Report of the Canada–United States Inter-Parliamentary Group

72nd Annual Meeting of the Council of State Governments – West

Big Sky, Montana, United States of America

July 16-20, 2019
DELEGATION MEMBERS AND STAFF

From 16–20 July 2019, Senator Michael L. MacDonald and the Honourable Wayne Easter, P.C., M.P., Co-Chairs of the Canadian Section of the Canada–United States Inter-Parliamentary Group (IPG), led a delegation to the 72nd annual meeting of the Council of State Governments - West (CSG West) in Big Sky, Montana. The other members of the delegation were Senators Martha Deacon, Kim Pate and David Richards. The delegation was accompanied by Mr. Brett Capstick, Advisor to the Canadian Section, and Miriam Burke, the Canadian Section’s Executive Secretary.

THE EVENT

CSG West is a non-partisan organization comprising the legislatures of the United States’ 13 western states (see Appendix A), as well as British Columbia and Alberta as associate members. It meets annually in the United States, with one exception to date (Edmonton, Alberta, in 2012). CSG West is governed by an executive committee and is subdivided into the following policy specific groups or committees:

- Agriculture Committee
- Canada Relations Committee
- Economic Development Committee
- Education Committee
- Energy Committee
- Health Committee
- Legislative Oversight Working Group
- Public Safety Committee
- Water & Environment Committee
- Westrends Board

DELEGATION OBJECTIVES FOR THE EVENT

The 13 U.S. states represented in CSG West share a mutually beneficial relationship with Canada, and the IPG’s interaction with state legislators allows its members to better achieve their goals of finding points of convergence in respective national policies, initiating dialogue on points of divergence, encouraging the exchange of information and promoting better understanding on shared issues of concern.
In particular, the Canada Relations Committee provides an opportunity to examine topics of joint Canada–U.S. interest. During the 72\textsuperscript{nd} annual meeting, the Honourable Wayne Easter, P.C., M.P., Co-Chair of the Canadian Section of the Canada–United States Inter-Parliamentary Group (IPG), spoke to participants in the Canada Relations Committee about Canadian workforce development initiatives, highlighting many of the programs designed to provide Canadians with the skills they need to succeed in a changing economy.

Throughout the meeting, delegates benefited from presentations on a variety of policy areas that are important for both Canada and the United States, including criminal justice reform, the North American opioid crisis, missing and murdered Indigenous, data privacy and protection, and the management of agriculture and natural resources.

**ACTIVITIES DURING THE EVENT**

The following concurrent sessions were held during the annual meeting:

- Chair’s Forum – Foster Care
- The Economics of Occupational Licensure
- Daylight Savings Forum
- Public Safety Committee: Juvenile Justice Reform
- Women in Politics
- Health Committee: Substance abuse and Treatment
- General Data Protection Regulation in the European Union
- Missing and Murdered Indigenous Women and Girls
- Energy Committee: Western Electric Grid Integration and Section 401 of the Clean Water Act
- North America Summit: The Growing Skills Gap and Workforce Development Initiatives
- Suicide Prevention Forum
- Economic Development Committee: Opportunity Zones and Incentives
- Canada Relations Committee: Modernizing the Columbia River Treaty
- Agriculture Committee: Food Safety, the Pressures of New Climate Realities and Changing Markets
• Education Committee: Teacher Retention and Recruitment & Competency-Based Education

• Water & Environment Committee: Climate Change Adaptation, Private Land Conservation, and Wild Fisheries Management Across the West

• Census 2020

• Westrends Board: Advances in Telehealth

• U.S. Supreme Court Review

• Chair’s Forum – Forest & Rangeland Management

This report summarizes selected concurrent discussions that occurred at CSG West’s 72nd annual meeting.

CHAIR’S FORUM - FOSTER CARE

Susan Robison, Casey Family Programs

• The Family First Prevention Services Act was signed into law by President Trump as part of the Bipartisan Budget Act of 2018 and will largely take effect in October 2019. It will enable U.S. states to use the Title IV-E entitlement – funds available under the Social Security Act previously reserved for foster care and adoption support – to fund services that support parents in need of support. Those services must be evidence-based and apply to parenting, substance abuse treatment and/or mental health interventions.

