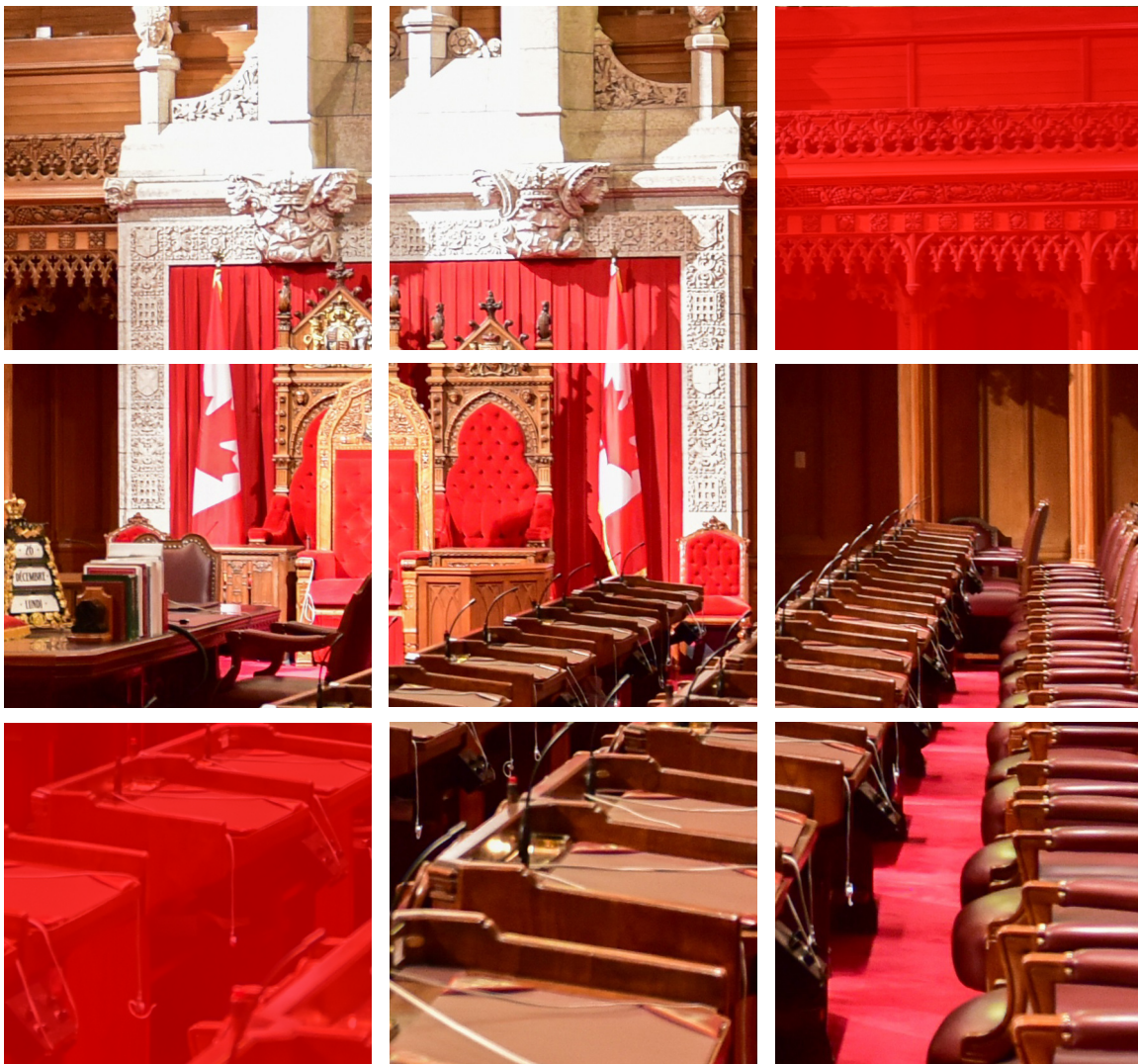


# Renewal of the Canadian Senate: Where to from Here?

Round Table Report



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## ABSTRACT

In November 2015, the government led by Justin Trudeau announced a new, non-partisan process to select candidates for Senate appointments. Most of the senators appointed since March 2016 under the new process have joined the Independent Senators Group, and by mid-2018 the group held almost half the Senate's seats. To take stock of these developments and related internal changes, the Institute for Research on Public Policy convened a round table in Ottawa on September 27, 2018. This report summarizes the presentations and discussion at that event.

According to participants' comments, there was general support for the claim that the Senate is performing its legislative review function even more effectively than in the past. This is reflected in more sustained interaction with the House of Commons, ministers and senior departmental officials. Some concerns were expressed about the large increase since 2015 in the number of registered communications between lobbyists and senators. It was observed that despite proposing more amendments to government bills than previously, the renewed Senate is generally respecting the principle of deference to the House of Commons. Participants commented favourably on the degree to which recent Senate appointments have reflected Canada's diversity, but they were less certain that regional representation has improved. There was a general sense that while the current renewal of the Senate represents progress, further changes are needed – particularly to reflect the move toward a second chamber organized much less along party lines than in the past. However, no one called for a return to intergovernmental negotiations on constitutional reform of the Senate.

