



SENATE | SÉNAT
CANADA

REFLECTING THE NEW REALITY OF THE SENATE

Report of the Special Senate Committee on Senate
Modernization

The Honourable Stephen Greene, *Chair*

The Honourable Serge Joyal, P.C., *Deputy Chair*

The Honourable Thomas Johnson McInnis, *Deputy Chair*

DECEMBER 2018

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TABLE OF CONTENTS

MEMBERS OF THE COMMITTEE 2

ORDER OF REFERENCE 3

RECOMMENDATIONS 12

APPENDIX A – LIST OF WITNESSES 13

APPENDIX B – BRIEFING NOTE PROVIDED BY THE OFFICE OF THE LAW CLERK AND
PARLIAMENTARY COUNSEL 14

MEMBERS OF THE COMMITTEE

The Honourable Stephen Greene, *Chair*
The Honourable Serge Joyal, P.C., *Deputy Chair*
The Honourable Thomas Johnson McInnis, *Deputy Chair*

The Honourable Senators:

Patrick Brazeau
Bev Busson
Marty Deacon
Lillian Eva Dyck
Linda Frum
Ghislain Maltais
Elaine McCoy
Percy Mockler
Mohamed-Iqbal Ravalia
Carolyn Stewart Olsen
Josée Verner, P.C.
David M. Wells

Ex officio members of the committee:

The Honourable Peter Harder, P.C. (or Diane Bellemare), (or Grant Mitchell)
The Honourable Larry W. Smith (or Yonah Martin)
The Honourable Joseph A. Day (or Terry M. Mercer)
The Honourable Yuen Pau Woo (or Raymonde Saint-Germain)

Staff Members:

David Groves and Laurence Brosseau, Analysts from the Parliamentary Information and Research Service of the Library of Parliament
Blair Armitage, Committee Clerk

ORDER OF REFERENCE

Extract from the *Journals of the Senate*, Friday, December 11, 2015:

The Senate resumed debate on the motion of the Honourable Senator Cowan, seconded by the Honourable Senator Fraser:

That a Special Committee on Senate Modernization be appointed to consider methods to make the Senate more effective within the current constitutional framework;

That the committee be composed of fifteen members, to be nominated by the Committee of Selection, and that five members constitute a quorum;

That the committee have the power to send for persons, papers and records; to examine witnesses; and to publish such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to hire outside experts;

That, notwithstanding rule 12-18(2)(b)(i), the committee have the power to sit from Monday to Friday, even though the Senate may then be adjourned for a period exceeding one week; and

That the committee be empowered to report from time to time and to submit its final report no later than June 1, 2016.

After debate,

The question being put on the motion, it was adopted.

Charles Robert
Clerk of the Senate

Extract from the *Journals of the Senate*, Tuesday, May 17, 2016:

The Honourable Senator McInnis moved, seconded by the Honourable Senator Andreychuk:

That, notwithstanding the order of the Senate adopted on Friday, December 11, 2015, the date for the final report of the Special Senate Committee on Senate Modernization in relation to its study of methods to make the Senate more effective within the current constitutional framework be extended from June 1, 2016 to December 15, 2016.

After debate,

The question being put on the motion, it was adopted.

Charles Robert
Clerk of the Senate

Extract from the *Journals of the Senate*, Monday, December 12, 2016:

The Honourable Senator McInnis moved, seconded by the Honourable Senator Marshall:

That, notwithstanding the order of the Senate adopted on Tuesday, May 17, 2016, the date for the final report of the Special Senate Committee on Modernization in relation to its study of methods to make the Senate more effective within the current constitutional framework be extended from December 15, 2016 to June 30, 2017.

After debate,

The question being put on the motion, it was adopted.

Charles Robert
Clerk of the Senate

Extract from the *Journals of the Senate*, Monday, June 19, 2017:

The Honourable Senator McInnis moved, seconded by the Honourable Senator McIntyre:

That, notwithstanding the order of the Senate adopted on Monday, December 12, 2016, the date for the final report of the Special Senate Committee on Senate Modernization in relation to its study of methods to make the Senate more effective within the current constitutional framework be extended from June 30, 2017 to December 15, 2017.

The question being put on the motion, it was adopted.

Charles Robert
Clerk of the Senate

Extract from the *Journals of the Senate*, Tuesday, November 28, 2017:

The Honourable Senator Greene moved, seconded by the Honourable Senator Verner, P.C.:

That, notwithstanding the order of the Senate adopted on Monday, June 19, 2017, the date for the final report of the Special Senate Committee on Senate Modernization in relation to its study of methods to make the Senate more effective within the current constitutional framework be extended from December 15, 2017 to June 29, 2018.

