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# Interim Report on the Senate's Order of Reference of December 7, 2023

Report of the Standing Committee on Ethics  
and Conflict of Interest for Senators

The Honourable Judith G. Seidman, *Chair*  
The Honourable Brent Cotter, *Deputy Chair*

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# THE COMMITTEE MEMBERSHIP

The Honourable Judith G. Seidman, *Chair*

The Honourable Brent Cotter, *Deputy Chair*

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## ORDER OF REFERENCE

Extract from the *Journals of the Senate* of Thursday, December 7, 2023:

The Senate resumed debate on the motion of the Honourable Senator Saint-Germain, seconded by the Honourable Senator Clement:

That the case of privilege concerning events relating to the sitting of November 9, 2023, be referred to the Standing Committee on Ethics and Conflict of Interest for Senators for examination and report;

That, without limiting the committee's study, it consider, in light of this case of privilege:

1. appropriate updates to the Ethics and Conflict of Interest Code for Senators; and
2. the obligations of senators in the performance of their duties; and

That, notwithstanding any provision of the Rules, when the committee is dealing with the case of privilege:

1. it be authorized to meet in public if it so decides; and
2. a senator who is not a member of the committee not attend unless doing so as a witness and at the invitation of the committee.

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

*Interim Clerk of the Senate*  
Gérald Lafrenière

## Introduction and Context

Senators are always expected to uphold the highest standards of conduct. This expectation is set out explicitly in key Senate governance documents, including the *Ethics and Conflict of Interest Code for Senators* (Code) and the *Senate Harassment and Violence Prevention Policy* (HVP Policy). Senators are also expected to be actively engaged in Senate business. This includes debating issues of national importance; taking positions on controversial policy matters and legislation; and, at times, zealously advancing political positions both in the course of Senate proceedings and in other public forums. To do that, parliamentary privilege guarantees freedom of speech to senators when they are taking part in Senate proceedings. Parliamentary privilege also protects senators against any attempts to intimidate or obstruct them with respect to their participation in any such proceedings.

Most of the time, these two expectations can coexist: controversial issues are debated respectfully, and opposite points of view can be expressed without senators feeling threatened or intimidated by their colleagues. The events relating to the sitting of November 9, 2023, and posts on social media in the days that followed, however, challenge the limits of vehement political disagreement and intimidation. They also raise additional questions, including the extent to which these limits are properly expressed within the rules of conduct, how allegations of inappropriate conduct between senators should be adjudicated, and who should adjudicate them.

On December 7, 2023, the Senate adopted an order of reference authorizing your committee to examine and report on the November 9 case of privilege and the challenges that it brought. From the outset, your committee understood its mandate to be prospective in nature. As such, no senator was invited to testify about the allegations.

This report contains no findings of fact, nor does it offer any commentary about the specific conduct of any senator on or after November 9. Instead, your committee has carefully studied the issues raised by this case of privilege and is hopeful that its findings and observations can serve as a strong foundation for a broader conversation on the parameters of civility in the Senate.

The following provides a brief overview of the context and allegations that led to the November 9 case of privilege. This overview is based on [the \*Debates of the Senate\*](#).

On November 9, 2023, the Senate began third-reading debate on Bill C-234, An Act to amend the Greenhouse Gas Pollution Pricing Act, with a speech from the bill's sponsor in the Senate. At the end of these remarks, the Speaker of the Senate, the Honourable Raymonde Gagné, recognized one senator who then moved the adjournment of the debate. Several other senators rose to speak; however, the Speaker had already recognized the senator who moved the debate's adjournment, thus she put that question to the Senate. This led to many senators "yelling" at the same time, but without being recognized, and this created a lot of confusion. Eventually, a point of order was raised.<sup>1</sup>

As the Speaker noted in her ruling several weeks later, it was during this time that some senators were heard yelling "insulting and unacceptable remarks ... across the Senate Chamber."<sup>2</sup> Ultimately, the motion to adjourn the debate was put to a standing vote, with a one-hour bell. While the bells were ringing, the "exceptional chaos"<sup>3</sup> that began during the point of order about who should have been recognized to speak first continued.<sup>4</sup>

Following the November 9 sitting, the dispute continued on social media. Some senators later reported having again felt intimidated and threatened as a result of some social media posts, including posts authored or shared by other senators.<sup>5</sup>

On November 21, the Honourable Senator Raymonde Saint-Germain raised a question of privilege concerning "attempts of intimidation of senators that occurred within the Senate Chamber and within the Senate of Canada Building on Thursday, November 9, 2023."<sup>6</sup> As some senators expressed during consideration of this question of privilege, they felt personally intimidated and threatened in the course of these exchanges.<sup>7</sup>

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<sup>1</sup> [\*Debates of the Senate\*](#), November 9, 2023.

<sup>2</sup> [\*Debates of the Senate\*](#), December 5, 2023 (Raymonde Gagné), p. 5041.

<sup>3</sup> *Ibid.*, p. 5040.

<sup>4</sup> *Ibid.*, pp. 5040–1.

<sup>5</sup> *Ibid.*, p. 5041.

<sup>6</sup> [\*Debates of the Senate\*](#), November 21, 2023 (Raymonde Saint-Germain), p. 4841.

<sup>7</sup> *Supra* n. 2 (Raymonde Gagné), p. 5041.



In her ruling of December 5, the Speaker determined that the allegations constituted a prima facie question of privilege. In her own words,

*[t]he events of November 9 involved a disproportionate reaction to a motion to adjourn debate. Senators shouted at colleagues who were operating within the framework of the Rules. We heard from senators about the aggressive and menacing tone used toward them. There were threats to penalize them by blocking work in committee or in the chamber if they did not give way and concede to a particular outcome. Insulting and unacceptable remarks were hurled across the Senate Chamber. All these events can be understood as attempts to intimidate colleagues and to unduly constrain, or even to extract retribution against them in the performance of their duties as parliamentarians.<sup>8</sup>*

After the Speaker's ruling, Senator Saint-Germain moved that the case of privilege be referred to your committee for examination and report. In her remarks, she noted that some senators had apologized for some of the conduct that had occurred. She also made it clear to the chamber that she was not seeking to sanction any senator after the events surrounding the November 9 sitting.<sup>9</sup> The Senate adopted Senator Saint-Germain's motion on December 7, and the matter was referred to your committee for further consideration.

