

SENATE



SÉNAT

STANDING COMMITTEE ON ETHICS AND
CONFLICT OF INTEREST FOR SENATORS

CANADA

COMITÉ PERMANENT SUR L'ÉTHIQUE ET LES
CONFLITS D'INTÉRÊTS DES SÉNATEURS

Wednesday, June 2, 2021

The Standing Committee on Ethics and Conflict of Interest for Senators has the honour to present its

THIRD REPORT

Your committee, which is responsible on its own initiative for all matters relating to the *Ethics and Conflict of Interest Code for Senators*, pursuant to rule 12-7(16) of the *Rules of the Senate*, herewith presents an interim report on amendments to the Code.

INTRODUCTION

The *Ethics and Conflict of Interest Code for Senators* ("Code") was originally adopted by the Senate on May 18, 2005, following the enactment of *An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer)*¹. That Act established an independent officer for each House of Parliament whose duties and functions are assigned by his or her respective House to govern the conduct of its members in matters related to ethics.

While the Act contemplated the adoption of a code of conduct by each House of Parliament, it did not constitute the enabling authority for such a code – an authority that rests on parliamentary privilege. Instead, the Act safeguarded all "powers, privileges, rights and immunities of the Senate or its members"².

The introduction of a Code was preceded by many years of studies. In this respect, the Third Report of the Standing Committee on Rules, Procedures and the Rights of Parliament from the 38th Parliament, in referring to the Code, stated that "[r]arely has a document been as thoroughly examined and discussed as this Code."

Importantly, the Code constitutes an exercise of the Senate's parliamentary privilege to govern its internal affairs and to discipline its members. Both privileges are inherent to the Senate as a legislative and deliberative body and have been explicitly conferred on the Senate by section 18 of the *Constitution Act, 1867* and section 4 of the *Parliament of Canada Act*.

¹ S.C. 2004, c. 7

² see *Parliament of Canada Act*, subsection 20.5(5)

Since 2005, the Code has been amended on four occasions³: 2008, 2012 and twice in 2014. These amendments were aimed each time at improving the provisions of the Code and at reasserting the commitment of the Senate and of each individual senator to the highest standards of conduct.

Your committee, in this report, builds on this legacy.

REVIEWING THE CODE

As your committee noted in its [Seventh Report](#) (42nd Parliament, 1st Session), the Code is “amended from time to time by the Senate to ensure that its provisions address contemporary realities, as well as to enhance public confidence and trust in the Senate and senators”.

To ensure that the Code’s provisions remain under examination, the Standing Committee on Ethics and Conflict of Interest for Senators (“committee”) is “responsible, on its own initiative, for all matters relating to the Code under rule 12-7(16)(b) of the *Rules of the Senate* (“Rules”). Not only does your committee have the authority to self-initiate a study at any time in order to recommend to the Senate potential amendments to the Code, section 59 of the Code also requires your committee to conduct a comprehensive review of its provisions and operation once every five years.

On August 12, 2019, your committee presented its [Seventh Report](#) to the Senate, an interim report on its findings and recommendations arising from the required review of the Code. This report was the culmination of a long and in-depth study, commenced in 2018, in which your committee heard from senators, academics, staff of the Senate administration and the Senate Ethics Officer (SEO) on their concerns with the Code and recommendations for amendments.

The [Seventh Report](#) was composed of four parts: Part A, which outlined matters identified during the study that did not require Code amendments but your committee nonetheless felt required action on its part; Part B, which outlined amendments to the Code “of a procedural and administrative nature”; Part C, which outlined amendments to the Code that required concurrent amendments to the Rules; and Part D, which outlined “substantive matters for further study and consideration”.

The [Seventh Report](#) was not considered by the Senate before the 42nd Parliament was dissolved on September 11, 2019.

During the 1st session of the 43rd Parliament, your committee wrote all senators, the SEO, and the Executive Committee to ask for new concerns, comments and suggested changes respecting the provisions and operation of the Code not already discussed in the previous session leading up to the preparation of your committee's [Seventh Report](#). Between the 1st and 2nd sessions of the 43rd Parliament, the Intersessional Authority on Ethics and Conflict of Interest for Senators prepared a workplan to review submissions and report to the Senate accordingly. With the start of the 2nd session of the 43rd Parliament and the appointment of new members to the committee on December 3, 2020, your committee resumed consideration of the [Seventh Report](#) and subsequent submissions for the betterment of the Code.

