

# Introduction

Academic commentary in common law jurisdictions has a tendency to focus on the development of judge made law. Increasingly, however, the rules that govern our society are conceived in the committee rooms of our legislatures instead of in our country's courtrooms. As Canada's only ongoing legislative process review periodical, *Underneath the Golden Boy* explores the workings of our Parliamentary system and the laws our elected representatives produce.

To that end, this volume of *Underneath the Golden Boy* continues down the path of legislative review established by previous editions. Volume V features detailed profiles of eight recent Manitoba statutes, including the debates that surrounded their origin and passage. Selected bills include legislative efforts to address rising heating costs, a dispute between Manitoba's architects and engineers, and the need for securities reform.

There are also several new and original contributions in this issue. Professor Debra Parkes comments on the review of Manitoba's Employment Standards Code. Her paper, "Employment Standards that Work for Women", includes a comprehensive review of the Code as well as detailed recommendations for its reform. This issue also includes a response to the Manitoba Law Reform Commission's "Consultation Paper on Franchise Law". The response, authored by Dr. Bryan Schwartz, Desautels Centre for Private Enterprise and the Law Director John Pozios and Robson Hall student Leandro Zylberman, discusses whether Manitoba ought to adopt franchise legislation. It features a survey of franchise legislation around the world, spanning 23 countries and three international franchise associations.

To open the issue, Dr. Schwartz and this year's senior student editor, Andrew Buck, explore four dimensions of reform to legislative process in Manitoba. Many of these proposals are readily applicable to other Canadian provinces as well as federal government. All are tied together by the desire for increased incumbent party accountability.

Consider, for example, the current federal political landscape. A minority government needs continued opposition party support. This fragile situation can lead to a directionless approach to governing that puts self-preservation ahead of solid policy-making and long-term planning. However, minority governments can also flourish under the pressure of knowing that one misstep could bring about a snap election and the prospect of a move to the opposition benches. Just as some individuals thrive when they are in fierce competition with others, so too can a minority government. Contrast this with the relatively stress-free existence of a majority government that has enjoyed a landslide victory. In that situation, the government need not worry about defeat in the

House or excessive scrutiny during question period. It is an agreeable situation for the government, but it does nothing to foster a sense of accountability.

A substantial majority is not the problem that causes accountability to suffer—instead, it's emblematic of a larger issue. Put simply, situations that shift the balance of power too much toward either the government or the opposition do not lead to good governance. Too much power in the hands of the opposition leaves the government shackled, unable to pass anything except the blandest laws and policy. Too much power in the hands of the government creates the potential for lazy, sloppy leadership.

The four legislative process reform papers contained in this issue of *Underneath the Golden Boy* address this latter scenario. As recent and historical developments have shown, measures need to be taken to correct the power imbalance incumbent governments in Canada enjoy. The proposals explored in this issue are as follows:

- Fixed date elections: many provincial governments are still allowed to manipulate the timing of elections for their own partisan purposes. We should remove this power by setting fixed dates for elections;
- Inquiries: incumbents are given unfettered discretion to establish and set the terms of reference for inquiries. This allows a government to delay the establishment of an inquiry into an issue of public concern indefinitely. Reform should be undertaken to distance inquiry establishment framework from the control of the governing party;
- Publicly funded government communication: it is perfectly acceptable that a governing party would attempt to sell its success to the electorate. Using the public purse to fund these partisan communication efforts is not acceptable, however. This type of funding should be banned, or the opposition should be provided with identical funding; and
- Minimum sitting dates: governments are held accountable when the House is sitting. Unfortunately, incumbents in some Canadian jurisdictions escape this scrutiny by keeping the House empty. To avoid this problem, these jurisdictions should move to a set sitting schedule that ensures a minimum number of sitting dates.

These measures are not intended to provide a perfect answer to the incumbent opposition imbalance. Taken together, however, they are an important move toward the creation of an atmosphere of accountability for Canadian governments.

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