## The Committee's Study

### Order of Reference and Study Objectives

Your committee began its study by analyzing the order of reference to establish its study objectives.

This order of reference is unique in two ways. First, your committee has never been tasked with examining a case of privilege. Matters of privilege are generally referred to the Standing Committee on Rules, Procedures and the Rights of Parliament (RPRD). Second, this order of reference is broader than usual, as it asks your committee to consider, in light of this case of privilege, "appropriate updates

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid. (Raymonde Saint-Germain), p. 5065.



to the Ethics and Conflict of Interest Code for Senators”, as well as “the obligations of senators in the performance of their duties”.

Your committee also considered that Senator Saint-Germain was not seeking sanctions and that she expressed a desire that this study be forward-looking instead. In addition, and as noted by the Speaker in her ruling, “[s]enators have recognized the importance of the issue and have in some cases offered their sincere apologies, which are matters of public record.”<sup>10</sup>

As such, your committee determined that a prospective approach to its study would be most useful to the Senate. With this in mind, your committee is focused on studying whether the Code’s current provisions sufficiently address the kind of conduct alleged to have occurred in relation to the November 9 sitting, including what transpired afterwards on social media. In particular, your committee considered whether and how the expectations set out in sections 7.1 and 7.2 of the Code could be clarified. Your committee is considering how allegations of inappropriate conduct should be adjudicated when all parties involved are senators, including which entity is best placed to adjudicate such allegations.

## **Senate Mechanisms Governing the Conduct of Senators**

To help assess potential Code amendments, the following sections provide an overview of the relevant mechanisms that exist in the Senate to deal with allegations of inappropriate conduct by a senator.

### **Question of Privilege**

A question of privilege arises when a senator alleges that a matter constitutes a grave and serious breach of parliamentary privilege affecting the Senate, a committee, or individual senators. It was the mechanism used by Senator Saint-Germain in this case.

“Parliamentary privilege is the sum of certain rights enjoyed by each House collectively ... and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other

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<sup>10</sup> Ibid. (Raymonde Gagné), p. 5040.

bodies or individuals.”<sup>11</sup> Individual senators possess a series of rights falling within this definition, including freedom of speech in parliamentary proceedings; freedom from arrest in civil cases; exemption from jury duty and from compelled appearance as a witness in a court case; and freedom from obstruction and intimidation.<sup>12</sup>

A senator can raise a question of privilege about *any* conduct that is engaged in by *anyone* and is alleged to have breached parliamentary privilege. In most cases, questions of privilege arise about conduct occurring outside formal Senate proceedings and alleged to prevent the Senate, a committee, or an individual senator from performing their constitutional role. It is generally “not possible to claim privilege against a proceeding of the Senate.”<sup>13</sup> Any concerns about conduct forming part of Senate and committee proceedings that cannot be addressed by raising a question of privilege may be the subject of a point of order instead.

The *Rules of the Senate* (the *Rules*) make it clear that a breach of privilege “affects all Senators and the ability of the Senate to carry out its functions” and that “[t]he preservation of the privileges of the Senate is the duty of every Senator and has priority over every other matter before the Senate.”<sup>14</sup> As such, chapter 13 of the *Rules* outlines a detailed process for addressing an alleged breach of privilege and stresses that such a matter must be raised and considered as soon as possible. The *Rules* allow a limited time for debate, after which the Speaker must rule on “whether a prima facie question of privilege has been established.”<sup>15</sup> If so, the *Rules* state, “the Senator who [first] raised the matter may immediately move a motion to seek a remedy or to refer the case of privilege to the Standing Committee on Rules, Procedures and the Rights of Parliament for investigation and report.”<sup>16</sup> RPRD is then expected to study the issue, conclude whether a breach of privilege did indeed occur, and, if so, recommend a sanction or a remedy.

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<sup>11</sup> Thomas Erskine May, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th ed., 2011, p. 203.

<sup>12</sup> Senate of Canada, *Senate Procedure in Practice*, “Chapter 11: Privileges and Immunities,” June 2015, p. 226.

<sup>13</sup> *Ibid.*, p. 216.

<sup>14</sup> Senate of Canada, *Rules of the Senate of Canada*, May 2024, [Rule 13-1](#).

<sup>15</sup> *Ibid.*, [Rule 13-5\(5\)](#).

<sup>16</sup> *Ibid.*, [Rule 13-6\(1\)](#).

## Point of Order

“A point of order is a complaint or question raised by a senator who believes that the rules, procedures or customary practices of the Senate have been incorrectly applied or overlooked during chamber or committee proceedings.”<sup>17</sup>

Senators may raise points of order about a wide range of procedural matters. Points of order are also the proper mechanism for raising issues related to order and decorum during proceedings and for objecting to the use of unparliamentary language during debates both in the chamber and in committee.<sup>18</sup>

As a general rule, a senator should raise a point of order as soon as reasonably possible even if it interrupts proceedings. A point of order related to conduct that occurred in the Senate Chamber must be raised in the Senate. The Speaker is then responsible for ruling on the issue, subject to any appeal to the Senate.<sup>19</sup> Similarly, a senator may raise a point of order in committee in relation to conduct that occurred in committee. The committee chair is then responsible for ruling on the point of order, subject to an appeal to the full committee.<sup>20</sup>

## The *Ethics and Conflict of Interest Code for Senators*

The Code is an instrument that the Senate adopted as an exercise of its collective privilege to discipline its own members. Its operation is thus an exercise of the Senate’s privileges as much as is the process for a question-of-privilege.