Your committee remains of the opinion that the recommendations outlined in the [Seventh Report](#) should be given further consideration and attention and that the work of ensuring that the Code remains current

³ *Journals of the Senate*, May 29, 2008; May 1, 2012; April 1 and June 16, 2014

must be continued with all deliberate speed. As such, your committee will continue with efforts to modernize the Code.

Given the limited sittings of the Senate in the context of the COVID-19 pandemic and the importance of questions regarding the Code, your committee will present its recommendations in a series of interim reports, rather than all at once. This report, divided into two parts, is the first such report: Part I seeks to identify recommended amendments to the Code that are of a procedural or administrative nature; Part II outlines certain principles regarding the composition of the committee and recommends that the Senate direct the Standing Committee on Rules, Procedures and the Rights of Parliament (RPRD) to consider potential amendments to the Rules based on these principles.

Your committee is aware that there are senators who have made submissions regarding significant and weighty issues such as sponsored travel and the work of the committee during an intersessional period. Your committee looks forward to returning to the Senate with additional reports on such issues after their consideration by the committee. However, your committee is of the view that it would not be appropriate to delay the Senate's consideration of the important matters contained in this report pending completion of the committee's exhaustive review of all suggested Code amendments.

PART I – RECOMMENDED AMENDMENTS TO THE CODE

1. Compilation of Recorded Declarations

Under the Code, senators are required to make a declaration, orally or in writing, when they have reasonable grounds to believe they or their family members have a private interest that might be affected by a matter before the Senate or a committee of the Senate on which the senator sits. Currently, any such declarations made by senators under the Code are sent to the SEO, who includes them with each senator's public disclosure summary. To find all declarations on a given matter, one must review the public disclosure summary of each senator individually, which can be cumbersome and time consuming.

Your committee proposes that a compilation of all declarations for all senators on matters before the Senate in a particular session be published online, subject to the existing process regarding declarations made in camera.

<i>Current Code</i>	<i>Code with Proposed Amendment</i>
12. (3) The Clerk of the Senate or the clerk of the committee, as the case may be, shall send the declaration to the Senate Ethics Officer who, subject to subsection (4) and paragraph 31(1)(j), shall file it with the Senator's public disclosure summary.	12. (3) The Clerk of the Senate or the clerk of the committee, as the case may be, shall send the declaration to the Senate Ethics Officer, who, subject to subsection (4) and paragraph 31(1)(j), shall file it with the Senator's public disclosure summary.
(4) In any case in which the declaration was made during an <i>in camera</i> meeting, the Chair of the committee and Senate Ethics Officer shall obtain the consent of the	(3.1) Subject to subsection (4), the Senate Ethics Officer shall maintain an online and updated compilation of all declarations

subcommittee on agenda and procedure of the committee concerned before causing the declaration to be recorded in the Minutes of Proceedings of the committee or filing it with the Senator's public disclosure summary, as the case may be.

made over the course of each parliamentary session.

(4) In any case in which the declaration was made during an in camera meeting, the Chair of the committee and the Senate Ethics Officer shall obtain the consent of the subcommittee on agenda and procedure of the committee concerned to:

- (a) cause the declaration to be recorded in the Minutes of Proceedings of the committee;
- (b) file it with the Senator's public disclosure summary; or
- (c) include the declaration in the compilation referred to in subsection (3.1).

2. Publication of the Senate Ethics Officer's Opinion (Government Contracts)

Currently, the Code prohibits a senator from being a party to a contract or business arrangement with the Government of Canada or any federal agency or body, or from having an interest in a partnership or private corporation that is a party to such a contract or business arrangement, unless the SEO provides a written opinion allowing it. The Code also provides an exclusion to these prohibitions on government contracts if the contract or business arrangement is a program operated or funded by the Government of Canada and certain criteria are met. In order to bring a senator within the exclusion, the SEO must determine whether these criteria are met. However, it is not clear if the SEO's opinion concerning whether or not the criteria have been met is required to be disclosed.

Your committee proposes that the Code be amended to ensure that an opinion of the SEO regarding whether or not a Government of Canada program meets the criteria under the Code is required to be made public. This will clarify the Code and ensure greater transparency by aligning the provisions regarding the publication of SEO opinions.

