

Article

The Effect of Trudeau's New Senate Selection Process in Perspective: The Senate's Review of Commons Bills, 1997-2019

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Abstract

This paper examines the Senate's record in reviewing legislation sent to it from the House of Commons, to see how the Senate has exercised its role as a chamber of legislative revision in the period 1997 to 2019. Several broader insights into the Senate's legislative review role emerge from the analysis, including the relatively short period of time most Commons bills spend in the Senate and the very different treatment of government bills and private members bills. The main findings of this analysis reveal a dramatic rise in amendments to government bills since the Trudeau government moved from overtly partisan Senate appointments to one favouring more independent candidates starting in 2016. Independent Senators appear to be considerably activist, with the rate of amendment doubling those seen in any prior session from 1997 to 2015. However, this activism has not led to deadlocks between MPs and Senators. Research in this paper also reveals that over a third of the Senators chosen by Trudeau had either been Liberal candidates or financial donors, which may explain a hesitancy to confront the Liberal government over amendments proposed by the Senate.

Résumé

Cet article analyse le bilan du Sénat dans l'examen des lois qui lui ont été envoyées par la Chambre des communes, afin d'identifier comment le Sénat a exercé son rôle de chambre de révision législative au cours des années 1997 à 2019. De cette analyse ressortent plusieurs résultats généraux quant au rôle d'examen législatif du sénat; notamment pendant la période relativement brève que la plupart des projets de loi des Communes passent au Sénat ainsi que le traitement très différent des projets de loi du gouvernement et des projets de loi d'initiative parlementaire. Les conclusions principales de cette analyse concernent l'augmentation spectaculaire des amendements aux projets de loi émanant du gouvernement depuis la mise en œuvre du nouveau processus de nomination sénatoriale lancé en 2016; le gouvernement Trudeau est passé des nominations ouvertement partisans à un processus censé favoriser davantage de candidats indépendants. Les sénateurs indépendants semblent être considérablement activistes; de 2016 à 2019 le taux d'amendements a doublé par rapport au taux observé pendant les sessions de 1997 à 2015. Cependant, cette activité plus élevée, n'a pas abouti à une impasse entre les députés et les sénateurs jusqu'à présent. Les recherches dans cet article révèlent également que plus du tiers des sénateurs choisis par Trudeau étaient soit des candidats libéraux soit des donateurs financiers, ce qui pourrait expliquer une hésitation à affronter le gouvernement libéral au sujet des amendements proposés par le Sénat.

Keywords: Canadian Senate, independent Senators, nonpartisan appointment, legislative review, Senate reform, Trudeau reforms, Canadian political history

Mots-clés: Sénat canadien, sénateurs indépendants, nomination non partisane, examen législatif, réforme du Sénat, réformes Trudeau, histoire politique canadienne.

Introduction

While the Senate has a number of valuable roles to play in our system of government, the one most often singled out is acting as a chamber of sober second thought for measures already approved by the House of Commons. This paper will examine the Senate's record in reviewing legislation sent to it from the Commons, to see just how Commons bills have been treated in recent years. The foundation for these discussions is provided by a statistical breakdown of the handling of Commons bills in the Senate during the last seven Parliaments, covering the period from 1997 to 2019. This period encompasses a useful range of changing

political circumstances and a shifting balance of power between parties in both the Senate and House of Commons.¹ In the discussion that follows, I hope to reveal just what the Senate has or has not done with the government and private members' bills sent to it by the House of Commons. One justification for an appointed Senate lies in it having a substantial role to play in improving the laws which emerge from Parliament. As the Supreme Court of Canada described the Senate, it is meant to be a complement to the House of Commons rather than a rival (Supreme Court, 2014; para 58). So, it is important to know just what the Senate has been doing to fulfil this role as a complementary chamber of legislative revision. This period of study allows a contextual assessment of changes to the Senate's work as a revising chamber following the influx of 'non-partisan' Senators appointed since Justin Trudeau assumed office in 2015.

This study's objective is two-fold: first to assess how active the Senate has been in its legislative review function over the last seven parliaments, spanning the period 1997-2019; and, second, to determine how differently the Senate has treated Commons legislation since the introduction of a new 'non-partisan' selection process to fill Senate vacancies. Of the 733 Commons bills introduced into the Senate in the period 1997-2019, 629 gained royal assent (85.8%) and 74 were amended (10.1%).² As one will see, however, significantly different treatment was given to these bills over time, and government sponsored bills consistently received favourable treatment compared to private members' bills. The major finding of this data analysis is that since the independent Senators have taken control, the Senate has been significantly more active in reviewing and amending legislation already passed by the Commons. However, this activism has so far not led to deadlock between the two houses. A secondary finding is that disparities in the Senate's treatment of government and private members bills have grown even wider.

After a brief discussion of the rationale for the Senate's role in reviewing Commons legislation, as well as the nature of the changes made by Prime Minister Trudeau, this paper will discuss in detail the Senate's treatment given to both government and private members' bills sent up from the Commons. These findings permit a firmer foundation from which to examine any transformation identifiable since the appointment process was instituted in 2016.

Rationale for the Senate's Role in Legislative Review

Canada's Parliament was deliberately modelled on the bicameral British Parliament when participants in the confederation debates came to discuss national institutions. The intent was to combine increased regional representation with a legislative review function in the upper house.³ While an increasing number of Canadians reject a role for an appointed house in a modern democracy, it is worth reviewing the reasons for its existence and the potential contributions the Senate may still legitimately make in the legislative process. The Senate was originally intended to act as a brake on the impulses of the elected lower house. Janet Ajzenstat has argued that the Senate was meant to be a foil against the ruling party's ability to limit debate in the Commons and push measures through regardless of the opposition's views (Ajzenstat, 2009). No doubt, too, the Senate was also originally viewed as a bastion of propertied interests, with a requirement in the *Constitution Act, 1867* for Senate nominees to hold real property that did not apply to members of the House of Commons.⁴ Although Colin Campbell has argued that the Senate has operated as a house of lobbyists, with the

close corporate links of many senators, most modern observers credit the Senate with a useful role based on other virtues.⁵

Principally, it is argued that the Senate is a less partisan chamber with an impressive array of talent; most new members join the body after notable careers in the professions, business, the arts, or public service. The longer-term membership of the Senate and its committees provide a shared expertise and familiarity with public policy that is too often lacking in the more transient world of the House of Commons; in comparison, Commons committees have suffered from higher turnover in membership.