The Code establishes a series of rules of conduct by which all senators must abide. Of particular note in this context are sections 7.1 and 7.2, which were added to the Code in 2014 to “reassert the commitment of the Senate and each senator to the highest standard of conduct”:<sup>21</sup>

**7.1 (1)** *A Senator’s conduct shall uphold the highest standards of dignity inherent to the position of Senator.*

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<sup>17</sup> *Senate Procedure in Practice*, “Chapter 10: Points of Order,” p. 215.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, pp. 219–21.

<sup>20</sup> *Ibid.* It is also possible for the committee to report to the Senate on issues arising a committee.

<sup>21</sup> Senate of Canada, Standing Committee on Conflict of Interest for Senators, *Fifth Report*, June 13, 2014.

**7.1 (2)** *A Senator shall refrain from acting in a way that could reflect adversely on the position of Senator or the institution of the Senate.*

**7.2** *A Senator shall perform his or her parliamentary duties and functions with dignity, honour and integrity.*

The Code's scope of application is very broad. In particular, section 7.1 applies to *any* conduct by a senator that could reflect on the position of senator or on the institution of the Senate - regardless of whether or not the conduct occurred in the exercise of the senator's parliamentary functions.<sup>22</sup> Meanwhile, section 7.2 covers any conduct that relates to the performance of a senator's parliamentary duties and functions.

Furthermore, given that the Code itself is an exercise of the Senate's collective privileges, it also applies to conduct taking place in the course of Senate and committee proceedings. For instance, sections 12 and 13 require an inquiry into the proceedings to determine if a senator participated in a debate in circumstances that would breach the Code's prohibition against doing so after that senator declaration of private interest. The Senate Ethics Officer (SEO) also expressed this view in the 2019 inquiry report concerning a senator . In that report, he concluded that even if the content of that senator's website constituted an exercise of freedom of speech (although, in his view, it did not), the Code itself constituted a constraint imposed by the Senate on freedom of speech.<sup>23</sup> Following this reasoning, the SEO could have decided to inquire into the matter, even if it had been related to speech uttered in parliamentary proceedings. This position is also consistent with a 2018 Court of King's Bench of Alberta decision, which confirmed the Alberta Ethics Commissioner's jurisdiction to investigate statements made during Alberta Legislative Assembly proceedings.<sup>24</sup>

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<sup>22</sup> In a directive to the SEO, your committee noted, "The Senate's privilege to regulate the conduct of its members is not limited to the conduct of its members in the Senate Chamber; it includes all conduct of a Senator, whether directly related to parliamentary duties and functions or not, that could undermine the fundamental integrity, dignity and authority of the Senate." See Senate of Canada, Standing Committee on Ethics and Conflict of Interest for Senators, *Directive 2015-02: Rules of General Conduct (section 7.1)*, July 27, 2015, p. 1.

<sup>23</sup> Senate Ethics Officer, *Inquiry Report under the Ethics and Conflict of Interest Code for Senators concerning Senator Lynn Beyak*, March 19, 2019, pp. 18–9.

<sup>24</sup> *Mclver v Alberta (Ethics Commissioner)*, 2018 ABQB 240, paras. 50–1.

The Code also outlines a detailed enforcement process if a senator breaches its provisions. The SEO can initiate a preliminary review of an alleged breach of the Code if they have reasonable grounds to believe such a breach occurred or if a senator requests such a review. If the SEO finds that the complaint is founded, your committee is expected to study the SEO's report and recommend appropriate sanctions or remedial measures to the Senate as required, and the Senate may then adopt those recommendations.

It is important to note, however, that a different process applies for section 7.3 of the Code, which states, "A senator shall refrain from engaging in conduct that constitutes harassment and violence." Breaches of that provision are addressed by a separate process, described below.

### **The Senate Harassment and Violence Prevention Policy**

Unlike the question-of-privilege process and the general enforcement process under the Code, the HVP Policy reflects a series of statutory obligations imposed on the Senate by Part II of the [\*Canada Labour Code\*](#), Part III of the [\*Parliamentary Employment and Staff Relations Act\*](#), and the [\*Work Place Harassment and Violence Prevention Regulations\*](#).

The HVP Policy is an instrument adopted by the Standing Committee on Internal Economy, Budgets and Administration (CIBA), and the Senate amended the Code in 2021 to fully implement the HVP Policy's regime. Its broad purpose is to promote a Senate workplace that is free of harassment and violence. The definition of *harassment and violence* in the HVP Policy reproduces the *Canada Labour Code* definition. That definition covers "any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness ... including any prescribed action, conduct or comment".<sup>25</sup>

The HVP Policy applies to all senators—as well as to all employees, contractors, and volunteers working for the Senate—in any "place or context where a person to whom this policy applies is engaged in work for the Senate or is otherwise

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<sup>25</sup> Senate of Canada, [\*Senate Harassment and Violence Prevention Policy\*](#), February 2021, s. 1.4.

representing the Senate,” other than Senate or committee proceedings.<sup>26</sup> As such, among the four mechanisms described in this report, the resolution process set out in the HVP Policy is the only one whose application unequivocally depends on whether parliamentary privilege covers the alleged conduct. To that end, section 1.10.9 of the HVP Policy provides that if CIBA determines that the alleged conduct occurred in the course of Senate or committee proceedings, the resolution process automatically ends.

Under the HVP Policy, a senator—or an employee, contractor, or volunteer working for the Senate—who experiences harassment and violence in the workplace can submit a “notice of occurrence” to the “designated recipient”. (In the Senate’s case, the designated recipient is a third-party entity with whom CIBA has chosen to enter into contract.) The designated recipient then initiates a process that can result in an investigation, if warranted.