## INTRODUCTION

The purpose and constitutional status of the Senate of Canada were major points of debate at the conferences that led to Confederation in 1867. It was agreed that a primary role of the Senate would be to review legislation adopted by the House of Commons – what John A. Macdonald referred to as “sober second thought.” To that end, the Senate was accorded legislative powers equal to those of the House of Commons, with one exception: appropriation and tax bills must be introduced in the House of Commons. Those powers remain unchanged.

In a number of other respects, the design of the Senate differs from that of the House of Commons. Senators are appointed by the governor general on the recommendation of the prime minister.<sup>1</sup> Until 1965, when their term was shortened to age 75, senators were appointed for life. In addition, Senate appointees are required to possess \$4,000 of real property. What was quite an onerous condition in 1867 was part of one of the unstated purposes of the Senate – as expressed by George-Étienne Cartier: “In order that institutions may be stable and work harmoniously there must be a power of resistance to the democratic element.”<sup>2</sup>

The Senate was also intended to counter representation based on population, the principle behind the distribution of seats in the House of Commons. Senate seats initially were allocated on the basis of three divisions – Ontario, Quebec and the Maritime provinces of Nova Scotia and New Brunswick – each with 24 seats.<sup>3</sup> This allocation was particularly important to political leaders of Lower Canada (as it then was), and it has been described as the key that secured the Confederation bargain.<sup>4</sup>

Over time, there was a growing sense that appointing senators was not in keeping with democratic values. This eventually led to considerable support for an elected Senate, but attempts at making this change through constitutional reform – on the last occasion, in the 1992 Charlottetown Accord – have not borne fruit. A second criticism concerned partisanship: although many well-qualified Canadians were appointed to the Senate and took their responsibilities seriously, a Senate seat was often used to reward people with strong loyalty to the party in government. The Senate was organized along lines similar to those of the House of Commons, with a leader of the government (who traditionally held a cabinet seat) and a leader of the opposition. Because the vast majority of senators voted along party lines, the dynamics in the second chamber largely reflected those of the House of

<sup>1</sup> There is one exception: under section 26 of the *Constitution Act, 1867*, the Queen (or King), on the advice of the prime minister, may “direct” that four or eight additional senators be appointed, one from each of the four regional divisions (the governor general is instructed to issue the necessary letters patent). This provision, intended as a means to break a deadlock between the two houses, has been used only once. In 1990, eight additional senators were appointed in order to ensure Senate passage of legislation on the Progressive Conservative government’s goods and services tax (prior to the additional appointments, the Liberals, who opposed the new tax, had a majority of Senate seats).

<sup>2</sup> M. MacGuigan, “Reform of the Canadian Senate: A Discussion Paper” (Ottawa: Government of Canada, 1983), 6.

<sup>3</sup> There are now four divisions: Ontario, Quebec, the four western provinces and the three Maritime provinces. In addition, Newfoundland and Labrador has six Senate seats, and the three territories have one each.

<sup>4</sup> MacGuigan, “Reform of the Canadian Senate,” 6.

Commons. In recent years, the Senate’s reputation has been further tarnished by financial irregularities involving a number of senators.

Shortly after taking office in November 2015, Justin Trudeau’s Liberal government announced “a new, nonpartisan, merit-based process to advise on Senate appointments” as well as the establishment of the Independent Advisory Board on Senate Appointments. The government described the rationale for these changes as follows:

*The Independent Advisory Board will be guided by public, merit-based criteria, in order to identify Canadians who would make a significant contribution to the work of the Senate. The criteria will help ensure a high standard of integrity, collaboration, and non-partisanship in the Senate...The new, independent appointments process will contribute to creating a less partisan and more effective institution to serve Canadians.<sup>5</sup>*

An initial step toward a less partisan Senate had been made in January 2014, when Justin Trudeau (then Liberal Party leader) announced that Liberal senators (of whom there were then 31) no longer would be part of the Liberal parliamentary caucus.<sup>6</sup>

Since the seven Senate appointments in March 2016, which were proposed by the advisory board, all candidates have come from pools of interested Canadians who submitted an application. Virtually all the senators appointed under this process have joined the newly created Independent Senators Group (ISG). As of the end of January 2019 the ISG held 54 of the Senate’s 105 seats. Thirty-one senators were affiliated with the Conservative Party of Canada, forming the second-largest group (for complete standings by party and group, see table 1).

**Table 1. Standings in the Senate as at January 31, 2019**

Party/group	Number
Independent Senators Group <sup>1</sup>	54
Conservative Party of Canada	31
Liberal Party of Canada	11
Nonaffiliated <sup>2</sup>	9
<b>Total</b>	<b>105</b>

Source: Parliament of Canada, “Party Standings in the Senate.” [https://lop.parl.ca/sites/ParlInfo/default/en\\_CA/Parliament/Senate/partyStandings](https://lop.parl.ca/sites/ParlInfo/default/en_CA/Parliament/Senate/partyStandings).