As well, the Senate is viewed as usually having a less partisan atmosphere than the Commons, allowing for more substantive debates and committee discussions. Until the Harper government imposed stringent discipline in the Senate Conservative caucus, as well, individual senators had traditionally charted a more independent line from their party whips than would ever be allowed in the Commons. As a result, even a party with a majority in both houses was historically not ensured of having its way in the Senate.⁶ That said, there have been a few periods when the Senate has been so effectively controlled by the ruling party that no government legislation was amended without the government's blessing.⁷

As a separate partner in the legislative process, even an appointed upper house can at times provide a useful counterweight to the cabinet's control over the Commons. The key, though, is that the senators have some degree of autonomy and should not use it to impose their choice of public policies on elected MPs. The traditional formulation of the Senate's role, that it provides sober, second thought, encapsulates the notion that it adds an extra stage in the legislative process that allows for further public hearings and time in which public support for changes to proposed legislation can consolidate. The Senate's task is to identify occasions when the elected MPs should reconsider measures they have passed. In taking a second look at matters referred back to it by the senators, MPs have the opportunity to agree to amendments they realize on further reflection actually improve their bills – or they can decide the original form was optimal and insist the Senate agrees. Given stringent party discipline, narrow windows for committee hearings, and the increasing use of time allocation to limit debate, there is no doubt that some bills passed by the House of Commons have not had sufficiently detailed consideration or accommodated public reaction adequately. As will be shown below, the Senate has been more active in the study period with bills subjected to time allocation in the House of Commons than with other bills.

With this discussion in mind, one can better assess the Senate's actual performance in reviewing bills sent to it from the House of Commons. In the sections that follow, this paper will examine data showing the length of time the Senate has spent considering Commons bills and the rate at which these bills have been amended. Particular attention will be paid to the different treatment given government bills and private members' bills. As well, the legislative record can reveal whether the Senate has taken its role as a counterweight seriously, by acting proportionately more often on bills which have been the subject of time allocation in the Commons.

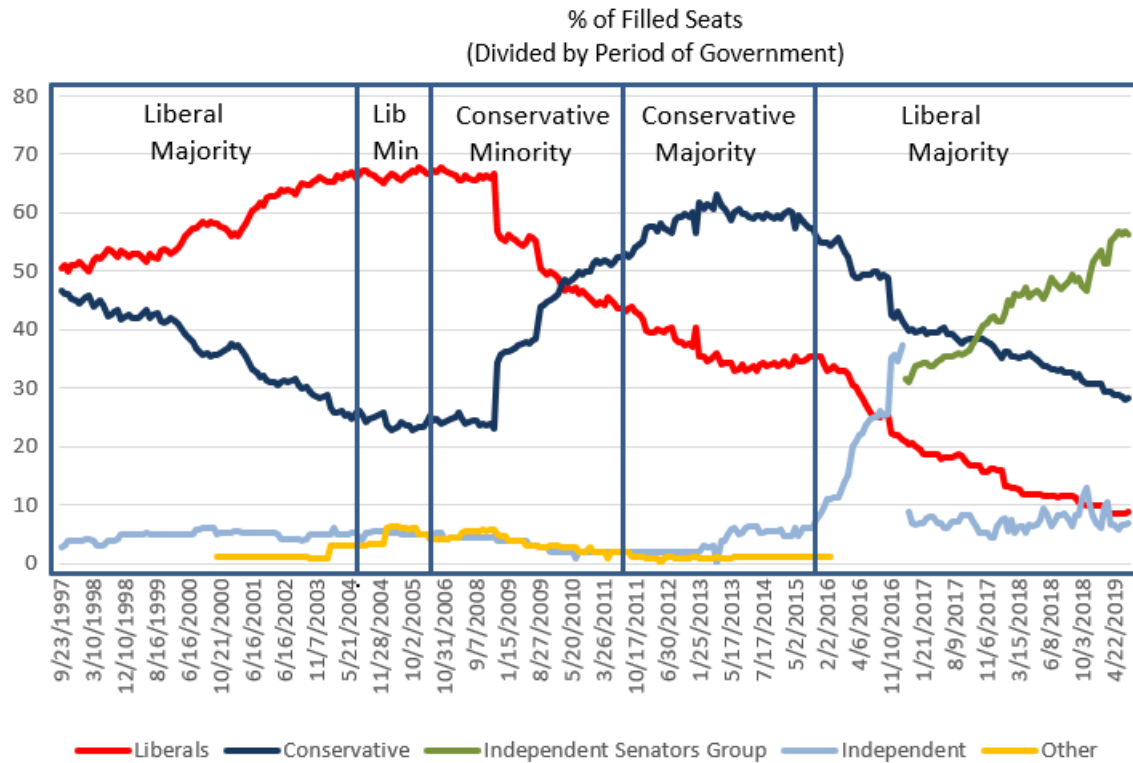
The New Senate Appointment Era

While still in opposition, Liberal Leader Justin Trudeau announced that, if elected, his party would expel all Senators from its caucus and commit to appointing non-partisan Senators. Despite his attempt to expel Liberal Senators, however, most of those Senators vowed their

loyalty to the party and continued to sit as a Liberal group in the Senate (although, they decided not to enforce a whip on votes) (Cowan, 2015). Very soon after winning office in the 2015 election, Trudeau announced that Senators would be selected from a list of five candidates identified by an Independent Advisory Board for Senate Appointments from among those who had actively applied to be considered. The message sent out at the time was that prospective candidates should “have the ability to bring a perspective and contribution to the work of the Senate that is independent and non-partisan.”⁸ Trudeau’s opportunity to act on his pledge was leveraged by the fact his predecessor in office, Stephen Harper, had deliberately refused to fill vacancies on the grounds that he believed only elected individuals should become Senators. At the time Trudeau assumed office, 23 Senate seats were vacant. Over the course of the next four years, resignations and retirements added a further 29 positions to be filled. All told, the Trudeau government appointed 50 Senators by the dissolution of parliament in 2019, the most during any single parliament since Confederation.⁹ The shift to appointing nominally non-partisan Senators cannot be emphasized enough for its rejection of past practices; from 1867 to 2013, only 11 of 928 Senators were appointed to sit as independents (Heard, 2014: 142). Virtually all these newly appointed Senators sat as independents, but they formally organized as the Independent Senate Group after 2017. The ISG is in some ways like a caucus, with regular group meetings, substantial financial resources assigned to the group, centrally assigned committee memberships, and shared research resources. But the ISG does not ‘whip’ its members, as it does not take a collective position on specific policy matters and leaves voting decisions to individual members.¹⁰

This rapid influx of a large number of non-partisan Senators fundamentally recast the traditional dynamics in the Senate. On top of the newly appointed Senators who were appointed on the understanding that they would not overtly support any political party, the growing critical mass of non-partisan Senators encouraged a surprising number of incumbent Senators to leave their partisan groups to sit as independents; nine Conservatives, seven Liberals, and the remaining Progressive Conservatives all abandoned their party affiliations to sit as independents (Library of Parliament, “Parliamentarians”). Figure One shows the dramatic nature of the shift in partisan and independent affiliations from 1997 to 2019. The cultural impact of these changes continued to reverberate in the Senate after the study period of this paper, with 11 Senators announcing in November 2019 election that they would form a new Canadian Senators Group dedicated to representing regional interests in a non-partisan setting. A further four Senators left the Conservative caucus to join those forming this new group (Dickson, 2019). Within days, the nine remaining Liberal Senators announced they would be abandoning their Liberal label to call themselves the Progressive Senate Group, in the hopes of attracting left-leaning members of the ISG to join them (Tasker, 2019).