Specific rules govern the process that follows an investigation if the allegations are directed at a senator. If the investigation results in a report and the “responding party” is a senator—i.e., a senator who is alleged to have engaged in harassment or violence—the report is provided to the SEO, who must then transmit it to your committee. In a manner somewhat analogous to its consideration of an inquiry report under the Code’s general enforcement process, your committee must then study the report and issue recommendations on appropriate remedies or sanctions either to the Senate or, in certain cases, to CIBA in a confidential manner.

## **What the Committee Heard**

On April 10, 2024, your committee began examining the case of privilege concerning events related to the sitting of November 9, 2023. Over five committee meetings, your committee heard from 13 witnesses—academics, government experts, and lawyers. Your committee also received written submissions from several academics. Your committee is grateful for the valuable contributions of those who participated in this examination.

It should be noted that these committee meetings took place in camera. The evidence your committee received is summarized thematically below, but it has

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<sup>26</sup> Ibid., s. 1.3.

been anonymized to preserve the confidentiality of CONF proceedings, as authorized by the *Rules of the Senate*.

## **Possible changes in relation to Sections 7.1 and 7.2 of the Code**

As part of its prospective study of the case of privilege concerning events related to the sitting of November 9, your committee agreed to consider whether the expectations set out in sections 7.1 and 7.2 of the Code need to be clarified.

Witnesses who appeared before your committee disagreed on the extent to which changes to the Code are necessary. Those in favour of amendments to the Code also diverged on the ideal form of such potential amendments.

In terms of the events of November 9, one witness explained that the current wording of sections 7.1 and 7.2 could be interpreted to either include or exclude the alleged behaviour. As such, intervention by the SEO could be interpreted as political if the issue in question becomes partisan in nature. However, another witness posited that sections 7.1 and 7.2 provide a certain degree of flexibility that allows for more adaptable approaches that respond to individual circumstances.

Several witnesses proposed specific changes to the Code. One witness recommended amending the Code to define more explicitly the behaviour expected of senators towards each other, with their staff, and with the broader public. Specifically, one witness argued that sections 7.1, 7.2, and 7.3 should explicitly suggest better conduct and clearly define prohibited behaviour.

### ***Principles Versus Rules-Based Approaches***

Many witnesses discussed the extent to which sections 7.1 and 7.2 ought to be aspirational or prohibitive (i.e., should the Code set out principles or use a rules-based approach?). Some witnesses explained that the two concepts are not mutually exclusive and that the Code could be both principles- and rules-based, as is the case in other jurisdictions. One witness explained that both types of approaches are necessary, in that the Code must define acceptable behaviours and provide consequences for breaches of those behaviours. Indeed, your committee heard that the Canadian *Conflict of Interest Code for Members of the House of Commons* sets out certain general behavioural expectations for its members in its



principles section. One of these expectations is that they perform their public duties with honesty and serve the public interest.

One written submission that your committee received dealt with this question in depth. The submission outlined how the advantages of a principles-based approach include greater flexibility and clarity about the values being encouraged, while the disadvantages include variance in interpretation and criticism of a potential commissioner's interpretation. For the rules-based approach, advantages include clarity of interpretation and predictability, while disadvantages include inflexibility and gaps resulting from unpredictability.

### ***The United Kingdom's Experience***

Throughout your committee's consideration of these issues, witnesses drew comparisons between the Senate's ethics code and those of other jurisdictions, especially that of the United Kingdom.

One witness suggested expanding the Code to include other principles, such as honesty, objectivity, and selflessness, mirroring the U.K.'s [The Seven Principles of Public Life](#) (the "Nolan Principles"), introduced in 1995.<sup>27</sup> A witness stated that the Nolan Principles could be adapted to the Canadian context and be embedded in the Code to provide more clarity. Some witnesses explained how drawing from these principles has allowed for an evolving interpretation of the U.K. Parliament's codes of conduct—something that has assisted in responding to novel or evolving issues.

Several witnesses underscored the importance of the concept of "personal honour" as a key part of the House of Lords' code of conduct. Historically, when the Crown granted peerages to members of the House of Lords, the Lords were considered to be recipients of an honour bestowed upon them personally. In the 1970s, it was considered a long-standing custom that members of the House of Lords should act on their "personal honour," especially in their conduct towards other members.

In 2001, after the adoption of the *House of Lords Act 1999*—which removed most hereditary peers from the House of Lords—and following a recommendation from

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<sup>27</sup> The principles are selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.

the Committee on Standards in Public Life, the House of Lords implemented its first code of conduct. For the first time, the 2001 *House of Lords’* code of conduct embodied the notion that members “should act always on their personal honour.”<sup>28</sup>

While the House of Lords code of conduct has been reviewed 13 times since 2010,<sup>29</sup> the concept of personal honour remains a key part of the document.

### ***Developing a Guide to the Code***

Some witnesses discussed the advantages of maintaining the status quo, which provides the SEO with the flexibility and discretion to judge whether pursuing enforcement actions would be in the public interest. The current approach also enables the SEO to interpret the rules and issue guidelines to inform senators of the conduct expected of them.

Others discussed the role that a guide to the Code could play in helping to interpret its rules and in providing clear examples of expected behaviour. The Scottish Parliament was cited as an example; it has both a *Code of Conduct for Members of the Scottish Parliament* and an accompanying *Guidance on the Code of Conduct for Members of the Scottish Parliament* (the Guidance). The Guidance provides more information on the behaviour expected of members in the chamber and in committee, as well as on social media. Your committee also learned that members of the Scottish Parliament (MSPs) must comply with general conduct requirements, along with standing orders and any other parliamentary decisions relating to the conduct of MSPs. It should be noted, however, that the Guidance section entitled “Guidance issued by the Presiding Officer on conduct” specifies that it is ultimately a matter for the presiding officer to rule on issues of members’ conduct in the chamber.