• The Family First Prevention Services Clearinghouse – in charge of approving services that will qualify for funding under the new law – has been delayed in producing an initial list of services. However, on 6 June 2019, the Children’s Bureau – which oversees certain federal child welfare funding at the Department of Health and Human Services – announced that in the interim, individual states would be able to identify substance abuse, mental health or in-home parenting services as the services that would qualify for funding.

• The Family First Prevention Services Act brought about ground-breaking changes in federal child welfare funding and reimbursement. These changes provided states with new opportunities to improve the lives of at-risk families and children.

Charles Sallee, New Mexico Legislative Finance Committee

• In 2018, the New Mexico Children, Youth and Families Department received 40,606 reports of maltreatment, undertook almost 23,000 investigations into such reports, placed 2,600 children and youth in foster care, and secured adoptions for 311 children or youth.
The average cost of seeing a youth or child through the process of maltreatment investigation to adoption is US$107,000. The most expensive portion of this process is the adoption itself (US$80,000).

Tax dollars could be used in more cost-effective manner by focusing on intervention stages, such as offering the biological family services like mental health counselling and parenting skills training.

MISSING AND MURDERED INDIGENOUS WOMEN AND GIRLS

Aren Sparck, Seattle Indian Health Board

The voices of Indigenous people have united in Canada and in the United States to create awareness of this issue while Indigenous families are still searching for answers.

According to a report published in 2018 by the Urban Indian Health Institute, the ten states with the highest number of Missing and Murdered Indigenous Women and Girls (MMIWG) are New Mexico, Washington, Arizona, Alaska, Montana, California, Nebraska, Utah, Minnesota, and Oklahoma.

The Canadian MMIWG report released in June defined the issue as a "genocide," and contained 231 recommendations to the Canadian federal government. This report is the result of an inquiry that cost $92 million and took 2.5 years to complete.

According to the report, the inquiry issued subpoenas to 28 police agencies across Canada seeking 479 files, but only obtained 174 files due to time constraints, the age of the files, missing information or agencies refusing to turn over the documents.

The report also took issue with an older RCMP report that found that indigenous men were responsible for 70% of MMIWG, saying that those numbers would be unreliable given the history of poor crime reporting around MMIWG.

Some estimates have suggested that approximately 5,700 cases of MMIWG were reported in 2016.

In November 2018, the Urban Indian Health Institute, the research division of the Seattle Indian Health Board, released a report titled Missing and Murdered Indigenous Women and Girls, which details results from a study of 71 urban cities in 29 states across the United States. The study highlights the barriers to obtaining data needed to address the MMIWG crisis.

In this report, the Seattle Indian Health Board recommends the following approaches:

- Build in on-going consultations with tribal nations.
• Invest in tribal epidemiology centers.
• Invest in Indigenous approaches to ending gender-based violence.
• Conduct a comprehensive assessment of law enforcement data systems.
• Mandate uniform data collection and reporting of race and ethnicity.
• Include accountability mechanisms such as funding restrictions for non-compliant law enforcement agencies.
• Invest in capacity and infrastructure, including trainings and technical assistance for tribal law enforcement and smaller municipal police departments to improve data collection and reporting abilities.

PUBLIC SAFETY COMMITTEE: JUVENILE JUSTICE REFORM

Sarah Wurzburg, The Council of State Governments Justice Center

• Research shows that approximately one third of youth are placed in secure detention – often referred to as "juvenile hall" – incorrectly, as this level of detention does not match their crimes. One reason for that is because there are no alternative placements available in the youth criminal justice system.

• To address the root causes of juvenile crime, many U.S. states are exploring different approaches to implement early intervention strategies.

Tracy Velazquez, Pew Charitable Trusts

• A significant percentage of the prison population in the United States are individuals who committed technical violations during their parole period, despite not committing any crimes during this time. Re-incarceration as a result of technical violations may be detrimental to curbing criminal recidivism and costs the U.S. taxpayers $2.8 billion annually.

• Shorter prison terms for technical violations – in comparison to longer ones – have been shown to reduce recidivism rates.

• Research has shown that positive incentives to reduce recidivism, such as a reward system for good behaviour, are more effective than the threat of being re-incarcerated.

• Sanctions, such as criminal penalties, are more effective when they are certain and administered swiftly, in comparison to the severity of those sanctions.