<i>Current Code</i>	<i>Code with Proposed Amendment</i>
23. For the purposes of sections 20 and 22, it is not prohibited to participate in a program operated or funded, in whole or in part, by the Government of Canada or any federal agency or body under which a Senator, or a partnership or private	23. (1) For the purposes of sections 20 and 22, participation in a program operated or funded, in whole or in part, by the Government of Canada or any federal agency or body under which a Senator - or a partnership or private corporation in

<p>corporation in which a Senator has an interest, receives a benefit if</p> <ul style="list-style-type: none"> (a) the eligibility requirements of the program are met; (b) the program is of general application or is available to a broad class of the public; (c) there is no preferential treatment with respect to the application; and (d) no special benefits are received that are not available to other participants in the program. 	<p>which a Senator has an interest - receives a benefit is not prohibited if:</p> <ul style="list-style-type: none"> (a) the eligibility requirements of the program are met; (b) the program is of general application or is available to a broad class of the public; (c) there is no preferential treatment with respect to the application; and (d) no special benefits are received that are not available to other participants in the program. <p>(2) The Senate Ethics Officer may make public an opinion in relation to subsection (1), as he or she considers appropriate, whether or not a Senator has asked for guidance or an opinion in relation to a particular program. However, if a Senator requests guidance or an opinion in relation to participation in a program that is not prohibited by subsection 1, the Senate Ethics Officer shall make his or her guidance or opinion available but may not provide or include any additional information on what was requested, nor may the Senate Ethics Officer provide any information that could reasonably reveal the identity of the Senator who requested the guidance or opinion.</p>
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3. Disclosure of a Partial Opinion of the Senate Ethics Officer by a Senator

Under the Code, a senator may make public a written opinion received from the SEO. However, if the senator only discloses part of the written opinion rather than the entire opinion, the partial disclosure of the opinion may be misleading. Your committee proposes that the Code be amended so that if a senator discloses a select portion of an opinion of the SEO, the SEO is authorized to release other relevant parts of the opinion or the opinion in full if the SEO believes it is in the public interest to do so. There may be cases in which a senator's partial release of an opinion or portion thereof inaccurately portrays the SEO's work or reasoning. Because it is recognized that an opinion from the SEO might relate to multiple matters, the SEO would only be authorized to release those portions of an opinion that could be misconstrued through the partial divulgation by the senator to whom the opinion was provided.

Your committee heard the concern expressed that the release of any information under this new provision could include private or personal information. It should be recalled that the SEO would be bound to approach this provision in light of section 56 of the Code: “In interpreting and administering this Code, reasonable expectations of privacy shall be impaired as minimally as possible.”

<i>Current Code</i>	<i>Code with Proposed Amendment</i>
None	42. (4.1) If a written opinion or advice is made public by a Senator in a way that the Senate Ethics Officer considers to be misleading, the Senate Ethics Officer may provide information to the public to correct any misunderstanding, including by releasing any relevant portions of the opinion or advice provided to the Senator, but only to the extent necessary to respond to any misleading information.

4. Inclusion of Indirect Benefits from Government Contracts

Currently, the Code prohibits a senator from being a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the senator receives a benefit unless the matter falls under certain exceptions. Similarly, the Code prohibits senators from having an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or one of its agencies or bodies under which the partnership or corporation receives a benefit.

Your committee proposes that the concept of indirectly receiving a benefit under these contracts or arrangements be included within the ambit of the Code. Including indirect benefits within this prohibition strengthens the Code by ensuring that the intended prohibition is broadly defined.

<i>Current Code</i>	<i>Code with Proposed Amendment</i>
<p>20. A Senator shall not knowingly be a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the Senator receives a benefit unless the Senate Ethics Officer provides a written opinion that</p> <p>(a) due to special circumstances the contract or other business arrangement is in the public interest; or</p>	<p>20. A Senator shall not derive a benefit, directly or indirectly, from a contract, subcontract or other business arrangement with the Government of Canada or any federal agency or body unless the Senate Ethics Officer provides a written opinion that</p> <p>(a) due to special circumstances, the contract, subcontract or other business arrangement is in the public interest; or</p>