Figure 1 - Senate Caucus Groups, 1997-2019



Source: (Library of Parliament, “Parliamentarians”)

Initial scholarly assessments of the Trudeau appointees suggested that, while they had a major impact on the internal functioning of the Senate, they had not made a remarkable difference to the Senate’s level of legislative activity (Macfarlane, 2019; Stos, 2017; Thomas, 2018). These studies were based only on the first half of the parliament following the 2015 election, however, while this paper examines the whole of the 2015-19 period; as will be seen later, the Senate became far more active in the second half, once the ISG came to dominate the chamber (See Table Four).

Treatment of Government Bills

A core measure for the Senate’s effectiveness in the legislative process is how it treats government legislation already approved by the House of Commons. There is a tension between respecting the expressed will of a majority of elected MPs and giving some autonomous assessment of the government’s bills. In its creation, the Senate was intended to provide a second consideration of measures passed by the Commons and to recommend that MPs consider changes when appropriate. In the almost 150 years since Confederation, Canada’s political system has changed dramatically, with the tight party discipline of MPs being a key feature of the modern era. In addition, government ministers now have at their disposal procedural rules which allow them to shut down debate in the House of Commons and force votes. So long as the government is able to command a majority of MPs through party discipline, the cabinet can control which, if any, amendments are made to its bills and use time allocation to squeeze bills through the House in short order. With the prospect of

entrenched cabinet control of the House of Commons, the Senate's role in reviewing legislation becomes even more salient, and it is especially important to determine just how effectively the Senate reviewed government bills.

The period of study from 1997 to 2019 was chosen for several reasons. This time frame allows the study of the Senate in all traditional configurations of partisan control of both the Senate and House of Commons as a comparison to the current control of the Senate by independent Senators. The period begins in 1997-2004 with a Liberal majority government in the House of Commons and a Liberal majority in the Senate as well. Then a two-year period of Liberal minority rule follows in the Commons, while the Liberals continued to control the Senate. The Conservatives formed minority governments in 2006 through 2011, a period in which majority control of the Senate transitioned from the Liberals (until October 2009) to the Conservatives by late 2010. A Conservative majority government was in place from 2011 to 2015 at a time when the Conservatives also enjoyed a majority in the Senate. In the 2015-19 parliament, a Liberal majority government initially faced a majority of Conservatives in the Senate, after which no one group dominated the Senate until the Independent Senators Group formed a majority in October 2018. This complete range of partisan permutations allows a breadth of data on the Senate's review of bills from the Commons, especially when broken down by session rather than the life of whole parliaments. With it, one can put into better perspective the work of the Senate in the new era of non-partisan Senators dominating the upper house.

A total of 588 government bills from the Commons were introduced in the Senate between 1997 and 2019. Of this group, 551 gained royal assent (93.7%) and 63 were amended (10.7%). Thirty-seven died on the order paper; three of these had passed third reading with amendments that were unresolved with the Commons prior to prorogation or dissolution. Sixteen of the bills that died on the order paper had not received second reading. The late transmission of bills from the Commons to the Senate does explain some of the lack of success in completing review of legislation in the Senate. For example, 19 bills left on the order paper had been introduced into the Senate within 90 days of the end of a session. Many of the bills that expired on the order paper were introduced within a month of the summer break, with prorogation or dissolution coming either in the late summer or September. However, several bills did not complete three readings in the Senate despite spending long periods of time there.

Table One: Treatment in the Senate of Government Bills from the Commons by Session, 1997-2019¹

Session	Bills Introduced	Bills Amended	3rd Reading	Amended Bills Resolved with Commons	Royal Assent
1997-9	69	7	68	7	68
1999-2000	30	2	29	2	29
2001-2	50	5	47	5	47
2002-3	41	5	30	3	28

¹ Data calculated from Senate of Canada. n.d.

2004	23	1	21	1	21
2005	46	3	46	3	46
2006-7	43	5	36	5	36
2007-8	31	2	29	2	29
2009	36	3	33	1	31
2010-11	29	0	28	-	28
2011-13	51	1	50	1	50
2013-15	55	0	55	-	55
2015-19	84	29	83	29	83

In the modern era, the Canadian Senate has not been very active in amending government bills from the Commons. In the period from 1962 to 1997, for example, the Senate's rate of amending bills from the House never achieved double digits (Heard, 2014: 146). The Senate's reticence to amend Commons legislation is not shared by the United Kingdom's upper house. For example, in contrast to the 11 government bills amended by the Senate in the period of 2006-15, the House of Lords amended 70 government bills sent from the Commons in roughly the same period (2005-15) (The Constitution Unit, n.d.). Prior to the change in appointment practices for the Senate in 2016, the Senate's overall sessional rate of amendment of government bills from the Commons ranged from a low of zero in 2010-11, and again in 2013-15, to 14.6 per cent in 2002-3. However, the period 2015-19 stands out with a significant jump in the Senate's rate of amendment of Commons bills to 34.9%. The significance of this increase can be seen even more clearly when one restricts the analysis to exclude bills which were considered unamendable by the Senate.

In each session, the Senate considers a number of Appropriations Acts that supply large amounts of money for the operation of the government, and these are handled quite differently from other legislation. For one thing, the House now routinely deals with all stages of an Appropriation Act in one day. And it is widely thought that the appointed Senate cannot properly amend them, since control of the public purse is said to be the purview of the elected chamber of parliament. Table Two shows that when one eliminates appropriation bills from consideration, the effective rate of amendment by the Senate is noticeably higher in most sessions than Table One would suggest. For example, in 2002-3, five Appropriation Acts were included in the 41 government bills sent from the Commons. As a result, the effective rate of amendment is 6 out of 36 amendable bills, or 16.7 per cent, in that session. In 2015-19, 18 of the 84 government Commons bills introduced into the Senate were Appropriation Acts. As a result, the 29 bills amended by the Senate represent 44.6% of the total.

Table Two: Treatment in the Senate of Government Bills from the Commons by Session, 1997-2019²

Session	# Bills Introduced	Bills with 3rd Reading	# Bills Amended	% of All Bills Amended	Appropriation Bills	Amendable Bills with 3rd Reading	% Amendable
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² Data calculated from House of Commons, n.d. and Senate of Canada, n.d.