<sup>1</sup> Includes 11 senators appointed before the election of the Liberal government in 2015.

<sup>2</sup> Includes 6 senators appointed under the selection process introduced in March 2016. All other senators appointed under that process are members of the Independent Senators Group.

ted an application. Virtually all the senators appointed under this process have joined the newly created Independent Senators Group (ISG). As of the end of January 2019 the ISG held 54 of the Senate’s 105 seats. Thirty-one senators were affiliated with the Conservative Party of Canada, forming the second-largest group (for complete standings by party and group, see table 1).

The current renewal<sup>7</sup> of the Senate extends beyond its composition. For example, changes have been made to procedural practice for Senate business and to the rules for the allocation of committee chairs and members among

<sup>5</sup> Government of Canada, “Government announces immediate Senate reform,” news release, December 3, 2015, <https://www.canada.ca/en/democratic-institutions/news/2015/12/government-announces-immediate-senate-reform.html>.

<sup>6</sup> CBC News, “Justin Trudeau statement: ‘Senate is broken, and needs to be fixed,’” January 29, 2014. <https://www.cbc.ca/news/politics/justin-trudeau-statement-senate-is-broken-and-needs-to-be-fixed-1.2515374>.

<sup>7</sup> “Senate reform” generally refers to constitutional change authorized under one of the amending formulas in the *Constitution Act, 1982*. In a report on the role of the Senate, the government representative in the Senate used the term “renewed Senate,” and this usage has been adopted here (see V.P. Harder, “Complementarity: The Constitutional Role of the Senate of Canada,” April 12, 2018, [https://senate-gro.ca/wp-content/uploads/2018/04/Complementarity-The-Senates-Constitutional-Role-2018-04-12-Final\\_E.pdf](https://senate-gro.ca/wp-content/uploads/2018/04/Complementarity-The-Senates-Constitutional-Role-2018-04-12-Final_E.pdf)).

the various groups in the chamber. The growth of the ISG has also created pressure to modify the budgetary resources provided to the officially recognized parliamentary offices of the various groupings, including those of the leaders of the Conservative and Liberal caucuses. A new formula, which considerably increased allocations to the ISG, was approved by the Senate Standing Committee on Internal Economy, Budgets and Administration in May 2018.

Two and a half years after the first senators were appointed under the new process, the Institute for Research on Public Policy (IRPP) considered it was time to take stock and explore possible next steps. To that end, it held a round table in Ottawa on September 27, 2018, on the theme, “Senate Renewal: Where to from Here?”<sup>8</sup> The event was attended by three senators and a number of academics, senior federal government officials and Senate staff.<sup>9</sup>

The round table was conducted according to the Chatham House rule: participants’ comments were not to be reported without their agreement. In this report, we cite, with attribution, observations made by the panellists in their opening presentations. Comments they made at other points during the day, as well as those of other persons present at the round table, are simply attributed to “a participant.”

## 1. BICAMERALISM AND THE SENATE’S HISTORICAL ROLE

The Supreme Court of Canada has declared that “the Senate is one of Canada’s foundational institutions.”<sup>10</sup> On the basis of discussion at the round table, there was general agreement that an effective Senate is a necessary counterweight to the House of Commons. Several participants indicated that they agreed with the principle of deference to the House of Commons, but that, particularly in carrying out legislative review, senators need to be able to “do their job.”

In his presentation, Jean-François Godbout emphasized that senators had exerted influence in the past. In the 1930s and 1940s, the Senate amended on average around 20 percent of bills. Over time, however, Senate activism decreased: from the 1950s until the Trudeau reform, it amended on average only about 5 percent of bills a year. Paul Thomas noted that the Senate rejected only 3 of 1,724 government bills between 1980 and 2015.

David Smith reported that between fiscal years 2008-09 and 2012-13, the Senate held more than 2,300 committee meetings and issued some 500 committee reports. In this context, some participants observed that the Senate had a practice of carrying out investigations on important policy matters and of publishing well-regarded reports; examples are the study of the state of Canada’s health care system led by Senator Michael

<sup>8</sup> For the round table agenda, including the affiliations of the presenters and panellists, see appendix A.

<sup>9</sup> For the list of participants, see appendix B.

<sup>10</sup> *Reference re Senate Reform*, 2014 SCC 32, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13614/index.do>.

Kirby, and the pioneering work on the legalization of cannabis carried out by a special committee chaired by Senator Pierre Claude Nolin. In the view of a participant, however, important exercises such as these, which have become rarer in the past decade or so, did not make the Senate an effective counterweight to the House of Commons.