Similarly, your committee heard how both the House of Lords and the U.K. House of Commons have a high-level code of conduct applicable to members of their

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<sup>28</sup> House of Lords, *Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct*, 2010, p. 3. The latest *Code of Conduct for Members of the House of Lords*—the 13th edition, published in September 2023—stipulates that Members of the House “should act always on their personal honour in the performance of their parliamentary duties and activities” (see p. 2).

<sup>29</sup> The first edition came into force in 2010.

respective chambers. They also have a supplementary guide to their code of conduct, with the guide being subject to frequent revisions and amendments. The U.K. House of Commons also has a third document, the *Procedural Protocol in respect of the Code of Conduct*, that explains how investigations are conducted. One witness explained how this approach has contributed to the guide becoming quite long and repetitive due to frequent revisions. The witness also identified certain challenges inherent to this approach. For example, House of Lords officials expressed that it has sometimes been difficult to harmonize the code and the guide and to delineate what information belongs in each document.

One witness explained that the Senate's interpretation of sections 7.1 to 7.2 of the Code could be developed through internal discussions within each of the recognized parties and parliamentary groups, facilitated by a senator acting as a designated ethics facilitator or adviser. This could assist in developing a shared understanding of ethical principles beyond the Code and lead to proposals for amendments to it.

Finally, your committee heard how, in addition to the formal rules and guidance provided to members of the U.K. Parliament, "Valuing Everyone" training is offered to members of both the House of Lords and the House of Commons as part of a culture-change initiative. Your committee heard that the training is mandatory for members of the House of Lords, with sanctions imposed for those who do not complete the training.

## **Applying the Code to Senate Proceedings**

Witnesses also questioned whether the Code sufficiently addresses the events of November 9, 2023. Many held diverging views, with some arguing that the Code is sufficient and others offering examples of potential changes.

For example, one witness stated that the Code should be amended to include a new section with specific examples of improper interpersonal behaviour and examples of positive behaviour during Senate proceedings and when engaging in committee work.

In contrast, other witnesses told your committee that amending the Code to address conduct within the Senate Chamber is unnecessary. Rather, one witness suggested that each recognized party and recognized parliamentary groups should

create its own enforceable codes of conduct—something recommended in 1991 by the Royal Commission on Electoral Reform and Party Financing. Another witness explained that existing parliamentary procedures—such as raising a point of order or a question of privilege in the Senate for the Speaker to adjudicate and the Senate to consider—should be the primary mechanisms for addressing senators’ conduct to preserve the Senate’s autonomy and control over its proceedings and membership.

Witnesses also informed your committee of the approaches taken by other jurisdictions to address matters of conduct during parliamentary proceedings. For example, one witness explained that, in the House of Lords, the whips play a role in encouraging positive conduct. Your committee also heard that the Committee on Standards in Public Life encourages the whips to work together to coordinate their disciplinary processes, to the extent possible. As a result, each party maintains control of its own internal disciplinary process, and this approach enhances the public’s confidence that all members are subject to similar internal processes.

In the House of Lords, bullying or harassment during parliamentary proceedings has never been formally investigated, although a standing order provides that members should avoid personally insulting or offensive speeches. In such instances, the member responsible is given the opportunity to apologize. If necessary, the clerk at the table can read out the standing order in the chamber.

## **Applying the Code to Social Media**

Finally, your committee asked witnesses whether the Code’s current framework is sufficient to address the senators’ conduct on social media. Though witnesses seemed to agree that senators’ conduct on social media should be subject to enforcement, some felt the Code is already broad enough to address misconduct on social media, while others argued that additional measures are necessary to capture that conduct.

Those who felt the Code can already be interpreted to include senators’ conduct on social media explained that social media is akin to other platforms like television and radio. Therefore, the laws of defamation and harassment apply regardless of the medium. Several witnesses also explained that the inclusion also makes such conduct subject to a possible investigation by the SEO.

Among witnesses who were in the latter group, one advocated for a stand-alone policy regulating the use of social media that could be applicable to all senators and Senate employees, with different rules for each group. The witness underscored that social media rules should extend to staff, because staff members sometimes post on behalf of their respective senators. The Government of Alberta's *Social Media Policy* was raised several times as an example that addresses this challenge. Another witness argued that internal party or parliamentary group codes of conduct could address conduct on social media. Several witnesses advocated for including specific rules about senators' conduct on social media in the Code.

Again, examples from other jurisdictions were provided to assess diverse ways in which senators' conduct on social media could be regulated in the Senate. One witness cited the Legislative Assembly of Ontario as an example of a legislature that developed social media guidelines for its members and incorporated them into legislation in 2020.

During discussions about conduct on social media, the theme of generational differences between social media users was mentioned frequently. Some stressed that this reality should be considered when developing a social media policy for senators.

Protecting free speech was also an area of concern for some witnesses. Other jurisdictions have also addressed this issue. Your committee heard that the U.K.'s *Code of Conduct for Members of the House of Lords* requires the Commissioners for Standards and the relevant committee to recognize the constitutional right to freedom of speech in parliamentary proceedings as a primary consideration. It was explained that the *Guide to the Code of Conduct* is clear that the commissioners do not investigate the expression of a member's views or opinions, whether they were expressed inside or outside the chamber.

Finally, your committee heard about the importance of protecting parliamentary privilege, as well as the interaction of the Code with other rules and mechanisms that apply to senators.

## **The Role of the Senate Ethics Officer**

Your committee also explored the role of the Office of the Senate Ethics Officer, along with questions related to the enforcement of the Code, including the SEO's role and powers when a senator fails to cooperate with an inquiry.

Some witnesses discussed what role the SEO could play in relation to the conduct between senators. For instance, one witness described how the SEO could create a third-party body to act as an agent to address such matters. Several other witnesses posited that the SEO should not regulate how senators interact with each other.