The question being put on the motion, it was adopted.

Nicole Proulx
Clerk of the Senate

Extract from the *Journals of the Senate*, Wednesday, June 20, 2018:

“Ordered, That the Senate adopt the following:

1. Order No. 91 under **Other Business – Reports of Committees – Other**;
2. Motion No. 359 standing in the name of the Honourable Senator Greene on the **Notice Paper**;

3. Motion No. 360 standing in the name of the Honourable Senator Mercer on the **Notice Paper**;

4. Motion No. 361 standing in the name of the Honourable Senator Tkachuk on the **Notice Paper**; and

5. Motion No. 366 standing in the name of the Honourable Senator Mockler on the **Notice Paper**.”

The question being put on the motion, it was adopted.

Richard Denis
Clerk of the Senate

Motion No. 359:

By the Honourable Senator Greene:

That, notwithstanding the order of the Senate adopted on Tuesday, November 28, 2017, the date for the final report of the Special Senate Committee on Senate Modernization in relation to its study of methods to make the Senate more effective within the current constitutional framework be extended from June 29, 2018 to December 31, 2018.

On December 11, 2015, your committee received the following order of reference from the Senate:

That a Special Committee on Senate Modernization be appointed to consider methods to make the Senate more effective within the current constitutional framework;

That the committee be composed of fifteen members, to be nominated by the Committee of Selection, and that five members constitute a quorum;

That the committee have the power to send for persons, papers and records; to examine witnesses; and to publish such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to hire outside experts;

That, notwithstanding rule 12-18(2)(b)(i), the committee have the power to sit from Monday to Friday, even though the Senate may then be adjourned for a period exceeding one week; and

That the committee be empowered to report from time to time and to submit its final report no later than June 1, 2016.

As the work of your committee has continued, the date for its final report has been extended to December 31, 2018.

Since your committee began its study, the composition of the Senate has changed considerably. Along with this change in composition have come changes in the Senate's day-to-day operations. Put simply, the number of senators that are not affiliated with either the Government or the Opposition has grown significantly, and the Senate has made a number of necessary adjustments within its rules, procedures, and practices as a result to ensure that these senators can participate effectively and can discharge their constitutional functions, as described in your committee's first report, *Senate Modernization: Moving Forward*.

While it is beyond the scope of your committee's order of reference to predict the future, it is likely that the presence of a large number of senators unaffiliated with the traditional Government or Opposition structure will remain a feature of the Senate for some time to come. Acknowledging this new reality, your committee turned its attention to the question of whether the Senate's rules and policies can accommodate the current state of affairs.

To assist it in its study, your committee heard from three witnesses: Senator Yuen Pau Woo, Facilitator of the Independent Senators Group, who testified on April 25, 2018;

Senator Peter Harder, Government Representative in the Senate, who testified on May 23, 2018; and Senator Joseph Day, Leader of the Senate Liberals, who testified on November 21, 2018.

Each witness was asked to provide their thoughts on the following question: Do the relevant statutes, such as the *Parliament of Canada Act*, the procedural rules, administrative rules and policies of the Senate adequately reflect the new reality of the Senate?

Your committee also revisited the testimony provided on October 19, 2016, by Senator Claude Carignan, who was, at that time, the Leader of the Opposition.

In its first report, *Senate Modernization: Moving Forward*, your committee identified a series of principles that has guided its work. One of those principles is equality: each senator should be treated equally with respect to his or her rights and privileges as a parliamentarian and the Senate's rules and practices should promote that status. In that report, your committee also recognized that the ability to organize and participate in a party or parliamentary group can be a useful tool for effective involvement in the deliberative process. The principle of equality, then, would suggest that the Senate's rules and practices should allow all senators to benefit from party or group participation equally. To this end, the rules and practices should avoid unjustified or arbitrary distinctions between parties and groups and guarantee that each party or group has the resources and powers necessary to support its members' work.

After having heard from the witnesses and considered the issue, your committee concluded that a more equal Senate requires changes on three levels: to the *Rules of the Senate*; to the *Senate Administrative Rules*; and to the *Parliament of Canada Act* and other federal statutes. These changes are all of a piece. They seek to ensure that rules or procedures that were developed when the Senate was composed largely of senators affiliated with either the Government or the Opposition no longer limit the right of any parliamentary group, party or senator to participate in the business of the Chamber.