<p>(b) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.</p> <p>[...]</p> <p>22. A Senator shall not have an interest in a partnership or in a private corporation that is a party, directly or through a subcontract, to a contract or other business arrangement with the Government of Canada or any federal agency or body under which the partnership or corporation receives a benefit unless the Senate Ethics Officer provides a written opinion that</p> <p>(a) due to special circumstances the contract or other business arrangement is in the public interest; or</p> <p>(b) the contract or other business arrangement is unlikely to affect the Senator's obligations under this Code.</p>	<p>(b) the contract, subcontract or other business arrangement is unlikely to affect the Senator's obligations under this Code.</p> <p>[...]</p> <p>22. A Senator shall not have an interest in a partnership or in a private corporation that derives a benefit, directly or indirectly from a contract, subcontract, or other business arrangement with the Government of Canada or any federal agency or body unless the Senate Ethics Officer provides a written opinion that</p> <p>(a) due to special circumstances, the contract, subcontract or other business arrangement is in the public interest; or</p> <p>(b) the contract, subcontract or other business arrangement is unlikely to affect the Senator's obligations under this Code.</p>
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5. Duty to Disclose: Exclusion of Certain Social Benefits

The Code excludes certain matters from disclosure in a senator's confidential disclosure statement when it is unlikely that they could lead to a conflict of interest, whether real, potential or perceived. A number of social programs and benefits to which all Canadians have access or are entitled, i.e., CPP, OAS, QPP, are not currently excluded from the disclosure requirements in the Code.

Your committee proposes that the Code be amended to explicitly exclude CPP, OAS and QPP income from the disclosure requirements. These programs are of general application and available to any Canadians who otherwise qualify for these programs. They should therefore be excluded from disclosure, as it is unlikely that these benefits could lead to a conflict of interest on the part of a senator.

<i>Current Code</i>	<i>Code with Proposed Amendment</i>
<p>28. (4) For the purpose of subsection (1), it is not required to disclose properties used by the Senator or family members as residences; mortgages or hypothecs on such residences; household goods; personal effects; cash on hand or on deposit with a financial institution; guaranteed investment</p>	<p>28. (4) For the purpose of subsection (1), a Senator is not required to disclose properties used by the Senator or family members as residences; mortgages or hypothecs on such residences; household goods; personal effects; cash on hand or on deposit with a financial institution;</p>

certificates; financial instruments issued by any Canadian government or agency; and obligations incurred for living expenses that will be discharged in the ordinary course of the Senator's affairs.

guaranteed investment certificates; financial instruments issued by any Canadian government or agency; a benefit paid under the *Old Age Security Act*, the *Canada Pension Plan*, or *An Act respecting the Quebec Pension Plan*, CQLR, c. R-9; and obligations incurred for living expenses that will be discharged in the ordinary course of the Senator's affairs.

6. Deadlines (Confidential Disclosure Statements)

The Code imposes certain deadlines for the provision of information or documents to the SEO. Practice has shown that there may be circumstances in which particular deadlines are inappropriate to enforce, such as when a senator is in ill health. As well, there are deadlines in the Code that have proven to be problematic: those for the filing of a new senator's first confidential disclosure statement (presently 120 days); those for the subsequent annual disclosure statement (date of the anniversary of the senator's appointment); and those for the annual statement of compliance (also on the date of the anniversary of the senator's appointment).

Your committee proposes that the Code be amended to provide the SEO with the authority to grant deadline extensions under the Code. As well, your committee recommends reducing the number of days for a new senator's initial confidential disclosure statement from 120 days to 60 days and allowing subsequent disclosure and compliance statements to be made within 30 days of the anniversary of a senator's appointment.

Enabling the SEO to extend deadlines when appropriate allows for reasonableness and flexibility in the administration of the Code. Further, it allows for procedural fairness in circumstances in which compliance with a deadline creates an unnecessary hardship for a senator, such as in the case of a medical emergency.

In recommending the reduction of the number of days in which an initial confidential disclosure statement must be made by a new senator, your committee is of the view that being required to do so sooner will help a senator become familiar with the Code and their obligations more quickly and reduce any potential period of inadvertent non-compliance. Additionally, by allowing subsequent reports and compliance statements to be made within 30 days of a senator's anniversary of appointment, more flexibility is given to senators who may, for example, not be in Ottawa on the anniversary of their appointment but might arrive shortly thereafter.

<i>Current Code</i>	<i>Code with Proposed Amendment</i>
27. (1) Every Senator shall file annually, on or before the date applicable to the Senator as established by the Senate Ethics Officer under subsection (2), a confidential statement disclosing the information required by section 28.	27. (1) Every Senator shall file, in each calendar year and within 30 days of the anniversary of their summons to the Senate, a confidential statement disclosing the information required by section 28.