Several witnesses suggested expanding the SEO's role to receive complaints from the public, with some also recommending that a public complaints process be created or that the role of the public be clarified within the Code. One witness explained that they felt the role of the public as currently contemplated in the Code is vague and confusing. Some discussed how, in the House of Lords and the U.K. House of Commons, public complaints can be received by the houses' respective commissioners and how a helpline was established to allow members of the public to report bullying, harassment, and sexual misconduct towards them by parliamentarians.

Your committee also heard how the House of Lords currently has two Commissioners for Standards who are experienced investigators who investigate complaints against members for any breaches of their respective codes of conduct. They are recruited through an open competition, and Conduct Committee members are part of the selection panel. Although there are presently two commissioners, they work separately on their own investigations and are not full-time House of Lords employees.

## **The Role of the Committee**

Many witnesses underscored the importance of collaboration between your committee and the SEO to resolve ethical issues among senators. Both entities approach questions from different perspectives, resulting in a more fulsome understanding, and collaboration assists in building trust among senators and with the public.

Witnesses also discussed whether your committee should play a larger role in the enforcement process, including as a potential appeal body that reviews an inquiry report's conclusions. Some witnesses explained how the House of Lords Conduct Committee—created in 2019 and responsible for overseeing the codes of conduct and the work of the House of Lords Commissioners for Standards—is also the appellate body in the consideration of the standards commissioners' 'findings of breaches of the code of conduct and any recommended sanctions.'<sup>30</sup> The witnesses described how the memberships of both the Commons Select Committee on Standards and the Lords Select Committee on Conduct include lay members with expertise in professional misconduct regimes. These lay members have full speaking and voting rights within their respective committees.

In the House of Lords, the member in question has the right to appeal the commissioner's findings or any proposed sanctions, or both. For cases of bullying or harassment in which the complaint is dismissed, the complainant also has a right to appeal. Once the committee hears an appeal, it reports its recommendations to the House of Lords, which makes the final decision without debate.

However, the process works differently in the U.K. House of Commons, whose Committee on Standards is not involved in bullying and harassment cases. Instead, an Independent Expert Panel—first created in 2020—determines sanctions and hears appeals of the standards committee's decisions.

## **Adjudicating Allegations of Senator-to-Senator Misconduct**

Most witnesses agreed that allegations of inappropriate conduct between senators should be adjudicated by their peers rather than by the SEO because of the Senate's unique environment. One witness cautioned that involving an external body or party to resolve such matters could undermine the Senate's autonomy to control its proceedings and its members. Another witness proposed that conflicts between senators should be discussed within recognized parties and parliamentary

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<sup>30</sup> Before 2019, the House of Lords Committee for Privileges and Conduct was the appellate body under the *Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct*. When the first edition of the code came into force in 2010, one of the committee's responsibilities was to hear appeals under the code. This committee was composed exclusively of members of the House of Lords.



groups to find common ground and a way forward. Such discussions could be facilitated by an ethics facilitator for the relevant groups.

As well, your committee heard that the U.K. Parliament’s Independent Complaints and Grievance Scheme (ICGS) applies to conduct in which the parties involved are parliamentarians. Under the ICGS, one of the Commissioners for Standards can investigate complaints related to parliamentary duties and activities. This commissioner makes a finding that can be appealed to the Conduct Committee. The regime applies to both the House of Lords and the House of Commons and has been described as “the first of its kind in any Parliament in the world”.<sup>31</sup>

## Other Considerations

Throughout your committee’s prospective study of the case of privilege concerning events relating to the sitting of November 9, 2023, several witnesses commented on the importance of accounting for the diverse lived experience of equity-seeking groups, including those of Indigenous peoples and women, in thinking about how the Senate addresses ethical issues.

Your committee heard repeatedly about the need to look at other jurisdictions and professional bodies for guidance on how the Senate could address conflicts between senators. In particular, a more in-depth examination of the United Kingdom’s experience could offer your committee substantial guidance for future Code amendments. Your committee hopes to continue exploring these issues and return to the Senate at a later date with further analysis and fulsome recommendations.

## Observations

Your committee is grateful to all the witnesses who appeared or provided written submissions. The evidence highlights the challenges faced by other legislative bodies—and even some professional bodies—in codifying standards of conduct. In addition, the exact nature of those standards, their level of generality or specificity, and the scope of their application might, in turn, influence the types of

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<sup>31</sup> U.K. Parliament, *The Independent Complaints and Grievance Scheme (ICGS)*.

enforcement regimes and adjudication processes that should be adopted to give them effect.

Fully addressing those questions requires your committee to consider issues that go well beyond the allegations raised in the November 9 case of privilege. As such, your committee is not yet prepared to make any specific recommendations. Instead, this report contains a number of observations based on the evidence received and on the preliminary impressions of your committee members. Rather than definitive conclusions on the case of privilege or on the ability of the Code and other Senate instruments to regulate senators' conduct adequately, these observations should be understood to be an interim step.

## The Unique and Evolving Nature of the Code

Your committee believes the Code was never meant to be a static instrument. The Senate adopted the first version of the Code in 2005. At the time, RPRD described it as a “work in progress” that would be reviewed and changed as necessary.<sup>32</sup> In addition, section 68 of the Code requires your committee to undertake a review of the Code every five years. As such, debates over the adequacy of the standards of conduct embodied in the Code are welcome and are necessary to ensure that it continues to reflect the ethical aspirations of the Senate and all senators.

In 2014, similar debates and discussions led your committee to recommend amendments to the Code that added the general rules of conduct set out in sections 7.1 and 7.2. Their addition marked a reassertion of the commitment of the Senate and each senator to uphold the highest standards of conduct. In doing so, the Senate became—and remains today—the only legislature in Canada with a code of conduct enabling an independent officer—the SEO—to assess parliamentarians' compliance with general standards of conduct.<sup>33</sup>

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<sup>32</sup> Senate of Canada, Standing Committee on Rules, Procedures and the Rights of Parliament, *Conflict of Interest Code for Senators*, Third Report, May 11, 2005.