In many cases, the Senate has already made adjustments within these rules and procedures to accommodate new parliamentary groups and new leadership configurations, but it is time to make these adjustments more certain.

As it has done in past reports, your committee recognizes that implementing the changes that it advocates requires the technical and procedural expertise of the Standing Committee on Rules, Procedures, and the Rights of Parliament and of the Standing Committee on Internal Economy, Budgets, and Administration. It also recognizes that there is no single approach for correcting all instances of inequality in the Senate's rules and procedures, and

that while witnesses may have agreed at times on which provisions need attention, their preferred solutions often differed.

Lastly, your committee is aware that, as noted by Senator Day and others, some changes to the *Parliament of Canada Act* are likely to require a royal recommendation and thus need some degree of involvement from the Government.

As such, your committee recommends that the Senate mandate the appropriate committees to review the *Rules of the Senate*, the *Senate Administrative Rules*, the *Parliament of Canada Act*, and any other relevant federal legislation and make any amendments necessary to ensure that all recognized parties and recognized parliamentary groups in the Senate are treated equally, to the extent possible.

What follows is a brief, non-exhaustive list of issues that were identified by witnesses and in a briefing note provided by the Office of the Law Clerk and Parliamentary Counsel at your committee's request (attached as an appendix to this report) and that your committee believes need attention:

Rules of the Senate:

- *Allocation of time for debate:* Under Rules 7-1(1) and 7-2(1), if the Leader or the Deputy Leader of the Government wish to impose time allocation on the consideration of a bill or other item of Government Business, they must first seek agreement on the allocation from “the representatives of the recognized parties”. These Rules make no mention of recognized parliamentary groups.
- *Determining the duration of the bells:* Under Rule 9-5, only the Government and Opposition Whips are consulted on the duration of the bells for a standing vote. The Rule makes no mention of the leadership of other parliamentary groups or parties.
- *Deferred standing votes:* Under Rule 9-10(1), only the Government or the Opposition Whips may defer a standing vote. The Rule makes no mention of other parliamentary groups or parties.
- *Ex officio status:* Rule 12-3(3) provides that the Leader and Deputy Leader of the Government, and Leader and Deputy Leader of the Opposition are *ex officio* members of all committees except the Standing Committee on Ethics and Conflict of Interest for Senators and any joint committees. No such status is provided to the leadership of other parliamentary groups or parties.
- *Committees meeting during adjournments:* Rule 12-18(2) provides that a committee may meet when the Senate is adjourned with the consent of the Leaders of the Government and the Opposition or their designates. The Rule makes no mention of the leadership of other parliamentary groups or parties.
- *Membership of the Standing Committee on Ethics and Conflict of Interest for Senators:* Under Rule 12-27(1), the membership of the Standing Senate Committee on Ethics and

Conflict of Interest for Senators is determined by a motion from the Leader of the Government, seconded by the Leader of the Opposition, and deemed adopted without debate or vote. There is no explicit role in this process for the leadership of other parliamentary groups or parties. Your committee also observes that under section 35(4) of the *Ethics and Conflict of Interest Code for Senators*, for which the Standing Committee on Ethics and Conflict of Interest for Senators is responsible, membership of the committee is largely determined by secret ballot in the caucus of Government senators and the caucus of Opposition senators, with no reference to other parliamentary groups or parties. The Senate would be responsible for drafting any related amendments to the *Ethics and Conflict of Interest Code for Senators*.

- *Designating a critic of a bill*: Per Appendix I of the *Rules of the Senate*, the critic of a bill is designated by either the Leader or Deputy Leader of the Government or the Opposition. No other leader is provided this authority.

Senate Administrative Rules

- *Office accommodations*: Sections 5, 8, 13, 16, 19 and 22 of chapter 5:02 of the *Senate Administrative Rules* provide that the Leaders, Deputy Leaders and Whips of the Government and of the Opposition are to be provided with office accommodations in close proximity to the Senate Chamber. No office accommodation for the leaders or facilitators of other parliamentary groups or parties is provided for under the *Senate Administrative Rules*.