• Female incarceration in the United States most often stems from drug crime or corresponding property crimes.
The generational effects of female incarnation may be greater than male incarnation, as women disproportionately occupy the role of primary caregiver.

Gender based analysis indicates that women with criminal records have greater difficulties then their male counterparts in re-entering the workforce, as low-skilled jobs traditionally occupied by women, such as caregiving, require criminal record checks to a greater extent than traditionally male occupied low-skilled jobs, such as construction work.

With respect to setting an accused person’s bail, reforms should consider that the ability of an individual to pay such sums may not correlate with the need for that person to be incarcerated while they await their trial.

Susanne DiPietro, Alaska Judicial Council

- Policies that have proved to be the most effective in reducing crime and recidivism are often unintuitive. For example, criminals find that a punishment’s certainty and immediacy are larger deterrents to criminal activity than the severity of the punishment.
- Individuals identified as 'lower risk' reoffenders after committing their first crime are more likely to reoffend when sentenced to longer prison sentences, as compared to shorter ones.
- Policy makers should examine which demographics are more likely to receive differed sentencing, as these groups may not be those that would benefit most from this practice.
- The United States utilizes a dollar value threshold to differentiate between felony and misdemeanor crimes that was established many years ago and was not indexed to inflation or any other metric. This threshold is no longer reflective of the severity of those crimes.

Tarra Simmons, Public Defender Association

- Neither policy makers or the general public understand the extent to which the collateral consequences of a criminal record affect an individual.
- Securing housing and employment upon being released from prison are particularly challenging in the United States, and individuals may never be able to volunteer for their own children’s school activities in spite of decades of exemplary post-prison behaviour.
- Laws which create or continue these collateral consequences are not suited to reducing recidivism and may continue the generational effects of incarceration as the families of these individuals are similarly affected.

GENERAL DATA PROTECTION REGULATION IN THE EUROPEAN UNION
Jennifer Brody, *Access Now*

- Data Brokers buy the information of individuals for processing and targeted resale, which they acquire from open sources, such as social media platforms. For example, employers buy this information to vet their prospective employees, such as screening out women who are more likely to be taking maternity leave in the near future or if the individual possesses certain medical conditions.

- This personal data being purchased is also used for marketing purposes, such as targeting individuals of lower socio-economic status for products such as payday loans.

- Individuals are generally unaware how the seemingly innocuous information that they include in their social media can be used. For example, listing the high school an individual attended on their social media account(s) can be a socio-economic status indicator.

- Each data point collected on an individual contributes towards a profile that can be for used – outside the individual’s awareness – in determining what products are market towards them, their voting habits, and how businesses might interact with them in the future. For example, financial lenders can use estimates of an individual’s socio-economic status to determine what interest rates they might offer that individual.

- Even if an individual has little to no online presence, a data profile can nevertheless be created from the information collected from others. For example, many cell phone applications are given access to the phone’s contact list. If an individual with no online presence is simply listed in the contact lists of others – who allow their data to be collected – characteristics of that individual can be inferred based on the characteristics of their contacts. These inferences can be drawn in many areas, such as location, voting preferences and shopping habits.

- Given the value of individualized data, businesses use a wide variety of tactics to obtain it. For example, voice assistant technology used in peoples’ homes listen to their owners’ conversations whether or not they have been activated by keyword commands.

- The data collected from smart watches such as the user’s geolocation and health related data can be purchased by insurance companies and used to determine the insurance premium applied to that individual.

- There is no U.S. federal data privacy law, and there is unlikely to be one before the next U.S. federal election. Citizens should be made aware of these business practices that make use of their data, and the need for laws to protect them as a result.

Rainer Wessely, *Competition and Justice Delegation of the European Union to the United States*
• It is important to note that the General Data Protection Regulation (GDPR) covers data protection and not privacy protection. The European Union (EU) has separate privacy legislation.

• The first data protective directive in the EU was passed in 1995, which led to different levels of state-imposed data protection based on each member’s interpretation of the directive. It was later adapted into a regulation that applies across all member states.

• The GDPR applies to business operators that collect or process personal data. There is no exclusion for small and medium-sized enterprises (SMEs) because small businesses can still have access to sensitive data. Under this consideration, a risk-based model was applied to the regulation.