Although the Senate's legitimacy and effectiveness have been questioned regularly by the media and the public, its power to amend or even defeat legislation passed by the House of Commons remains unchanged. David Smith pointed out that in the United Kingdom, in contrast, the 1911 *Parliament Act* reduced the powers of the House of Lords to a suspensive veto. In 1949 the length of time that the latter could delay passage of legislation adopted by the House of Commons was shortened to, in effect, one year.<sup>11</sup>

Historically, senators, along with their counterparts in the House of Commons, were members of a party caucus. Godbout's analysis of all recorded divisions since 1867 showed that party discipline in the Senate, measured by whether or not senators voted with colleagues from the same party, increased over time, but also that party discipline was not much higher in 2015 than in the 1980s. For Thomas, the strength of party discipline in both chambers effectively allowed the party in government to neutralize the Senate's power. According to Smith, one result of the changes introduced since 2014 was that most senators were "freed of the partisan ties that linked them to the House of Commons for 150 years."

## 2. THE LEGISLATIVE PROCESS AND RELATIONS WITH THE HOUSE OF COMMONS

On the question of how the legislative process and the Senate's relations with the House of Commons are changing, presenters and panellists were asked to address the following questions:

- What does a more independent Senate mean for the legislative process?
- How compatible is a more active Senate with the principles of Westminster government – notably, the primacy of the elected House of Commons?
- Should the Senate have a particular role in scrutinizing certain aspects of legislation or public policy? If so, which ones?
- What are the potential implications of individual senators' greater independence for the role of MPs and the mandate of House of Commons committees?

Gary O'Brien explained that the relationship between the Senate and the House of Commons had evolved in a number of ways even before the Trudeau changes. For

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<sup>11</sup> Under the *Parliament Act, 1949*, if a public bill (other than a money bill or a bill extending the maximum duration of a parliament) is passed by the House of Commons in two successive sessions, with at least a year between the first Commons second reading and the Commons third reading in the second session, it can be presented for royal assent. Money bills are subject to a tighter timeline of one month. For more information about this, see R. Kelly and L. Maer, "The Parliament Acts," Briefing Paper 00675 (London: House of Commons Library, 2016), <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN00675#fullreport>.



example, following the 1979 election, the Liberal majority in the Senate instituted the practice of abstaining from certain Senate votes in order to save face while allowing the Conservative government's bills to pass. Thomas recalled that, during the same period, the Liberal majority used "pocket vetoes" – that is, not defeating legislation, but taking no action on it before the expiry of the parliamentary session.

It was noted that the renewed Senate clearly takes its function of legislative review very seriously. During the parliamentary session from December 2015 until the end of June 2018, the Senate proposed amendments to 14 bills – all but one of them government bills – that originated in the House of Commons. During the entire 2011-15 Parliament, the Senate attempted to amend only one government bill that had been adopted by the House. Thomas suggested, however, that such statistics need to be interpreted cautiously. Some Senate amendments are substantive, but others can be technical. In addition, some Senate amendments might be last-minute changes requested by the government. Finally, it was pointed out that some senators might vote in favour of a bill or against amendments to it – and thus be perceived as voting "with the government" – because they believe they have done their duty and should not further delay legislation adopted by the elected House of Commons.

Several participants commented on how the Senate's role in legislative review is changing. Senator Ratna Omidvar described the process as becoming more complex and arduous. In her view, the biggest change was that senators often do not know how their colleagues will vote, and many of them might not make a final decision on their vote until very late in the legislative process. Another participant observed that ministers who introduce a bill in the House of Commons are now less certain of how the Senate will react to it.

A number of presenters addressed the Senate's activities with regard to a number of bills referred to it during the parliamentary session that began in December 2015. Thomas praised the way the Senate dealt with one of the highest-profile pieces of legislation of that session: Bill C-45, on the legalization of cannabis. The Senate's review of the bill included:

- detailed scrutiny by five committees that heard more than 240 witnesses;
- eight appearances by ministers before Senate committees;
- a six-day third reading debate organized around themes; and
- a deadline for adoption (June 7, 2018) agreed in advance.

Emmett Macfarlane discussed the handling of Bill S-3 on removing sex-based status discrimination from the *Indian Act*. The bill sought to restore Indian status to Indigenous women who married non-Indigenous men after 1951. A number of senators wanted to amend the bill – in particular, to restore status to such women beginning in 1867. Senate passage took longer than expected, and the government had to obtain two extensions to the court declaration that had led to Bill S-3. The House of Commons did adopt some Senate amendments, but the government did not agree to change the 1951 date, promising instead to hold consultations on the matter. Although some senators accepted this concession, others were displeased with the absence of a time frame for the consultations.

Participants highlighted other noteworthy examples of interactions between the Senate and the House of Commons that reflect the changing relationship.

- Senator Omidvar recounted her unsuccessful attempt to amend Bill C-25, which sought to increase diversity on the boards of publicly traded companies. She and a number of other senators wanted the bill to include the *Employment Equity Act* definition of diversity as well as voluntary targets. These senators formed a loose coalition and sought to rally their colleagues to their cause. The government successfully lobbied other senators to reject the amendment. It did, however, agree to reflect the senators' concerns about a broader definition of diversity in the regulations issued under the statute.
- Elizabeth Roscoe lauded the Senate's handling of Bill C-14 on medical assistance in dying. The Senate proposed seven amendments, most of which were accepted. Its attempt to extend the applicability of Bill C-14 to a larger number of cases was ultimately defeated. Still, a lot of bargaining was required before the bill was adopted.