Parliament of Canada Act

- *Additional allowances*: Under subsections 62.3(a) to (f.4) of the *Parliament of Canada Act*, Senators occupying specific leadership positions in the Senate receive additional allowances to their salary. Senators receiving additional allowances include the Leaders and the Deputy Leaders of the Government and of the Opposition, the Whips and the Deputy Whips of the Government and of the Opposition, as well as the Chairs of the caucuses of the Government and of the Opposition in the Senate. No leadership positions within other parliamentary groups or parties are recognized under the *Parliament of Canada Act* for the purpose of receiving additional allowances.
- *Membership changes to the Standing Committee on Internal Economy, Budgets and Administration*: Subsection 19.1 (3) of the *Parliament of Canada Act* provides that the Leader of the Government in the Senate and the Leader of the Opposition in the Senate may, in accordance with the rules of the Senate, change the membership of the Standing Committee on Internal Economy, Budgets and Administration, including during periods of prorogation or dissolution. No other leader or facilitator of a parliamentary group or party is provided this authority.
- *Appointment of the Parliamentary Budget Officer*: Per subsection 79.1(1) of the *Parliament of Canada Act*, the appointment of the Parliamentary Budget Officer is made after consultation with, among others, the leaders of every party and of every recognized group in the Senate. The language used in this provision does not reflect the

language used in the *Rules of the Senate* and the *Senate Administrative Rules*, which both refer to the leader of every recognized party and the facilitator of every recognized parliamentary group.

- *Appointment of the Senate Ethics Officer*: Under section 20.1 of the *Parliament of Canada Act*, the appointment of the Senate Ethics Officer by the Governor in Council requires prior consultation with the leader of every recognized party in the Senate. Section 20.1 makes no mention of the leadership of other parliamentary groups or parties.

Other Acts of Parliament

- *Appointments of Officers of Parliament*: Several federal statutes require the Governor in Council to consult with, among others, the leader of every recognized party in the Senate before the appointment of an officer of Parliament. Such consultation is required, for example, under section 3(1) of the *Auditor General Act* regarding the appointment of the Auditor General of Canada; section 53(1) of the *Privacy Act* regarding the appointment of the Privacy Commissioner; section 54(1) of the *Access to Information Act* regarding the appointment of the Information Commissioner; section 39(1) of the *Public Servants Disclosure Protection Act* regarding the appointment of the Public Sector Integrity Commissioner; section 4.1(1) of the *Lobbying Act* regarding the appointment of the Commissioner of Lobbying; and section 49(1) of the *Official Languages Act* regarding the appointment of the Commissioner of Official Languages. These acts make no reference to consultation with the leader or facilitator of any recognized parliamentary groups.
- *National Security and Intelligence Committee of Parliamentarians*: Per section 5(2) of the *National Security and Intelligence Committee of Parliamentarians Act*, the appointment of senators to the National Security and Intelligence Committee of Parliamentarians must be made after consultation with the leader of every caucus and of all recognized groups in the Senate. The language used in the act does not reflect the language used in the *Rules of the Senate* and the *Senate Administrative Rules*, which both refer to the leader of a recognized party and the facilitator of a recognized parliamentary group.

As a final comment, your committee notes that during the course of this study, the procedure to amend the *Parliament of Canada Act*, and most importantly the involvement of the Senate in this process, was the subject of considerable discussion. One possibility would be for the Senate to recommend specific amendments directly to the Government, which could be done by asking the Standing Committee on Rules, Procedures, and the Rights of Parliament to draft amendments that would be sent to the Government to be included in legislation. On this subject, Senator Harder, Government Representative in the Senate, stated that while the Government is receptive to any direction from the Senate on this question, it is not for the Government to unilaterally come forward with amendments to the *Parliament of Canada Act* which would affect the Senate. On October 23, 2018, the

Minister of Democratic Institutions, in an answer to a question in the Senate on amendments to the *Parliament of Canada Act*, stated that it was “up to the honourable senators to decide” how that act should be changed. Your committee feels the Senate, as a self-governing body, should be aware of these discussions as it considers the recommendations put forward in this report.

Your committee concludes that true equality among senators necessarily requires adjustments to the framework currently governing the procedures and deliberations of the Senate and that these adjustments must be considered in its modernization.

