Spotlight on 42: Changes, Challenges and Conclusions

In the year leading up to an anticipated federal general election in 2019, the Canadian Study of Parliament Group gathered together parliamentary officials, interested observers and parliamentarians to examine what has transpired in the current parliament and what may lie ahead. This well-attended conference included four panels which explored "the changes and challenges facing each Chamber in light of recent procedural and structural innovations." In this article, the author provides summaries of each of these panels and some of the discussion that followed the presentations.

Will Stos

The Changing Bicameral Relationship

Cathy Piccinin, Acting Principal Clerk of Chamber Operations and the Procedure Office in the Senate, outlined a series of changes which occurred in the upper chamber prior to and during the 42nd Parliament. Following a decision by Liberal Leader Justin Trudeau to remove Liberal Senators from caucus in 2014, for the first time in Canadian history a government had no Senate representative when the Liberals took office following the 2015 election. Peter Harder was subsequently named to act as the government's representative in the Senate. Facing a historic number of vacancies in the upper chamber, Prime Minister Trudeau created a new appointment process to select independent Senators. The composition of the Senate has thus changed dramatically in the past few years with Conservative senators continuing to sit with the party's MPs, a group of Senate Liberals who function as a partisan caucus but who are not affiliated with the Liberals in the House of Commons, a new plurality of Independent Senators who have organized themselves in an Independent Senator Group (ISG) caucus, and other senators who sit as independents without affiliation to any group.

Piccinin explained that with these changes, the work of the Senate has become much less predictable. While

contending that using metrics to gauge the effect of amendments is not a great way to just legislative work, she said it does bear noting that in this parliament the number of Senate amendments per year has tripled. There has also been an increase in the numbers of bills that have been amended. But, Piccinin says, the Senate still seems to respect the Commons' ability to reject amendments by not insisting upon amendments.

Recognizing the absence of cabinet ministers sitting in its ranks, the Senate has begun inviting cabinet members to the chamber to answer questions. There have been no changes to the rules to accommodate this practice; rather, it's been a matter of negotiations among members.

Piccinin also provided several examples of legislation that has been dealt with in novel ways:

- Bill S-3 – Aboriginal Peoples Committee decided to defeat the bill, then adjourned, but then changed its mind and instead proposed many changes and amendments.
- Bill C-49 – If a Senate insists on an amendment, a committee must be struck to explain why. It did this expeditiously. When the Commons rejected the amendment a second time the Senate did not proceed.
- Bill C-45 – Various Senate committees discussed the subject matter (recreational cannabis legalization), but one social affairs committee dealt with the legislation in substance. Senate party leaders and facilitators agreed to structure debate thematically during third reading, similar to the assisted dying bill. It added a sense of organization that Senators seemed to appreciate.

Will Stos is Editor of the Canadian Parliamentary Review. He would like to thank Peter Price for contributing notes for portion of a panel he missed due to a previously scheduled meeting.

From left: Moderator Charlie Feldman, Till Heyde, Cathy Piccinin, and Jeremy LeBlanc.

She concluded by stating the Senate has become more multi-centred in terms of power and highlighted that many things have been accomplished through negotiations among members rather than formal rule changes.

Jeremy LeBlanc, Principal Clerk of Chamber Business and Parliamentary Publications in the House of Commons, discussed some themes evident in the 42nd Parliament (timing pressures for the government, financial prerogatives, and procedural changes) and the impact they have had what's happening in the lower chamber. He reported there has been a marked increase in legislation being returned to the House of Commons with amendments from the Senate (27 per cent of bills have been amended) and noted that the House of Commons rejected all of these amendments in only two cases.

LeBlanc pointed out that there have been more instances of double ping-pong between the chamber – legislation going back and forth a number of times – and also an increase in the number of sitting days where Senate amendments are considered. He explained that time pressure is most keenly felt before long adjournments.

Two pieces of legislation, C-14 and C-45, were complex bills with many different issues to consider, yet adjustments, amendments and messages between the two houses were exchanged rapidly. LeBlanc suggested that budget implementation bills have noticeably lengthened. Typically, there are two per year and they tend go through the system quickly. While it has been rare for Senate to amend financial legislation, there were two instances where this did occur. Bill C-29 was seen as an omnibus bill and there was concern, particularly in Québec, about changes to the *Bank Act*.