								Bills Amended
1997-9	69	68	7	10.3	9	59	11.9	
1999-00	30	29	2	6.9	4	25	8.0	
2001-2	50	47	5	10.6	7	40	12.5	
2002-3	41	30	5	16.7	5	25	20.0	
2004	23	21	1	4.8	2	19	5.3	
2004-5	46	46	3	6.5	5	41	7.3	
2006-7	43	36	5	13.9	6	30	16.7	
2007-8	31	29	2	6.9	5	24	8.3	
2009	36	33	3	9.1	6	27	11.1	
2010-11	29	28	0	0.0	5	23	0.0	
2011-13	51	50	1	2.0	12	38	2.6	
2013-15	55	55	0	0.0	10	45	0.0	
2015-19	84	83	29	34.9	18	65	44.6	

A casual review of the Senate's treatment of government bills would show that 96 of those that progressed beyond second reading were given no detailed examination in Senate committees, potentially undermining the detailed foundation upon which the Senate can provide sober second thought. However, all but three of those bills were Appropriation Acts, and Senate committees usually study the Estimates of those bills prior to their introduction in the Senate. Overall, 473 government bills were formally considered by a committee (80.4%), including in pre-study; a further 2 Common bills were given pre-study, but were not subsequently introduced into the Senate prior to prorogation/dissolution.

Perhaps the biggest surprise is the short period of time that many bills were formally before the Senate, considering its reputation for detailed scrutiny. For the 471 government bills that completed third reading in the Senate between 1997 and 2015, an average of only 42 calendar days were spent in to reach that point; fifty-seven per cent were in and out of the Senate in 30 days or less. In the period 2015-19, however, the average time it took for government bills to receive third reading in the Senate more than doubled, to 95.6 days. Even so, 45.7% still completed third reading in 30 days or less in 2015-19, and 88% were given third reading within six months. Only three bills took more than a year to pass third reading during the entire period of study, all in 2015-19: Bill C-55 on designating marine protected areas (372 days), C-48 on oil tanker legislation (401 days), and C-58 on access to information and privacy (517 days).

One concern that has been expressed about the Senate's unlimited legislative powers is that it can effectively kill Commons legislation through a subtle and sometimes unseen "indirect veto," by simply failing to proceed with bills before the end of a parliamentary session. However, the data revealed very few examples of the indirect veto of government legislation in the period studied. The clearest example of an indirect veto of a government

bill is well known, Bill C-10 which was introduced in October 2007. This bill to amend the Income Tax Act did not progress beyond first reading, even though 313 days remained in the session. However, the Senate may also have delayed another bill, Bill C-26, introduced in 2009, to tackle auto theft. The Senate took six months before the Legal and Constitutional Affairs Committee held its first hearing on the bill, in which law enforcement officials expressed mixed views on the effectiveness of the measures (Senate, 2009). In 2015-19, just one government bill, C-101 on the RCMP, did not emerge from the Senate, but it was only introduced on the second to last sitting day of the session. As will be seen below, however, several private members' bills were clearly shelved in various sessions.

Resolving differences between the Senate and House of Commons

Particular constitutional and practical considerations arise in the case of Commons bills amended by the Senate. Since no bill may receive royal assent unless both houses approve it in identical form, the House of Commons must decide what to do with amendments made in the Senate to bills already approved in the Commons. In practice, the government of the day reviews Senate amendments and proposes a motion in the House as to how to dispose of them. Essentially the Commons has three choices: to accept the Senate amendments, to amend the Senate's amendments and send them back to the upper house, or to reject the Senate's amendments. If the House accepts Senate amendments, then a bill can be sent for royal assent. However, the Senate must reconsider any bill if the House either amends or rejects the changes made by the Senate. The Senate sometimes debates the issue in the full chamber, but it may also refer the bill back to committee to provide a recommendation. In most instances, the Senate acquiesces to the position taken by the House, in which case the bill is ready for assent; in such situations, the Senate passes a motion that it "does not insist" on its amendments.¹¹ But the Senate may also pass a motion to insist on their original amendments, or it can make further amendments in order to find a compromise the House might support; in both instances, the House of Commons must consider yet again how to react to the Senate's position.

The length of time spent in resolving differences between the two houses can vary tremendously, depending on how supportive the government is of making changes to its legislation and how intransigent the Senators are. Whether Senate amendments are resolved in just one round of reconsideration by each chamber or turn into a 'ping pong' of repeated rounds between the two houses, will have a big impact on the delays involved in passing legislation.

On most occasions, where these amendments occur with the support or acquiescence of the government, the Commons approves the Senate changes very quickly. Interestingly, resolution can occur when the Commons simply rejects outright all changes made by the Senate; in those cases, the Senate usually acquiesces in short order. More time is required to resolve differences when the government has a mixed reaction to the changes made by the Senate. The longest periods of resolution occur when some amendments are accepted while others are either amended by the House or rejected.

In the period of review for this study, the Commons and Senate have settled matters within 3 weeks in the majority of cases. However, the more contentious Senate amendments took longer to resolve. The House and Senate took more than 60 days to resolve Senate amendments on two occasions in 1997-2015, and five bills required over 60 days to settle in

2015-19.¹² The resolution of Bill C-7 on public service labour relations stretched almost a full year (350 days) between third reading in the Senate in June 2016 until its final approval in June 2017; it is worth noting that the Senate took only 22 days to originally consider the bill and grant third reading, while the Commons took 330 days to consider the Senate amendments.

In the 2002-3 Session, two bills died on the order paper before Senate amendments were resolved with the Commons. The fate of C-34 is easily explained, as it received third reading in the Senate only 5 days before prorogation, but C-10B (Criminal Code, Animal Cruelty) was a special case and was one of the most visible clashes between the two houses in the entire period of study. C-10B was one of two bills split from original C-10, with the Commons agreeing to the split. The Senate passed C-10A (dealing with firearms) without amendments after a total of 55 days. However, C-10B had 232 days in Senate before third reading was given with 5 amendments included. The Commons then agreed to two of these amendments, disagreed with another two, and amended the remaining Senate alteration. The Senate referred this matter back to committee and adopted its report, insisting on one amendment the Commons had disagreed with, replacing another, and amending the third. The Commons replied with disagreement to all the new changes. By this time, four months had passed. The Senate took another 37 days before referring the matter back to committee. Parliament prorogued 6 days later without resolution. The bill spent 167 days in unresolved disagreement between the two houses, and a total of 399 days since C-10 was originally introduced in the Senate.

Interestingly, disagreements between the two houses were resolved in a comparatively short 54 days over the only bill in 2015-19 where the Senate insisted on its amendments; Bill C-49 dealt with a range of air and rail transportation issues. The House of Commons initially accepted three of the Senate amendments, amended a further three, and rejected six others. The Senate accepted the Commons amendments, acquiesced to the Commons' rejection of most of its original amendments, but voted to insist on two of its amendments. Nevertheless, the Senate did back down once the Commons rejected the outstanding Senate amendments a second time.

There is one example of the Commons agreeing to Senate amendments on its second round of re-consideration. This occurred with Bill C-2 on accountability in 2006, where the Senate insisted on some amendments to which the Commons had initially not agreed; however, background deliberations led to the Commons to agree with the Senate amendments after they had been sent back.