<sup>33</sup> The legislatures of Newfoundland and Labrador and of Saskatchewan are the only two Canadian legislatures with codes of conduct that, through general behaviour guidance, provide their respective commissioners with indirect authority over such matter.

Your committee is proud that the Senate is leading the Canadian field in this area. It notes, however, that these rules have been in place for more than a decade, necessitating a continuous reassessment of their adequacy.

## **Broad Aspirational Principles Versus Detailed Prohibitive Rules**

Witnesses diverged on whether the broad principles set out in sections 7.1 and 7.2 of the Code are enough to ensure a common understanding of the expectations of conduct applicable to senators.

The advantage of aspirational principles like those embodied in sections 7.1 and 7.2 is that they are flexible and adaptable. They can be applied to several different or even unexpected factual contexts. Their normative content may also evolve through interpretation to keep pace with contemporary expectations without requiring textual modifications. However, principles that are too abstract may appear vague or difficult to grasp, and their interpretation may vary depending on the reader's background.

In contrast, prescriptive rules can be drafted with a much higher degree of precision, thereby providing clearer expectations of conduct. However, they can also be less flexible and are often seen as setting lower expectations than broad principles. They are also less adaptable to change and may require frequent review and modification. At this time, your committee is not convinced that adding prescriptive rules to the Code would address the events surrounding the November 9 Senate sitting.

Although the aspirational principles currently in the Code have served the Senate well over the past decade, your committee intends to consider whether more detailed rules, directives, or guidelines would provide more clarity on those expectations. To that end, the House of Lords' model, which has a short, normative code of conduct and is accompanied by a detailed guide, may serve as inspiration. Your committee intends to further consider and study both the House of Lords model and the Nolan Principles established by the U.K.'s Committee on Standards in Public Life, as it continues to examine this issue.

## **Overlapping of Senate Mechanisms Governing the Conduct of Senators**

In studying the “allegations raised in the November 9 case of privilege”, your committee also considered what other mechanisms can be used to govern the conduct of senators. These include raising a question of privilege, raising a point of order, applying the Code, and administering the HVP Policy.

Since all four mechanisms described above can be applied to address the conduct of senators, a situation that engages all four simultaneously is foreseeable. The events surrounding the November 9 sitting illustrate this point. The allegations relate to events that began in the course of debate during a Senate sitting and continued while the voting bells were ringing. As such, some of the allegations were raised as a point of order, while the other allegations were raised as a question of privilege. Some may be considered potential breaches of sections 7.1 and 7.2 of the Code, and they may also be seen as alleged occurrences of harassment and violence in the Senate workplace under the HVP Policy.

While these mechanisms overlap in some contexts involving the conduct of senators, each has its own purpose:

- Points of order serve to ensure that order and decorum are maintained at all times during chamber and committee proceedings.
- Questions of privilege work to protect the Senate’s ability to perform its constitutional functions effectively and without interference.
- The Code exists to ensure the highest standards of conduct are respected by senators.
- The HVP Policy exists to provide a safe and healthy environment for those working on Senate premises.

Your committee has considered whether those overlapping mechanisms result in an overly complex system. At this point, however, it is of the view that, while imperfect, the first three tools have their place in regulating and responding to the November 9 events. In fact, your committee feels that increasing senators’ awareness of existing mechanisms to deal with inappropriate conduct by senators

could be one of the most effective and immediate solutions available to prevent incidents similar to the events surrounding the November 9 sitting.

At the same time, your committee questions whether the HVP Policy is the proper mechanism to address inappropriate conduct when all parties are senators. Your committee understands that the policy applies in this context because senators are captured in the definition of *employers*. However, it does not believe a process set out under the *Canada Labour Code* and designed primarily to protect employees adequately responds to the unique nature of interactions between senators.

Your committee believes these unique cases should instead be governed either by the Code or, in specific contexts, by raising points of order and questions of privilege in the chamber.

## **Freedom of Speech in an Evolving Senate**

Freedom of speech has been an important theme in this study. Parliamentary privilege guarantees freedom of speech to all senators and witnesses when they are taking part in parliamentary proceedings. This privilege enables the Senate chamber and its committees to remain the appropriate forums where senators can freely express opinions—even controversial ones—without fear of outside interference.

Of course, this privilege does not mean that speech in parliamentary proceedings is not or should not be regulated at all. Indeed, the effect of parliamentary privilege is essentially to confer upon the Senate exclusive jurisdiction over its own proceedings. It is then up to the Senate to determine how to regulate those proceedings. As such, the Senate can impose limits on what can be said in debate and to ensure order and decorum. In addition, as explained earlier, the Senate has disciplinary authority over senators. It therefore possesses the means to enforce any restrictions it wishes to impose on senators, whether in chamber or committee proceedings or outside those proceedings.

In addition, senators ought to be mindful that the privilege regarding freedom of speech is limited to parliamentary proceedings. It does not extend to statements made outside the chamber or during committee proceedings, including statements made to journalists or posted on social media.

Your committee also invites senators to reflect on the evolution of Canadian society and the Senate's changing composition.

Some witnesses have noted that we may be living in a period of enhanced sensitivities, with higher expectations placed on conduct. At the same time, we may be witnessing an overall decline in civility, especially on social media.

There is and should be flexibility both in what senators are allowed to say to each other during debates and in how they say it. The difficulty lies in finding the line between a speech that is sharp and forceful on the one hand and a speech that is inappropriate or intimidating on the other.