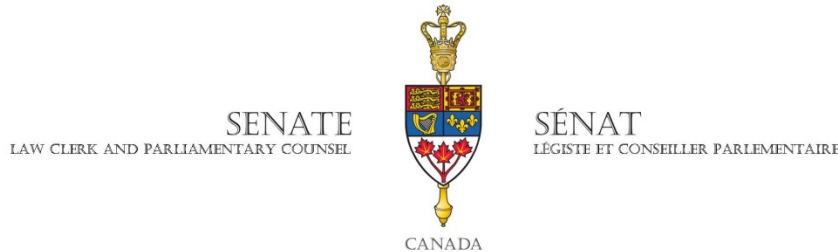
Your committee, therefore, recommends:

- 1. That the Standing Committee on Rules, Procedures and the Rights of Parliament undertake a review of, and recommend amendments to, the *Rules of the Senate* with a view that all recognized parties and recognized parliamentary groups in the Senate are treated equally.**
- 2. That the Standing Committee on Internal Economy, Budgets, and Administration undertake a review of, and recommend amendments to, the *Senate Administrative Rules* with a view to ensure that all recognized parties and recognized parliamentary groups in the Senate are treated equally.**
- 3. That the Standing Committee on Rules, Procedures and the Rights of Parliament undertake a review of, and, if necessary, recommend amendments to, the *Parliament of Canada Act* and other relevant statutes for the consideration and action of the Government to ensure that all recognized parties and recognized parliamentary groups in the Senate are treated equally.**

APPENDIX A – LIST OF WITNESSES

October 19, 2016	
The Senate of Canada	The Honourable Senator Claude Carignan, P.C., Leader of the Opposition
April 25, 2018	
The Senate of Canada	The Honourable Senator Yuen Pau Woo, Facilitator, Independent Senators Group
May 23, 2018	
The Senate of Canada	The Honourable Senator Peter Harder, P.C., Government Representative in the Senate
November 21, 2018	
The Senate of Canada	The Honourable Senator Joseph A. Day, Senate Liberal Leader

APPENDIX B – BRIEFING NOTE PROVIDED BY THE OFFICE OF THE LAW CLERK AND PARLIAMENTARY COUNSEL



BRIEFING NOTE TO THE
SPECIAL SENATE COMMITTEE ON SENATE MODERNIZATION

**SUBJECT: AMENDMENTS TO STATUTORY LAW RESPECTING
RECOGNIZED PARLIAMENTARY GROUPS**

INTRODUCTION

This note discusses amendments to the *Parliament of Canada Act* and other Acts of Parliament that are necessary for recognized parliamentary groups to have the same statutory rights as recognized parties.

BACKGROUND

On May 11, 2017, the Senate concurred in the [Seventh Report](#)¹ of the Standing Committee on Rules, Procedures and the Rights of Parliament (the “Rules Committee”), thereby amending the *Rules of the Senate* with respect to “recognized parliamentary groups.” These amendments formally contemplated the grouping of Senators, for parliamentary purposes, other than by common membership in the same political party; these amendments also provided for the procedural rights of such a recognized parliamentary group and its leadership (the facilitator). These rights are substantially similar to those of a recognized party and its leadership. Similarly, on June 21, 2017, the Senate concurred in the [Fifteenth Report](#)² of the Standing Committee on Internal Economy, Budgets and Administration (the “Internal Economy Committee”), thereby amending the *Senate Administrative Rules* to provide to caucuses of recognized parliamentary groups the same resources provided to caucuses of recognized parties.

These amendments resulted from recommendations originally made by the Special Senate Committee on Senate Modernization (the “Modernization Committee”) in its [First Report](#) and [Fifth Report](#).³ The Modernization Committee is now considering other changes to Senate rules and to legislation, so that recognized parliamentary groups have rights identical to those of recognized parties.

The recognized parties—and now recognized parliamentary groups—are part of the Senate’s internal governance structure, both procedural and administrative. The recognized parties and recognized parliamentary groups are not established by statutory law; they are established by the Senate in its rules and orders, notably the *Rules of the Senate* and the *Senate Administrative Rules*. Statutory law, however, does recognize the presence of the Government, the Opposition and recognized parties in the Senate and provides certain statutory rights for both them and their leadership. This note identifies the legislation (notably the *Parliament of Canada Act*) that refers to the Government, Opposition and recognized parties and sets forth the changes necessary so that recognized parliamentary groups have the same statutory rights as recognized parties.

It is important to note that the recognition of recognized parties that are neither the Government nor the Opposition is relatively new in the Senate. Until 2001, the *Rules of the Senate* were premised on there being only two parties in the Senate: the Government and the Opposition. The 2001 [Seventh Report](#)⁴ of the Rules Committee set the path to the recognition of other parties in the Senate. It recommended that the Senate officially recognize as parties those that are registered under the *Canada Elections Act* and have a minimum membership of five Senators. It also recommended that the *Rules of the Senate* be reviewed so that the necessary amendments to implement this recommendation could be made.⁵ While the *Rules of the Senate* were amended in 2001 to contemplate the existence of recognized parties aside from the Government and the Opposition, it was only 14 years later, with the opening of the 42nd Parliament in 2015, that they were applied, when the Senate Liberals became the first recognized party that was neither the Government nor the Opposition.