Two extended rounds of exchange between the Senate and House of Commons were rare in the 1997-2019 period, with the Senate sending only 3 bills back to the Commons after MPs had initially rejected Senate amendments.¹³ But it is not clear why they occurred at all. If the Senate's principal task in legislative review is to provide sober second thought, then that role appears to have been fulfilled with the Commons' initial response to Senate amendments. The Senate should consider limiting itself to obliging the Commons to reassess legislation just once and accede to the wishes of the elected House once they are made clear in response to the Senate's amendment. The alternative is to pit unnecessarily the wishes of elected MPs against appointed senators, with the Senate appearing to be an obstacle rather than a complement to the elected chamber. To avoid protracted disputes with the Commons, it may be necessary to more fully explain the need for specific amendments in the message to the Commons.

The Senate as a Brake on Government Control of the Commons

This period of study provides an interesting insight into the role of the Senate in acting as a brake on excessive government control of the legislative process. One measure we can use to assess this role is to compare the degree of Senate activism in dealing with bills that were and were not subject to time allocation by the government in the House of Commons. In recent decades, the increasing use of time allocation is generally viewed as evidence of the cabinet's control over the legislative process. In theory, time allocation limits the ability of MPs to debate and amend legislation, which may require the Senate to reflect and accommodate public reaction to a bill. The majority governments, headed by Chrétien and Martin between 1997-2004, invoked time allocation in the House of Commons for 27 of the 213 government bills sent to the Senate. The Senate, controlled by the Liberals at the time, was twice as likely to amend legislation that had been subject to time allocation than it was for other bills (18.5% of bills with time allocation were amended versus 8.5% of other bills). Even looking at the 2011-15 period of Conservative majorities in both chambers, there is similar evidence of increased scrutiny of bills forced through the Commons. The Harper government made widespread use of time allocation when it enjoyed a majority government, invoking it 108 times for 50 of the 106 bills sent to the Senate. Excluding the 22 Appropriation Acts (for which time allocation is not used), a full 59.5% of government legislation which made it to the Senate had been subject to time allocation.

Although Conservative senators were subject to such strong party discipline that they only amended one bill in this period, they were almost twice as likely to attach "observations," pointing to improvements they believed could have been made, to bills that had been subject to time allocation (18.0% of bills subject to time allocation, compared to 10.7% of other bills).

In the 2015-19 period, the Trudeau government invoked time allocation in a higher proportion of bills than did Harper's majority government. A total of 94 times in 46 (54.8%) of the 84 government bills sent to the Senate. Excluding the 18 appropriation bills, 70% of other government legislation which made it to the Senate had been subject to time allocation. As in the previous period of study, the Senate took a more activist approach to bills which had been subject to time allocation in the House. Of the 46 bills for which time allocation was used, 23 (50%) were amended by the Senate, compared to just 6 (30%) of the 20 non-appropriation government bills in which time allocation had not been used in the Commons. These data clearly indicate that Senators have been significantly more likely to amend legislation that was subject to government limitations on debate in the House of Commons. Consequently, one can argue that the Senate functioned to some extent as a brake on executive control of the legislative process in the 2015-19 parliament.

Treatment of Private Members' Bills

The most problematic aspect of the Senate's legislative record lies in its inefficient handling of House of Commons private members' bills. While these bills lack the authority of the government behind them, they are nevertheless bearers of the democratic stamp of approval given by the House of Commons. Changes in House procedures have created greater opportunities for these bills to pass and to be concerned with more substantial areas of public policy than was the case in previous decades. In the 36th Parliament, 1997-2000, only 13 private members' bills were sent to the Senate from the House of Commons. But after

reforms in the Commons, the number of private members bills rose in 2011-15 to 51 being introduced in the Senate after passage in the Commons; in 2015-19 the number of private members' bills from the Commons dropped to 25.

The general trend is for the Senate to pass significantly fewer private members' bills than government bills, and to take significantly more time to do so. Of 120 private members' bills sent from the Commons in 1997-2015, 68 received royal assent (56.7%) and 6 were amended (5.0%), while two had completed report stage but died before third reading (both had been amended), and the rest languished almost untouched in the Senate. The disparity between successful passage of government bills and private members' bills grew even wider in 2015-19. During this later parliamentary period, 25 private members' bills were sent from the Commons to the Senate, with only 10 (40%) receiving royal assent. Four more bills made it through the committee report stage, without receiving third reading. The Senate amended three (12%) private members' bills, but only one of those received third reading and royal assent (Bill C-224, exempting from criminal charges those who seek treatment for a drug overdose).

In contrast to the 50 days that successful government bills spent on average in the Senate between 1997 and 2019, private members' bills averaged 163. It is important to note that there was a noticeable slowing in the treatment of all bills over time, particularly for private members' bills. As Table Three shows, third reading was given in an average of 149 days for private members' bills between 1997 and 2015, and this grew to 249 days in 2015-19. Between 1997 and 2015, those private members' bills which did not pass had spent an average of 231 days in the Senate prior to the end of the session. This figure grew to 312 days in 2015-19.

Table Three: Senate Treatment of Government vs Private Members' Bills³

Type of Bill & Period	# Introduced	% Amended	% with Royal Assent	Average Days to 3rd Reading
<u>Government</u>				
1997-2015	504	7.2	92.9	42
2015-2019	84	34.9	98.8	96
<u>Private Member</u>				
1997-2015	120	5.0	56.7	149
2015-2019	25	12.0	40.0	249

The only direct defeat of Commons legislation in the entire study period involved two private members' bills. In 1998, the Senate adopted a committee report to not proceed further with Bill C-220 dealing with profiting as an author from tales of one's crimes. The second defeat involved the controversial Bill C-311 introduced in 2010, which the opposition parties in the Commons had succeeded in passing against the wishes of the minority

³ Data calculated from Senate, n.d.

Conservative government. This measure would have required the government to provide reports on action to counter climate change. In November 2010, C-311 was defeated on second reading. In my view, an outright defeat of a measure passed by the Commons steps beyond the bounds of the Senate's accepted role to provide sober second thought; a veto irreparably substitutes the Senate's position in place of that of the Commons. It should not matter whether it is a government bill or a private members' bill, measures that have received third reading in the Commons have the stamp of democratic authority which the appointed senators should not usurp.