(2) The date or dates on or before which the annual confidential disclosure statements are required to be filed shall be established by the Senate Ethics Officer following approval by the Committee.

(3) Within 120 days after being summoned to the Senate, a Senator shall file a confidential statement disclosing the information required by section 28.

(4) Thirty days after the date established under subsection (2), the Senate Ethics Officer shall submit to the Committee the name of any Senator who has not complied with his or her duty to file a confidential disclosure statement.

(2) Within 60 days after being summoned to the Senate, a Senator shall file a confidential statement disclosing the information required by section 28.

(3) The Senate Ethics Officer shall submit to the Committee the name of any Senator who has not complied with his or her duty to file a confidential disclosure statement within the period specified under subsections (1) or (2).

27.1 The Senate Ethics Officer may extend any time period in which an action is to be completed by a Senator under this Code if, in the opinion of the Senate Ethics Officer, circumstances exist that warrant the extension.

7. Explicitly Allowing for Electronic Tabling of Documents

Sections 47 and 48 of the Code describe the procedure for tabling a preliminary determination letter and an inquiry report from the SEO in the Senate. They require a “true copy” of such documents to be tabled in the Senate at the first possible opportunity or, if the Senate is not sitting on the day on which the committee receives the report from the SEO, or if Parliament is dissolved or prorogued, the Chair of the committee shall cause a true copy of these documents to be deposited at the first opportunity with the Clerk of the Senate.

Your committee proposes amending the Code to allow electronic tabling of such documents from the SEO with the Clerk of the Senate when tabling during a Senate sitting is not possible. This practice will allow for greater efficiency in the processing and distribution of files and is in line with modern practices and the evolution of technology.

<i>Current Code</i>	<i>Code with Proposed Amendment</i>
47. (17) The Chair of the Committee shall cause a true copy of the preliminary determination letter received by the Committee under subsection (16) to be tabled in the Senate at the first possible opportunity; if the Senate is not sitting on the day on which the Committee receives the letter, or if Parliament is dissolved or prorogued, the Chair shall also cause a true copy of the letter to be deposited with the Clerk of the Senate at the first opportunity.	47. (17) The Chair of the Committee shall cause a true copy of the preliminary determination letter received by the Committee under subsection (16) to be tabled in the Senate at the first possible opportunity; if the Senate is not sitting on the day on which the Committee receives the letter, or if Parliament is dissolved or prorogued, the Chair shall also cause a paper or electronic copy of the letter to be

48. (18) The Chair of the Committee shall cause a true copy of the report received by the Committee under subsection (17) to be tabled in the Senate at the first possible opportunity; if the Senate is not sitting on the day on which the Committee receives the report, or if Parliament is dissolved or prorogued, the Chair shall also cause a true copy of the report to be deposited with the Clerk of the Senate at the first opportunity.

deposited with the Clerk of the Senate at the first opportunity.

48. (18) The Chair of the Committee shall cause a true copy of the report received by the Committee under subsection (17) to be tabled in the Senate at the first possible opportunity; if the Senate is not sitting on the day on which the Committee receives the report, or if Parliament is dissolved or prorogued, the Chair shall also cause a paper or electronic copy of the report to be deposited with the Clerk of the Senate at the first opportunity.

8. Language Harmonization with *Senate Administrative Rules* ("Parliamentary Functions")

In order to minimize the risk of various interpretations for similar expressions and allow for more consistency throughout documents used by senators, your committee recommends making every reference in the Code to that of “parliamentary functions” and to harmonize the definition with that in the *Senate Administrative Rules*.

<i>Current Code</i>	<i>Code with Proposed Amendment</i>
<p>3. (1) The following definitions apply in this Code.</p> <p>“parliamentary duties and functions”</p> <p>« <i>fonctions parlementaires</i> »</p> <p>“parliamentary duties and functions” means duties and activities related to the position of Senator, wherever performed, and includes public and official business and partisan matters.</p>	<p>3. (1) The following definitions apply in this Code.</p> <p>“parliamentary functions”</p> <p>« <i>fonctions parlementaires</i> »</p> <p>“parliamentary functions” has the same meaning in the <i>Senate Administrative Rules</i>.</p>

9. Non-Substantive Modification of Forms

Subsection 37(1) of the Code provides that your committee is responsible for all forms involving senators that are used in the administration of the Code. While this important safeguard ensures that your committee is aware of what senators are to provide the SEO, it has meant that the SEO is unable to modify forms in non-substantive ways, such as to correct typographical or printing errors. Your committee feels that the SEO, who provides the forms, should be empowered to make non-substantive changes to the forms your committee has approved.