• The GDPR applies whether the businesses are inside or outside of the EU, so long as they are targeting individuals residing in the EU or have an establishment inside the EU.

• The regulation covers the data of natural persons’ – as distinct from that of legal persons – and includes information such as their names, addresses, IP address, geolocation and biometric data. It also applies to data that directly or indirectly relates to individuals but not to fully anonymized data.

• Data protection principles are generally globally agreed upon, though the approaches to, or implementation of, those principles can differ considerably among countries. These principles include: transparency, having the legal basis for the use of data by consent or contract, limiting the use of data to the purpose that it was collect for, ensuring the data’s accuracy, retaining it for a limited time and ensuring its security.

• The GDPR assigns rights to an individual with respect to their data. These include the rights to access it and the ability to request its deletion, to object to its processing, not to be subjected to decisions based solely on its automated processing, and a right to redress against its improper use.

• Companies must be able to demonstrate that they are in compliance with the GDPR. Their default approach should always be to request the use of the data from the individual to which it pertains, as opposing to allowing them to opt out of its use. They are also obligated to notify users of data breaches and conduct impact assessments with respect to those breaches.

• Companies can be fined up-to 4% of the worldwide annual revenue for non-compliance with the GDPR.

NORTH AMERICA SUMMIT: THE GROWING SKILLS GAP AND WORKFORCE DEVELOPMENT INITIATIVES
• According to Manpower’s 2018 talent shortage survey, 50% of Mexican employers, 46% of U.S. employers and 41% of Canadian employers have had difficulty filling open positions.

• The World Economic Forum’s 2018 Future of Jobs Report indicates that:
  • there will be a 42% change in required workforce skills across all jobs from 2018-2022;
  • over 54% of workers will require reskilling or upskilling during this period;
  • 50% of companies expect to reduce full-time workers. But, almost 40% expect to expand their workforce as a result of automation;
  • 74% of companies surveyed indicated that the location for new production facilities will likely be determined by the availability of skilled local workers; and
  • the workers who are most at risk of being displaced are the least likely to be offered re-training.

• According to The Economist’s Automation Readiness Index, Canada ranks 5th among countries surveyed with respect to its readiness to address the challenges and opportunities of intelligent automation. The U.S. and Mexico ranked 9th and 23rd, respectively.

• The U.S. Bureau of Labor Statistics predicts that 1.37 million workers will be displaced in the United States in the next decade. The reskilling cost is estimated to be US$34 billion, with an average reskilling cost of US$24,800 per displaced worker.

• The McKinsey Global Institute argues that by 2030, 375 million workers will need to change occupations or undergo reskilling across the globe.

• The Organisation for Economic Co-operation and Development (OECD) estimates that 10.2% of jobs in the United States and 8.5% of jobs in Canada have a high risk of automation, and that these workers need training to avoid this risk.

• Jobs in “heartland” states and counties that specialized in manufacturing with relatively low-skilled workers will be hit hard by automation and artificial intelligence.

• The Wilson Center proposes a trilateral task force providing a platform for public-private, federal and sub-national working groups to identify best practices and develop proposals for cooperation across the three countries. In addition, the three countries should agree on guidelines that assign responsibilities to governments,
industry and intermediaries regarding the development, implementation and funding of targeted apprenticeships.

CANADA RELATIONS COMMITTEE: MODERNIZING THE COLUMBIA RIVER TREATY

Kathy Eichenberger, British Columbia Ministry of Energy, Mines and Petroleum Resources

• A flood in 1948 destroyed the city of Vanport in Oregon – a city of approximately 35,000 – and killed more than 50 people. This event precipitated the Columbia River Treaty.

• The growing power demands in the United States post World War II also led to the desire for a water management agreement between Canada and the United States.

• The following are key provisions of the Columbia River Treaty:
  • The construction of three dams by Canada to provide 15.5 million acre-feet (Maf) of water storage.
  • The United States delivering one-half of the estimated U.S. power benefits to Canada, known as the Canadian Entitlement.
  • The purchase of 8.45 Maf primary flood control by the United States up to 2024, for a total of $64.4 million.

• Columbia River Treaty renegotiations began in May 2018 and have had 7 rounds to date.