Several participants stressed that the influence of the Senate goes well beyond amending bills. On this, Thomas argued that "the new Senate should seek influence mainly through the 'soft power' of scrutiny, advice, publicity and persuasion, rather than relying on the 'hard power' of attempting to defeat, amending in fundamental ways and prolonging unduly the passage of government bills already approved by the Commons."

According to Macfarlane, the Trudeau government's changes were generally working because, even if senators are more active, they generally accept that the government has to get its agenda through. A number of participants stated that the Senate must remain complementary to the House of Commons.

### 3. POLICY-MAKING AND RELATIONS WITH THE GOVERNMENT

Presenters and participants considered how the Senate's relations with the government have been changing. In particular, how are the processes for developing government policies and legislation changing as the renewal proceeds, and should Senate committees be more active in areas such as the study of broad public policy issues and the review of government policies and programs? If so, how could this be achieved? It was clear from presentations and participants' comments that the changes have altered the nature and extent of senators' interactions with ministers and senior departmental officials. Ministers can no longer rely on a block of senators from the same camp and often have to get involved earlier in the legislative process, including providing briefings to smaller groups of senators. Because they are examining legislation more closely, senators are calling more often on senior officials to provide technical expertise. In some cases, senior officials have even briefed individual senators.

One specific innovation is the participation of ministers in the Senate Question Period. Previously, the Government Leader in the Senate, who was usually also a member of the cabinet, responded to questions on the full range of issues. Now, the Government Representative in the Senate is not a minister and cannot speak for the government. The Senate therefore initiated the practice of inviting a minister to participate in Question Period, usually once every sitting week. The selection of ministers is done in consultation with all caucuses and groups of senators, and the scheduling is coordinated by the government representative.

#### 4. RELATIONS WITH STAKEHOLDERS

The Senate's changing interactions with stakeholders and outside policy actors received considerable attention. According to data presented by Elizabeth Roscoe, total registered lobbying communications with senators numbered about 450 a year between 2011 and 2014. This rose to 700 in 2016 and then to 1,450 in 2017. Yaroslav Baran explained that lobbying activity had long been focused on a few focal points of power such as ministers and opposition leaders. This has changed, according to Roscoe, because independent senators are more concerned with substance and can respond to stakeholders' views by amending legislation or influencing other politicians.

In Roscoe's experience, lobbyists now have to research the policy positions of independent senators and tailor their messages accordingly, as opposed to relying on party lines. A participant mentioned that one drawback of lobbying nonpartisan senators is that they might not settle on a position until a couple of days before the vote.

Participants had mixed views about the increase in lobbyists' activity in relation to the Senate. Roscoe saw this as a healthy development that promotes dialogue and gives senators greater access to input from stakeholders. Other participants were somewhat wary. As one participant explained, MPs are sheltered from the influence of stakeholders through party discipline. However, there is no formal or informal mechanism to prevent an independent senator from becoming an advocate for a particular stakeholder. Another participant said it was important for ISG senators to remain independent from the influence of lobbyists and to focus instead on ensuring the representation of regions and respect for diversity.

#### 5. REPRESENTATION IN THE SENATE

There was a wide-ranging discussion of the Senate's representational role, prompted in part by the following questions:

- What would be the potential benefits and drawbacks of establishing regional caucuses in the Senate?
- Are there potential changes to the mandate and composition of Senate committees that could strengthen the Senate's regional representation role?

- How would this role relate to other aspects of the Senate’s mission and responsibilities?

## 5.1 The primacy of region?

Hugh Segal provided historical background on the Senate’s role in regional representation. He pointed out that, in 1867, the Senate was conceived for two principal purposes: (1) to limit the “tyranny of the majority” by creating a counterbalance to the House of Commons (elected on the basis of population); and (2) to provide each region with equal representation. The *Constitution Act, 1867*, guaranteed 24 senators to each of the then three divisions: Ontario, Quebec and the Maritime provinces (initially only Nova Scotia and New Brunswick). Otherwise, Segal insisted, the Maritime provinces would never have accepted a Confederation agreement in which their political weight in the House of Commons would be crushed by Ontario and Quebec.

In her presentation, Nadia Verrelli asserted that, over time, senators (most often selected for their party affiliation) became more focused on representing their party’s interests than on those of their region.

In a 2016 Public Policy Forum report, former senators Michael Kirby and Hugh Segal recommended that senators organize around regions rather than in parties.<sup>12</sup> At the round table, Segal explained the rationale for this aspect of their report and mentioned that the endorsement of regional representation as an organizing principle did not exclude the Senate’s other roles.

Verrelli, commenting on the Kirby-Segal proposal, said she feared that a regional caucus system might lead to certain issues, such as those of direct concern to Indigenous peoples, being overlooked. She questioned which interests regional caucuses would rely on for guidance or claim to protect: those of premiers, provincial governments or public opinion? In this regard, she noted that senators’ closer ties to their regions would not prevent them from considering the interests of the country as a whole.