A group of independent Senators wanted this portion split off from the main bill and the Government in the Commons decided to agree to this change to help speed its passage. With Bill C-44, the Senate made amendments on excise taxes. The Government rejected these amendments, stated the Senate should not interfere in financial aspects, and then adjourned. Although the Senate accepted this rejection, senators reiterated that they believe the Senate has the power to insist upon amendments to any legislation.

During a Q&A session with the audience, one attendee asked about an obscure procedure called 'pre-conferences' on legislation between chambers that were last used in the 1940s. Piccinin responded that there had not a big clamouring for these conferences yet. **Till Heyde**, Deputy Principal Clerk of Chamber Operations and the Procedure Office in the Senate of Canada, said procedural staff would have to investigate it but they are not yet near a point where it would be required.

In response to other audience questions, Piccinin highlighted that the procedural complexities present with the new composition of the Senate require staff to have agility and flexibility (for example, thematic debate at third reading). Heyde explained that staff used to know with 90-95 per cent certainty how the day would go. Now, with many more actors present, they tend to have around 70-75 per cent certainty and on some days it's much lower. "We now have to keep track of a lot more Senators," Heyde said, whereas previously it would be the leader of the Senate and the Leader of the Opposition. In general, senators are becoming much more active and the newer senators have become more confident in learning about what their rights and privileges are.

Lori Turnbull, Director of the School of Public Administration at Dalhousie University, made a point

of raising questions as she explored new trends in the Senate and House of Commons. She suggested she was fascinated with how much control political parties had gained over the Senate in past years since, once appointed, a Senator has more job security than the prime minister appointing them. When she asked a Senator why members of the upper chamber had not exercised more independence, he answered: "because in politics you're part of a team." Even though new kinds of teams are forming, Turnbull said new senators are still being chosen for their community involvement. She noted "they want to show they're value-added, but they still have a legitimacy crisis." Turnbull asked: "Who are Senators accountable to? Citizens? But, they didn't choose them. If we elected senators we might have answers to these questions."

Since 2015 election, Turnbull revealed anecdotally that she had heard both the House and Senate have taken very different approaches to staffing. Senators now appear more likely to hire lawyers and she said she wondered if this new staffing is affecting how they're working.

Turnbull suggested that the increasing lack of predictability in the Senate has affected how the government in the House of Commons is working. The government now has less confidence it can tell the public that it can deliver on its agenda; this uncertainty can be a concern in the retail state of politics. If voters are selecting a product, and the Senate is becoming less predictable, she explained that it's not that a party can't do what it wants when forming a government in the house, but it may take longer than anticipated. During a question and answer period, an audience member used the analogy of the parties running on a platform that is a service contract in a retail politics environment. He likened the Senate's role to reading the fine print in these contracts.

Turnbull concluded by wondering if we will be back to a more traditional Senate in another 10 years. She said she doubts this will be the case as she thinks "we've unleashed the beast."

Innovations in the House of Commons

Guillaume LaPerrière-Marcoux, Chief of Staff to the Clerk of the House of Commons, described the advance of social media channels in the House of Commons. Five Twitter accounts (@OurCommons, @HoCChamber, @HoCCommittees, @ParlDiplomacy, @HoCSpeaker) and three Instagram accounts now provide insight into various aspects of the House, its committees and other

Charlie Feldman and Lori Turnbull.

programming. To date, the there have been more than 200 photos posted on Instagram with a total of 10,000 likes, and 8,000 Tweets which have garnered more than 4.4 million impressions.

LaPerrière-Marcoux explained how the House of Commons will continue to innovate and refine its messaging to respond to the unique features of each type of social media. They plan to create more dynamic content and use less text and more images on Twitter, including using GIFs that automatically play when viewed while scrolling through feeds.

Jeremy LeBlanc reported on new rules surrounding omnibus bills. This type of legislation had long been used, but it became especially contentious in recent years, and particularly in the last parliament. Some budget implementation bills were hundreds of pages long and some parts did not appear to be clearly related to the budget.

The new government gave the Speaker the power to divide the questions for the purpose of voting, but there was an exemption for budget implementation bills. The bill is not divided, but at the second reading stage there can be multiple votes on questions.

LeBlanc cited a number of rulings made by the Speaker since this change was made to the standing order. For example, he pointed to Bills C-69 and C-59. C-69 was bill relating to environmental assessments while C-59 was the government's national security bill. In both cases, all parts of these bills were related to one subject matter, but various parts could conceivably stand on their own for voting.