The Rules Committee, in its 2001 [Seventh Report](#), also noted the following:

15. If the Senate is to recognize other parties, the *Parliament of Canada Act* should be amended to provide for additional allowances to be paid to the Leader, Deputy Leader and Whip.

Accordingly, it recommended:

2. That the Government be asked to propose amendments to the *Parliament of Canada Act* to reflect the decision of the Senate.

However, it appears that this recommendation was never acted upon.

LEGISLATION

PARLIAMENT OF CANADA ACT — ADDITIONAL ALLOWANCES

Senators and Members of the House of Commons who occupy certain positions receive an additional allowance (salary) under the *Parliament of Canada Act*. The Senators who receive an additional allowance are the following:

- the Leader of the Government in the Senate;
- the Leader of the Opposition in the Senate;
- the Deputy Leader of the Government in the Senate;

- the Deputy Leader of the Opposition in the Senate;
- the Government Whip in the Senate;
- the Opposition Whip in the Senate;
- the Deputy Government Whip in the Senate;
- the Deputy Opposition Whip in the Senate;
- the Chair of the Caucus of the Government in the Senate; and
- the Chair of the Caucus of the Opposition in the Senate.⁶

This list only includes positions from the Government and the Opposition. As mentioned above, the Rules Committee had recommended that the leadership of recognized parties also be added to the *Parliament of Canada Act*, but no amendment was proposed or made in that regard.

Based on the 2001 recommendation of the Rules Committee and the intention of the Modernization Committee to have all recognized parties treated alike, the leadership of recognized parties and recognized parliamentary groups should also be added to the list of positions receiving an additional allowance under the *Parliament of Canada Act* unless, as a matter of policy, only the leadership of the Government and Opposition are to receive one. In the Commons, Members of the House of Commons occupying a leadership position in any recognized party (“a party that has a recognized membership of twelve or more persons in the House of Commons”) receive an additional allowance.⁷

A legislative proposal providing for an additional allowance to Senators occupying leadership positions in recognized parties and recognized parliamentary groups, it is to be noted, would likely have to originate from the House of Commons, as they would require the spending of public funds.⁸

PARLIAMENT OF CANADA ACT — MEMBERSHIP CHANGE TO THE STANDING COMMITTEE ON INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

In 1991, the *Parliament of Canada Act* was amended to provide, notably, for the continuing existence of the Internal Economy Committee during periods of prorogation and dissolution.⁹ These amendments also provided that membership changes to the Internal Economy Committee during intersessional periods are to be made by the Leader of the Government in the Senate and the Leader of the Opposition in the Senate—or their nominee(s)—in accordance with the *Rules of the Senate*.¹⁰ The Act does not contemplate membership changes being made by the leaders of other recognized parties and facilitators of recognized parliamentary groups during intersessional periods. Again, in 1991, only the Government and the Opposition (with the exception of some non-affiliated Senators) were present in the Senate Chamber, and the 1991 amendments to the *Parliament of Canada Act* were made on that basis.

Amendments to the *Parliament of Canada Act* authorizing the leadership of all recognized parties and recognized parliamentary groups to make membership changes to the Internal Economy Committee during intersessional periods will be necessary to achieve the objective of the Modernization Committee.

APPOINTMENTS OF OFFICERS OF PARLIAMENT

Acts of Parliament require that the appointments to certain public offices be preceded by consultations with the leader of every recognized party in the Senate (in addition to other requirements). For example, subsection 3(1) of the *Auditor General Act* provides the following:

3 (1) The Governor in Council shall, by commission under the Great Seal, appoint an Auditor General of Canada after consultation with the leader of every recognized party in the Senate [emphasis added] and House of Commons and approval of the appointment by resolution of the Senate and House of Commons.

These public officers are:

- the Auditor General of Canada;¹¹
- the Privacy Commissioner;¹²
- the Information Commissioner;¹³
- the Public Sector Integrity Commissioner;¹⁴
- the Commissioner of Lobbying;¹⁵
- the Commissioner of Official Languages;¹⁶ and
- the Senate Ethics Officer.¹⁷

Note: The appointment of the Conflict of Interest and Ethics Commissioner does not need to be preceded by consultations with the leader of every recognized party in the Senate and by a Senate resolution. The Commissioner is primarily answerable to the House of Commons as the officer in charge of the administration of the Conflict of Interest Code for Members of the House of Commons.