## 5.2 Representation in today’s Senate

Whom or what do senators represent following the recent changes? Senator Omidvar stated that the Senate now reflects a more inclusive and complete picture of the country. (At the time of the round table, 44 percent of senators were women and 11 percent were Indigenous people.) She added that senators appointed since 2016 come from a larger variety of professions and backgrounds than in the past.

According to Verrelli, the Senate should reflect the modern understanding of federalism, rather than that of the nineteenth century. As she put it, federalism is not only about

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<sup>12</sup> M. Kirby and H. Segal, “A House Undivided: Making Senate Independence Work” (Ottawa: Public Policy Forum, 2016), [http://dev.ppforum.ca/sites/default/files/Senate-A-House-Undivided\\_2.pdf](http://dev.ppforum.ca/sites/default/files/Senate-A-House-Undivided_2.pdf).

relations between two orders of government. She argued that, even though Indigenous people are better represented in the Senate than the House of Commons, this is taking place within existing colonial structures. She added that Indigenous peoples are still regarded as “special interest” groups, not as partners in the federation.

Participants generally saw representation of Canada’s diversity as one of the Senate’s principal functions.

## 6. ASSESSING THE RENEWAL

The panellists for the round table’s concluding session were asked to comment on points raised during the day and to address the following questions:

- In light of the greater attention to merit and diversity considerations in the new selection process, is the Senate acquiring greater legitimacy?
- What are the implications of the transition under way for senators’ accountability?
- What further changes could be made without returning to the multilateral constitutional table?
- Could the current Senate renewal encourage moves toward more fundamental reform? If so, what is required to reach that stage?

Senator Raymonde Saint-Germain stated that modernization of the Senate is a work in progress: some aspects are moving fast, others more slowly. A cultural change is required. In addition, MPs, officials and the media need to develop new ways of looking at the Senate. In this regard, she proposed the following criteria for evaluating the renewed Senate:

- expertise: broad knowledge to examine a wide range of issues;
- relevance: working within the mandate of the Senate;
- inclusiveness: listening to different views, including those of all regions; and
- independence: capacity to carry out its mandate without being unduly constrained by the government or the House of Commons; keeping a distance from well-organized lobbies and other interest groups.

Senator Saint-Germain also called for strengthening the Senate’s Code of Ethics, especially on conflict of interest, and for revising the *Parliament of Canada Act*, which, in a number of important respects, still reflects a division between government and opposition within the Senate.

Jennifer Wallner reported that she had reviewed all the Senate committee reports issued during the previous year and had not found single reference to regional implications. She suggested that the Senate consider starting a practice of explicitly including this dimension in committee reports.

Wallner observed that Senate renewal might be making the policy process more democratic because senators are a more frequent point of contact. However, the

lack of party discipline for independent senators might expose them to lobbyists and special interests. She also expressed concern about the extent to which the renewed Senate is relying on informal agreements and conventions to organize its business, adding that these could be overturned. On representation, Wallner suggested that a considerable number of the senators appointed since 2016 might represent people who are aligned with the agenda of the present government. If another party assumed government, relations with the House of Commons could become more fractious.

Jason VandenBeukel suggested that the increased representation of women and Indigenous people in the Senate might raise the legitimacy of the second chamber, and that Canadians are likely to see the reduction in partisanship in the Senate as a positive step. Indeed, in response to a March 2018 survey question about preferred paths for the Senate, 71 percent of respondents agreed that senators should be independent and should vote independently.<sup>13</sup> A number of participants observed, however, that improving the public's overall perception of the Senate will take time.

VandenBeukel expressed concern that not all provincial governments have agreed to participate in the Independent Advisory Board on Senate Appointments in order to fill a Senate vacancy from a given province, which could represent insufficient "buy in." He was also concerned that there had been no improvement in senators' accountability and that, as the share of nonpartisan senators increases, there may be less opportunity for sanction through party discipline – for example, being removed from a party caucus.

In response to some of the panellists' observations, a participant pointed out that, in its study on autonomous vehicles, the Standing Committee on Transport and Communications had been quite attentive to regional differences. On accountability, she stated that there is now greater disclosure of senators' financial matters, but added that this is a limited form of accountability.

Thomas recommended the establishment of a business committee – perhaps drawing on New Zealand's experience in this regard – to organize Senate business. He suggested that, over time, such an innovation could lead to "a more constructive and collaborative culture" in the Senate.

There appeared to be a preference among participants for greater transparency with regard to interactions between senators and stakeholders, in order to limit the potential effects of outside influence. Some even suggested establishing a set of rules to govern the relationship.

Following on Senator Saint-Germain's point about revising the *Parliament of Canada Act*, a participant strongly agreed that updating was required to entrench in law the changes that have taken place.