For budget implementation acts C-63 and C-74, the Speaker had to consider whether some measures within the bills were announced as a part of the budget. In one case he divided it, but in the other he ruled that the part in question had been announced in the budget

From left: Moderator Chloé O'Shaughnessy, Christopher Cooper, Jeffrey LeBlanc, Guillaume LaPerrière-Marcoux and Aurélie Skrobik.

address and the length of the part was not out of the ordinary for the complexity of the changes.

Aurélie Skrobik, a 2017-2018 intern with the Parliamentary Internship Program, explored the theme of populism and e-petitions in Canada as a part of the programme. Her work contrasted the experience with e-petitions in the United Kingdom and outlined the differences in how they are accepted, considered, and potentially debated. An article based on Skrobik's work will be published in a future issue of the CPR.

Christopher Cooper, an associate professor at the University of Ottawa's Department of Political Studies, reviewed the prime minister's appointments and growing centralization of power in government. He highlighted the Savoie Thesis: no one, at least in government, believes the prime minister is the first among equals any longer. In explaining the increasing degree of centralization, he cited the news media cycle, personalization of politics, distrust in public service, dissatisfaction with deliberative process, influence of business management, and desire for responsive competence rather than neutral competence (for example, being able to deliver).

Making Parliament More Inclusive Panel

Jeanette Ashe, chair of the Political Science Department at Douglas College, discussed her ongoing research into "gender sensitive parliaments." There are a variety of ideas for how to make a parliament more gender sensitive, including: legislating quotas; incentivizing parties to recruit women; and requiring Elections Canada to gather data on candidate selection.

Although the current prime minister describes himself as a feminist, she wondered what that means

substantively. Currently 27 per cent of MPs are women and there has been slow movement in increasing this percentage. Ashe stated that a gender sensitive parliament would have more artwork that includes women, a prohibition on single gender committees and a prohibition on all-male panels. Although she concluded that the current parliament is more gender sensitive than previous one, she stressed that there is much more to do.

Adelina Petit-Vouriot, a research analyst with Samara Canada, suggested that Canadians want to see a Parliament that reflects the population. *Democracy 360*, Samara's report card on the House of Commons, includes a section on diversity of representation. Petit-Vouriot's presentation focused on electing, empowering, and engaging youth in our parliamentary democracy. She noted the average age of MPs now is 51 and the cabinet is marginally younger at an average age of 50.7. Samara has been exploring constituency youth councils/advisory groups to examine some ways youth are participating in parliamentary democracy. She noted that the structure and activities of these groups often differed greatly.

Manon Tremblay, a professor of Political Studies at the University of Ottawa, stated that in terms of composition, the House of Commons is not representative of the number of women in Canada, but is a bit more representative of LGBTQ people. Of 338 seats, five are held by openly LGBTQ people. By comparison, openly LGBTQ people hold seven per cent of seats in the United Kingdom's House of Commons. Moreover, she said "emotional representation" is an important aspect to consider. For example, she cited the appointment of Randy Boissonnault (Special Advisor to the Prime Minister on LGBTQ2 Issues) and the Prime Minister's official apology to LGBTQ2 people

From left: Moderator Marie-Ève Belzile, Adelina Petit-Vouriot, Jeanette Ashe and Manon Tremblay.

for historic wrongs members of the community had experienced.

Tremblay expressed sadness that Canadians have to give political parties incentives to achieve more representative slates of candidates and encouraged discussion of quotas to achieve more equitable representation. During a Q&A period following the panel an audience member asked about a potential backlash if a quota system were introduced. Ashe noted there was a lot of backlash in the 1990s when the Labour Party instituted all-women shortlists in the UK, but it has found more acceptance in recent years and other parties now looking at them as an option.

A Check-in on Senate Modernization Panel

Independent Senator **Diane Bellemare**, who initially sat as a Conservative the Upper Chamber, noted that Senate modernization talks are nothing new, having first begun in the 1890s. Since she arrived in the Senate it's been a steady topic of discussion as the institution has been in a crisis mode. Although she belonged to a party caucus when she first arrived, she knew she also had a constitutional role to play. She began to research the role of the Canadian Senate and other Senates in order to determine how it could be successfully modernized.