<i>Current Code</i>	<i>Code with Proposed Amendment</i>
None	<p>Exception – Non-substantive Modifications</p> <p>37. (1.1) Despite subsection (1), the Senate Ethics Officer may make non-substantive modifications to a form approved by the committee to</p> <ul style="list-style-type: none"> (a) correct grammatical and typographical errors; (b) insert or revise cross-references; and (c) improve its readability or formatting.

PART II - COMPOSITION OF THE COMMITTEE

As part of its review of the Code, the committee also considered questions related to its composition. The committee's composition and the selection process for its members is a matter that is addressed under provisions of both the Code and the Rules.

The Code currently provides that two members are elected by secret ballot in the caucus of the government, and two members are elected by a secret ballot in the caucus of the opposition. The fifth member is elected by a majority of the four other members of the committee.⁴ The selection process, provided for in both the Code and the Rules, is formalized by the presentation of a motion by the Leader of the Government, seconded by the Leader of the Opposition, which is deemed adopted without debate or vote when moved.⁵ When a vacancy occurs in the membership of the committee, the Rules provide that the replacement member is elected by the same method as the former member being replaced.

During the 1st Session of the 42nd Parliament, in order to accommodate new senators who were not, at the start of that session, members of a recognized party, the Senate adopted a motion on December 7, 2016 regarding the composition of the committee for the remainder of that session.⁶

The Code has not been amended as have other Senate instruments to reflect changes within the Senate. Notably, the Rules and the *Senate Administrative Rules* have been amended to include recognized parliamentary groups composed of at least nine senators formed for parliamentary purposes.

In its [Seventh Report](#), the committee underscored the importance for the Senate, in the next Parliament, to establish the parameters of the committee's composition to reflect the new realities of the Senate. It also outlined principles regarding the committee's composition.

Building on the Seventh Report, your committee further examined this question. After thorough deliberations, your committee presents the below guiding principles for establishing the parameters of its composition.

⁴ [Ethics and Conflict of Interest Code for Senators](#), subsection 35(4).

⁵ Ibid., subsection 35(5); [Rules of the Senate of Canada](#), subsection 12-27(1).

⁶ [Journals of the Senate](#), 1st Session, 42nd Parliament, Issue N° 84, December 7, 2016.

In developing these principles, your committee considered the specific nature of its mandate and how it operates. As well, it considered the history of the committee and the reflections of senators at the time of its initial formation. In the 2005 report recommending that the Senate adopt the first version of the Code, the Standing Committee on Rules, Procedures and the Rights of Parliament (RPRD) underscored that given the committee's key role under the Code, "the composition of the committee and the rules governing its selection and operation are extremely important." The report also recommended that three goals should govern how the committee is structured: first, a small committee should be favoured so that confidentiality is enhanced; second, the committee should be as non-partisan as possible; and third, members of the committee should be representative and have the confidence of other senators.⁷

Since its establishment, the committee has been committed to carrying out its work in accordance with these goals, in addition to the values and practices it has developed over the years. For example, one of the key considerations for the committee is how best to protect the integrity of the Senate, ensuring that the committee follows an impartial and objective process that balances the rights and privileges of the Senate with the rights of an individual senator who has been the subject of an inquiry.

Further, the committee has historically operated by consensus. Your committee is of the view that its composition should reflect the impartial and non-partisan nature of its work and facilitate its ongoing practice of making decisions by consensus. Accordingly, your committee recommends the below guiding principles.

Principles Guiding the Composition of the Committee

First, as underscored in the Seventh Report, the composition of the committee should be fair and balanced. Specifically, this means that each recognized party and recognized parliamentary group should be allowed to select a member of the committee. Thus, each recognized party and recognized parliamentary group should have the opportunity to select one representative to the committee from their party or group, and an additional member should be elected, by secret ballot, by all senators after the parties and groups have selected their respective members and made their nomination public.

During its deliberations, your committee agreed that affiliation to a recognized party or recognized parliamentary group should not be the sole determining factor for the selection of committee members. Indeed, your committee wishes to ensure that the participation of all senators in the selection process remains a priority. In addition, having an additional member elected by all senators after each party and group has selected its respective member and made that nomination public would provide senators with the opportunity to consider candidates that would bring different perspectives and experiences from those already selected to complete the committee's composition.