For similar treatment to be accorded to both recognized parties and recognized parliamentary groups, these Acts would need to be amended to include consultation with the facilitator of every recognized parliamentary group before the appointments to these offices are made.

Also, in 2017, the position of Parliamentary Budget Officer was established outside of the Library of Parliament (where it had initially been established in 2006), and the appointment process for the Parliamentary Budget Officer was made similar to that of other Officers of Parliament.¹⁸ New subsection 79.1(1) of the *Parliament of Canada Act* provides as follows:

79.1 (1) The Governor in Council shall, by commission under the Great Seal, appoint a Parliamentary Budget Officer after consultation with the following persons and after approval of the appointment by resolution of the Senate and House of Commons:

(a) the persons referred to in paragraphs 62(a) and (b) and the leader of every caucus and of every recognized group in the Senate; [emphasis added] and

(b) the leader of every recognized party in the House of Commons.

The person referred to in paragraph 62(a) is the Leader of the Government in the Senate (currently styled the “Government representative in the Senate”), and the person referred to in paragraph 62(b) is the Leader of the Opposition in the Senate. The reference to the “leader of every caucus and of every recognized group in the Senate” is intended to capture the leadership of both recognized parties and recognized parliamentary groups. These 2017 amendments to the *Parliament of Canada Act* were based on the terminology used by the Modernization Committee in its *First Report* and *Fifth Report*. It would be desirable for subsection 79.1(1) of the *Parliament of Canada Act* to be amended to mirror the terminology and concepts that were

finally adopted by the Senate when it made amendments to the *Rules of the Senate* and the *Senate Administrative Rules* by referring to the leader of every recognized party and the facilitator of every recognized parliamentary group.

NATIONAL SECURITY AND INTELLIGENCE COMMITTEE OF PARLIAMENTARIANS ACT

Similarly, the Prime Minister's appointments of Senators to the National Security and Intelligence Committee of Parliamentarians are to be made after consultation with the Leader of the Government in the Senate, the Leader of the Opposition in the Senate "and the leader of every caucus and of every recognized group in the Senate". Subsection 5(2) of the *National Security and Intelligence Committee of Parliamentarians Act* provides as follows:

(2) A member of the Senate may be appointed to the Committee only after the Prime Minister has consulted with the persons referred to in paragraphs 62(a) and (b) of the *Parliament of Canada Act* and the leader of every caucus and of every recognized group in the Senate[*emphasis added*].¹⁹

Again, the relevant provisions of the *National Security and Intelligence Committee of Parliamentarians Act*, enacted on June 22, 2017, were based on the terminology used by the Modernization Committee in its *First Report* and *Fifth Report*. Amendments to the *National Security and Intelligence Committee of Parliamentarians Act* to make it consistent with the terminology and concepts finally adopted by the Senate in its rules would be desirable.

PARLIAMENTARY EMPLOYMENT AND STAFF RELATIONS ACT

The *Parliamentary Employment and Staff Relations Act* ("PESRA")²⁰ provides for employment and staff relations provisions for employees employed by the Senate and other parliamentary institutions.

The staff members of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate, the Government Whip in the Senate and the Opposition Whip in the Senate, as well as the staff of all Senators, are excluded from the application of Part 1 of PESRA, which deals with labour relations (unions, etc.). The explicit exclusion of the staff of those four leadership positions is not necessary, as the general exclusion of all Senators' staff already places these individuals outside the application of Part 1. To that effect, PESRA has not been amended as other positions were formally recognized (for example, under the *Parliament of Canada Act*). It would therefore not be necessary to amend PESRA to expressly exclude the staff of the leadership of a recognized parliamentary group.

EMERGENCIES ACT

Another Act of Parliament that could be considered by the Modernization Committee is the *Emergencies Act*.²¹ This Act provides that the "exercise of powers and the performance of duties and functions pursuant to a declaration of emergency" must be reviewed by a joint committee of both Houses. Subsection 62(2) provides that this Parliamentary Review Committee, as it is called, is to "include at least one member of the House of Commons from each party that has a recognized membership of twelve or more persons in that House and at least one senator from each party in the Senate that is represented on the committee by a member of the House of

Commons [emphasis added].” While this Act does not provide representation on the joint committee for each recognized party in the Senate, it ensures that each party in the Senate that is a recognized party in the House of Commons has representation on the Committee. Consideration could be given to the composition of the Parliamentary Review Committee so that it reflects contemporary party and group organization in the Senate or so that it only provides the number of members from each House on the Committee, leaving each House with the decision to appoint members on the joint committee as it sees fit.²²