• The following impacts of water use in the Columbia river basin require careful consideration during the renegotiation process:
  • The erosion of indigenous cultural sites.
  • Impacts to ecosystems, fish and wildlife.
  • Air quality deterioration.
  • Reduced recreation and tourism opportunities.
  • Effects on forestry, agriculture, transportation.

• A new treaty would be an opportunity to build on 55 years of strong transboundary collaboration.

AGRICULTURE COMMITTEE: FOOD SAFETY, THE PRESSURES OF NEW CLIMATE REALITIES AND CHANGING MARKETS
Jeff Farrar, U.S. Food and Drug Administration

- Technological advancements have dramatically increased the ability of the U.S. Food and Drug Administration (USDA) to detect food contaminant outbreaks in recent years.

- The Food Safety Modernization Act (FSMA) has decreased the number of food contaminant outbreaks since its coming into force. It provides safety rules and hygiene standards for farms with respect to the factors that contribute to these outbreaks.

- FSMA-related farm inspections begun in 2019, though the focus of these inspections has been on education as opposed to penalization.

- FSMA contains the “Produce Safety Rule,” which establishes mandatory science-based minimum standards for the safe growing, harvesting, packaging, and holding of fruits and vegetables grown for human consumption. These new standards include requirements for agricultural water quality, employee health and hygiene, animals use, biological soil amendments of animal origin (such as compost and manure), as well as with respect to equipment, tools, and buildings.

- Approximately 50,000 farms in the United States are now subject to the Produce Safety Rule.

Lynn Nakamura-Tengan, University of Hawaii at Manoa

- The Center for Disease control estimates that 1 in 6 inhabitants in the United States is made ill – to some degree – by food contaminants each year, of which 128,000 are hospitalised and 3,000 die.

- Between 1996 and 2014, 50% of produce-related outbreaks were from leafy greens and sprouts.

- The Produce Safety Rule requires agricultural water quality and testing in order to detect contamination by feces – which may be accompanied by bacteria that cause disease – and for farm workers that handle certain produce and/or food contact surfaces to be trained on the importance of health and hygiene.

Bill Barton, Idaho State Department of Agriculture

- Chronic Wasting Disease (CWD) has been found in a number of cervidae – including deer, elk and moose – in both Canada and the United States.

- CWD is a progressive and fatal disease effecting the nervous system of cervidae, and is known as a transmissible spongiform encephalopathy or prion disease.
Until 2014, Idaho law required all domestic cervidae that died or were harvested to be tested for CWD at an approved laboratory. No infections were detected during this period.

In order to keep CWD out of the state’s ecosystem, Idaho mandates that all imported animals must (1) possess “Certified Status” obtained through the USDA’s CWD Herd Certification Program or the Canadian Food Inspection Agency’s program, (2) cannot originate from a CWD endemic area, and (3) must be accompanied by a Certificate of Veterinary Inspection and an import permit.

CENSUS 2020

Michael Hall, U.S. Census Bureau

- Census data is used for:
  - drawing congressional and state legislative districts, school districts and voting precincts;
  - enforcing voting rights and civil rights legislation;
  - distributing federal funding to states;
  - informing planning decisions of federal, tribal, state and local governments; and
  - informing organizational decisions (where to locate, size of market, etc.) of businesses and non-profits.

- It is in the states’ interest to ensure Census data is collected correctly. For example, California will not receive an amount of approximately $2 billion dollars in federal funds over a 10-year period as a result of inaccurate census data collected in 2010.

- In 2015, 132 U.S. federal programs used Census Bureau data to distribute $675 billion to States and programs during the fiscal year.

- With respect to Census data’s impact on apportionment, Oregon was only 800 residents short of receiving an additional seat in the U.S. House of Representatives.

Vicki McIntire, U.S. Census Bureau

- Census self-response methods can be completed by paper, online, or over the phone; and representatives from the U.S. Census Bureau will visit every address that does not self-respond.
• Self-response data is the most accurate, and states should be more active in encouraging their citizens to self-respond.

• Policy makers should motivate populations that are traditionally difficult to identify by communicating the advantages they might gain by participating, and assuring them that the data collected is confidential (the data is released publicly after 72 years).