Second, the size of the committee should be flexible and take into consideration the potential fluctuation in the number of recognized parties and recognized parliamentary groups. The size of the committee could change according to fluctuation in the number of recognized parties and recognized parliamentary groups at the beginning of a session, while maintaining a minimum number of five members. Thus, if the number of parties or groups increases, the size of the committee would increase accordingly. By contrast, if the number of parties or groups decreases, each party and group would continue to select their

⁷ Standing Committee on Rules, Procedures and the Rights of Parliament, [Third Report](#), May 11, 2005.

representative to the committee and the number of members elected by all senators would increase to ensure that there is always a minimum of five members on the committee.

Third, where a member ceases to be a senator, or following the death of a member, the member in question should be replaced in the same manner as provided for under the selection process recommended by your committee.

Fourth, a change of affiliation of a committee member during a parliamentary session should have no impact on the membership of that senator on the committee for the duration of the session. In this regard, your committee underscores the importance of stability and continuity in its membership as it is often called to consider complex questions that benefit from the committee's institutional memory. This principle also aligns with your committee's intent to maintain impartiality and neutrality in its deliberations and determinations.

Your committee takes this opportunity to express that, in order to preserve stability and ensure a certain level of institutional memory, it would be preferable to maintain the membership of the committee for the duration of a Parliament rather than for the duration of a session. Your committee notes, however, that providing for the continuity of its membership for the duration of a Parliament would require legislative amendments.

Fifth, to avoid any risk of delay in the establishment of the committee at the beginning of each session and to allow continuity in its work, the committee should be reinstated at the first opportunity with the last membership from the previous session until a new membership is selected. When the committee is established, it should be done within a certain number of days after the start of a new session.

Finally, senators should not be prohibited from serving on both the committee and the Standing Committee on Internal Economy, Budgets and Administration (CIBA). Senators holding a leadership position within a recognized party or recognized parliamentary group should also be allowed to serve on the committee.

In its Seventh Report, your committee was of the view that no member of the committee should serve on CIBA as a regular member. Your committee recognizes the importance of separating the work of the committee from that of CIBA and the role of senators in leadership positions. It is also mindful of the increased risk of potential conflicts of interest inherent to serving on both committees or serving on the committee while holding a leadership position. However, all senators, including members of the committee, are expected to perform their parliamentary duties with dignity, integrity and honour. Your committee trusts that members who also serve on CIBA and those who hold a leadership position would take the appropriate measures to prevent any such issues from arising while they serve on the committee, for example, by recusing themselves from a committee study if necessary.

Your committee also recognizes that imposing such membership restrictions could negatively impact smaller recognized party or recognized parliamentary groups. Indeed, smaller parties or groups could be confronted with the challenge of not having enough senators in their parties or groups who possess the interest, experience, or skills appropriate to serve on each committee and, as well, may have numerous other committee obligations.

By adopting this report, the Senate would express its support for the forementioned principles regarding the composition of your committee finding expression in the Rules.

RECOMMENDATIONS

Recommendation 1

The proposed amendments in Part I of this report require changes to various sections of the Code. Your committee recommends that these amendments be adopted and come into force 15 calendar days after the adoption of this report by the Senate. This delay is to allow the SEO an opportunity to update materials and documents, particularly those on the website of the SEO, to reflect changes made to the Code.

As well, your committee recommends that the Law Clerk and Parliamentary Counsel maintain a consolidation of the Code that reflects these amendments and be empowered, in preparing the consolidation, to renumber the provisions as necessary and to correct any grammatical or typographical errors, as well as to make any other changes of a non-substantive nature that may be required. The consolidation will be available on the website of the Senate Ethics Officer.

Recommendation 2

The principles explained in Part II of this report would require amendments to the Code and the Rules. While your committee has the authority to propose amendments to the Code, it does not have the mandate to recommend amendments to the Rules; that is within the mandate of the Standing Committee on Rules, Procedures and the Rights of Parliament (RPRD).

Accordingly, your committee recommends that the Senate direct RPRD to consider and propose to the Senate amendments to the Rules in relation to the committee's composition consistent with the principles expressed in this report. Because certain Code amendments will be dependent on the content of the Rules, your committee believes that it should only proceed with recommending Code amendments related to its composition once a report of RPRD in this regard is adopted by the Senate.