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<sup>13</sup> Nanos Research, "Majority of Canadians Prefer an Independent Senate," Senate of Canada Survey Summary, commissioned by Senator Elaine McCoy, <https://www.canada.ca/fr/leader-gouvernement-chambre-communes/nouvelles/2015/12/le-gouvernement-annonce-une-reforme-immediate-du-senat.html>.

On the question of potential Senate reform through constitutional amendment, a participant expressed doubt that any political party would include in its 2019 election platform a commitment to instituting an elected Senate.<sup>14</sup> She added that party leaders will want to evaluate the effect of the changes now under way and, further, that the public is not pressing for constitutional reform.

## CONCLUSION

Although the IRPP round table held on September 27, 2018, did not specifically address the question whether the current renewal of the Senate represents progress, the general sense of the discussion was that the changes under way constitute a positive development. Although senators remain appointed legislators, the second chamber's membership has been enriched and diversified through the addition of leading Canadians selected through a merit-based process. The Senate's legislative review function is being carried out even more seriously than in the past, with significant effects on when and how ministers and senior officials relate to members in the Independent Senators Group – both individually and in informal groups that have formed. The Senate has assumed a more active role than in recent decades in seeking to amend government legislation, and is asserting greater independence in other ways.

As the process of renewal of the Senate proceeds, many questions will arise, among them the following:

- What further changes are needed to the Senate's rules and other provisions (such as the *Parliament of Canada Act*) in order to provide a stable and fair framework for the responsibilities and resourcing of the different groups in the Senate?
- Now that the ISG has a majority of Senate seats, will it become more cohesive and, in its actions, begin to resemble a party caucus? Or will divisions emerge within an even larger and more diverse ISG?
- Will legislative review remain the dominant objective of the renewed Senate? Or will independent senators also devote increased attention to carrying out public policy investigations, regional representation and protection of the rights of minorities? What are the modalities that would allow senators to carry out such functions effectively in the context of a second chamber that, it is generally agreed, should be complementary to the House of Commons?
- What steps can be taken – by the Senate and others – to increase public understanding of the purposes and achievements of the renewal and to stimulate debate on potential further improvements?

The renewal of the Senate that is now under way has occurred within the existing constitutional framework. It reflects a widely held view that, although fundamental reform

<sup>14</sup> The long-standing position of the New Democratic Party is that the Senate should be abolished. In its decision in the *Reference Re Senate Reform* (see note 10), the Supreme Court indicated that abolition of the Senate would require the approval of Parliament and all provincial legislatures.

under the amending formula is not in the cards for the foreseeable future, certain improvements nevertheless were needed. The new process for selecting senators has no statutory basis and could be reversed by a future government. However, according to a senior Senate official present at the round table, if partisan appointments were resumed in the short term, it would probably take a decade or so before the ISG lost its majority position in the chamber, given the anticipated dates of retirement of sitting senators.

In addition to the issues discussed at the IRPP round table, there are still many unanswered questions about the longer-term viability of the Senate changes. As the renewal continues, it is to be hoped that further research and critical commentary will assess what has been achieved over the past three years, and thus encourage further adjustments to the way the Senate carries out its important role within the federal legislative process.



## APPENDIX A

### Agenda

#### Opening remarks

Graham Fox (Institute for Research on Public Policy)

#### Session 1: Taking stock of the Trudeau government's changes

This session will set the scene for the day's discussion and address the following questions:

- What have been the principal changes since the appointment of the first group of independent senators?
- What have been the main impacts on the functioning of the Senate?
- How are the changes being perceived by the media and the public?

#### Panel

**Moderator:** F. Leslie Seidle (Institute for Research on Public Policy)

David E. Smith (Ryerson University)

Senator Ratna Omidvar (Senate of Canada)

Jean-François Godbout (Université de Montréal)

#### Session 2: Impact on the legislative process and relations with the House of Commons

This session will examine the following questions:

- What does a more independent Senate mean for the legislative process?
- How compatible is a more active Senate with the principles of Westminster government, notably the primacy of the elected House of Commons?
- Should the Senate have a particular role in scrutinizing certain aspects of legislation or public policy? If so, which ones?
- What are the potential implications of individual senators' greater independence for the role of MPs and the mandate of House of Commons committees?

#### Panel

**Moderator:** Heather Scofield (the Canadian Press)

Paul Thomas (University of Manitoba)

Gary William O'Brien (former Clerk of the Senate)

#### Break

#### Session 3: Impact on policy-making and relations with the government

This session is complementary to session 2 and will explore the following questions:

- How are the processes for developing government policies and legislation changing as the renewal proceeds?
- Should Senate committees be more active in areas such as the study of broad public policy issues and the review of government policies and programs? If so, how could this be achieved?

- Has the recent Senate renewal changed the manner in which stakeholders and outside policy actors engage in the legislative process?

#### **Panel**

**Moderator:** Yaroslav Baran (Earnscliffe Strategy Group)

Emmett Macfarlane (University of Waterloo)

Elizabeth Roscoe (H+K Strategies Canada)

#### **Keynote address by the Honourable Karina Gould, Minister of Democratic Institutions**

#### **Session 4: Regional representation**

This session will explore the implications of the recent changes for the Senate's role in representing regional interests and will address the following questions:

- What would be the potential benefits and drawbacks of establishing regional caucuses within the Senate?
- Are there potential changes to the mandate and composition of Senate committees that could strengthen the Senate's regional representation role?
- How does this role relate to other aspects of the Senate's mission and responsibilities?