Your committee also notes that the Senate as an institution is changing. Notably, its composition is more diverse than it has ever been, with increased representation from Indigenous peoples and racialized persons. It has also achieved gender parity. Your committee hopes to reflect on the impact that this changing composition has had on traditional power structures within the institution. For instance, your committee has heard that achieving gender parity may not be enough to change power relationships in an institution. Your committee intends to consider these dynamics as it further reviews expectations for the highest standards of conduct, as set out in the Code.

Your committee wishes to make clear that it considers the ability of senators to fully engage in debate and to voice their opinions within and outside parliamentary proceedings to be vital to their role. It also recognizes that any attempt to codify rules of conduct related to what senators say—either in debate or privately—would require striking a delicate balance between maintaining the highest standards of conduct and preserving the right to free speech. While your committee will continue to consider this matter, it believes that any rules of conduct imposed on senators must be crafted so that any restrictions are aimed at limiting personal attacks—such as harassment, insults, or hate speech—rather than at preventing senators from expressing political views or opinions on policy even if those views are controversial or unpopular.

To that end, your committee could again draw inspiration from the House of Lords model. Again, that model states that their commissioners and Conduct Committee must recognize as a primary consideration the constitutional principle of freedom of speech in parliamentary proceedings, including, but not limited to, the need for

members to be able to express their views fully and frankly in parliamentary proceedings.

## **Adjudication of Allegations of Senator-to-Senator Misconduct**

The nature of the rules of conduct imposed on senators is inextricably linked to the identity of the adjudicative body that will be tasked with interpreting those rules and applying them in a given context. This is why your committee believes it is important to consider carefully, as part of its review, who should adjudicate allegations of inappropriate conduct between senators.

As such, your committee has received evidence on different adjudication models that include varying degrees of peer involvement. As the committee has heard, an adjudication process that is completely at arm's length, while independent, might limit the Senate's ability to control its proceedings. In addition, your committee believes such a process may deal with matters in a way that will neither fully respond to the institution's culture, nor to its inherently political nature. Conversely, a fully internal process may be well adapted to the institution's culture, but it may also be more prone to "groupthink" and lose sight of public perception as a result.

At the Senate, the current enforcement process under the Code is a hybrid one. The independent SEO is responsible for conducting inquiries and for applying the Code in a specific factual context. Conversely, your committee is responsible for providing general directives on the Code's interpretation and for recommending sanctions or remedial measures to the Senate for final decision. Your committee also acknowledges the existence of internal mechanisms for conflict resolution within parliamentary groups and caucuses.

Another, different hybrid model has been implemented in the House of Lords, which includes a number of lay members on its Conduct Committee.

Your committee is interested in learning more about the participation of lay members on a parliamentary committee and the unique perspective those members may be able to bring. At the same time, your committee believes that senators' conduct, especially towards each other, should be addressed primarily by senators, since they are best placed to understand fully the Senate's culture and the need to preserve the institution's fundamental integrity.



Lastly, your committee underlines that the fact that senators are appointed, not elected, is an additional factor to consider when designing rules of conduct for senators. It also makes any comparison with the rules of conduct for elected bodies more difficult, since senators will never have to be judged directly by an electorate. This reality serves as an additional incentive for senators to uphold, as an overarching principle, the highest standards of dignity, honour, and integrity.

## Social Media: Addition to the Code or Separate Guidelines Required?

Whether detailed guidance should be given about the conduct of senators on social media is another question your committee is considering in light of the events surrounding the November 9 sitting and the evidence received by your committee.

The general principles embodied in sections 7.1 and 7.2 of the Code already apply to senators' conduct on social media and, as indicated above, parliamentary privilege does not protect a senator's social media comments. As such, mechanisms already exist to address inappropriate conduct in that context.

Your committee also notes that other public bodies have addressed social media through rules of conduct or guidelines, and the committee intends to consider these further.<sup>34</sup>

Your committee intends to reflect further on whether amendments to the Code or a new directive should be considered to further regulate senators' conduct on social media.

## Conclusion

In the concluding remarks to her ruling on December 5, 2023, the Speaker explained the importance of setting high expectations for senators' conduct:

*Senators all want the best for our country. The same is true of witnesses, staff, and everyone we deal with. We may disagree strongly,*

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<sup>34</sup> See, for example, United Kingdom, House of Lords Commission, [\*Social media guidance for members of the House of Lords\*](#), December 2023; and City of Ottawa, [\*Code of Conduct for Members of Council \(By-law No. 2018-400\)\*](#).

*but we must do so with restraint and respect. The work we do matters, but how we do it is also important. Let us consider how the Senate is evolving and where we want it to go, so that, together, we can continue to perform our essential work as a respectful house of sober second thought, which strengthens our Parliament and acts in the interest of all Canadians.*<sup>35</sup>

To a large degree, sections 7.1 and 7.2 of the Code serve to implement those aspirations through enforceable rules of conduct reflecting the commitment of both the Senate and of all senators to uphold high standards of conduct. However, even these rules, like most, remain imperfect.

Assessing the adequacy of sections 7.1 and 7.2 in dealing with the types of behaviour alleged to have occurred on November 9, including on social media, is a complex task. Your committee is of the view that it has barely scratched the surface of the issues it must consider before it can make any final determination or provide recommendations. Furthermore, the issues surrounding this case of privilege are entangled with broader questions, such as the adequacy of the Code's enforcement process to deal with allegations of inappropriate conduct when both parties are senators.

Your committee feels it is premature to make recommendations on possible Code amendments. However, we wish to emphasize both the procedural mechanisms and the provisions in the Code that already exist and are relevant to the issues raised in this case of privilege. However, whether those mechanisms should be reviewed or supplemented remains an open question. Your committee fully intends to continue gathering information and reflecting on whether sections 7.1 and 7.2 are adequate in this context as it continues its review of the Code and its enforcement process.

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<sup>35</sup> *Supra* n. 2, December 5, 2023 (Raymonde Gagné), p. 5042.