• California is investing US$2 million into education and promotion of the 2020 Census to ensure that the error found in the 2010 Census does not re-occur.

U.S. SUPREME COURT REVIEW

Lisa Soronen, State & Local Legal Center

• The appointment of Brett Kavanaugh to the Supreme Court of the United States means that the court will have a majority of consistently conservative voting Justices for the first time in many generations.

• Justice Kavanaugh’s predecessor, Justice Kennedy, was the “swing vote” on a number of significant issues before the U.S. Supreme Court; including matters concerning the death penalty and abortion rights.

• In contrast to Justice Kennedy, Justice Kavanaugh’s legal decision-making record has been “reliably conservative.”

• This majority of “reliably conservative” U.S. Supreme Court Justices will likely prompt certain issues to be considered by the court, including property rights, land use, abortion, race based affirmative action and gun control.

• The consent of 4 Justices is required for a case to be heard by the U.S. Supreme Court.

• The liberal members of the U.S. Supreme Court (Justices Ginsburg, Breyer, Sotomayor and Kagan) are also among its oldest members. Therefore, they are the closest to retirement.

• It is likely that the next open seat on the U.S. Supreme Court will only be filled when the political parties of the sitting President and Senate majority are aligned.

• The court recently heard the case Rucho v. Common Cause regarding partisan gerrymandering, the manipulation of the boundaries of an electoral constituency to favor one party. An example of this practice brought before the court was from North Carolina’s congressional district, where Republicans held 76.9% of the congressional seats but North Carolina voters cast only 53.22% of their votes for Republican candidates. Chief Justice Roberts wrote the leading opinion and the other conservative Justices followed him (Justices Thomas, Alito, Gorsuch and Kavanaugh). The court decided that the judicial system should not decide what
constitutes partisan gerrymandering, that the state legislatures should be free to address the issues themselves.

- Chief Justice Roberts of the U.S. Supreme Court opposes the notion of the court operating as a political institution and has increasingly taken up the role of the court’s “steward” in protecting its non-partisan status. As a result, he may become the “swing vote” to temper any perception of the court’s connection to the Republican party.

- One other significant case heard recently before the U.S. Supreme Court was the “citizenship question” in *The Department of Commerce v. New York*. This case concerned U.S. Secretary of Commerce Wilbur Ross announcing in March 2018 – allegedly at the request of the Department of Justice – that he would include a question in the 2020 U.S. census regarding the citizenship of those completing it. The court heard that the alleged reasoning for the question’s addition – the request from the Department of Justice – was disingenuous. In a 5-4 ruling, the court found that it would not be unconstitutional for Secretary Ross to include a citizenship question on the census; however, since U.S. law prohibits federal agencies from acting arbitrarily and/or capriciously, Secretary Ross’s attempt to add the question in this instance was rendered invalid.

**THE ECONOMICS OF OCCUPATIONAL LICENSURE**

**Matthew Mitchell, George Mason University**

- Over the last 60 years, the number of jobs that require an occupational license – or government approval to practice a profession – has grown from approximately one in twenty to one in four.

- When implemented properly, occupational licensing can help protect the health and safety of consumers by requiring practitioners to undergo designated field specific training and education.

- Differences in occupational licensing laws across jurisdictions create barriers for workers entering a labor markets and inhibit the ability of workers to relocate to meet demand.

- Certain populations are disproportionately affected by jurisdictional licensing incompatibility, such as military spouses and families, immigrants with work authorization, individuals with criminal records, and dislocated or unemployed workers.

- President Trump recently addressed this issue in a press conference, focussing primarily on the burden placed on military spouses.

- Certain states are acting to address this issue, including Arizona and Pennsylvania.
There is a Nurses Compact in the U.S. – in place since 2015 – which allows for inter-state operability of nursing licenses in 34 states.

Respectfully submitted,

Hon. Michael L. MacDonald, Senator, Co-Chair
Hon. Wayne Easter, P.C., M.P., Co-Chair
Canada–United States
Inter-Parliamentary Group

Canada–United States
Inter-Parliamentary Group
Appendix A

STATES REPRESENTED IN THE COUNCIL OF STATE GOVERNMENTS - WEST

Alaska
Arizona
California
Colorado
Hawaii
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming
## Travel Costs

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