A number of private members' bills have been victims of extremely lengthy delays, which can amount to an indirect veto. It is instructive to consider, by way of example, the 7 bills given first reading in the Senate on October 17, 2013. Four of these spent the remaining 654 days in the session without emerging from committee (one of which never completed second reading). The other remaining three bills introduced on this day were eventually enacted, although they required an average of 430 days between first and third reading. The controversial Bill C-377, on reporting requirements for labour organizations, took 622 days to complete its journey through the Senate. Bill C-290, introduced in March 2012 was another example of an indirect veto of a private member's bill. Despite spending 556 days in the Senate and completing the committee report stage unamended with 309 days left in the session, it never received third reading. The most-delayed bill in the entire period of study, however, was C-243. This bill, dealing with a national maternity leave strategy, was introduced into the Senate on June 14, 2017 and spent 746 days there before dying on the order paper; this two-year limbo occurred despite it having been approved at committee report stage 204 days before dissolution. Senator Harder signaled the problems faced by private members' bills in his report on the 2015-19 parliament. He believes that bills which die on the order paper "tend to be those that would have sufficient support to pass, but are opposed by small but determined factions" (Harder, 2019: 10).

The main limitation that private members' bills face in the Senate is competition with government bills for time on the Senate floor and in committee. Private members' bills generally receive a much lower priority and are often squeezed in only as opportunities occur; inevitably, it is easier to accommodate private members' bills earlier in the life of a parliament than later, when more government bills are sent up from the House. The 2015-19 period provides a clear illustration of these time pressures. All 11 private members' bills which were introduced into the Senate by the end of 2017 progressed through committee hearings and report stage, and 9 of those 11 received royal assent. Of the 11 bills introduced in 2018, however, only one bill was granted royal assent, while 3 died in committee and 7 others never received second reading; none of the three bills introduced in 2019 received second reading. In some respects, these trends are not surprising, given that the time government bills spent in the Senate had jumped to an average of 96 days from 42 in 1997-2015.

Clearly, the Senate needs to address its treatment of private members' bills already approved by the Commons. And it must remain sensitive to the autonomy inherent in the concept of private members' bills. It should not normally be a reason to shelve a bill simply because the government of the day is opposed to a measure approved by a majority of backbench MPs. One potential way for the Senate to handle more of the bills on its plate is to extend the number of sitting days. Although the Senate has been sitting for more days of the

year than it used to, it still only sits for about two-thirds of the number of days as the House of Commons (Library of Parliament, “Parliaments and Sessions”).

Discussion of the ‘Non-Partisan’ Senate in 2015-19

As has been shown in this paper, the way in which the Senate treats legislation from the House of Commons has changed in the 2015-19 parliament compared to that of 1997-2015. The most notable difference is a significant increase in the number of government bills that the Senate amends. Once Appropriation Acts are excluded from the count, Senators amended 45% of government bills already approved by the House. As Table Two reveals, this is more than twice the rate of amendment of any other session in the prior 18 years. While the Senate has often been criticized for not doing enough (such as during 2011-15), this is the first time in modern history when Canadians might have to consider seriously what level of activity might be too much. However, the higher rate of amending activity was not accompanied by a more intransigent attitude in insisting that MPs accept those amendments. Senators acquiesced in short order to MPs’ judgment on Senate amendments in 28 of the 29 Commons government bills altered by the Senate. In this section of the paper, attention will focus on the implications of changes made to the senatorial selection process by the Trudeau government for the Senate’s role in legislative review.

One of the issues is how non-partisan the Senators appointed by the Trudeau government really are. While each has chosen to sit as members of the Independent Senators Group, it is clear that a number of those appointed did in fact have histories of supporting political parties. Access to the chief electoral officers’ databases on political donations allows one to identify individuals with party sympathies through their history of political donations (Elections Canada, “Search for Contributions”). Of the 50 Senators appointed in the first Trudeau government, 19 can be identified as having been candidates for or contributed to political parties, either federally or provincially. The Trudeau government clearly favoured individuals with a Liberal connection over those with known connections to other parties. Of the 19 with records as party donors or candidates, 16 (32% of all Trudeau appointees) had clear Liberal connections, while three had donated exclusively to parties other than the Liberals. Two had held elected office under a party banner: Pat Duncan was the Liberal premier of the Yukon, while Diane Francis was a cabinet minister in Bob Rae’s NDP government in Ontario. A couple of the party donors only gave a few hundred dollars, although most were for much more substantial sums. Two individuals stand out as major Liberal supporters, given the large sums they had donated over the years. Quebec’s Marc Gold contributed \$54,809.18 to the Liberal Party of Canada between 2004 and 2015 and a further \$25,770 to the Liberal Party of Quebec; it should be noted that he also gave much smaller sums on occasion to other parties (\$14,400 to the federal Conservatives, \$3,650 to the PQ, and \$2,500 to the ADQ) (Elections Canada, “Search for Contributions”). These Liberal connections are all the more relevant since Senator Gold was appointed to be the new Government Representative in January 2020. Another strong financial backer of the Liberal Party of Canada prior to his appointment to the Senate was Stan Kutcher of Nova Scotia, a candidate for the Liberals in the 2011 federal election and donor of \$32,693.26 to the Liberal Party of Canada between 2004 and 2018 (Elections Canada, “Search for Contributions”).

Even using this raw yardstick of a record of prior Liberal donations or candidature, one can see a shift in appointment profiles over the four years of Trudeau’s first four years as

prime minister. Among the 30 Senators appointed in 2016 and 2017, there were eight individuals (26.7%) with clear Liberal connections and three with links to opposition parties. In 2018-19, however, 38.1% of Senate appointees had Liberal connections (eight of 21), while none met the same criteria for opposition party support. Given the choice of five candidates provided by the arms-length advisory committee, it appears that the Prime Minister's Office is showing some clear preference for those with Liberal connections. One can clearly conclude that the Trudeau appointees are not, as a group, free of partisan sympathies.

Media coverage of the political leanings of Trudeau's Senate appointees has raised a question mark over just how non-partisan his choices have been. A Hill Times analysis of recorded divisions (where each Senator's vote on a motion is recorded) in the 2015-19 parliament found that members of the ISG appointed by Trudeau had voted with the Government Representative, Senator Peter Harder, more often than any other group of Senators at 85.8% of the time. In contrast, other ISG members who had been appointed earlier to the Senate by other prime ministers had voted with the government representative 73.6% of the time. Even the remaining self-identified Liberal Senators had been less staunch supporters than Trudeau appointees, siding with Senator Harder in 79.2% of their votes. Unsurprisingly, perhaps, Conservative Senators actively opposed most government measures, voting with the Government Representative only 18.1% of the time (Wright Allen, 2019).¹⁴ Eric Grenier conducted an earlier analysis for the CBC in 2017, in which he claimed that Trudeau-appointed Senators had voted with Peter Harder 94.5% of the time. He concluded that "just seven have voted differently from the government's representative on multiple occasions" (Grenier, 2017).¹⁵

Combining the evidence that at least 32% of all Trudeau-appointed Senators had Liberal ties with the evidence that Trudeau-appointed Senators were more likely than others to vote with the government's representative in the Senate, one could hypothesize that this core of Liberal supporters appointed as 'non-partisan' Senators were more likely to support government positions than other new appointees. However, an analysis of the data only partially supports this supposition. Using a dummy variable for a prior record of having donated or stood as a candidate for either the federal or provincial Liberals, one can test whether this measure is correlated to the percentage of times they voted the same as the Liberal government's representative in the Senate, Peter Harder. The Pearson's correlation between these variables is 0.21441, which looks like a positive result, but it fails the test for statistical significance.¹⁶ On balance one can say that previous Liberal supporters appointed to the Senate did have a higher propensity to vote with the government on recorded votes, but not remarkably more than other Senators appointed by the Liberal government. That said, one still needs to assess the impact of Trudeau's appointees, taken as a whole group, on the passage of government legislation through the Senate.