CONCLUSION

Amendments to a number of statutes will be required to achieve the objective of ensuring that recognized parliamentary groups have the same statutory rights as recognized parties. Those statutes and amendments are as follows:

- the *Parliament of Canada Act*, in respect of additional allowances to Senators occupying leadership positions in recognized parties and recognized parliamentary groups;
- the *Parliament of Canada Act*, in respect of the membership of the Internal Economy Committee;
- the *Auditor General Act*, *Privacy Act*, *Access to Information Act*, *Public Servants Disclosure Protection Act*, *Lobbying Act*, *Official Languages Act*, and *Parliament of Canada Act*, in respect of the appointment of Officers of Parliament; and
- the *National Security and Intelligence Committee of Parliamentarians Act*, in respect of the appointment of Senators to the National Security and Intelligence Committee of Parliamentarians.
 - *Note: No amendment to the Parliamentary Employment and Staff Relations Act is recommended.*

¹ Standing Committee on Rules, Procedures and the Rights of Parliament, *Seventh Report*, Amendments to the Rules — Recognized parties and recognized parliamentary groups, 42nd Parliament, 1st Session, presented to the Senate on May 9, 2017, adopted on May 11, 2018.

² Standing Committee on Internal Economy, Budgets and Administration, *Fifteenth Report*, Senate Administrative Rules (Caucuses), 42nd Parliament, 1st Session, presented to the Senate on June 15, 2017, adopted on June 21, 2017. See also Standing Committee on Internal Economy, Budgets and Administration, *Sixteenth Report*, Senate Administrative Rules (Caucuses), 42nd Parliament, 1st Session, presented to the Senate on June 15, 2017, adopted on June 21, 2017.

³ Special Senate Committee on Senate Modernization, *First Report*, Senate Modernization: Moving Forward, 42nd Parliament, 1st Session, deposited with the Clerk of the Senate on October 4, 2016; Special Senate Committee on Senate Modernization, *Fifth Report*, Senate Modernization: Moving Forward (Caucus), presented to the Senate on October 4, 2016, and adopted, as amended on May 11, 2017.

⁴ Standing Committee on Rules, Procedures and the Rights of Parliament, *Seventh Report*, Recognition of a Third Party in the Senate, 37th Parliament, 1st Session, presented to the Senate on November 6, 2001, adopted on February 5, 2002.

⁵ Standing Committee on Rules, Procedures and the Rights of Parliament, *Twelfth Report*, Update to the Rules of the Senate regarding third parties, 37th Parliament, 1st Session, presented to the Senate on March 26, 2002, and adopted on June 11, 2002.

⁶ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, paragraphs 62.3 (a) to (f.4).

⁷ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, paragraphs 62.3(1)(h), (j), (j.1), (l), (m) and (o).

⁸ *Rules of the Senate*, rule 10-7, *Constitution Act, 1867*, section 54.

⁹ *An Act to amend the Parliament of Canada Act*, S.C. 1991, c. 20, section 1. See *Parliament of Canada Act*, subsection 19.1(2).

¹⁰ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, subsection 19.1(3).

¹¹ *Auditor General Act*, R.S.C. 1985, c. A-17, subsection 3(1).

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- ¹² *Privacy Act*, R.S.C. 1985, c. P-21, subsection 53(1).
¹³ *Access to Information Act*, R.S.C. 1985, c. A-1, subsection 54(1).
¹⁴ *Public Servants Disclosure Protection Act*, S.C. 2005, c. 46, subsection 39(1).
¹⁵ *Lobbying Act*, R.S.C. 1985, c. 44 (4th Supp.), subsection 4.1(1).
¹⁶ *Official Languages Act*, R.S.C. 1985, c 31 (4th Supp.), subsection 49(1).
¹⁷ *Parliament of Canada Act*, R.S.C., 1985, c. P-1, section 20.1.
¹⁸ *Budget Implementation Act, 2017, No. 1*, S.C. 2017, c. 20, section 128.
¹⁹ *National Security and Intelligence Committee of Parliamentarians Act*, S.C. 2017, c. 15, subsection 5(2).
²⁰ *Parliamentary Employment and Staff Relations Act*, R.S.C., 1985, c. 33 (2nd Supp.).
²¹ *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.).
²² *E.g., National Security and Intelligence Committee of Parliamentarians Act*, section 4.