Bellemare listed six conditions she believes are necessary for successful modernization. Condition 1: The existence of several groups who share policy views and can be called caucuses. In most countries it's rare to have only two parties in the upper chamber. Condition 2: These groups or caucuses should not be partisan. They should be more independent. Condition 3: An appointment process that is transparent and favours the selection of qualified senators who are non-partisan.

Condition 4: The implementation of policies and rules that prevent caucus leaders or group facilitators from rewarding or sanctioning senators for their views. Condition 5: A shared idea of a common vision of their constitutional role in the Canadian Senate and objective criteria by which to review bills in order to help separate personal opinions and emotions. Condition 6: The explicit recognition by government and the House of Commons of changes in the Senate by establishing a sincere and respectful dialogue with the Senate and by adopting relevant changes to the *Parliament of Canada Act*.

Liberal Senator **Art Eggleton**, who joked that he would be 'graduating from the Senate' upon his mandatory retirement at age 75 (two weeks from the date of the conference) expressed his view that the Senate has never been a better place to work. He suggested the Senate spending scandal/auditor investigation helped, but that Senators really got their own house in order. Senate Communications have been transformed to allow the Senate to better communicate its work. Moreover, he said he believes the change in the appointment process has made things better because a majority of Senators are no longer bound by a caucus whip and the Senate is no longer a rubber stamp.

Eggleton cautioned that there are still concerns. The modernization project has gotten bogged down badly. He noted that two years ago 10 reports were published, but since that time four are still on the order paper. He also said some of the changes the Senate undergone may not last depending on what future governments decide to do. Eggleton contended the Conservatives have indicated they really want to maintain the old system or something similar to it – especially the notion of the Official Opposition. He said he doesn't mind a group opposing, but he doesn't think there is a need to

From left: Moderator David Groves, Senators Diane Bellemare, Art Eggleton, Marc Gold and Vernon White.

belong to a caucus with a whip associated to a political party. Eggleton pointed to a Nanos Poll in *Policy Options* which showed significant support among Canadians (84 per cent of those polled) who agreed with the idea that Senators should vote independently.

He concluded by suggesting the need for future work updating the *Parliament of Canada Act*. The Independent Senators Group Facilitator is not recognized in the current legislation, and therefore doesn't get paid for his/her additional responsibilities which are similar to the paid role of caucus leaders in the Senate.

Independent Senator **Marc Gold** suggested we could use three possible criteria to evaluate the 42nd Parliament: efficiency, predictability and effectiveness. He offered that efficiency of the Senate could be improved by better planning amongst the government, Senate representatives and others. A more organized structure would help the Senators work more efficiently; but efficiency should not be the sole measure to look at the Senate's sober second thought mandate. Gold noted that critics cite the lack of predictability resulting from the government's appointment process is one of its flaws. But, he asked, is lack of predictability a bad thing? Do we really want a rubber stamp? Government must now keep on its toes and pay attention to what's happening in the Senate.

Finally, in order to be effective, Gold said the Senate must provide reasonable scrutiny of legislation. He cautioned not to confuse assertiveness with effectiveness. For example, he pointed to the government's *Cannabis Act*. Gold contends the quality of the Senate's review, both in committees and in third reading debate, made for much more effective review. With this level of review Gold stated he believed the Senate is truly adding value to the legislative process. He warned

the process is fragile, however, and identified a risk that an increasingly assertive Senate will undermine its role if it proposes too many amendments. Gold noted there is a lot of internal debate in the ISG about how much change to legislation is too much and why. He also cautioned against hyper-partisanship in the modernization process. "We ought to be humble when we proceed with fundamental institutional change," Gold concluded, adding that there's a wisdom in tradition that is sometimes missed by cold, rational thought.

Conservative Senator **Vernon White** encouraged attendees to consider the Westminster system when discussing Senate modernization. He suggested it's very important to understand where we're going by understanding where we've come from, and he noted that the Senate's historic role a voice of and for regions must not be lost in discussions.

White suggested the current appointment process will likely continue, but said alternatives should be considered – for example, allowing provinces to nominate candidates for appointment. Moreover, he said if the current process is missing small 'c' conservative candidates but including small 'l' liberals and small 'p' progressives, there's a problem. He stated the Senate is not as representative as it could or should be.

White stressed that the Senate must serve as a check against the power of the prime minister, especially in a majority government. As the modernization project continues, he encouraged greater involvement of provinces and territories in the selecting new members and in discussions of what a future Senate should look like. After all, he said, these provinces and territories were involved in creating the Senate to begin with.