If the thesis held, that Trudeau-appointed Senators have been stalwart supporters of Liberal government measures, then one would have expected the rate of Senate amendment of government bills to decline as the new Senators become the largest group in the upper house. But instead, the rate of amendment accelerated during the 2015-19 parliament. Table Four shows that over half of amendable bills were altered by the Senate in both 2018 and 2019, when the ISG formed the majority in the chamber. It would seem improbable for Trudeau appointees to be voting over 85% of the time in favour of government positions and yet have this high rate of amendment to government bills in 2018 and 2019.

Table Four: Amendments to Government Bills from the Commons by Year, 2015-19⁴

Year of 3rd Reading	# of Bills	# Amended	% of Total Amended	Appropriation Bills	Amendable Bills	% of Amendable Amended
2015	1	0	0.0	1	0	n.a.
2016	14	3	21.4	5	9	33.3
2017	20	4	20.0	5	15	26.7
2018	24	11	45.8	4	20	55.0
2019	24	11	45.8	3	21	52.4

The answer to this counter-intuitive contradiction may lie in flawed inferences drawn from the available data on Senators' voting patterns. Published examinations of Trudeau appointees' voting patterns are based entirely on the data from the recorded votes on division in the Senate, where each Senator stands and declares their vote. But the nature of this data gives a very incomplete and probably erroneous view of the full range of measures supported or opposed by individual Senators.

An insurmountable analytical hurdle arises because the majority of business in the Senate is conducted by voice votes, where no record is made of how each Senator voted. In a voice vote, the Speaker first asks, "Is it your pleasure, honourable senators, to adopt the motion?" A motion is declared adopted if there are no dissenting voices. If there is a mix of yes and no shouts in response, then the Speaker calls all those in favour to say "Yea" at once, and then those against to say "Nay." The vote is decided on the basis of whether the Speaker judges the Yea or Nay voices are loudest. Just over half (15 of 29) of the government bills that were amended in the Senate had no recorded division of votes on any amendments. In a number of cases, there are recorded votes only on proposed amendments that are defeated, but no recorded division on amendments that are accepted.

Most amendments made to bills in the Senate are proposed by the committee which studied the bill in detail. Those amendments are proposed in a report to the full Senate, which votes to accept, reject, or amend the committee report. And in most cases, reports are simply adopted by a voice vote; indeed, in the entire 2015-19 parliament, there were only 3 instances of recorded divisions on committee reports in the Senate (Senate of Canada, "Votes"). Where records are taken of divisions on amendments, it is usually on individual amendments proposed at third reading, but only 7 of the 29 government bills altered by the Senate in 2015-19 had amendments passed at third reading (Senate of Canada, "Progress of Legislation").

Of the 29 bills that were amended, 10 proceeded through the Senate without a single recorded vote on division, including those votes on whether to insist on amendments that had been amended or rejected by the House of Commons. Five other bills had no recorded vote on their amendments but did have a vote on division to accept the House of Commons position on those amendments. Another six had recorded votes on amendments, but only voice votes on accepting the House of Commons judgment on those amendments. Eight had recorded votes both on some amendments and on dealing with the House response (Senate of Canada, "Votes").¹⁷ Some recorded divisions votes were for third readings of bills, as

⁴ Data calculated from House of Commons, "Status of House Business."

already amended, while other recorded votes were on whether the Senate should accept the House of Commons position on Senate amendments; in those instances it would be entirely appropriate for ISG Senators to vote with the government representative, as the Senate's job was done and the constitutionally appropriate course of action was to accede to the judgment of the House. In short, the data on recorded votes is simply insufficient to draw any reliable conclusions on overall voting on amendments to government bills by Trudeau-appointed Senators.

As a consequence, it is very likely that many Trudeau appointees supported amendments to government bills, but in voice votes that left no trace of how they actually voted; alternatively, some may simply have been absent from the chamber when it came time for a vote. As the Independent Senators Group grew in size and came to dominate committees, their members could work on amendments and convince enough of their ISG colleagues in caucus meetings to support the adoption of the committee report when it came to a voice vote in the Senate. Indeed, this possibility appears to be the logical explanation of how an increasing number of bills came to be amended as Trudeau-appointed Senators grew in number, despite most of those Senators voting with the government representative most of the time on recorded votes.

It should be noted that there are worrisome aspects to this trend of amending bills by voice votes among 'loose schools of fish' in the Senate, to borrow a phrase from Eugene Forsey. One concern is that the process of legislative approval loses transparency when the public cannot tell how specific parliamentarians voted in most of the key votes. This lack of transparency is compounded by the other problem of lobbyist pressure on individual Senators to support amendments in anonymous voice votes. The increased legislative activity by the Senate has resulted in Senators becoming increasingly targeted by professional lobbyists. Most Senators no longer answer to party whips who would have ensured whole groups of Senators normally voted according to their caucus position.¹⁸ With the majority of Senators acting as free agents now, lobbyists can identify and try to persuade independent Senators on committees, where most successful amendments are first proposed and approved. Other Senators might be persuaded to support the committee's recommendation for amendments once it came to a voice vote in the full Senate. In the period from 2011 to 2016, reported contacts by registered lobbyists were less than 500 per year, but this grew steadily with Trudeau's new appointment process. By 2018-19, reported contacts with Senators by registered lobbyists had more than tripled to 1503 (Harder, 2019: 6).

Conclusion

The Senate clearly has the potential to play a meaningful role as a chamber of legislative review. The data from 1997 through 2019 reveal periods when Senators were quite actively engaged in amending government legislation that had already been approved by the House of Commons. The Senate was significantly more likely to amend bills that had been subject to time allocation during their consideration in the Commons. This finding supports the role of the Senate as a brake on executive dominance in the House of Commons, by ensuring further debate on possible changes to controversial bills. On many occasions the House of Commons accepted the Senate's amendments, validating the benefits of sober, second thought by the upper house. When MPs either rejected or amended Senate changes, Senators

almost always acquiesced to the judgment of the House; only on rare occasions did Senators either make further amendments or insist on their original changes. At times, as well, the Senate has not lived up to its potential, with few to no formal amendments proposed to Commons bills; these times have notably occurred when one party has a majority in both houses of parliament. The record of Senate activity in this period also reveals a very clear distinction between the attention given to government bills and to private members' bills from the Commons. A large portion of private members' bills risk dying on the order paper in the Senate, despite spending lengthy periods there and having the stamp of approval from elected MPs.

