of New France to Great Britain. At the time of signing, the French colony of Canada – originally along the St Lawrence River - was already under the control of the British army.

A Royal Proclamation issued in 1763 renamed Canada as The Province of Quebec, redefined its borders and established a British-appointed colonial government.

The *Constitution Act 1791* was enacted in London and gave Canada its first parliamentary constitution. This divided The Province of Quebec into Upper Canada (present-day Ontario) and Lower Canada (present-day Quebec). Each province was given an elected Legislative Assembly, an appointed Legislative council, and an appointed Executive Council.

A chequered history of unrest followed, and in 1838 the British government sent Governor General Lord Durham to Lower and Upper Canada to investigate the uprisings and formulate solutions.

He suggested the forced union of the two Canadas, specifically to preserve Lower Canada as an English Province, and this ultimately resulted in the *Act of Union Act 1840* which gave birth to the Province of Canada with a single parliament.

French was banned in the legislature for about eight years. Nevertheless, continual legislative deadlocks between the English and French led to a movement to replace unitary government with a federal one, and this movement culminated in the Canadian Confederation. Ministerial responsibility became a reality in 1848.

In 1867 under the *British North America Act*, the Dominion of Canada became the name of the new federal dominion extending ultimately from the Atlantic to the Pacific and the Arctic coasts.

Canada obtained legislative autonomy from the United Kingdom in 1931, and had its Constitution, including a new Rights Charter, patriated in 1982.

Session Notes:

Dr Smith began his dissertation with a warning of the dangers implicit in drawing comparisons between systems of government, even those which share the basis of the Westminster model, because even where there is apparent similarity there is also fundamental difference. For example, voting is not compulsory in Canada.

He quoted Noel Lyon who wrote that "the central fallacy of Canadian constitutional law is to assume that, taken together, the Canadian Parliament and the legislatures are replicas of the Parliament of the United Kingdom".

Dr Smith also made reference to Walter Bagehot who wrote a series of articles which were later consolidated in his famous treatise *The English Constitution*. Bagehot was one of a succession of constitutional interpreters including Canadians Eugene Forsey and Peter Russell. It was the view of Dr Smith that:

> *The concept of democracy does not fit well with the conventions of constitutional monarchy because, whatever else it may be, the former concerns numbers. Democracy is about counting while constitutional monarchy is about weighing.*

It is his view that Canadians are so used to their system of government and so accustomed to being told that the system is 'inherited' that many are remarkably uninformed – or misinformed – about Constitutional matters. He cited one report (Ipsos-Reid) which indicated that 51% of Canadians believed the Prime Minister was directly elected by voters.

In his view, part of the confusion arises out of the use of symbols and nomenclature common to the United Kingdom – when Canadian political institutions are quite distinctive. He then went on to describe these distinctions, including the difference between the House of Lords and the Canadian Senate.

According to Dr Smith, there was initially some confusion regarding the role of the Canadian Senate, and the *Parliament Act of 1911* resolved matters up to a point. There were three distinctive features of the new Senate:

- Appointment of its members (originally for life) by the Governor General on recommendation of the prime minister;
- The allocation of senators among 'divisions' rather than provinces, although two of the original divisions were single provinces; and
- An upper limit on the total number of senators, thereby making it impossible to swamp the upper chamber with new appointees - or to threaten to do so.

This contributed to the strength of the Senate in its relationship with the House of Commons, and its successful resistance to a series of proposals for change.

Reforms are also complicated by the fact that the object of Confederation for many Upper Canadians was to break out of the straight-jacket of United Canada with its own fixed and equal representation of the two Canadas in a single assembly. In the view of Dr Smith, Canada is really two federations - one of cultures and one of jurisdictions.

He advised that the Fathers of Confederation agreed that the ratio of Quebec's population per member would determine the number of Members each province would have in the lower chamber. This was reformed by a 1946 redistribution formula which was itself abandoned three decades later for a series of agreements which saw some provinces increase their number of seats, but ensured no province would lose. This reflected a more malleable attitude.

The Senate's fixed structure is the consequence of a bargain made by the Fathers of Confederation, the terms of which included both chambers of parliament.

The elastic Commons and finite Senate are in striking contrast to the relationship between the two chambers of the Australian Parliament where the *Commonwealth of Australia Act 1900* (Section 24) requires that the number of seats in the House of Representatives be, as nearly as practicable, twice the number of senators.

According to Dr Smith, the House of Commons parts company from the Westminster model in its representational composition in that, whilst people are represented in the lower chamber, so too are provinces. Nevertheless, the number of seats held by the provinces in the Commons has been highly contentious since Confederation.

The sum of executive power lies in the seven sections of the constitution Act's 147 sections, of which S7 is paramount:

> The Executive Government and authority of and over Canada is hereby
> declared to continue and be vested in the Queen.

Dr Smith (who is the author of a book titled *The Invisible Crown*) advised that executive power is not derivative and, as a consequence, mechanisms of legal (as opposed to political) accountability are scarce.

The Trudeau Government attempted to replace the Senate with a House of the Provinces with members indirectly elected by provincial legislative assemblies and the House of Commons. In 1980 the Supreme Court of Canada ruled that the Senate should clearly be "thoroughly independent" and "an institution forming part of the federal system (as well as) a participant in the legislative process."

These phrases have come to severely test any proposals for Senate reform. Dr Smith noted that the provinces do not have constitutions in the sense of the *Constitution Act* – and in this regard they are similar to Western Australia whose Constitution is not bound in one document.

Australia differs in the power of its Prime Minister – Canadian prime ministers exert more discipline over their parties than their counterparts at Westminster or Canberra - and Dr Smith noted that a 'Kevin Rudd dismissal' would not occur in Canada.

In comparison to Australia and New Zealand, Canadians are currently more inclusive of First Nations in their Constitution.

Dr Smith expressed the view that there remains a real need to re-examine the Canadian Constitution to make it relevant to current times and values.

Conclusion

The visit to Canada was a valuable opportunity to compare a different parliament under the Westminster system and to experience a parliament which has a bi-lingual approach. However, with only five non-Canadian delegates representing only three other Commonwealth nations, there is a need to encourage more Commonwealth countries to participate. This may broaden the session topics and generate greater inter-parliamentary and international rapport.