#### **Panel**

**Moderator:** Elizabeth Goodyear-Grant (Queen's University)

Honourable Hugh Segal (Massey College)

Nadia Verrelli (Laurentian University)

#### **Session 5: Summing up and next steps**

This session will encourage participants to think about further changes to strengthen the Senate's contribution to legislative and policy processes, as well as its legitimacy.

The panellists will be asked to comment on points raised during the day and to address some or all of the following questions:

- In light of the greater attention to merit and diversity considerations in the new selection process, is the Senate acquiring greater legitimacy?
- What are the implications of the transition under way for senators' accountability?
- What further changes could be made without returning to the multilateral constitutional table?
- Could the current Senate renewal encourage moves toward more fundamental reform? If so, what is required to reach that stage?

#### **Panel**

**Moderator:** Graham Fox (Institute for Research on Public Policy)

Senator Raymonde Saint-Germain (Senate of Canada)

Jennifer Wallner (University of Ottawa)

Jason VandenBeukel (University of Toronto)

#### **Closing remarks**

Graham Fox (Institute for Research on Public Policy)

## APPENDIX B

### List of Participants

- David J. Anderson, Executive Director, Public Governance: Democratic Institutions, Institute on Governance
- Étienne Arnoux Hébert, Parliamentary Research Assistant, Senator Raymonde Saint-Germain's Office, the Senate of Canada
- Yaroslav Baran, Principal, Earnscliffe Strategy Group
- Joshua Bath, Analyst, Democratic Institutions, Privy Council Office
- Aengus Bridgman, PhD candidate, McGill University
- Rosemarie Brisson, Senior Policy Adviser, Senator Peter Harder's Office, the Senate of Canada
- Eric Costen, Director General of Strategic Policy, Health Canada
- Graham Fox, President and CEO, Institute for Research on Public Policy
- Jean-François Godbout, professor, political science, and director, Observatory of Federations (CÉRIUM), Université de Montréal
- Elizabeth Goodyear-Grant, Director, Institute of Intergovernmental Relations and Associate Professor, Department of Political Studies, Queen's University
- Hon. Karina Gould, Minister of Democratic Institutions, Government of Canada
- Hon. Peter Harder, Senator, the Senate of Canada
- Rob Jamieson, Chief of Staff, Democratic Institutions, Government of Canada
- Leonard Kuchar, Chief of Staff, Senator Joseph Day's office, the Senate of Canada
- Emmett Macfarlane, Associate Professor, Political Science, University of Waterloo
- Ian McCowan, Deputy Secretary to the Cabinet, Privy Council Office
- Éric-Antoine Menard, Director of Policy and Government Affairs, Government Representative (Senator Peter Harder), the Senate of Canada
- Errol P. Mendes, Full Professor, Faculty of Law, Common Law, University of Ottawa
- Gary William O'Brien, former Clerk of the Senate and former Clerk of the Parliaments
- Hon. Ratna Omidvar, Senator, the Senate of Canada
- Christopher Reed, Parliamentary Affairs Adviser, Hon. Stephen Greene, the Senate of Canada
- Elizabeth Roscoe, Senior Vice-President and National Practice Leader Public Affairs, H+K Strategies; IRPP board member
- Hon. Raymonde Saint-Germain, Senator, the Senate of Canada
- Heather Scoffield, organizational leader, communications and public policy specialist, Ottawa Bureau Chief, the Canadian Press
- Hon. Hugh Segal, Principal, Massey College, University of Toronto
- F. Leslie Seidle, Research Director – Federalism, Institute for Research on Public Policy
- Dale Smith, freelance journalist and author
- David E. Smith, Distinguished Visiting Professor, Ryerson University
- Allen Sutherland, Assistant Secretary to the Cabinet, Privy Council Office
- Mohy-Dean Tabbara, researcher, Institute for Research on Public Policy

## Renewal of the Canadian Senate: Where to from Here?

- Paul Thomas, professor emeritus, political studies, University of Manitoba
- Jason VandenBeukel, PhD candidate, Department of Political Science, University of Toronto
- Marie Vastel, parliamentary correspondent, *Le Devoir*
- Nadia Verrelli, Assistant Professor, Department of Political Science, Laurentian University
- Jennifer Wallner, associate professor, political studies, University of Ottawa
- Maia Welbourne, Assistant Deputy Minister, Interdepartmental Task Team on Environmental and Regulatory Reviews, Environment and Climate Change and Natural Resources Canada
- Aaron Wherry, journalist, Parliament Hill bureau, CBC
- Laurie Wright, Senior Assistant Deputy Minister, Policy Sector, Justice Canada

Note: The leader or equivalent of each political party and group in the Senate was invited to the round table.





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