The data from this period showed that the Senate has been dramatically more active since the Trudeau government changed the process for selecting new Senators. The 2015-19 parliament saw the Senate amend Commons bills at more than twice the rate than the busiest session between 1997 and 2015. Quite clearly the influx of over 50 new Senators, charged with using their individual judgment rather than answering to caucus whips, has radically reshaped the culture in the Senate. Despite the increased autonomy exhibited by Senators, however, the upper house did not confront the House of Commons any more than in the earlier periods. So far, independent Senators have maintained the Senate as a complement rather than adversary to the Commons in the legislative process. However, controversy has arisen with the new appointment process, with clear evidence that promises to appoint 'non-partisan' Senators did not preclude the government from filling a third of empty seats with individuals who had a history of Liberal support. Debates have arisen because the record of votes in formal divisions reveals that the Trudeau appointees have more consistently voted with the government representative than any other group in the Senate. But other data discussed in this study, however, show that these recorded votes are only a subset of actual decisions in the Senate; most amendments to government bills occur through voice votes in which individual Senator's votes are not identifiable. In practice, past sympathies do not appear to have kept many of the new Senators from supporting amendments to Liberal government bills.

Two clouds appeared on the horizon from this brief look at the 2015-19 Senate. One worry is the increased pressure on individual Senators by professional lobbyists, which is concerning when most changes to legislation occur anonymously through voice votes; there is little effective transparency in lobbying efforts when one cannot match targeted Senators with their voting on specific measures. The other concern arises from the increased propensity over the life of this parliament for the Trudeau government to appoint new Senators with a record of Liberal support, while ignoring those with connections to other parties. So far, at least the reforms to Senate appointments have had a positive effect, with undoubted autonomy and independence of mind being exhibited collectively by the upper house. This larger impact in the policy process has raised the profile of the Senate and helped improve public opinion of the chamber (Nanos, 2019). But that improvement is transitional for the moment, and much hinges on the choices made in the next parliament as to whether true non-partisanship takes root in the Senate. The collapse of formal party caucusing risks becoming a cover for informal domination of the Senate by individuals with career profiles and personal values that broadly favour left of centre policies. The true test of non-partisanship down the road will come if a Conservative government faces a future Senate filled with progressive sympathizers, however they label themselves. Will the Senate flex its muscles and become more confrontational in blocking or amending legislation it opposes?

Notes

¹ From 1997 to 2004, the Liberal party controlled a majority in both Houses. From 2004 to 2006, the Liberals formed a minority government in the Commons with a majority in the Senate. From 2006 to 2009, the Conservatives formed a minority government in the Commons, while the Liberals held a majority in the Senate. From 2010 to 2011, the Conservatives continued with a minority government while gaining control of the Senate. From 2011 to 2015, the Conservatives held a majority of seats in both Houses.

² All data on the Senate's treatment of legislation sent from the House of Commons are compiled from the material in the "Progress of Legislation" reports issued by the Senate and the detailed information on each bill at the Parliament of Canada's LEGISinfo site. The data was compiled from the reports for each session of the 36th through 42nd Parliaments.

³ For a review of the role of second chambers, see: Watts, 2003.

⁴ Section 23 of the *Constitution Act, 1867* stipulates a number of qualifications for someone to be appointed to the Senate, including property worth at least \$4,000 in the province which they are appointed to represent.

⁵ For general discussions of the role of the Senate and the positive attributes it may bring to legislative review, see: Docherty, 2005: 41-44; Franks, 1987: ch.9; Franks, 2003; Lynch-Staunton, 2000; O'Brien, 2005; O'Brien, 2019; Sharman, 2008; Smith, 2003: ch.6; Thomas, 2003. There are, of course, a number of authors who have also been critical of the work of the Senate; for example, see: Boyer, 2014; Campbell, 1978; Hoy, 1999.

⁶ In the period 1958-1988, the Senate's tendency to amend Commons bills was positively correlated with the size of the governing party's majority in the House (Heard, 2014; 148).

⁷ Stephen Harper's government drew fire for the fact that only one Commons bill was amended by the Senate in the 2011-15 Parliament. Only one bill was also amended during 1980-84 when the Liberal government had a majority in both Houses.

⁸ For more information on the new appointment process, see the website of the Independent Advisory Board for Senate Appointments: <https://www.canada.ca/en/campaign/independent-advisory-board-for-senate-appointments.html>.

⁹ There were 2 vacancies in the Senate at the time parliament was dissolved in 2019.

¹⁰ Peter Harder was appointed by Trudeau to the Senate in order to serve as the Government Representative, and as such he formally identified himself as not affiliated with any group; his justification was that his participation in the ISG would undermine that group's portrayal of its members as thoroughly independent of the government. However, as the person responsible for facilitating the passage of government legislation through the Senate in a form as acceptable to the government as possible, Harder is quite clearly allied with the Liberal government as a consequence; in addition, Harder attends a range of cabinet meetings, although he is not a member of cabinet. Senator Harder is assisted by Senators Bellemare and Mitchell who also sit nominally as non-affiliated Senators.

¹¹ The logic for Senate acquiescence is that it has fulfilled its role of providing 'sober second thought.' This second thought occurs in two ways: a bill gets a second consideration in the Senate after the

House has already debated and approved it, and if the Senate does make amendments, then the Commons is itself forced to consider the matter a second time.

¹² The bills in 2015-19 were: Bill C-4 (labour relations) took 63 days, C—64 (marine wrecks) 71 days, C-57 (sustainable development) took 91, C-65 (workplace harassment) required 128 days, and C-7 (public service labour relations) saw 350 days of consideration before the Senate and House of Commons came to an agreement.

¹³ C-10B in 2003, C-2 in 2006, and C-49 in 2018.

¹⁴ Also see a previous study of Senate votes through mid-2018: Evelyn and Wright Allen, 2018. <https://www.hilltimes.com/2018/07/25/independent-senator-voting-shifts-away-liberal-rep-isg-still-likely-allies-152033-152033/152033>.

¹⁵ At the time of this analysis, Trudeau had appointed 29 Senators.

¹⁶ The P-Value is .139055; the result is not significant at $p < .10$. One-way ANOVA also failed to find a significant difference between voting patterns of new Senators with Liberal connections and those without f-ratio value is 2.21654; the p-value is .143363 and not significant at $p < .10$. Data for donations came from Elections Canada, "Search for contributions." Data on individual voting records was drawn from Wright Allen, 2019.

¹⁷ Note that some recorded votes taken for amendments were defeats of those proposals.

¹⁸ The only whipped Senators are members of the Conservative caucus and the three Senators in the Government Representative's Office. While Peter Harder was the official Government Representative in 2016-19, he was assisted by two other Senators, Diane Bellemare and Grant Mitchell; all three were obliged to vote in favour of government-supported measures.

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